IN THE COURT OF APPEAL OF BELIZE, A.D. 2024
CRIMINAL APPEAL NO. 11 OF 2019

BETWEEN:

CHADWICK DEBRIDE **Appellant**

and

THE KING **Respondent**

IN THE COURT OF APPEAL OF BELIZE, A.D. 2024
CRIMINAL APPEAL NO. 19 OF 2019

BETWEEN:

JEREMY HARRIS **Appellant**

and

THE KING **Respondent**

Before:

The Hon Madam Justice Hafiz Bertram	President
The Hon Mr. Justice Bulkan	Justice of Appeal
The Hon Madam Justice Arana	Justice of Appeal

Appearances:

Mr. Leeroy Banner for the Appellants

Mrs. Cheryl-Lynn Vidal S.C., Director of Public Prosecutions, for the Respondent

…….

2024: March 26

June 11

……

JUDGMENT ON RESENTENCING

[1] **HAFIZ BERTRAM, P:** These appeals against sentences by Chadwick Debride ('Debride') and Jeremy Harris ('Harris') were heard on the same day. It is convenient to determine both appeals in one judgment since the appeals were on the basis that the sentences imposed for their convictions of murder were excessive. Debride had a second ground which was that he was not given credit for the time spent on remand. The sentencing judge ('trial judge') was the same in both appeals.

[2] Both Appellants were re-sentenced following the CCJ decision of Gregory **August and Alwyn Gabb v The Queen,**[1] a decision which is oft cited in this Court. Debride and Harris were sentenced to life imprisonment with a minimum term to serve before becoming eligible for parole. The appeals were heard on 26 March 2024 and the Court reserved its decisions.

[3] The appeal of Debride is allowed in part as the trial judge erred in not given the credit for remand time. The ground that the sentence was excessive was dismissed in both appeals. The sentences imposed by the trial judge were commensurate with the criminal conduct of the appellants and are consistent with the range of sentences imposed for a conviction of murder post-August. For Debride, life imprisonment with a minimum term of 30 years before becoming eligible for parole and in the case of Harris, life imprisonment with a minimum term of 25 years before becoming eligible for parole.

[4] ***Section 216(3) of the Senior Courts Act 2022***

Section 216 (3) of the Senior Courts Act 2022[2] gives this Court the power to re-exercise the sentencing discretion "if it thinks a different sentence should be passed and quash the sentence passed at the trial and pass such other sentence warranted in law by the verdict (whether more or less severe) in substitution therefor as it thinks ought to have been passed and in any other case shall dismiss the appeal."

[1] [2018] CCJ 7 (AJ)
[2] Act No. 27 of 2022

[5] The statutory obligation under section 216(3) was explained by the CCJ in **Pompey v DPP**.[3] Saunders PCCJ stated that the functions of a reviewing court is to step in to correct discrepancies, reverse excesses or aberrations, secure consistency and promote observance of the rule of law. The appellate court should not lightly interfere with the exercise of a trial judge's discretion on sentences imposed unless it is manifestly excessive or wrong in principle.

Sentencing guidelines in the CCJ decisions

[6] The crux of the complaint by both appellants was that the trial judge did not follow the sentencing guidelines as enunciated by the CCJ in several recent decisions which is often cited in this Court. These decisions are **Teerath Persaud v The Queen**,[4] **Pompey v DPP**,[5] and **Calvin Ramcharran v DPP.**[6] The guidelines were discussed in the consolidated appeals of Faux **and Others**[7] a decision of this court at paragraphs [8] to [9]:

> "*Sentencing guidelines in Pompey – range of sentences or starting points*
>
> [8] In **Calvin Ramcharran v DPP**, Barrow JCCJ noted that in the re-exercise of the sentencing discretion, the reviewing Court must identify a starting point or range of sentence which **Pompey** endorsed following the CCJ's earlier determination in **Teerath Persaud**. In **Persaud**, Anderson JCCJ sets out the methodology for applying sentencing principles to arrive at an appropriate sentence:
>
> > "Fixing the starting point is **not a mathematical exercise**; it is rather an exercise aimed at seeking consistency in sentencing and avoidance of the imposition of arbitrary sentences. Arbitrary sentences undermine the integrity of the justice system. In striving for consistency, there is much merit in determining the starting point with reference to the particular offence which is under consideration, bearing in mind the comparison with other types of offending, taking into account the mitigating and aggravating factors that are relevant to the offence but excluding the mitigating and aggravating factors that relate to the offender. Instead of

[3] [2020] CCJ 7 (AJ) GY
[4] [2018] CCJ 10 (AJ)
[5] [2020] CCJ 7 (AJ) GY
[6] [2022] CCJ 4 (AJ) GY
[7] Criminal Appeals No. 24, 25 and 26 of 2019

considering all possible aggravating and mitigating factors only those concerned with the objective characteristics of the offence are factored into calculating the starting point. Once the starting point has been so identified the principle of individualized sentencing and proportionality as reflected in the Penal System Reform Act is upheld by taking into account the aggravating and mitigating circumstances particular (or peculiar) to the offender and the appropriate adjustment upwards or downwards can thus be made to the starting point. Where appropriate there should then be a discount for a guilty plea. In accordance with the decision of this Court in *Romeo da Costa Hall v The Queen* full credit for the period spent in pre-trial custody is then to be made and the resulting sentenced imposed.""

