

IN THE SENIOR COURTS OF BELIZE

CENTRAL SESSION - BELMOPAN

**IN THE HIGH COURT OF JUSTICE
(CRIMINAL DIVISION)**

INDICTMENT NO. CR20230074C

BETWEEN:

THE KING

and

ARMANDO PASTRANA

Before:

The Honourable Madame NATALIE –CREARY DIXON., J

Appearances:

Mr Glenfield Dennison, for the Crown

Mr Hurl Hamilton, for the Accused

2024:
January 29, 2024
February 13, 2024
March 5 & 26, 2024

JUDGMENT ON SENTENCING

[1] **NATALIE -CREARY DIXON, J:** On the 13th February 2024, Mr Pastrana entered a plea of guilty to the offence of Causing Death by Careless Conduct pursuant to Section 108(2) of the Criminal Code, Chapter 101 of the Substantive Laws of Belize (Revised Edition) 2020, (“the Code”), having caused the death of Kimberly Griffith and Elmar Avila, through the careless use of his motor vehicle between Miles 49 and 50 on the Hummingbird Highway, in the Cayo District on November 21, 2021.

[2] In arriving at the appropriate sentence, the Court considered the following:

1. The summary of agreed facts;
2. The victim impact statements;
3. The Law; and
4. Decided cases on the matter at hand.

[3] **The Summary of the Agreed Facts** are that on November 21, 2021, sometime after 10:00 a.m., Jacklyn Martinez, Elias Castillo, Elmar Avila, and Kimberly Griffith were travelling in a Toyota 4Runner SUV heading from the direction of Dangriga Town towards Belmopan City. Armando Pastrana was travelling in the opposite direction in a Honda Civic motorcar.

[4] Between miles 49 and 50 on the Hummingbird Highway, Armando Pastrana made a left turn on the highway intending to go on to Mariposa Street. Upon making this left turn, the front driver-side bumper of the Honda Civic being driven by Armando Pastrana collided into the left front wheel of the said Toyota 4Runner. This impact caused the left front wheel of the SUV to break off causing it to flip and land on its side facing a southern direction.

[5] The driver of the Toyota 4Runner, 40-year-old Elmar Avila’s succumbed to his injuries at the scene. The front seat passenger of the SUV, 51-year-old Kimberly Griffith was flung from the vehicle and landed in a

nearby drain. She also succumbed to her injuries.

[6] A post-mortem examination was conducted by Dr Loyden Ken on Elmar Avila where he certified the cause of death to be acute brain and cervicospinal cord traumatic injuries due to blunt force traumatic injuries to the head. A post-mortem examination was conducted by Dr. Loyden Ken on Kimberly Griffith where he certified the cause of death to be acute cranioccephalic trauma injuries due to blunt force traumatic injuries to the left side of the head.

[7] An Ethanol Concentration Analysis was performed on the blood specimen of Armando Pastrana taken shortly after the collision where it revealed an ethanol concentration of 179 milligrams of ethanol per 100 millilitres of blood. Mr Pastrana's ethanol concentration was above the legally prescribed limit.¹

The Victims' Impact Statements

[8] The Court considered the victim impact statements from the following relatives and friends of the deceased persons:

- (i) Seventeen (17) year-old son of Elmar Avila, who is still in High School, spoke of his father as his role model and one of the main characters in his village. On the verge of manhood, he pointed out that his father will never get to see him become the man he moulded him to be.
- (ii) Frances Lopez: mother of the deceased Elmar Avila: the deceased was her eldest son who played his role as a son very well. He was dependable and kind-hearted to everyone. He would support her financially. He would also support her mother (his grandmother), physically and financially. Her mother passed away a few months after Mr Avila's death. He was head

¹ According to the Motor Vehicles and Road Traffic Act CAP 230 of the Revised Edition of the Laws of Belize, "the prescribed limit" means, as the case may require, (a) 80 milligrams of alcohol in 100 millilitres of blood.

of the re-enactment of the settlement of the Garifuna people. He would partake yearly. He was proud of his culture. He was a family man who was active in the lives of all of his six children. She stated that she has forgiven the convicted as he has taken responsibility for his actions.

