IN THE SENIOR COURTS OF BELIZE

NORTHERN DISTRICT

IN THE HIGH COURT OF JUSTICE

INDICTMENT NO.: N2/2019

BETWEEN

THE KING

and

RONALD REYES
RODEL MAI (absconded)
ANGEL UH (absconded)
EDWARDO ESCARRAGA
VICTOR RUIZ

Prisoners

Before:

The Honourable Mr. Justice Raphael Morgan

Appearances:

Mrs. Shanidi Urbina for the Crown

Mr. Leeroy Banner for the Prisoners

2024: June 6th

SENTENCING – ATTEMPTED MURDER

[1] MORGAN, J.: The Prisoners were indicted on one count of Attempted Murder of Allen Sanker, contrary to **section 18** read along with **section 117** of the **Criminal Code**[1], ("the Code").

[2] This trial was conducted in absentia for Ronald Reyes and Angel Uh as they absconded in 2019 and 2023 respectively after being arraigned in 2019 before Lord J.

[3] The three prisoners chose to represent themselves at trial and proceeded to trial before Lord J. The trial commenced on the 25th October 2023 and concluded on the 28th November 2023 with all five accused persons (including Reyes and Uh) being found guilty of attempted murder. The matter was then adjourned for a separate sentencing hearing for the three Prisoners pursuant to the guidance of our apex court, the Caribbean Court of Justice (CCJ) in **Linton Pompey v DPP**[2].

[4] In the interim Lord J retired and the Court was reconstituted. The Court then proceeded to schedule the sentencing hearing for the Prisoners Rodel Mai, Victor Ruiz and Edwardo Escarraga.

[5] On the 6th May 2024 the Court held a mitigation hearing where the Prisoners called the following witnesses:

1. Josue Cruz
2. Hernan Cal
3. Irene Mai (mitigation specific to Prisoner Mai)
4. Ceidy Cuellar (mitigation specific to Prisoner Escarraga)

[6] At their mitigation hearing the Prisoners called witnesses and gave statements from the dock. Submissions were also made on sentence by both the Defence and the Crown.

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[1] Chapter 101 of the Substantive Laws of Belize, Revised Edition 2020.
[2] [2020] CCJ 7 [AJ] GUY

[7] In order to arrive at a fair and appropriate sentence for the Prisoners, the Court was also provided with the following:

a) Social Inquiry Report
b) Report from Kolbe Foundation (Prison)
c) Antecedent Record of the Prisoners
d) Psychiatric Report from Dr. Matus.
e) Victim Impact statements of Allen Sanker and his mother Margarita Sanker

[8] The Court now proceeds to pass sentence.

Legal Framework

[9] The ideological aims/principles of sentencing were identified by the Caribbean Court of Justice (CCJ) in **Lashley v Singh**[3]. These were set out as follows:

a) The public interest, in not only punishing, but also in preventing crime ("as first and foremost" and as overarching);
b) The retributive or denunciatory (punitive);
c) The deterrent, in relation to both potential offenders and the particular offender being sentenced;
d) The preventative, aimed at the particular offender;
e) The rehabilitative, aimed at rehabilitation of the particular offender with a view to re-integration as a law-abiding member of society.

[10] These principles were restated and emphasised by Jamadar JCCJ in **Pompey**[4]. The import or significance of each principle may differ from case to case as a Court engages in the individualised process of sentencing the particular offender[5].

[3] [2014] CCJ 11 (AJ) GY
[4] Ibid
[5] Alleyne v The Queen [2017] CCJ (AJ) GY

[11] In determining whether or not to impose a custodial sentence in a matter where there is no fixed minimum custodial term, a Court must have regard to the provisions of the **Penal System Reform (Alternative Sentences) Act**[6] (PSRASA) (where relevant):

> *"28.-(1) This section applies where a person is convicted of an offence punishable with a custodial sentence* ***other than one fixed by law****.*
>
> *(2) …****the court shall not pass a custodial sentence on the offender unless it is of the opinion****,*
>
> *(a****) that the offence was so serious that only such a sentence can be justified for the offence****;*
>
> *…*
>
> *31.-(1) … a court in sentencing an offender convicted by or before the court shall observe the general guidelines set forth in this section.*
>
> *(2) The guidelines referred to in subsection (1) of this section are as follows,*
>
> ***1. The rehabilitation of the offender is one of the aims of sentencing, except where the penalty is death.***
>
> ***2.*** **The gravity of a punishment must be commensurate with the gravity of the offence…**
>
> *4. Where a fine is imposed, the court in fixing the amount of the fine must take into account, among other relevant considerations, the means of the offender so far as these are known to the court, regardless whether this will increase or reduce the amount of the fine.." (emphasis added)*

[12] A court in arriving at the sentence in a particular matter must first ascertain what the appropriate starting point should be. This has been the subject of guidance by the CCJ in the Barbadian case of **Teerath Persaud v R**[7], per Anderson JCCJ:

> *"[46]* ***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 considering all possible aggravating and mitigating factors only those concerned with the objective seriousness and 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***

[6] Chapter 102:01 of the Substantive Laws of Belize, Revised Edition 2020, see section 25.

[7] [2018] 93 WIR 132

point. Where appropriate there should then be a discount for a guilty plea. In accordance with the decision of this court in R v da Costa Hall full credit for the period spent in pre-trial custody is then to be made and the resulting sentenced imposed*." (emphasis added)*

[13] The Court is also reminded of the guidance given by Barrow JCCJ in **Calvin Ramcharan v DPP**[8] on this issue:

> *"[15] In affirming the deference an appellate court must give to sentencing judges, Jamadar JCCJ observed that* ***sentencing is quintessentially contextual, geographic, cultural, empirical, and pragmatic. Caribbean courts should therefore be wary about importing sentencing outcomes from other jurisdictions whose socio-legal and penal systems and cultures are quite distinct and differently developed and organised from those in the Caribbean*** *……*
>
> *[18]…* ***to find the appropriate starting point in the sentencing exercise one needed to look to the body of relevant precedents, and to any guideline cases*** *(usually from the territorial court of appeal)." (emphasis added)*

[14] The maximum penalty for Attempted Murder is **life imprisonment** as prescribed by **s107** of the Code. There is no fixed minimum term. In accordance with the general principles of sentencing a maximum sentence ought properly to be reserved for cases that fall into the category of the 'worst of the worst'.

