IN THE COURT OF APPEAL OF BELIZE AD 2024
CRIMINAL APPEAL NO. 1 OF 2020

BETWEEN:

Giovanni Villanueva

Appellant

and

The King

Respondent

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Before:

The Hon. Mme. Minnet Hafiz-Bertram	President
The Hon. Mr. Justice Arif Bulkan	Justice of Appeal
The Hon. Mme. Justice Michelle Arana	Justice of Appeal

Appearances:

R Gonzales, for the Appellant
C Vidal SC, Director of Public Prosecutions, for the Respondent

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2023: June 14
2024: June 7

JUDGMENT

[1] **ARANA, J.A.:** This is an Appeal against Sentence. Giovanni Villanueva the Appellant was convicted by a jury of his peers of the murder of Wilfredo Baeza on October 5, 2006, and sentenced to life imprisonment. On December 17, 2019, the Appellant was re-sentenced pursuant to the order of the Caribbean Court of Justice in **Gregory August v R 2018 CCJ 7 (AJ)** and pursuant to section 106 of the Criminal Code (Amendment) Act, 2017. This appeal is brought against this sentence of life imprisonment with eligibility for parole after 25 years imposed by Lord J as a result

of this re-sentencing exercise. Arguments were submitted before this Court by way of written submissions.

Facts of The Case

[2] On July 19, 2003, Wilfredo Baeza was shot and killed in the bathroom of his home. The day after he was murdered, Geovanni Villanueva informed his sister that he had killed Mr. Baeza because their other sister Tomasita Baeza (Wife of the deceased) had promised him payment of $6,000 to do so. On October 6, 2006, the Appellant was tried for the Murder of Wilfredo Baeza and found Guilty by a jury of his peers.

Grounds of Appeal

[3] Mr. Ronell Gonzalez, on behalf of the Appellant, advanced the following Grounds of Appeal:

(1) The appellant received an unreasonably excessive re-sentence having regard to the evidence before the Court.

(2) The learned trial judge failed to take into account the mitigating factors regarding this case and circumstances in reaching his decision and seemingly focused only/mostly on the aggravating factors which served as an immediate bias to the Appellant.

(3) The appellant did not receive a fair sentence

The Re-sentencing Exercise

[4] On December 17, 2019, Justice Lord conducted a re-sentencing exercise in R v. Giovanni Villanueva pursuant to section 106(A) of the Criminal Code Chapter 101 of the Substantive Laws of Belize as Amended by Act No. 22 of 2017. After hearing submissions from Richard Bradley Sr. on behalf of Mr. Villanueva and from Ms. Chell-Urbina of the Office of the Director of Public Prosecutions, Justice Lord set out his reasons for imposing a life sentence with eligibility for parole after 25 years. The CCJ had ordered in **Gregory August and Alwyn Gabb v R 2018 CCJ 7 (AJ)**

that those persons serving a mandatory life sentence for Murder had to be resentenced to either a fixed term of imprisonment, a sentence of life imprisonment with a minimum period to serve before becoming eligible for parole, or a sentence which specifies when consideration can be given as to whether the prisoner has become eligible for parole.

[5] The Judge discussed the reasons for the sentence that he imposed on Mr. Villanueva at the re-sentencing. He highlighted the changes in the law brought about by Section 3 of the Criminal Code Amendment Act No. 22 of 2017: "an *Act to make for, among other things, the specification of a minimum term of years, which an offender sentenced to life imprisonment for murder, shall serve before the offender can become eligible to be released on parole."*

[6] In analysing the circumstances of the offender and the offence, Justice Lord said that he took note of the fact that the Prosecution had proven that the Appellant admitted to his sister Maria Catzim, that he was the one who had shot Wilfredo Baeza at the request of Tomasita Baeza, Wilfredo's wife, their other sister who had promised to pay the Appellant $6,000 for this killing. The judge also noted that Mr. Villanueva had been convicted after a full trial and had not pleaded Guilty, and that his appeal against conviction and sentence had been heard and dismissed by the Court of Appeal on March 13, 2008. The sentence of life imprisonment imposed by the trial judge had been confirmed by the Court of Appeal.

[7] In re-sentencing the Appellant to life imprisonment with eligibility for parole after serving 25 years, the learned judge noted the submissions in mitigation made by Mr. Bradley on behalf of Mr. Villanueva:

1) that Mr. Villanueva helped in contributing to his family
2) that he helped to provide food for his stepchildren
3) that he was an honest hardworking man
4) that he had no previous convictions.