- (iii) Serina Avila: 21-year-old daughter of Elmar Avila. She echoed the sentiments of everyone that her father was the breadwinner of the family. She had to terminate her studies after he died, to assist her mother with the mounting bills, and to take care of her siblings. She had to put her dreams on hold. He was an excellent father whom she could confide in. Understandably, she has become depressed since his passing.
- (iv) Ms Santalla, the common law wife of Mr Avila and mother of his minor children stated that her children were robbed of the Garifuna culture; that they had to move back to Finland because she had no financial support in Belize.
- (v) Mr Fabrice Cocom the son of Kimberley Griffiths outlined that she was the breadwinner of the family; he has been jobless occasionally since her death.
- (vii) Jacklyn Martinez, friend of Kimberly Griffith, shared the depths of her friendship with the deceased and the void that has been left on her passing. She has forgiven the convicted and knows that the deceased Kimberly would agree with her.
- (viii) Shanena Reyes – daughter of Kimberly Griffith shared the pain of losing her mother and the subsequent anxiety and depression that remain with her even today.
- (ix) Character evidence for Mr Pastrana:

Mr Pastrana called one character witness on his behalf: Pastor Pedro Ochoa. Pastor Ochoa of the Beldaderia Pentecostal Church in Camalote, stated that he had known the convicted man since 1999. The convicted man attended Sunday school at that church since he was 18 years old. They have been neighbours for the past 14 years. He described Mr. Pastrana as a calm young man and a hard worker. Mr. Pastrana has a wife and a baby boy. He has a strong family unit; he also cares for his sick father. He is kind, respectful and hard-working.

(x) Mr Pastrana himself begged the family of the deceased to forgive him. He stated that he no longer drinks, and he struggles mentally and has sleepless nights; he empathized with the family as he knows what it is like to lose a loved one. He said he has always been a kind and humble person. His life has changed; he does not drink anymore.

(xi) In his plea in mitigation, his Counsel outlined that this is an early guilty plea. The defendant took responsibility for his actions immediately, saving the court time and valuable resources.

[9] The common theme running throughout these statements is the fact that the deceased were family-oriented; took care of their families and most of their family members are suffering financially as a result of their demise.

THE LAW

[10] The offence of Causing Death by Careless Conduct is outlined in section 108(2) of the Code. According to Section 108(2) of the Code

“(2) Every person who causes the death of another by any careless conduct not amounting to negligence, as defined in this Code, commits

an offence and is liable to imprisonment for two years.”

[11] It is important to mention at this time that although the convicted man’s actions claimed the lives of, not one, but two innocent persons, the Court must bear in mind that the convicted must only be sentenced in respect of one count, but the Court may consider all the probable consequences of his actions.

[12] This is outlined in Section 156 (2) of the **Indictable Procedure Act**, which reads as follows:

‘If a person by one act ... kills several persons ..., he shall be punishable only in respect of one of the persons so ... killed ..., but in awarding punishment the court may take into consideration all the ... probable consequences of the crime.’

[13] The **DPP v Ravell Gonzalez No. 2 of 2015**, supports this position: referencing **Michel Espat v The Queen, Criminal Appeal No 2 of 2015**, it states that:

“Mr Espat was punishable in respect of only one of the four children killed in the horrific accident with which that case was concerned. The Court, in the final paragraph of it (sic) judgment, explicitly stated: ‘For the guidance of trial judges in future where similar situations arise the proper course in sentencing would be to impose sentence in respect of only one count and note that by reason of the provisions of section 156(2) of the Criminal (sic) Procedure Code (sic) no sentence is imposed in relation to all the other counts.’

[14] What then, is an appropriate sentence in this matter?

Aggravating and mitigating factors:

[15] The Court was assisted in determining an appropriate and just sentence by considering the case of Teerath Persaud v R² from the Caribbean Court of Justice. On the issue of the formulation of a just sentence, per Anderson JCCJ, who implores the Court to bear 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 point. Where appropriate there should then be a discount for a guilty plea. (My emphasis).”

[16] Considering the above methodology, the Court determined the starting point by assessing the mitigating and aggravating factors relative to **the offence**. A mitigating factor relative to the offence is the convicted’s post-conduct behaviour. Some of the family members of one victim were compensated, and in a substantial sum, before the matter was completed before the Court.

[17] It is, however, a major aggravating factor relative to the offence that the convicted was intoxicated through voluntary consumption of drinks. Another

² (2018) 93 WIR 132

aggravating factor is the fact that more than one person died as a result of this accident.