[15] Notwithstanding the maximum sentence, the current sentencing range for Attempted Murder in Belize is **8-15 years**. This was acknowledged in **R v Cuellar**[9] an appeal on leniency of sentence by the DPP in a case of Attempted Murder where the trial judge had essentially sentenced the Defendant to a sentence of 87 days in prison which represented time spent awaiting sentencing. The Court of Appeal allowed the appeal and Sosa P indicated the following:

> "29. In agreement with both the Director and Mrs. Trapp Zuniga, the Court further considers that the use by the judge, in passing sentence, of the phrase 'time served' was, to say the least, unhappy. Cuellar had not, and indeed has not, 'served time' in connection with the instant case to date. He has only been at the prison on remand in custody, initially, for six months ('the six — month period'), pending his trial, and, subsequently,

[8] [2022] CCJ 4 (AJ) GY
[9] Criminal application for leave to appeal no 13 of 2014 (judgement delivered in 2016)

for 87 days ('the 87-day period'), pending his sentencing hearing. Self-evidently, on neither of the two occasions on which he was sent to the prison was he under a sentence of imprisonment.

30. The Court is of the view, nevertheless, that what the judge intended to do is clear: he meant to impose on Cuellar a sentence equal in length to the period of time during which he had been at the prison on remand pending his sentencing hearing in order to ensure that he would not spend another day at such prison. In short, the Court, whilst compelled to conclude that the judge committed the simple error, so to speak, of treating the 87-day period as "time served", hesitates to think that he could have committed the compound error of treating not only the 87—day period but also the six–month period as 'time served'. The Court proceeds therefore on the basis that the judge imposed on Cuellar a sentence of 87 days' imprisonment.

31. **He did so in circumstances where the sentencing range in cases of attempted murder in this jurisdiction is not in any doubt. That range, in the considered view of the Court, is one of 8–15 years' imprisonment, as the Director, uncontradicted by Mrs. Trapp Zuniga, has submitted**……" [emphasis mine].

[16]The Court is also guided by the words of Sosa P in Edwin **Hernan Castillo v R**[10] where he indicated:

[30] It seems opportune to make a few important general remarks on the topic of a sentencing range at this point in the present judgment. In *Hyde's* case, cited above, the sentencing range in respect of manslaughter cases arising from fatal stabbings was held to be 15 to 25 years although the only cases treated in the judgment as worthy of serious consideration involved sentences of 15 to 18 years only. As is revealed in that judgment, it had been submitted on behalf of the Director of Public Prosecutions in that case that the upper end of the applicable range should be 20 years, whilst counsel for Mr Hyde was content to take the position that such end should be as high as 25 years (contending, however, that the appropriate sentence for his client should be no more than 15 years' imprisonment). **A sentencing range is not, however, inscribed in granite. It is no more than a general guideline. There will inevitably arise from time to time cases calling for deviation therefrom. Like courts in other jurisdictions, this Court must be alive to the fact that the variety of factual situations in which manslaughter is perpetrated is unlimited. Quite apart from that, courts interested in maintaining the essential confidence and trust of a law-abiding public must be prepared to make realistic and hard admissions about the lower end of a sentencing range if the prevalence of the crime to which it applies is not decreasing or, even worse, keeps increasing. Indeed, this Court regards itself as free, in an exceptional case, to fix a sentence beyond even the higher end of the sentencing range where a particular mix of aggravating and mitigating features so demands. The**

[10] Criminal Appeal no 11 of 2017

> **sentencing range is thus an aide used early on in the sentencing exercise, whereas the features, aggravating and mitigating, of the particular case come into play later**. [emphasis mine].

[17] This sentiment echoes the statement by Morrison JA in **Thurton v R**[11], an appeal against conviction and sentence for Attempted Murder. Morrison JA indicated the following, with some force, while upholding the trial judge's sentence of 15 years imprisonment:

> **49…..Whereas the average of sentences that have been imposed in the past for a particular kind of offence is a good and just guide, a judge should not lose sight completely of the maximum penalty intended by legislation for the crime. Where the facts of the particular offence are grave, the average sentence should be departed from.**

[18] Sentencing ranges are thus a guide and not a stricture on any sentencing Court and can, if necessary, be adjusted if the facts of the offence sufficiently justify a departure from the previous sentences imposed or if society's attitude towards the commission or prevalence of a particular offence has changed. A sentencing court is free to adjust the upper or lower end of the sentencing range to reflect the change in societal tolerance or abhorrence of a particular offence. Any departure however should be accompanied by reasons which justify the disparity.

Facts

[19] On the 24th August 2017 at around midday, Allen Sanker and his cousin Esly Villaderez were coming from a Chinese shop which was situated at the exit of San Jose and entrance of San Pablo Village.

[20] They were on bicycle and heading towards Orange Walk on the back street behind the principal street. Allen Sanker was on the right almost to the center and his cousin Esly Villaderez was close to him on the left.

[11] Criminal Appeal no. 4 of 2012

[21] Allen Sanker and Esly Villaderez made it on their bicycles to the Adventist Church on the said back street where there was piece of land with high bush. At that point Allen Sanker saw five guys come out, two with machetes and three with stones.

[22] The men then came about twelve feet away from Allen Sankar and Esly Villaderez and began to throw stones at them. This caused Allen Sankar and Esly Villaderez to attempt to escape.

[23] Allen Sanker identified the men with the machetes as Ronald Reyes and Angel Uh and the ones with the stones as Rodel Mai, Edwardo Escarraga and Victor Ruiz. Mai, Escarraga and Ruiz had one stone in each hand. Allen Sanker and Esly Villaderez were unarmed.

[24] Ronald Reyes then said "Hold him" to the others and they came at Allen Sanker and Esly Villaderez. Allen Sanker and Esly Villaderez threw away their bikes. Villaderez took the road to Orange Walk and Sanker ran in the direction of the Church.

[25] Allen Sanker was able to run for five seconds before Rodel Mai pulled on his shirt from behind and punched him in his face, causing his feet to get tangled. Rodel Mai tripped him and he fell down.