[8] Mr. Bradley said that the Appellant was sorry for his actions and for what he had done to the deceased, the Appellant had already served 16 years in prison, and the Appellant begged for another chance to re-enter society.

[9] The learned sentencing judge also noted the submissions made by the Crown regarding the aggravating circumstances of this crime, including that:

1) this was a senseless act of violence by the Appellant against Mr. Baeza who was his brother-in-law
2) there was the use of a firearm, and the act was mercilessly carried out against a member of his own family
3) the manner of executing showed a degree of premeditation
4) Victim Impact Statement of Judith Baeza (sister of the deceased)
5) unprovoked nature of the attack on the deceased while he was in his bathroom of his own home, and the Judge later noted that the Deceased was an amputee
6) bragging to his sister after the killing, asking if she knew that Wilfredo Baeza was dead
7) actions after the crime of throwing the gun into the sea and asking his sister Ms. Catzim for money to leave the country indicated the Appellant's lack of remorse
8) ten infractions committed by Villanueva while he was in prison

[10] The judge touched briefly on the sentencing principles of Retribution, Deterrence, Prevention, and Retribution stated in Desmond Baptiste High Court, Criminal Appeal, No. 8 of 2003, Saint Vincent & The Grenadines. In conclusion, in resentencing the Appellant to life imprisonment with eligibility for parole after 25 years, the judge stated that in his view the aggravating factors far outweighed the mitigating factors.

Appellant's Submissions on Ground Two

[11] In his written submissions, Mr. Ronell Gonzales argued his Second Ground of Appeal first, that the Learned Trial Judge failed to take into account the mitigating factors regarding this case and circumstances in reaching his decision, and

seemingly focused only/mostly on the aggravating factors which served as an immediate bias to (against) the Appellant.

[12] Learned Counsel submits that the judge failed to give sufficient weight to the particular circumstance of the offender, in that the Appellant appeared to the witness Maria to have been drinking alcohol shortly after the commission of this crime. The court should have considered this as a justifiable defence since it appeared that the Appellant may not have been in his right mind. This was a major oversight by the sentencing judge who had the following evidence before him: "*When Giovanni Villanueva was speaking to her, Maria said that he appeared as though he had been drinking as she could smell the aroma of alcohol."* This was a material issue which the judge should have addressed and the judge erred in failing to give any weight or consideration to this evidence. Alcohol is legal but is largely known as a depressant and is defined in the Oxford dictionary as "chiefly of a drug which reduces functional or nervous activity." The judge did not mention anywhere in his reasoning that the Appellant had been drinking alcohol, and a circumstance where a defendant was not under his normal mind set must be considered by any sentencing court.

[13] Mr. Gonzalez further argued in advancing his second ground of appeal that the sentencing judge failed to take account of the age of the Appellant as a young man of 27 years at the time of the commission of this crime. Although the law prescribes the age of adulthood to be 18, the reality is that maturity is not recognized until age 25. The Appellant had only recently completed his 27th birthday in April 2003 and he was arrested in July 2003. He also argued that the judge failed to mention that the Appellant had no previous convictions as a mitigating factor, and that the judge paid little regard to the fact that the Appellant had expressed remorse for the crime. The judge's sentence therefore appeared focused too heavily on the aggravating circumstances of this crime, ignoring or minimizing the mitigating factors and therefore was arbitrary and excessive. This murder was not among the worst and the judge should have in these circumstances imposed a fixed term sentence similar to that of the Louis Gentle case.

[14] Mr. Gonzalez then focused the balance of his written submissions on Ground 1, that the Appellant had received and unreasonably excessive re-sentence having regard to the evidence before the court and Ground 3, that the Appellant did not receive a fair hearing. The gravamen of the submission on these grounds was that the sentencing judge failed to follow the proper sentencing procedure. The judge failed to give reasons as to why he imposed a life sentence with eligibility for parole after 25 years. Learned Counsel referred to the following cases as precedents which the court should have followed:

1. Glenford Baptist v The AG of Belize
2. Nicholas Guevara v The Queen
3.The Queen v Louis Gentle
4. Patrick Robateau and Leslie Pipersburgh v The Queen

[15] The judge should have given the Appellant a fixed term instead a sentence of life imprisonment with eligibility for parole after 25 years.