- [18]** It is also an aggravating factor that the offence is prevalent in Belize.
- [19]** In arriving at a starting point, the Court considered the case of Michel Espat, as being similar to the present case, in that there were obvious aggravating factors (speeding and alcohol respectively); also, both pleaded guilty to the offence for which they were charged before the Court, thus earning discounted sentences.
- [20]** Although in Espat the accused pleaded guilty to the more serious offence of manslaughter by negligence, it was felt that this case could assist in relation to the sentence ultimately imposed. In that case, the accused was sentenced to a term of nine (9) months imprisonment. Considering the deductions and additions that could be applied for the mitigating and aggravating features of the case, it is reasonable to assume a starting point of eighteen months (18) months in that case, and in the present case.
- [21]** The Court will now individualize the sentence of the convicted man. Starting from eighteen months, one-third would be subtracted for the guilty plea, leaving a total of twelve months; three months would be deducted each for the mitigating factors of genuine remorse, no previous conviction of this nature, and the evidence of good character, resulting in a final total of three months imprisonment.
- [22]** Interestingly, the case of Espat outlined that for the offence of causing death by careless conduct, there had been no custodial sentence imposed since 1990; custodial sentences were not usually imposed for those types of offences.
- [23]** Suffice it to say that that is the current trend in Belize.

[24] The immediate question which arose was whether, having regard to Section 108(2) of the Code outlined above, a custodial sentence should be imposed. The case of **Cardinal Smith v The Queen, Criminal Appeal No 35 of 2005** is helpful. Mr Smith was spared a custodial sentence, because of the mitigating factors present in that case, such as the fact that he was an upstanding citizen with no previous criminal history; he was described as a hard worker; his alcohol level was only slightly over the limit and there was no indication that the alcohol level caused the accident.

[25] This Court also considered a custodial sentence for Mr Pastrana, but, similar to the reasoning in **Cardinal Smith**, this Court considered the mitigating factors of this matter and decided against imposing a custodial sentence.

[26] The mitigating factors considered in support of a non-custodial sentence will now be discussed. The convicted was described by Pastor Ocha as a family man, hard-working and humble. This was his demeanour in Court for all Court appearances; hence the Court had no reason to believe that he was otherwise.

[27] The Court also considered the convicted man's early guilty plea, his genuine remorse, the fact that he has no prior convictions of this nature and the compensation made to some of the victim's family members before the matter was even disposed of before the Court; thus, the Court concluded that a custodial sentence should not be imposed.

[28] This Court also had regard to the sentence in the case of **Gonzalez**. In that case, two persons also died and there was also an obvious aggravating factor (speeding), just as the obvious aggravating factor in this case is the consumption of alcohol. The sentence imposed on **Gonzalez**, was also non-custodial, having regard to the convicted post-

conduct behaviour, his previous “unblemished character”, his genuine remorse, and cooperation with the police. Conclusively, the Court is of the view that a fine and compensation to the victim’s family would accord with the sentences that would normally be imposed for these offences.

[29] I was further guided on the sentence to be imposed, by other decided authorities on this issue. These authorities outlined the general sentencing options exercised by the crown in these types of matters. In assessing the authorities on this type of matter, Justice Lamb in **R v Earl Armstrong Indictment No. N9/2022** observed that the sentencing options exercised by the Courts in these types of matters were as follows³:

- a) *A maximum term of imprisonment of two years;*
- b) a fine;
- c) compensation to the family of the deceased; and
- d) disqualification of driving licences.

[30] Each of the above sentencing options will be applied to the facts of this case, to determine its applicability to this case and ultimately to arrive at an appropriate sentence.

“a) **A maximum term of imprisonment of two years**

[31] The case of **Michel Espat** stated that the maximum term of imprisonment that can be imposed is “clearly intended for the worst possible case”. In that case, the accused pleaded guilty to manslaughter by negligence. There was evidence that the accused was travelling at an excessive speed, lost control of the vehicle, and four persons were killed. As a result, a sentence of nine (9) months imprisonment was deemed appropriate. That case also referenced

³ Para 5

the case of **Rafael Guerra v R** decided on June 18, 1991. In that matter, the negligence was also excessive speed; one person was killed, and the accused did not stop. He also pleaded not guilty and was found guilty after a trial. It was felt that a term of imprisonment of eighteen months was appropriate.

[32] Although the convicted in the present case was drunk when the accident occurred, this Court did not consider this case to be the worst of the worst, nor did it consider that the convicted behaviour was akin to the accused persons in the case of **Espat** and **Guerra**, largely because of the convicted man's actions of compensating one victim's family, and because of what the Court perceived to be genuine remorse, as also his attempt to address the offending behaviour of drinking in excess of the limit prescribed by law.