[26] When Allen Sanker fell down Rodel Mai started kicking him. He didn't say anything to him at that time. Angel Uh then arrived and they both began hitting him with kicks on the left and right side of his body. This lasted for about two minutes.

[27] After the beating Angel Uh was told by Rodel Mai to chop Allen Sanker with the machete which Uh still had in his possession. Angel Uh then attempted to chop Allen Sanker in his face but Allen Sanker lifted his arm to fend off the blow and was chopped instead on his left arm.

[28] When Angel Uh chopped Allen Sanker with the machete, Rodel Mai was next to him and he was stomping and kicking Sanker. Allen Sanker at that point tried to escape and he crawled about 20 feet to the corner

of the church whilst Rodel Mai was still stomping and kicking him. Rodel Mai and Angel Uh were just laughing even as Allen Sanker begged them to let him go.

[29] When Allen Sanker eventually got to the corner of the church to try to get away, Rodel Mai came up to him and held him by the shoulder and placed him in a standing position. Rodel Mai then hit Allen Sanker in the head with the stone that was still in his hand.

[30] Angel Uh then came up to Allen Sanker and Allen Sanker begged him to let him go and asked why he was doing this to him. Angel Uh just laughed and punched him in his face.

[31] Edwardo Escarraga and Victor Ruiz then arrived. Immediately upon arrival Edwardo Escarraga held the right hand of Allen Sanker and kneed him in his belly. Rodel Mai was still holding his left hand. Victor Ruiz then slammed Sanker's head against the wall. Ronald Reyes then arrived and told Victor Ruiz to move. Ronald Reyes then choked and punched Allen Sanker in the stomach. Allen Sanker then broke down and started to cry more because he was not being released. Ronald Reyes then said "no, you done get fucked here", raised the machete and chopped Allen Sanker on the head.

[32] Allen Sanker could not fend off the blow to his head and Edwardo Escarraga and Rodel Mai were still holding his hands and Victor Ruiz had him cornered against the wall. Rodel Mai then told Ronald Reyes to give him another one. Victor Ruiz then said "no, that is enough with that done to him, he will done dead".

[33] Angel Uh was standing next to Allen Sanker when Ronald Reyes chopped him. Angel Uh then punched him in his belly while everyone else laughed and blood was pouring down over his face. Angel Uh and Ronald Reyes left and they bucked each other's knuckles. The others followed shortly thereafter.

[34] When the others were leaving, Allen Sanker collapsed on the ground facing up. Then Victor Ruiz stooped down and told him that he would only last two days and shoved him with his fingers.

[35] Allen Sanker was then taken to the hospital where he was found to be suffering from a large cut wound to the head with moderate bleeding. He also suffered an abrasion to the left shoulder.

[36] The injury to the head was found to be life threatening as it impacted the brain and forced almost immediate neuro-surgical intervention in order to save the life of the victim.

Victim Impact Statements

[37] The Court was provided with two victim impact statements by way of affidavit from the victim Allen Sanker and his mother Margarita Elvira Sanker.

[38] Allen Sanker deposed in his victim impact statement that he is now 22 years of age. He indicated that the attack has left a permanent change in his life, scarring him for the rest of his life. He cried for many months after the incident. He is unable to work due to the damage to his head and his hand. He also has a three year old son and is unable to assist him as he should as a father. He suffers from seizure-like attacks and is unable to do his day-to-day activities on his own. He has become dependent on his mother for everything.

[39] Mr. Sanker further deposed to the financial hardship that the family has suffered. He is no longer able to assist his parents financially and they are now burdened with covering his medical bills. He indicated that those medical bills now total approximately **Thirty thousand, Four hundred and Eighty-one dollars ($30, 481.00)**.

[40] No medical evidence was submitted to substantiate the victim's assertion of his current quality of life.

[41] The mother of the victim Allen Sanker also deposed to the effect that the incident and injuries have had on the victim and the family. She indicated that she suffered many sleepless nights looking at her son's

condition. She now suffers from high blood pressure which she believes is as a result of the stress related to the incident.

Mitigation hearing

[42]At the mitigation hearing the Prisoners called the following witnesses:

1. **Mr. Josue Cruz – Chairman of the village of San Jose** – Mr. Cruz testified that he knows all of the Prisoners (Mai, Ruiz and Escarraga). He indicated that he knew Victor Ruiz for about 30 years and in his knowledge Mr. Ruiz didn't like problems. Mr. Mai he knows for more than twenty five years and that he likes to work and is a responsible person within their family. He further stated that all of the Prisoners are good persons. He asked for mercy on their behalf. He accepted that he also knows Mr. Sanker and asked Mr. Sanker for mercy for them as well.

2. **Hernan Cal – construction worker, villager in San Jose** - He testified that he knew all three persons from school and that he was shocked to hear that they were involved in this as in his mind they were all good people.

3. **Irene Mai – aunt of the Prisoner Rodel Mai** – She indicated that she knew him from a child and that he was never problematic. She asked the Court for mercy on behalf of the Prisoner.

4. **Ceidy Cuellar – neighbour of the Prisoner Edwardo Escarraga** – She testified that she knew the prisoner for about 12 years. She knows him to be a good boy and a good neighbour. She testified that he has very humble, hardworking and she never knew him to be in trouble.

[43]The three prisoners also gave statements from the dock during their mitigation hearing:

1. **Victor Ruiz** – He indicated that he was very sorry for what has been done to the victim and asked for leniency from the Court. He indicated that he has a three year old son and thanked the Court for allowing him to speak.

2. **Rodel Mai** – He apologized and asked forgiveness from the Sanker family and indicated his regret for his actions. He begged the court for mercy and acknowledged that these actions had severely affected his future.

3. **Edwardo Escarraga** – He asked for forgiveness from the Sanker family. He asked the Court to have mercy on him as he was a minor. **He curiously despite asking for forgiveness from the Sanker family also indicated that he had no knowledge of what happened to the victim on the day in question**.

The Reports

Letters from Kolbe Foundation

[44] The Court was provided with letters on behalf of the three Prisoners Mai, Ruiz and Escarraga. The letters indicated that they were admitted to prison on the 8th December, 2023 for attempted murder. The Prisoners during this short time have not violated any prison rules and have not yet completed any rehabilitative programs.