[7] The trial judge in the cases of Debride and Harris imposed life sentences for murder after considering the seriousness of the offence and the aggravating and mitigating factors of both the offence and the offender. In considering the mandated minimum sentence, he did not state a starting point and the adjustments made for the aggravating and mitigating circumstances of the offence and then go on to consider the aggravating and mitigating factors relevant to the offender. I note that the sentences of the appellants were imposed prior to most of the decisions by the CCJ, except for **Teerath.** Nevertheless, not fixing a starting point and showing adjustments for aggravating and mitigating factors for both the offence and the offender does not mean that the trial judge imposed arbitrary sentences. As will be shown by a review of his judgments, he applied the sentencing principles of retribution, deterrence, prevention and rehabilitation to the facts of both cases to show what the court was seeking to achieve through the sentences imposed. Also, in applying the statutory provision, section 106 of the Belize Criminal Code[8] , he considered the mitigating and aggravating factors of the offence and the offender (except for the remand time for Debride).

The appeal of Chadwick Debride

[8] On the 24 December, 2004, during early morning in broad daylight, Nedi Reymundo ('the Deceased') who at that time was a young police officer, was shot in the face in the region

[8] Cap. 101, as amended (22 of 2017)

of his right side eyebrow by Debride on West Canal Street in Belize City. Debride 23 years old at the time, was charged for his murder. He was convicted on the 5 June 2007 of the offence of murder and was sentenced to a mandatory life imprisonment. He was re-sentenced post-**August** to life imprisonment with a minimum term of 30 years with effect from **28** December 2007.

Analysis and findings by the trial judge

[9] In a judgment dated 6 May 2019, the trial judge examined the classical principles of sentencing, namely: retribution, deterrence, prevention, and rehabilitation as laid down by Lawson LJ in **R v James Henry Sergeant**[9] and applied those principles to the facts of the case. In relation to retribution he stated that the deceased, who was a young policeman was murdered execution style and he could not ignore the fact that the deceased was a police officer. Further, the fact that he may not have been in uniform when he was shot does not make him any less a policeman. He also took into consideration the upsurge in homicides and other serious crimes of violence involving the use of a firearm within this jurisdiction. Accordingly, the trial judge stated that the court must show its abhorrence for this type of offence committed in the manner in which it was done herein by the sentence it imposes.

[10] As for the principle of deterrence, the trial judge noted that it is specific to Debride to deter him from reoffending in like manner upon his release from custody. Further, it was to deter members of the wider public who contemplate committing this or some similar offence. The court noted that it must impose a suitable sentence to deter Debride and others from committing crimes of violence especially those involving the use of firearms.

[11] Upon consideration of prevention, the trial judge stated that the principle is applicable to those who persist in high rates of criminality. He considered that Debride is not a first time offender and admits to three previous convictions for: "(1) mischievous acts, 1998; (2) three counts of escape from lawful custody, 1999; and (3) burglary in 2000 for which he was sentenced to a period of imprisonment of three years. He was discharged from prison in August 2002 and committed this murder two years later." Although those previous convictions did not involve acts of violence, the court noted that Debride has

[9] 1974 60 Cr. App. R. 74

not benefitted from the proverbial sound of the shutting iron cell door as within a relatively short period of time after his release from prison for burglary, he committed murder.

[12] The trial judge upon considering rehabilitation recognised that it is of utmost importance as it is the preparation of the accused for his reintegration to the society as a law abiding citizen. He took into consideration that Debride was involved in programs whilst an inmate at the Kolbe Foundation. He also considered that he committed several infractions over the years which, though not serious, caused him not to be considered a model prisoner and one who is committed to rehabilitate himself.

[13] The court further noted that during Debride's address to the court, he appeared to have accepted the enormity of what he had done and expressed remorse. He spoke of the impact of what he had done on the family of the deceased and his own family and he sought mercy from the court.

[14] The trial judge considered the aggravating and mitigating factors at paragraphs [17] and [18] of his judgment:

> "[17] **Mitigating Factors**
>
> i. The violations of the convicted man's constitutional rights;
> ii. The remorse expressed;
> iii. The previous convictions do not relate to acts of violence.
> iv. The programs pursued by the convicted man in aid of his rehabilitation.
>
> [18] **Aggravating Factors**
>
> i. The killing of the Deceased in the manner in which it was done;
> ii. The killing was planned and premeditated;
> iii. The Deceased was a police officer;
> iv. The use of a firearm to kill the Deceased on a busy city street without consideration of the possibility of injuring other members of the public;
> v. The effect of this homicide on the family members of the Deceased as disclosed in the victim impact statements."