The Respondent's Submissions

[16] The learned Director of Public Prosecutions (The Director) submitted that this court has made it clear in its decision in ***Faux, Ramirez and Torres, Criminal Appeals No. 24, 25 and 26, Court of Appeal of Belize***, that the decision whether to impose a sentence of life imprisonment with a minimum term or a fixed sentence is at the discretion of the trial judge. That discretion must be exercised judicially having regard to the actual facts of the case. This Court also made it clear that it is not bound by sentences imposed by the court below.

[17] In relation to the offence of Murder, the learned Director submits that there are no mitigating circumstances. On the admission of the Appellant, this was a contract killing, carried out with a firearm on Wilfredo Baeza in his own home. The Appellant killed his brother-in-law because his sister had promised to pay him $6,000 to do so. In relation to mitigation factors specific to the offender, the Appellant had expressed remorse, and he had no previous convictions. He had attended two

rehabilitation programs while he was incarcerated between 2012 and 2018 and he had incurred 12 infractions in prison.

[18] In response to the Appellants submissions on alcohol as a mitigating factor in this crime, the learned Director contends that the issue of intoxication cannot be an issue at this stage of the proceedings because the judgment of this Court in the substantive appeal clearly demonstrates that intoxication was not an issue at trial. There was no evidence to suggest that the Appellant was intoxicated at the time that he committed this offence, or that he was drunk at the time that he confessed to his sister to having killed Mr. Baeza. Alcohol therefore cannot be a mitigating factor at this time. There was no evidence of alcohol intoxication of the Appellant at trial. The Director agreed that this was not the worst of the worst type of murder; if it had been, then the Crown would have requested that the death penalty be imposed on the Appellant instead of life imprisonment.

[19] On the issue of whether the judge should have imposed a life sentence or a fixed term on the Appellant, the learned Director submitted that since each sentence must be individualized, precedents must be considered in context. In ***Faux, Ramirez and Torres*****,** the court considered factors relating to age, physical health, family situation and personal background in determining that a fixed term sentence was appropriate. These mitigating factors were not present in the Appellant's case. At the time of commission of this crime, the Appellant was neither a teen nor a minor; he was 27 years old. In the two decades spent in prison, he has only completed two rehabilitation programs of 2- and 3-month duration in 2012 and 2018 respectively. He had no previous convictions. However, 2 of the 12 infractions he committed were after he had been re-sentenced; ten of the infractions committed by him prior to his re-sentencing included possession of controlled drugs, participation in a fight, possession of "boras" i.e. prison made instruments crafted to be used as weapons, use of indecent words to an officer, disrespecting an officer and possession of a knife blade. The Director also indicated that 10 infractions were committed after he had completed the first rehabilitation program while the others were committed after he completed the second.

[20] While the Appellant expressed remorse at his re-sentencing, he had proclaimed his innocence to the Community Rehabilitation Officer preparing the Social Enquiry Report for his sentencing. The Director submits that while the expression of remorse is a mitigating factor to be taken into account by the judge in resentencing the Appellant, it cannot be such an extenuating circumstance that would operate to require a fixed term sentence when no other factor would justify it. The established range of sentences as seen in the decision of this court in ***The Queen v Clifford Hyde*** was 15 to 25 years for the street fight type killing in Manslaughter cases, while in ***Gregory August v The Queen*** this court accepted that the range for a fixed term sentence for Murder would be 25 to 35 years. Citing the Privy Council decision in ***Caryn Moss v The King [2023] UKPC 28***, the Director submitted that a departure from the established range of sentences must have its basis in some extenuating circumstances. While the Director concedes that the judge did not follow the accepted path in imposing sentence, she submits that the sentence passed was commensurate with the offence committed, and in keeping with the mitigating and aggravating circumstances. In conclusion, this court should dismiss the appeal and affirm the sentence of life imprisonment with eligibility for parole after twenty five years.

The Decision

[21] This court agrees with the submissions of the Learned Director.