Psychiatric report from Dr. Matus

[45] Psychological reports were obtained from Dr. Matus indicating that the Prisoners were fit to be sentenced as they know that they were convicted of a crime, they know the reasons for the conviction and the possible penalties. They also know why the court can sentence them to an appropriate punishment.

Social Inquiry reports

[46] Social inquiry reports were done on behalf of the prisoners Mai, Ruiz and Escarraraga.

[47] In the social enquiry report for **Rodel Mai**, the Court noted the following:

a) Interviews were conducted with several members of San Jose Village and the family members of the Prisoner. They all indicated that Mr. Mai is hardworking, respectful and a member of the community who caused no issues even as a child.
b) The Prisoner had to stop school during secondary school to assist his family to make ends meet.
c) The Prisoner has a two-year-old child
d) The Prisoner at the time of his conviction was gainfully employed as a construction worker
e) He has enrolled in rehabilitative programs in the prison and intends to open a wood working shop when released to help his family make ends meet.

[48] In the social enquiry report for **Victor Ruiz** the Court noted the following:

a) Interviews were conducted with several members of San Jose Village and the family members of the Prisoner. The general consensus from all persons interviewed being that Mr. Ruiz is hardworking, respectful and never gave any trouble before in the community.
b) The Prisoner has a three-year-old son for whom the prisoner is the primary care giver.
c) The Prisoner dropped out of secondary school in form 2 and has been working ever since. He was working in construction as a skilled labourer at the time of his conviction for this offence.
d) There is no indication of Mr. Ruiz enrolling in any rehabilitative programs in the prison.

[49] In the social enquiry report for **Eduardo Escarraga** the Court noted the following:

a) Interviews were conducted with several members of San Jose Village and the family members of the Prisoner. The general consensus from all persons interviewed being that Mr. Escarraga is hardworking, respectful and never gave any trouble before in the community.
b) The Prisoner was a minor at the time of the offence
c) The Prisoner has a young son and he is the sole breadwinner for his young family as his common-law wife is unemployed.
d) The Prisoner dropped out of secondary school and has been working ever since. He was employed as a construction worker at the time of his conviction, and he would supplement that with working in the cane fields.

e) The Prisoner has enrolled in a computer program while at Kolbe and has the support of his family while incarcerated.

Antecedent Report

[50]All of the prisoners have no previous convictions.

Submissions on Sentence

Defence Submissions

[51]Counsel for the Prisoners indicated that the Court should begin with a starting point of 8 years. He further indicated that the Court should have regard to the genuine remorse shown by the prisoners and to the age of the Prisoners at the time of the commission of the offence: Ruiz (18 years old), Mai (21 years old), Escarraga (16 years old). **The Defence also asked the Court to pay attention to the delay that occurred in the prosecution of the offence and mitigate their sentences accordingly**.

Submissions by the Crown

[52]The Crown indicated that the Prisoners should collectively be held responsible for the incident and the Court should set a starting point of 12 years. The Crown also submitted that there was a lack of remorse by Prisoners Ruiz and Escarraga. The Crown accepted however that Prisoner Mai showed genuine remorse. The Crown accepted the age of the Prisoners as a possible mitigating factor on their behalf.

Analysis

Starting Point

[53]In arriving at the starting point the Court is guided by the provisions of the **PSRASA** and the authorities cited above.

[54] Pursuant to the **PSRASA** the Court must first consider whether the offence is so serious that only a custodial sentence can be justified for the offence. In deciding whether only a custodial sentence can be justified for this offence the court finds that this was a vicious, sustained attack upon the victim with the intent to kill him which was reflected by the words of the Prisoner Ruiz intimating that they were leaving the victim to die of his injuries. The Court therefore considers that only a custodial sentence can be justified for the offence. The Court's view is buttressed by the fact that the offence of attempted murder is a serious one which is reflected by the stiff maximum penalty of life imprisonment that the National Assembly saw it fit to impose when crafting the offence. In those circumstances, it will be rare that a non-custodial sentence be imposed for an offence such as this.

[55] Having found that the offence warrants a custodial sentence, the Court now looks to cases from our Court of Appeal which reflect the sentences imposed in similar cases. The Court, in that regard, derives considerable assistance from the following authorities from the Court of Appeal:

a) **Lionel Daly v R**[12] - In **Daley**, the Appellant along with another person was convicted for attempted murder and robbery. He was sentenced to 12 years for attempted murder and ten years for robbery to run concurrently. The incident occurred between the 20th and 21st September, 2010 in San Ignacio Town and the victim was stabbed twice to the chest and his left lung had collapsed. The Court of Appeal upheld the conviction but varied the sentence having regard to his age as a minor (16 years at the time) and his previous good character at the time of the offence to 6 years and 6 months representing the time that he had already served awaiting appeal.

b) **Kevaughn Staine v R**[13] – In **Staine**, the Appellant was convicted for attempted murder and sentenced to 10 years imprisonment. The incident occurred in 2013 when the victim had an encounter with the appellant who shot her eight times while she was walking home after going to the store. On Appeal against conviction and sentence the Court of Appeal dismissed the

[12] Criminal Appeal no 8 of 2012
[13] Criminal Appeal no 4 of 2018

appeal against conviction and upheld the sentence of 10 years imprisonment imposed on the Appellant who was 16 years at the time of the offence.

c) **Orlando Smith Junior v The King**, **Joseph Cadle v The King**[14] – In this joint appeal, the Appellants were convicted for attempted murder and both sentenced to 12 years by Moore J at 1st instance. The incident occurred in 2016 where the victim was in the company of the Appellants and another man by the name of Oswald Arnold. The three men took him out of the vehicle he was driving and carried him into the bushes. The victim was chopped by Arnold on the back of his neck and the side of his head and hand. After the injuries were inflicted Cadle implored Arnold to kill the victim but the victim managed to escape. He made his way to a police station where he made his report. The Appeals were dismissed and the sentences of 12 years affirmed.