[15] In applying *section 106 of the Criminal Code,* the trial judge considered the legal principles in **The Queen and Mervin Moise**[10]**,** a case from the Eastern Caribbean Court of Appeal. At paragraphs 18 and 19, Rawlins JA writing for the court discussed the factors a sentencing judge should take into consideration in passing sentence. This include the facts and circumstances that surround the commission of the offence and the character and record of the convicted person.

[16] The trial judge applied the principles in sentencing and analysed and balanced the aggravating and mitigating factors for the offence and the offender. He found that the aggravating factors significantly outweighed the mitigating factors. Before passing sentence, he reiterated the circumstances of the killing and that Debride was not a first time offender. He considered his role as a sentencing trial judge as stated by Lawson LJ in **R v Sergeant** "… society, through the Courts, must show its abhorrence of particular types of crime, and the only way the Courts can show this is by the sentences they pass."

[17] The court further relied on **R v Howells**[11] where Lord Bingham CJ as he then was opined:

> "Courts should always bear in mind that criminal sentences are in almost every case intended to protect the public, whether by punishing the offender or reforming him, or deterring him and others, or all of these things. Courts cannot and should not be unmindful of the important public dimension of criminal sentencing and the importance of maintaining public confidence in the sentencing system."

[18] After the above considerations by the trial judge, he imposed a sentence of life imprisonment with eligibility for parole to be considered after Debride has served a period of 30 years imprisonment with effect from the 28 December 2007.

Grounds of appeal

[19] Debride brought two grounds of appeal. The first being that the sentence imposed on him was excessive and the second ground was that the trial judge did not give him full credit for the period spent on remand.

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[10] Criminal Appeal No. 8 of 2003
[11] (1999) 1 all er 50- 54

[20] Learned counsel Mr. Banner correctly referred the Court to the sentencing guidelines from the CCJ decisions and the range of sentences for murder in Belize as shown in **Faux and Others.** He raised four points:

(i) There was no starting point;
(ii) The aggravating and mitigating factors for the offence and offender not properly considered. Additionally, no evidence that Debride knew that his victim was a police officer;
(iii) No evidence that trial judge paid sufficient attention to the psychiatric evaluation, social inquiry report and the prison report; and
(iv) the trial judge did not consider if a fixed term sentence was appropriate.

Was the sentence imposed on Debride excessive?

[21] The main issue for this Court is whether the trial judge erred in imposing the sentence of life imprisonment with a minimum term of 30 years after taking into consideration the aggravating and mitigating factors for the offence and the offender. If the trial judge erred and the sentence is excessive a different sentence ought to be passed by this Court in accordance with section 216(3) of the Senior Courts Act. However, this court will not lightly interfere with the exercise of a trial judge's discretion on the sentence imposed unless it is manifestly excessive. Firstly, the Court will consider Mr. Banner's point that the trial judge did not consider if a fixed term sentence was appropriate under the circumstances of this case.

Is a fixed term appropriate?

[22] In the consolidated appeals of **Faux and Others v The King** this Court discussed when fixed term sentences are appropriate:

> "[15].....The Court notes that these fixed term sentences have only been imposed where there have been **mitigating circumstances warranting a lesser sentence. It is at the discretion of the trial judge to determine whether to impose a sentence of life imprisonment or a fixed term sentence upon a conviction for murder.**
>
> [16] For a conviction of murder a custodial sentence is warranted as shown by the imposition of past sentences. The sentencing trend for murder ……since the amended section 106 and the case of **August** has been the imposition of a life

sentence with a minimum term of 25-37 years after which the convicted person becomes eligible to be released on parole."

[23] As shown above, the imposition of a fixed term sentence would have been justified only if there were mitigating factors warranting it. The trial judge considered four mitigating factors. Debride's age as not one of those factors. He was 23 years old at the time of the commission of the offence. In both **August** and **Faux**, one of the considerations in imposing a fixed term was the age of the offender. August was 19 years of age at the time of the offence, and Faux was just over 18. Debride was not a teenager but still relatively young considering he was below the age of 25 at the time.

[24] Madam Director submitted that if the position of this Court is that sentences of imprisonment for life should never be imposed on young adults, then the respondent cannot argue this point any further, and submitted that the facts of the case would warrant a fixed term on the upper end of the range. We have a difficulty embracing a fixed term sentence based solely on Debride's age, which will be discussed further below.

[25] We have considered the judgment of the trial judge which shows the gravity of the offence. A firearm was used to kill the deceased, a policeman, in broad daylight in a crowded street, in execution style, a bullet to his face above the eyebrows. This was not a robbery gone bad as stated by this Court on appeal of the conviction. Nothing was taken from the deceased, including his thick gold chain and other personal effects. Debride was brave enough to cold-bloodedly use a firearm to execute the deceased in broad daylight. This was obviously premediated or planned. We agree with the trial judge that the circumstances of the offence must be given a lot of weight. Though age is a mitigating factor, this can be displaced by serious aggravating factors as shown by several decisions given by this Court.