The submission that the resentencing judge did not consider the issue of alcohol as a mitigating factor cannot be considered at this stage since there was no evidence of this at the trial. We agree with the Learned Director that in the particular circumstances of this case, this cannot now be a live issue at the appeal. Furthermore, it is not every instance of alcohol that will amount to a mitigating factor. The evidence of drunkenness or intoxication must be such that the court is bound to consider whether the mind of the accused was so impaired by alcohol that he was unable to form the requisite specific intention to kill. In ***Criminal Appeal No. 4 of 2019, Orlando Smith v The King and Criminal Appeal No 5 of 2019, Joseph Cadle v The King*** President Hafiz-Bertram delivered the judgment of the court,

unanimously dismissing these consolidated appeals and affirming the Conviction and Sentence of 12 years of those Appellants for Attempted Murder. Hafiz Bertram P. referred to ***Sooklal v Francis Mansingh [1999] UKPC 37*** where the Privy Council discussed the test to trigger the defence of intoxication. Lord Hope at paragraphs 15 and 16 stated:

""This test is not satisfied by evidence that the accused had consumed so much alcohol that he was intoxicated. Nor is it satisfied by evidence that he could not remember what he was doing because he was drunk. The essence of the defence is that the accused did not have the guilty intent because his mind was so affected by drink that he did not know what he was doing at the time when he did the act with which he has been charged. The intoxication must have been of such a degree that it prevented him from foreseeing or knowing what he would have foreseen or known had he been sober. This was made clear by Lord Denning in ***Bratty v Attorney-General for Northern Ireland [1963] AC 386, 410****, in a passage which was quoted by Widgery L.J. in* ***Reg. v. Lipman [1970] 1 Q.B. 152*** *at 156:- "If the drunken man is so drunk that he does not know what he is doing, he has a defence to any charge, such as murder or wounding with intent, in which specific intent is essential, but he is still liable to be convicted of manslaughter or unlawful wounding for which no specific intent is necessary, see Beard's case. "In* **Attorney-General for Northern Ireland v Gallagher [1963] AC 349, 381** *Lord Denning gave some helpful examples of the application of this principle: "If a man is charged with an offence in which a specific intention is essential (as in murder, though not in manslaughter), then evidence of drunkenness, which renders him incapable of forming that intention, is an answer: see Beard's case. This degree of drunkenness is reached when the man is rendered so stupid by drink that he does not know what he is doing (See* ***Reg. v. Moore (1852) 3 Car. & Kir. 319)****, as where, at a christening, a drunken nurse put the baby behind a large fire, taking it for a log of wood (Gentleman's Magazine, 10 1748, p. 570; and where a drunken man thought his friend (lying in his bed) was a theatrical dummy placed there and stabbed him to death ("The Times" January 13, 1951). In each of those cases it would not be murder. But it would be manslaughter."*

[22] While the Appellant's sister to whom he confessed said that she smelt alcohol on him, it is our view that this does not rise to the level that would trigger an intoxication warning by the trial judge. The sentencing judge was therefore in our view not required to take intoxication into account since there was no evidence of drunkenness of the Appellant raised at the trial; we therefore agree with the submission of the Director that alcohol intoxication therefore cannot be a live issue for the re-sentencing judge on this appeal.

[23] While the learned resentencing judge did not follow the usual path of establishing a starting point for the commencement of a custodial sentence, we do not agree with Mr. Gonzalez's submission that the judge erred in resentencing the Appellant to life imprisonment with eligibility for parole after 25 years, or that the sentence was excessive or unreasonable. The decision whether to impose a fixed term or life imprisonment with a term of years is a discretion to be exercised by the judge. We find that the resentencing judge considered the mitigating and aggravating factors and decided to impose the sentence of life imprisonment with eligibility for parole after 25 years. We agree with the Director that the sentence imposed was commensurate with the offence committed in the individual circumstances of this case. This Appellant used a gun to shoot his brother-in-law, who was also his employer, in exchange for the promise of $6,000 from his sister. This was murder for hire by the Appellant of his family member, an amputee who was in the privacy of his bathroom, and in our view the resentencing passed by the judge was well within the period of 20 to 25 years for cases of this type. None of the mitigating factors which were considered by this court in ***Faux et al v The Queen*** was present in this case. We agree with the submission of the Director that departure from the established range of sentences must have its basis in some extenuating circumstance, and in this case, we do not see that any such circumstance exists.

[24] For these reasons, we dismiss the appeal, and affirm the resentence of life imprisonment with eligibility for parole after 25 years.

Michelle Arana
Justice of Appeal

Minnet Hafiz-Bertram
President

Arif Bulkan
Justice of Appeal