d) **Thurton v R**[15] – In **Thurton**, the Appellant was convicted for attempted murder and sentenced to 15 years imprisonment. The incident occurred in 2010 when the victim, an Attorney exited his office and was confronted by two assailants who shot him in the left side of the belly. The Appellant was later identified as the shooter and convicted at trial. The judgement of the Court of Appeal describes him as "young" both at the time of the commission of the offence and the appeal. The Court of Appeal dismissed his appeal against conviction and sentence with the Court of Appeal finding that the sentence of 15 years was in no way excessive for the young Appellant.

e) **Reyes v R**[16] - In **Reyes**, the Appellant was convicted for attempted murder and sentenced to 15 years imprisonment. The incident occurred in 2007 when the victim was walking home with two companions when they were confronted by the Appellant and a group of men. The Appellant requested to speak to the victim but the victim was stopped from approaching the Appellant by one of his friends. The Appellant thereafter pulled a gun from his pants waist and fired a shot in the air. The victim and his two companions then ran off in different directions. The victim then heard two more shots and heard one of his companions scream. He turned around to see what

[14] Criminal Appeal no 4 of 2019
[15] Ibid
[16] Criminal Appeal no 19 of 2013

was happening when he saw the appellant walking towards him. The Appellant then shot him on the right side of the neck. The Appellant appealed against conviction and sentence. The Appeal against conviction was dismissed and the sentence affirmed.

[56] These authorities reflect the range of sentences that have been imposed in similar cases of Attempted Murder involving group attacks or young offenders. The cases reflect that the Court has not hesitated to impose sentences within the range indicated in **Cuellar** even where the offender has been young. However, the authorities of **Daley** and **Staine** show that for minor offenders, in particular, the range of final sentences appears to be between 10 years to 6 years. The Court uses the term final sentences as the reported sentences did not indicate the specific starting point used by the respective Courts in coming to the eventual sentence.

[57] The Court also notes that the cases of Attempted Murder involving firearms carry a higher sentence than those where the weapon of choice was a knife or a machete. This may be due to the nature of the firearm as a deadly weapon and the Court's general deprecation of the use of firearms in the commission of criminal offences. However this distinction in sentencing is not absolute as a knife and machete can be equally as lethal and depending on the circumstances, its use may warrant a sentence on par with those cases where firearms were used.

[58] The Court also drew considerable assistance from **Smith and Cadle v The King** which has a similar factual matrix to the instant matter being a group attack involving a machete. The Court notes, however as with the other case above, that the sentence in **Smith and Cadle** is a final sentence and the appellate judgement does not reflect the starting point or aggravating and mitigating features taken into account by the trial judge in fixing the sentence.

[59] Considering the ideological aims of sentencing and the **PSRASA** the Court finds that the aims that take precedence in these circumstances in respect of the Prisoners Mai, Ruiz and Escarraga are the retributive, deterrent and rehabilitative aims.

[60] The Court now looks to the aggravating features of the offence to see what the appropriate starting point ought to be in this case. The Court finds the following as aggravating features:

a) The nature and seriousness of the offence
b) The prevalence of the offence
c) The offence was committed as a group
d) The attack on the victim was unprovoked, sustained and vicious
e) There was a callous disregard for the life of the victim
f) The attack continued despite the victim's pleas for mercy
g) The offence was committed in a place to which the public had access
h) The offence appeared to have some level of planning as the assailants laid in wait for the victim with weapons (stones and machetes) at a particular point on his way back home.
i) The victim was known to the assailants from the same village

[61] There are no mitigating features of the offence.

[62] The Court does not however consider that the offence as committed falls into the category of '**the worst of the worst**' which warrants the imposition of the maximum sentence of life imprisonment. The Court also does not consider this case to be an exceptional case which warrants an upward departure from the final sentencing range emphasized in **Cuellar** which was set out in 2016 or the final sentences imposed or upheld for minors by the Court of Appeal in **Daley** and **Stein**.

[63] Considering the facts of the commission of this offence and bearing in mind the applicable principles of sentencing of retribution, deterrence vis a vis these offenders and vis a vis potential offenders and rehabilitation, the Court cannot agree with the suggestion by Counsel for the Prisoners that the starting point should be eight (8) years. Such a starting point would not reflect the gravity of the commission of the offence and the amalgamation of aggravating factors in this case as it relates to the offence. In the mind of the Court, the Prisoners are quite fortunate that the victim was able to receive medical attention shortly after the attack or the charge would have been considerably different.

[64] The Court having regard to the foregoing finds that the appropriate starting point for this offence is **sixteen (16) years**.

Consideration of the circumstances of the Offenders

[65] At stage two of the methodology in **Persuad**, a sentencing Court must then consider the aggravating and mitigating circumstances of each offender in order to individualize the sentences.

Delay

[66] The Court was asked to consider whether there was a breach of the prisoners' right to trial within a reasonable time in these proceedings as there was a more than six (6) year gap between the prisoners being charged and if there was a trial. The Court was further asked, if there was a breach, to treat it as a mitigating factor on behalf of the prisoners. The Court therefore must examine the record, in fairness to the prisoners, to see whether any such breach has occurred.

[67] The **Constitution. Section 6(2)** provides as follows:

> "6(2) If any person is charged with a criminal offence, then, unless the charge is withdrawn, the case shall be afforded a fair hearing within a reasonable time by an independent and impartial court established by law."

[68] This right was considered by the apex court, the CCJ with a similar constitutional provision from Barbados, **Section 18(1)** of their Constitution, in the case of **AG v Gibson**[17], per Saunders and Wit JCCJ:

> "[48] The public have a profound interest in criminal trials being heard within a reasonable time. Delay creates and increases the backlog of cases clogging and tarnishing the image of the criminal justice system….
>
> [49] Even more telling than the societal interests at stake are the consequences to an accused of a breach of the reasonable time guarantee. This is evident in the case of a defendant who is not guilty. That person is deprived of an early opportunity to have his name cleared and is confronted with the stigma, loss of privacy, anxiety and stress that accompany exposure to criminal proceedings. But a defendant facing conviction and punishment may also suffer, albeit to a lesser extent, as he is obliged to undergo the additional trauma of protracted delay with all the implications it may have for his health and family life…By deliberately elevating to the status of a constitutional imperative the right to a trial within a reasonable time, a right which already existed

[17] [2010] 5 LRC 486.

at common law, the framers of the Constitution ascribed a significance to this right that too often is under-appreciated, if not misunderstood.