[26] In Deon **Cadle v The Queen**[12], this Court did not find the sentence imposed as manifestly excessive notwithstanding the young age of the Appellant, 21 years at the time of his

[12] Criminal Appeal No 23 of 2001

trial and his previously almost unblemished record. The Court noted that there was a marked element of cold bloodedness in the shooting of the deceased. The Court added, at page 5:

> 'The continued frequency of such cases may well have moved trial judges to take the view that an increase in the existing maximum was needed to emphasise the intention of the courts to do all in their power to protect society from young offenders armed with guns . ..'

[27] The case of **The Queen v Hilberto Hernandez**[13] also discussed the displacement of age. At paragraph 38, several other authorities were discussed which showed that the mitigating factor of young age was not enough to displace the aggravating features of the case. In **Renaldo Alleyne v The Queen**[14] the issue of mitigating circumstances being outweighed by aggravating factors was addressed by President Saunders in the concurring judgment at paragraphs 79 and 80:

> "Sentencing where life imprisonment is a possibility
> [79] Life sentences fall into a unique category of sentences. If, after considering all of the aggravating and mitigating circumstances of the offence (as distinct from those of the offender), a trial judge is initially disposed to impose a life sentence, that disposition can be softened, in appropriate cases, upon a consideration of the mitigating circumstances that relate to the offender. That would be because matters such as the offender's early guilty plea or his age or level of remorse or social or economic circumstances, cause the trial judge to moderate his or her original disposition in favour of a lesser sentence measured in terms of years or months.
>
> [80] Alternatively, however, a) the circumstances relating to the offence may be so ghastly that the trial judge is inclined to regard life imprisonment as being eminently appropriate and therefore commensurate notwithstanding the mitigating circumstances the offender put forward. In other words, the trial judge may consider that a particular offence and its consequences are so serious that neither an early guilty plea nor any other mitigating factor can, in that particular case, serve to reduce the life sentence. Or, having found that the circumstances of the offence initially suggest that life imprisonment might be appropriate, in considering next the aggravating and mitigating factors relating to the offender, the trial judge may b) conclude that the mitigating factors put forward are outweighed by aggravating ones. In this regard, the trial judge may

[13] Criminal Application No 16 of 2010
[14] 5 [2019] CCJ 06 (AJ)

find that, despite the existence of some mitigating factors, the offender has, for example, such an appalling record that it cancels out the mitigating circumstances. In either of these two situations, that is a) or b), the sentence of life imprisonment is "commensurate"."

[28] The trial judge in Debride's case imposed a life sentence with a minimum of 30 years after he considered the aggravating factors and mitigating factors of the offence and the offender and found that the aggravating factors outweighed the mitigating ones. Debride's age, a mitigating factor, cannot outweigh the serious aggravating features of the offence. As noted by the trial judge, killing with guns is very prevalent in Belize. In a recent decision of this Court, **Tyron Reid v The King**,[15] Justice of Appeal Bulkan identified the use of a firearm with the specific intent to kill as an aggravating factor at paragraph 48 of the judgment.

[29] In the present case, Debride armed with a firearm shot the deceased in the face. Mr. Banner submitted that Debride did not know that the victim was a Police Officer. However, the evidence shows that the deceased was obviously the target as he fired a single shot to his face in a crowded street. No one else was shot. This was obviously a planned execution. Further, Debride was not a man of good character as he had previous convictions for mischievous acts, escape and burglary. The Prison report showed that he had 17 prison infractions. In the twenty years that he has been in prison, he has participated in 2 programmes, one of which was a treatment programme of 5 months duration in 2016. After that treatment programme, he was found in possession of 473 grammes of cannabis (2019) and he tested positive for cannabis use (2023). The trial judge considered this report as shown by his judgment. There was no circumstance to soften the life sentence imposed by the trial judge on Debride.

[30] In our view, the aggravating circumstances in this case for the offence and the offender, do not warrant a fixed term sentence. We see no reason to interfere with the discretion exercised by the trial judge to impose life imprisonment.

[15] Criminal Appeal No 3 of 2022

Is the minimum term of 30 years appropriate ?

[31] The trial judge imposed life imprisonment with a minimum term of 30 years upon Debride. As shown in **Faux and Others**, the sentencing trend for murder since the amended section 106 and the case of **August** has been the imposition of a life sentence with a minimum term of 25-37 years after which the convicted person becomes eligible to be released on parole. Debride falls below the middle of the scale.

[32] Section 106 of the Criminal Code provides for a minimum term to be given where a life sentence is imposed and the factors to be considered in doing so. The relevant subsections are 106(3) and (4):

> "(3) Where a court sentences a person to imprisonment for life in accordance with sub-section (1), the court shall specify a minimum term, which the offender shall serve before he can become eligible to be released on parole in accordance with the statutory provisions for parole.
>
> (4) In determining the appropriate minimum term under subsection (3), the court shall have regard to–
>
> (a) the circumstances of the offender and the offence;
> (b) any aggravating or mitigating factors of the case;
> (c) any period that the offender has spent on remand awaiting trial;
> (d) any relevant sentencing guidelines issued by the Chief Justice; and
> (e) any other factor that the court considers to be relevant."