…

[59]…The question therefore is what should the appropriate remedy be when there is a breach of the reasonable time guarantee?

[60] In answering this question a court must weigh the competing interests of the public and those of the accused and apply principles of proportionality. One starts with the premise that the executive branch of government has a constitutional responsibility to allocate sufficient resources to ensure that the reasonable time guarantee has real and not just symbolic meaning. A governmental failure to allocate adequate resources, **or for that matter inefficiencies within the justice sector, could not excuse clear breaches of the guarantee** …

[61] When devising an appropriate remedy a court must consider all the circumstances of the particular case, especially the stage of the proceedings at which it is determined that there has been a breach." [emphasis mine]

[69] It is to be noted that Belize has a similar constitutional terrain to Barbados. The equivalent of their **Section 13(3)** is our **Section 5(5)**[18] and their enforcement provision to protect constitutional rights at their **Section 24(1)** is our **Section 20(2)**.

[70] In **Gibson**, the CCJ also indicated the following with respect to fashioning a remedy for a breach of the right to trial within a reasonable time:

[63]…….**As previously indicated at para [42] above, s 24(1) of the Constitution affords the court flexibility, power and a wide discretion in fashioning a remedy that is just and effective taking into account the public interest and the rights and freedoms of others. No conceivable remedy, including a permanent stay or dismissal, ought to be removed from the range of measures at the disposal of the court if the relief in question will prove to be appropriate**…..[emphasis mine]

[71] In **Gibson** the Court accepted that a reduction in sentence is an appropriate remedy.

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[18] *"If any person arrested or detained as mentioned in subsection (3) (b) of this section is not tried within a reasonable time, then without prejudice to any further proceedings that may be brought against him, he shall, unless he is released, be entitled to bail on reasonable conditions."*

[72] In **R v Henry**[19] the CCJ also affirmed that Belizean Courts in giving effect to the Constitution and remedying a breach of the right to trial in a reasonable time also have a wide breadth of options:

> [41]……..**Remedies for breach may be a declaration, an award of damages, stay of prosecution, quashing of conviction, or a combination of these or some other or others. Everything depends upon the circumstances**……[emphasis mine]

[73] Findings of unreasonable delay can only be made on an analysis of the facts of the particular mater. A finding of unreasonable delay also cannot be reached by applying a mathematical formula. However the lapse of a significant amount of time between charge and trial gives rise to a rebuttable presumption that there has been undue delay. The Court in **Gibson** emphasized that the finding of a breach is an exercise that the Court must consider in the round taking into account a number of factors:

> "[58] A finding that there has indeed been unreasonable delay in bringing the accused to trial must be made on a case-by-case basis. It cannot be reached by applying a mathematical formula, although the mere lapse of an inordinate time will raise a presumption, rebuttable by the state, that there has been undue delay. **Before making such a finding the court must consider, in addition to the length of the delay, such factors as the complexity of the case, the reasons for the delay and specifically the conduct both of the accused and of the state. An accused who is the cause and not the victim of delay will understandably have some difficulty in establishing that his trial is not being heard within a *reasonable* time. One must not lose sight of the fact, however, that it is the responsibility of the state to bring an accused person to trial and to ensure that the justice system is not manipulated by the accused for his own ends. Even where an accused person causes or contributes to the delay, a time could eventually be reached where a court may be obliged to conclude that notwithstanding the conduct of the accused the overall delay has been too great to resist a finding that there has been a breach of the guarantee** (see for example *Boolell v R* [2006] UKPC 46, [2007] 2 LRC 483)" [emphasis mine].

[74] The Crown in their submissions stopped short of accepting that there was a breach of the prisoners' rights due to delay but accepted that there were a myriad of factors which contributed to the six (6) year gap including some factors attributable to the State. The Crown further submitted that a reduction in sentence is an available remedy and if the Court finds that there was indeed a breach, the reduction should be minimal.

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[19] [2018] 93 WIR 205

[75] In this matter the prisoners were charged in August 2017, committed to stand trial in December 2018, indicted by the Office of the Director of Public Prosecutions in April 2019 and eventually had their trial begin in October 2023. The trial as indicated culminated in all five accused persons (two in absentia) being found guilty on December 9th 2023. There is in fact therefore a period of time of over 6 years between the date of the prisoners being charged and the date that their trial actually started.

[76] Considering the fact that there is on the face of the record an over 6-year gap between charge and trial, the Court finds that there is a rebuttable presumption in this matter of undue delay. The Court must however still look and see whether the fault for the delay in this matter, which is considerable, is to be laid partially or wholly at the foot of the State whose responsibility it is to ensure that the prisoners' were tried within a reasonable time. Should the Court find that a breach has indeed occurred the next step is a consideration of the appropriate remedy.

[77] The Court notes that this matter is not complex either factually or legally and thus its complexity could not have afforded a reason for the delay. The Court also considers that there were multiple accused including two who absconded. However, this feature on the face of the record did not add much difficulty as the Court proceeded to case manage the matter after the 1st accused absconded and after the 2nd accused absconded the Court proceeded to trial within a matter of weeks.

[78] The history of the matter before the High Court also shows *inter alia* the following:

a) The prisoners were indicted in April 2019.
b) Case Management was completed in December 2019 without Ronald Reyes who absconded on the 8th October 2019. The matter was therefore ready for trial.
c) The matter was first fixed for trial on the 28th September 2020. The trial was unable to go forward as the Covid Pandemic forced the closure of the Courts, a state of affairs which subsisted until April 2021. Even after the Courts were reopened, the matter was not heard until November 10th 2021.

d) Subsequent to 10th November 2021, the matter was not fixed for trial but the prisoners had issues with representation and were allowed time to sort out their representation from March 8th 2022 to February 28th 2023 when they indicated that they would be representing themselves at trial.

e) Subsequent to 28th February 2023 the matter was adjourned 9 times before the trial commenced on the 25th October 2023. One of those occasions was a trial date which had to be adjourned due to the illness of Crown Counsel and on other occasions the sitting judge was ill. No request was made by the prisoners for an adjournment during this period.

[79] It is clear therefore that the majority of the delay of 6 years in this matter is attributable to the State. A significant portion of the delay fell during and when the country was recovering from the effects of the Covid19 pandemic. The Court understands the strain that the pandemic placed on the criminal justice system but the responsibility to ensure the protection of the prisoners' constitutional rights rests with the State who has brought them before the Courts. However, even if that portion is excused, the delay attributable to the State extends beyond that period.

[80] The Court finds that the delay in this matter that is attributable to the Defence constitutes the period from March 8th 2022 to February 28th 2023.

[81] In answering the question as to whether there has been a breach the Court has weighed the competing interests of the public and those of the prisoners and applied the principles of proportionality. Uppermost in the Court's mind, as was stated in **Gibson**, is the premise that the State has a constitutional responsibility to allocate sufficient resources to ensure that the reasonable time guarantee has real and not just symbolic meaning. The Court having considered all of the circumstances finds that there has been a breach of the prisoners' right to trial within a reasonable time. Following the CCJ in **Gibson**, this Court further finds that having regard to the stage of the proceedings at which the issue is raised, the appropriate remedy in the circumstances is a reduction in the sentence that is to be imposed on the prisoners.

[82] The Court will therefore adjust the starting point downwards for each offender by **two** (2) years for the breach of their right to trial within a reasonable time, leaving a notional term of **fourteen years** (14) for each prisoner.

[83] Delay of such length as happened in this case is inimical to the administration of justice. Delays of this kind affect all parties in the criminal justice system from victims to the accused persons who all have to face the spectre of participating in criminal proceedings for such a protracted period of time without finality. Delays such as this ought not to be countenanced especially with the advent of the **Needham's Point Declaration on Criminal Justice Reform: Achieving a modern Criminal Justice System**. In that declaration the participating Caribbean countries, including Belize, adopted the following aspirational goal:

> 19. That as a rule, **trials should be held within one (1) year of the accused being charged (for indictable offences)** and six (6) months (for summary offences). **During the necessary transitional stage to this ideal, trials should be held within two (2) to three (3) years of the accused being charged (for indictable offences)** and twelve (12) months (for summary offences).

[84] This declaration represents a sea change in our Caribbean criminal justice systems and while not law, represents persuasive ideals which our individual courts aspire to and should seek to implement and enforce as much as possible.

Other Mitigating and Aggravating factors

Victor Ruiz

[85] For Victor Ruiz the Court finds as mitigating his previous good character as he has no previous convictions. The Court also took as mitigating his positive Social Inquiry Report and the testimony on his behalf at the mitigation hearing. Through the mitigation hearing and report, a picture emerged of the Prisoner which showed him to be hard working, a good father and well liked in his community. The incident also appears to be, while serious, uncharacteristic of his general behaviour.

[86] Mr. Ruiz's genuine remorse which was shown in his dock statement at his mitigation hearing is also noted in his favour as a mitigating feature.

[87] The Court also notes Mr. Ruiz young age at the time and is prepared to take into account his immaturity at the time of the offence as a mitigating feature.

[88] The Court finds that there are no aggravating features of this offender and accordingly further adjust his sentence downward by **three (3) years**, leaving a notional term of **eleven (11) years**.

Rodel Mai

[89] Mr. Mai previous good character is noted in his favour as a mitigating factor as well as his positive social inquiry report and mitigation evidence. The Court notes that Mr. Mai prior to this incident and after has been characterized as hardworking, family oriented, close to his father and generally pleasant to his community. The behaviour that characterized this incident appears to have been a one off for him.

[90] Mr. Mai's genuine remorse at the mitigation hearing and his age and immaturity at the time of the offence is also noted in his favour as a mitigating feature.

[91] The Court finds that there are no aggravating features of this offender accordingly further adjusts his sentence downward by **three (3) years**, leaving a notional term of **eleven (11) years**.

Edwardo Escarraga

[92] Mr. Escarraga's previous good character and his positive social inquiry report were also taken as mitigating factors. Further, the Court notes through the report that Mr. Escarraga is characterized as hard working, ambitious, diligent and a new father. It would also appear when his lack of a criminal record is married with the reports and mitigation evidence, that this incidence is a uncharacteristic of his general behaviour.

[93] The Court notes Mr. Escarraga's age at the time of the offence which was 16 years as a mitigating factor which carried significant weight.

[94] The Court does not accept the expression of remorse from Mr. Escarraga as it was coupled with a declaration that he did not commit the offence. The Court of Appeal in **Hernan Castillo v R**[20] dealt with a similar circumstance and indicated as follows:

> *"[23] The appellant made sure to mouth an expression of remorse early on in his statement at the sentencing phase. But he also kept on insisting, despite the verdict of the judge, that he was not the deceased's killer and that Amir Garcia, the chief Crown witness at trial, 'lied and got away with it', thanks to the shortcomings of his (the appellant's) counsel.*
>
> *…*
>
> *[28] It should come as no surprise that, given the remarks already made at para [23], above, the Court finds it impossible to accept as genuine such expressions of remorse as were articulated by or on behalf of the appellant in the present case**. It does not lie in the mouth of an offender to claim to be remorseful when he steadfastly insists that he is innocent of the crime of which he has been convicted. Implicit in a feeling of remorse is an acceptance of one's guilt. A false claim of remorse made before a sentencing court is a most reprehensible display of utter disrespect for that court. That said, however, the Court will not treat the appellant's claim of remorse as an aggravating feature in the present case. That is not to suggest that in a future case the advancement of such a claim will be met with the same, or any, degree of indulgence**." (emphasis added)*

[95] The Court will treat the expression of remorse by Mr. Escarraga while maintaining his innocence as an aggravating feature in this case. The Court considers that his expression of remorse, while pleading innocence, was made to get a further discount from the Court. Such behaviour which amounts to a false declaration of remorse must be frowned upon as disrespectful to the Court. However, even with the weighing of this aggravating feature in the balance, the mitigating features of Mr. Escarraga outweigh the aggravating and a downward adjustment of his sentence is therefore warranted.

[96] The Court therefore finds that a downward adjustment is warranted in the amount of four (4) years for Edwardo Escarraga leaving a notional term of **ten** (10) years.