[33] The CCJ in **August** elaborated on the amended section 106 as to the sentences to be imposed for conviction of murder at [82] and [83]:

> "[82] We have concluded that under the amended section 106, where a person is convicted of murder, that person can be sentenced to death or to a maximum term of imprisonment for life. Accordingly, any life sentence imposed following a conviction for the offence of murder will be discretionary and not mandatory. Wherever on the scale the term is fixed, the term of imprisonment must necessarily be such that it is befitting of the circumstances of the offence and the offender.
>
> [83] Where a term of life imprisonment is imposed by the sentencing trial judge, the judicial tailoring function is preserved by subsections (3) and (4) which allow for the prescription of a minimum term that must be served by the offender before being eligible for release on parole. In individualizing that minimum period, the

trial judge's exercise of his or her sentencing discretion is guided by the consideration of the key factors set out in subsection (4)."

The key factors considered by the trial judge in considering the minimum term

[34] Mr. Banner submitted that the trial judge did not use a starting point and the aggravating and mitigating factors for the offence and offender were not properly considered. In our view, despite the trial judge did not begin with a starting point and made adjustments (upward and downward), he adequately addressed the circumstances of the offence and the offender. He addressed the seriousness and characteristics of the offence which was an execution style killing of a police officer with a gun. Murder is prevalent in Belize and as noted by the trial judge the court had to impose a suitable sentence to deter Debride and others from committing crimes of violence especially those involving the use of firearm.

[35] The trial judge was cognisant of the sentencing principles which he applied to achieve the purpose of the sentence imposed. He found the principles of **Sergeant and** Lord Bingham CJ's opinion in **Howells** highly persuasive **having** regard to the fact that this case involves the killing of a police officer execution style. He carefully analysed the aggravating and mitigating factors for the offence and the offender and found the aggravating factors significantly outweighed the mitigating factors. It was for the trial judge to determine how much weight to be placed on the aggravating and mitigating factors taking into account all the circumstances of the offence and the offender. In our view, the minimum sentence of 30 years was commensurate with the offence committed by Debride.

Did the trial judge give sufficient attention to the reports?

[36] Mr. Banner argued that the sentencing trial judge did not give sufficient attention to the psychiatric evaluation, social inquiry report and prison report. We have reviewed the judgment and noted that the trial judge sufficiently considered the psychiatric report which revealed that there were no signs of any psychosis observed during the examination. He also considered sufficiently the prison report which showed Debride's conduct at Kolbe Foundation Central Prison. He considered as a mitigating factor the programs pursued by Debride in aid of his rehabilitation. He stated that regrettably the social inquiry report ordered was not provided. Nevertheless, we note the four mitigating

factors considered by the trial judge which were not sufficient to outweigh the aggravating factors.

Remand period not deducted

[37] Mr. Banner under this ground submitted that Debride was on remand since the 28 December 2004 and was convicted on the 5 June 2007. However, when he was re-sentenced, the trial judge ruled that his sentence took effect from the 28 December 2007. The Director conceded that the trial judge did not credit the appellant with the full period of remand and has not given any reason for the departure as shown in **da Costa Hall.**

[38] We agree with Mr. Banner that Debride's sentence should take effect from the 28 December 2004 and not December 2007. The trial judge erred in that respect. At paragraph 26 of his judgment he stated that, "*…the convicted man is sentenced to life imprisonment with eligibility for parole to be considered after he has served a period of 30 years imprisonment with effect from the 28th day of December, 2007."* The trial judge failed to give credit for the remand period from the minimum sentence of 30 years. To avoid any confusion the life sentence with a minimum of 30 years is to commence on 28 December 2004 thus accounting for the period spent on remand.

Conclusion

[39] The sentence of life imprisonment with a minimum term of 30 years imposed on Debride is not excessive. It is commensurate with his criminal conduct and it is in keeping with the range of sentences imposed for murder since the change in law. Further, he is entitled to the three years remand time which was not considered by the trial judge.

Disposition

[40] Based on the foregoing discussion, the Order of the Court is:

(i) The appeal of the Appellant, Chadrick Debride is partly allowed.
(ii) The appeal on sentence is dismissed and his sentence of life imprisonment with a minimum term of 30 years is affirmed.
(iii) The commencement date of the sentence is 28 December 2004.

The appeal of Jeremy Harris

[41] The Appellant, Jeremy Harris ('Harris') and Deon Slusher ('Slusher') were indicted for the murder of Phillip Chin ('the deceased') which occurred on 4 February 2002. On 12 January 2004, both accused were convicted of murder. Harris had robbed the deceased at gunpoint with his own gun. He and Slusher tied the deceased and took him in his pickup truck to a remote area. Slusher shot the deceased three times with the same gun whilst Harris waited in the vehicle. Harris then drove the pickup truck back to Belize City and took possession of the murder weapon from Slusher.

[42] Harris was sentenced to death and on appeal the sentence was reduced to life-imprisonment. He was re-sentenced post-**August** CCJ decision, to life imprisonment with a minimum term of 25 years before becoming eligible for parole. He appealed this sentence on the basis that it is excessive and that the trial judge did not consider whether a fixed term sentence was appropriate.