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[20] Ibid

Discount for Guilty Plea

[97]No discount arises in this matter as the prisoners were found guilty at trial.

Credit for time served

[98] Pursuant to the decision of our apex Court the CCJ, in **Da Costa Hall**, the Prisoner must be given full credit for the time spent in pre-trial custody prior to being sentenced. In the instant matter the Prisoners were taken into the custody of the State on the 8th December 2023. The Defendants have thus far served **six (6) months** in custody. This will be discounted from their notional term accordingly leaving a final sentence of **Ten (10) years six (6) months** for prisoners Ruiz and Mai and **nine (9) years six (6) months** for prisoner Escarraga.

Ancillary orders

[99]The Court is empowered to order compensation pursuant to **s168** of **the Indictable Procedure Act**[21] (the IPA). The award of compensation is discretionary. Compensation if awarded reflects a number of considerations. These include but are not limited to any payments previously made by the Accused to the victim's family, any monetary award that the victim's family may be entitled to or has received from any pending civil claims and the financial means of the Accused.

[100] The Crown has urged the Court to order compensation in the amount of the victim's medical bills. The Crown provided bills amounting to roughly Eight Thousand Dollars ($8000.00) and not the total amount claimed by the victim and his mother. The Defence urged the Court, if compensation was to be awarded that it should only be for the amount specifically proven by the Crown and not the full Thirty thousand, Four hundred and Eighty-one dollars ($30, 481.00).

[101] While the suggestion by the Defence is attractive, when one considers the wide discretionary breadth conferred on the court by **s168**, the Court is clearly not limited to awarding compensation for only the

[21] Cap 96 of the Substantive Laws of Belize Revised Edition 2020

monetary damage that has been strictly proven by the Crown. The Court in awarding compensation and looking particularly at the principle of totality, must consider the matter in the round looking at all of the relevant factors if compensation should be awarded and if so in what amount, bearing in mind that criminal compensation is not meant as a substitute for a civil claim.

[102] The Court has considered the facts of the matter and the damage done to the victim by the vicious sustained group attack of the prisoners. The Court has also noted that the prisoners are construction workers and that their means are limited. The Court has also looked at whether compensation should be awarded in light of the custodial sentence already imposed on the Prisoners. In all of the circumstances, the Court is minded to award compensation to the victim pursuant to section 168 of the IPA.

[103] The Court finds that compensation in the amount of **Three Thousand Five Hundred Dollars ($3500.00)** to be paid to the victim Allen Sanker by each prisoner is a fair and just award in the circumstances.

Offenders Ronald Reyes and Angel Uh

[104] The offenders Ronald Reyes and Angel Uh have not yet been apprehended. In the course of these proceedings the Court was not fully equipped with the necessary reports to individualize the sentences for the offenders Ronald Reyes and Angel Uh. The Court accordingly orders that a Social Inquiry Report and an Antecedent report be provided for those offenders and reserves their sentencing in absentia for a date to be fixed pending the availability of the reports.

Disposition

[105] The order of the Court in respect of the prisoner **Victor Ruiz** is as follows:

a) The Court finds that the appropriate starting point having regard to the aggravating and mitigating circumstances of the offence is **sixteen years (16) years**.
b) The Court finds that there are no aggravating features of the offender.

c) The Court finds that the prisoner's right to trial within a reasonable time has been breached and awarded the prisoner a reduction in sentence of **two (2) years**.
d) Having regard to the other mitigating factors of the Prisoner, a further downward adjustment is warranted in the amount of **three (3) years**.
e) The Prisoner is credited for the time spent thus far in pre-trial custody which amounts to **Five (5) months and twenty nine (29) days**.
f) The Prisoner stands convicted of Attempted Murder and will serve a term of imprisonment of **Ten (10) years, six (6) months and (1) day** to commence today.
g) The Prisoner is to pay compensation to the victim Allen Sanker in the amount of **Three Thousand Five Hundred Dollars ($3500.00)**.

[106] The order of the Court in respect of the prisoner **Rodel Mai** is as follows:

a) The Court finds that the appropriate starting point having regard to the aggravating and mitigating circumstances of the offence is **sixteen years (16) years**.
b) The Court finds that there are no aggravating features of the offender.
c) The Court finds that the prisoner's right to trial within a reasonable time has been breached and awarded the prisoner a reduction in sentence of **two (2) years**.
d) Having regard to the other mitigating factors of the Prisoners, a further downward adjustment is warranted in the amount of **three (3) years**.
e) The Prisoner is credited for the time spent thus far in pre-trial custody which amounts to **Five (5) months and twenty nine (29) days**.
f) The Prisoner stands convicted of Attempted Murder and will serve a term of imprisonment of **Ten (10) years, six (6) months and (1) day** to commence today.
g) The Prisoner is to pay compensation to the victim Allen Sanker in the amount of **Three Thousand Five Hundred Dollars ($3500.00)**.

[107] The order of the Court in respect of the prisoner **Edwardo Escarraga** is as follows:

a) The Court finds that the appropriate starting point having regard to the aggravating and mitigating circumstances of the offence is **sixteen years (16) years**.

b) The Court finds that the prisoner's right to trial within a reasonable time has been breached and awarded the prisoner a reduction in sentence of **two (2) years**.

c) Having regard to the other mitigating factors of the Prisoners, a further downward adjustment is warranted in the amount of **four (4) years**.

d) The Prisoner is credited for the time spent thus far in pre-trial custody which amounts to **Five (5) months and twenty nine (29) days**.

e) The Prisoner stands convicted of Attempted Murder and will serve a term of imprisonment of **Nine (9) years, six (6) months and (1) day** to commence today.

f) The Prisoner is to pay compensation to the victim Allen Sanker in the amount of **Three Thousand Five Hundred Dollars ($3500.00)**.

[108] The Court orders in respect of the offenders **Ronald Reyes** and **Angel Uh** as follows:

a) Social Inquiry Reports and Antecedent Reports are to provided to the Court in respect of Ronald Reyes and Angel Uh

b) The mitigation and sentencing of Ronald Reyes and Angel Uh is reserved to a date to be fixed.

Raphael Morgan
High Court Judge
Dated 16th May 2024