Analysis and findings by the trial judge

[43] The trial judge in this appeal was the same as in the previous appeal and he took the same approach as in that case. He fully apprised himself of the facts of the case as shown in the judgment and considered a psychiatric evaluation, social inquiry report and a Prison report on Harris from the Kolbe Foundation. I need not repeat the applicable principles of sentencing and guidelines.

[44] The facts of the case was that the deceased was the owner of a .38 special revolver and Harris was so aware. He and Slusher sought information about the deceased, such as his financial status, the times he left home and where he would go, and whether any other persons resided at his home. Their source was one Kathrine Fairweather, the friend of Rosita Castellanos, the girlfriend of the deceased. Harris and Slusher had a conversation with Rosita during which Slusher informed her that he wanted the deceased's gun. She removed the gun from the deceased's home and hid it. When the deceased discovered that his gun was missing, he went to Fairweather's home where he met Rosita and questioned her about it.

[45] At Fairweather's home, Harris pushed the deceased and pulled the gun from his pants waist. The deceased was later seen on the ground tied up with either rope or a cord and

lying face down on the floor. Harris told Fairweather and Rosita to go to the deceased's house and take all valuables which could be sold. Harris and Slusher then took the deceased with his vehicle to a remote area where he was shot three times with his own gun.

[46] Harris and Slusher in their statements to the police accused each other of the shooting and killing of the deceased. However, they were both convicted for the murder. Having considered the factual circumstances of the case, the trial judge then applied the sentencing principles of retribution, deterrence, prevention and rehabilitation to same to achieve the purpose of the sentencing by the court.

[47] In relation to retribution, the trial judge considered that Harris participated in a criminal activity which resulted in the death of the deceased as a result of gunshot injuries. He arranged for Rosita, the girlfriend of the deceased to take his gun and having done so he confronted the deceased with same gun. He was sure that Harris and Slusher planned this event and on that fateful day put their plan into execution whilst the deceased was tied up and incapacitated. The trial judge viewed this incident as "*another one of those brutal and deliberate acts of homicide which have become prevalent in this jurisdiction to which the Court must show its abhorrence by the sentence it imposes."*

[48] As for the principle of deterrence, the trial judge stated that the report from the Kolbe Foundation indicated that Harris was not a first time offender. He referred to paragraph 3 of that report which states:

> "prior to his present incarceration our records also show that he was convicted to prison on 2 occasions, which are:
>
> (1) September 4th, 1998, when he was convicted for kept prohibited firearm three years sentence, kept unlicensed ammunition six months sentence, and possession of controlled drugs. He was discharged on parole on September 18th, 2000;
>
> (2) August 3rd, 2001, for kept unlicensed firearm sentenced $1005.00 in default six months, kept unlicensed ammunition sentenced to $1005.00 in default six months, and armed with an offensive weapon $205.00 in default two months. He was discharged on remission on December 21st , 2001."

[49] The trial judge also noted that on 4 February 2002, Harris participated in the murder of the deceased for which he was convicted. He referred to paragraph 1 of the Kolbe report which further discloses that Harris was admitted to prison on 12 February 2002, on remand for this matter and to serve a sentence of 18 months imprisonment for drug trafficking. The previous convictions were taken into consideration by the trial judge to apply the principle of deterrence to deter Harris and others from reoffending in like manner. He noted Harris did not benefit from the proverbial sound of the shutting of the iron cell door as his predilection for having possession of unlicensed firearms and ammunition seemed to have caused him to be a repeat offender.

[50] He noted that the principle of prevention is applicable to those persons who are considered to be a danger to the society and in respect of whom rehabilitation has failed. The court also noted that although Harris is a repeat offender he took into consideration the rehabilitation programs he took for his reintegration into society. As such, he did not apply the principle against him.

[51] The court in a detailed analysis considered the rehabilitation of Harris. He noted that Harris had enrolled in several rehabilitation programs. However, his social inquiry report disclosed that Harris did not accept responsibility for the crime. So although it appeared that he was on the path of rehabilitating himself, the process was negatively affected by his failure to take responsibility for his willing participation in a criminal activity which caused the death of the deceased. For that reason, the trial judge attached very little weight to Harris' expressions of remorse. The trial judge also took into consideration the numerous infractions recorded against Harris which indicated that the process of rehabilitation will be a long and hard one.

[52] At paragraphs 22 & 23 of the judgment the trial judge addressed the aggravating and mitigating factors:

> "[22] **Aggravating Factors**
>
> i. The offence was planned and premeditated;
> ii. The gravity of the offence;
> iii. The convicted man was not a first offender at the time of the commission of this offence;

iv. The convicted man has failed/refused to take responsibility for his actions.

[23] **Mitigating Factors**

i. The progress made by the convicted man whilst on remand to rehabilitate himself;

ii. The violations of the convicted man's constitutional rights."

[53] The court in its application of section 106(1) of the Criminal Code, considered and relied on the decision of Harry **Wilson v The Queen,**[16] an appeal from the Eastern Caribbean Court, to guide itself on the balancing of the aggravating and mitigating features. In that decision Rawlins J.A. writing for the Court stated the factors a trial judge should consider when sentencing: At paragraphs 17 and 18 he stated:

> "17. It is a mandatory requirement in murder cases for a Trial judge to take into account the personal and individual circumstances of the convicted person. The Trial judge must also take into account the nature and gravity of the offence; the character and record of the convicted person; the factors that might have influenced the conduct that caused the murder; the design and execution of the offence, and the possibility of reform and social re-adaptation of the convicted person. …. The sentencing Trial judge is fixed with a very onerous duty to pay due regard to all of these factors.
>
> 18. In summary, the sentencing Trial judge is required to consider, fully two fundamental factors. On the one hand, the Trial judge must consider the facts and circumstances that surround the commission of the offence. On the other hand, the Trial judge must consider the character and record of the convicted person. The Trial judge may accord greater importance to the circumstances, which relate to the commission of the offence. However, the relative importance of these two factors may vary according to the overall circumstances of each case."

Determination of the sentence by the trial judge

[54] The trial judge considered the facts and circumstances of Harris' case and noted that it was a most brutal and heinous crime for which he has not taken responsibility. He also considered the possibility of his reform which seem to be well on course. Further, he stated that it seemed that Harris has eschewed the criminal lifestyle he adopted as a teenager. At paragraphs 28 and 29 the trial judge concluded:

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> "[28] I find that the aggravating factors outweigh the mitigating ones. I further find that the convicted man should not be considered to be a danger to the society; hence, there is no need for the imposition of an indeterminate sentence. I am concerned about the several infractions committed by the convicted man whilst an inmate in prison which indicate that his rehabilitation is still incomplete.
>
> [29] Accordingly the convicted man is sentenced to life imprisonment. He shall be considered for parole after serving 25 years imprisonment. This sentence shall commence from the 12th day of February 2002."

Ground of appeal

[55] Harris challenged the sentence on the basis that it was excessive as the trial judge failed to follow the guidelines a sentencing trial judge should adhere to when conducting a sentencing hearing.

Was the sentence imposed on Harris excessive?

[56] The issue is whether the trial judge erred in imposing the sentence of life imprisonment with a minimum term of 25 years after taking into consideration the aggravating and mitigating factors for the offence and the offender. As shown in **Faux and Others**, the sentencing trend for murder since the amended section 106 and the case of **August** has been the imposition of a life sentence with a minimum term of 25-37 years after which the convicted person becomes eligible to be released on parole. If the trial judge erred and the sentence is manifestly excessive a different sentence ought to be passed by this Court in accordance with section 216(3) of the Senior Courts Act.

[57] Mr. Banner submitted that the trial judge did not follow the recent sentencing guidelines by (a) fixing a starting point (b) make any adjustments upward and downward for the aggravating and mitigating factor; (c) give sufficient attention to the psychiatric evaluation, social inquiry report and prison report and (d) did not consider if a fixed-term sentence was appropriate.

Is a fixed term sentence appropriate for Harris?

[58] As shown in **Faux and Others** the imposition of a fixed term sentence would have been justified only if there were mitigating factors warranting it. The trial judge considered two mitigating factors as shown above. This is in relation to the rehabilitation of Harris

and breach of his constitutional rights. There was no mention of his age. Harris was 22 years at the time of the offence and may be considered a young adult.

[59] In both **August** and **Faux**, one of the considerations in imposing a fixed term was the age of the offender. August was 19 years of age at the time of the offence, and Faux was just over 18. Harris was not a teenager but still relatively young considering he was below the age of 25. Madam Director as in the previous appeal submitted that if the position of this Court is that sentences of imprisonment for life should never be imposed on young adults, then a fixed term on the upper end of the range would be warranted.

[60] As in Debride's case, we have a difficulty embracing a fixed term sentence based solely on Harris's age which will be discussed further, below. We have considered the judgment of the sentencing trial judge and the aggravating factors in relation to the offence. In our view, Harris' age would be displaced by these serious aggravating factors.

[61] In the case of **Ramcharran** the CCJ encouraged courts to seek guidance regionally. Madam Director assisted the court by relying on guidelines from Trinidad & Tobago and the Eastern Caribbean. In 'A Compendium Sentencing Guideline of the Eastern Caribbean Supreme Court,' on Homicide Offences, the guidance given in relation to the sentence of an adult for murder are at pages 6 to 8:

> **"Whole life sentence**
>
> 4 If:
>
> a. the court considers that the seriousness of the offence (or the combination of the offence and one or more offences associated with it) is exceptionally high; and
>
> b. the offender was an adult when he committed the offence;
> the appropriate starting point is a whole life sentence.
>
> 5 Cases where the seriousness of the offence could be considered exceptionally high include:
>
> …..
>
> b. the murder is associated with a series of serious criminal acts;
> c. a substantial degree of premeditation or planning;
>
> d. the abduction of the victim;

….

l. a deliberate killing for payment or gain (eg a contract killing, or for inheritance, or insurance payout);

Determinate sentence

6 (1) In cases not falling in paragraphs 3 or 4; or

(2) Where a case falls within paragraph 4,

a. but the court considers that the offence (or the combination of the offence and one or more offences associated with it), does not warrant a whole life sentence, and
b. the offender was an adult when he committed the offence;

the appropriate starting point is a determinate sentence of 40 years within a range of 30-50 years."

[62] In Harris' case, the evidence against him shows the exceptionally high seriousness of the offence. There was a substantial degree of planning, the deceased was abducted and the killing was done for gain.

[63] The Sentencing Handbook 2016, published by the Judicial Education Institute of Trinidad and Tobago, at page 276, shows the aggravating and mitigating factors when considering the offence of murder:

"AGGRAVATING FACTORS:

- The extent of planning and premeditation.
- The offence was committed for gain;
- The involvement of multiple attackers;
- The use of a weapon;
- The use of gratuitous violence;
- The concealment of the body.

MITIGATING FACTORS:

- The defendant was believed to be of good character;
- The age of the defendant at the time of the offence;
- The defendant expressed remorse."

[64] There are four of the above aggravating factors in Harris' case: (a) The extent of planning and premeditation; (b) The offence was committed for gain; (c) The involvement of multiple attackers; and (d) the use of a weapon, a gun.

[65] We are fortified in our view, that the murder of the deceased fell in a class of exceptionally high seriousness. Harris' age cannot displace these serious aggravating factors. The initial motive of Harris and Slusher was to get the deceased's gun which they obtained without robbing him. After they obtained the gun, they robbed him of his wallet and money with his own gun. They then kidnapped him and used his vehicle to take him to a remote place, where his own gun was used to kill him. It was a senseless and cold-blooded killing although Harris himself did not pull the trigger. It was a joint enterprise, planned together by both Harris and Slusher for gain. In our view, the aggravating circumstances in this case for the offence and the offender do not warrant a fixed term sentence. The trial judge was correct when he exercised his discretion and imposed life imprisonment upon Harris.

Is the minimum term of 25 years appropriate?

[66] The trial judge was mandated to fix a minimum term as shown in August case and Section 106(3) and (4) of the Criminal Code. In determining the appropriate minimum term under subsection (3), the trial judge took into account (a) the circumstances of the offender and the offence; (b) the aggravating and mitigating factors and (c) the period that Harris spent on remand awaiting trial. He imposed life imprisonment with a minimum term of 25 years upon Harris.

Did the trial judge adequately consider the factors under section 106(4)?

[67] Mr. Banner submitted that the trial judge did not use a starting point and the aggravating and mitigating factors for the offence and offender were not properly considered. As seen above, the trial judge imposed a life sentence based on the circumstances of the offence and the offender. In fixing the minimum term, the trial judge did not state a starting point and the adjustments, upward and downward for the aggravating and mitigating factors that he considered. Nevertheless, in our view, he adequately addressed section 106(4) (a) to (c), the circumstances of the offence and the offender, which included the seriousness and characteristics of the offence which was murder for gain. Murder is prevalent in Belize and as noted by the trial judge the court had to impose a

suitable sentence to deter Harris and others from committing crimes of violence especially those involving the use of firearm.

[68] As shown at paragraphs 17 and 18 of the judgment, the court relied on the case of **Wilson** for guidance on the balancing of the aggravating and mitigating factors. He addressed the circumstances that surround the commission of the offence and the character and record of Harris. After a careful analysis, he found that the aggravating factors significantly outweighed the mitigating factors.

[69] The trial judge was cognisant of the sentencing principles and other factors that he had to consider in imposing a proportionate sentence to achieve the purpose of the sentence. He fully addressed the principles in **Sergeant** and applied them to the circumstances of Harris's case. In paragraph 28, he summed up the basis for the sentence. As shown in **Faux and Others**, the sentencing trend for murder since the amended section 106 and the case of **August** has been the imposition of a life sentence with a minimum term of 25-37 years after which the convicted person becomes eligible to be released on parole. The minimum term of 25 years imposed on Harris is at the lowest end of the range which in our view is commensurate with the offence.

Did the trial judge give sufficient attention to the reports?

[70] Mr. Banner argued that the trial judge did not pay sufficient attention to the psychiatric evaluation, social inquiry report and prison report. We have reviewed the judgment and noted that the trial judge sufficiently considered all the reports. Nevertheless, we note that the mitigating factors considered by the trial judge were not sufficient to outweigh the aggravating factors.

Conclusion

[71] The sentence of life imprisonment with a minimum term of 25 years imposed on Harris is not excessive. It is commensurate with the criminal conduct of Harris and it is in keeping with the range of sentences imposed for murder since the change in law.

Disposition

[72] Based on the foregoing discussion, the following Order is made:

The appeal of Jeremy Harris is dismissed and the sentence of life imprisonment with a minimum term of 25 years is affirmed.

Minnet Hafiz Bertram
President

Arif Bulkan
Justice of Appeal

Michelle Arana
Justice of Appeal