[33] The case of **Victor Cuevas v The Queen**⁴ was also instructive in determining whether a custodial sentence should be imposed. The respondent in that case was given a one-year sentence for, among other things, what the Court referred to as "appallingly bad" driving:

"For the reasons he chose not to provide to the court below, he made, on his own showing, three attempts, in what can only have been fairly quick succession, to overtake a slow-moving vehicle on a Friday night when the traffic on the road, a major highway, was unsurprisingly hectic. He 16 was plainly "tailgating" the vehicle in front of him at the time and, as a result, found himself in position, when that other vehicle braked, to take the crucial precaution of making sure that the road ahead was clear for a sufficient distance to enable him to overtake and get back to his proper side before meeting traffic coming from the opposite direction. Driving of this kind demonstrates to the Court a selfish disregard for the safety of other road users. Giving due consideration to the applicant's version of events, as well as to all mitigating factors, and disregard the results of the blood alcohol test,

⁴ Cr. Application for Leave to Appeal no. 17 of 2007

this Court came to the firm conclusion that a prison sentence of one year is entirely appropriate in this case and that the sentence of the convicting court is in all other respects condign”.

[34] There is no evidence that the convicted man’s deportment before and after the accident was as reprehensible as that of Mr Cuevas. This further supported the Court’s decision not to impose a custodial sentence.

(b) A Fine

[35] The Court is of the view that the fact that the convicted was inebriated may not warrant a custodial sentence, but certainly warrants a substantial fine. A sum of eight thousand dollars (\$8,000.00) is therefore considered appropriate in the circumstances. This would be in line with the fine imposed in the case of **Ravell Gonzalez**⁵ mentioned above.

[36] That case is similar to this case in that more than one person died as a result of the accident. That case is instructive for the sentence imposed therein.

c) Compensation to the family of the deceased

[37] Justice Lamb in the case of **Earl Armstrong** noted that

*“compensation under Section 108(2) of the Criminal Code does not seek to place a monetary value on human life. Instead, the quantum of compensation, when awarded at all under this provision, reflects considerations such **as any payments previously made by the Accused to the deceased’s family, prior or anticipated future insurance payments to the deceased’s family, pending civil claims, and the financial means of the Accused.**” [My emphasis].*

[38] This Court concurs. Without prejudice to subsequent claims against the convicted man’s insurance company, figures of three thousand (\$3,000) and two thousand dollars (\$2,000) to the families of the deceased persons are

⁵ DPP v. Gonzalez, at para. 21

awarded. It was made clear to the family members that they could take the necessary steps to be compensated by the convicted man's insurance company. Further, the Court enquired and was assured, that every possible assistance would be rendered to the family members who had not been compensated, to ensure that the necessary applications would be made and the family members who had not been compensated by the insurance company would be so compensated in due course.

d) **Disqualification of driving licences:**

[39] With respect to a suspension of the convicted man's driving license, the Court is guided by the case of **Cuevas**, in which a sentence of one year was imposed in addition to a disqualification of his licence and compensation for the family of the victim. **Cuevas** is distinguishable from the present case in that there was evidence of a serious disregard for other road users as evidenced by the careless way in which he was observed driving, prior to the accident. In **Gonzalez**, it was felt that the view expressed in **Cardinal**, that "persons convicted of an offence under that section should invariably have their driving licence suspended", could be "indefensibly rigid and inflexible, and that there was no justification in the instant case for the imposition of such further treatment." The Justices respectfully refrained from ordering the suspension of Gonzalez's licence.

[40] Whilst this Court is by no means ignoring the seriousness of Mr Pastrana's actions, it is felt that the additional punishment of suspending Mr Pastrana's driving license would not be necessary in the current circumstances: he has accepted responsibility and is remorseful.

[41] The process of arriving at an appropriate sentence, in this case, also entailed the application of the generally accepted principles of sentencing⁶, against

⁶ See R v Ramcharran para 19, where Jamadar JCCJ noted that" in 2014 this Court explained the multiple ideological aims of sentencing. These objectives may be summarised as being: (i) the public interest, in not only punishing, but also in preventing crime ('as first and foremost' and as overarching), (ii) the retributive or

the background of the nature and seriousness of the offence, the circumstances surrounding its commission and the personal circumstances of the offender. This meant that the Court considered that this was a serious and prevalent offence which resulted in the horrific death of two innocent persons. The Court is of the view that the sentence should therefore serve as a deterrent whilst appreciating that the convicted is not without redemption and does not pose a danger to the public at this time.

[42] In light of the above, I consider the following sentence to be appropriate in all the circumstances:

1. A fine of \$8,000.00 payable within six (6) months of the date of this judgment;
2. A term of imprisonment of nine (9) months in default of payment; and
3. A sum of compensation of \$5,000.00, payable within three (3) months of the date of this judgment, to the family of the deceased, in the following amounts:
 - a) \$2,000.00 to the family of Kimberly Griffiths, to be collected by her adult son Fabrice Cocom.
 - b) \$3,000 to the family of Elmar Avila, to be collected by Serena Avila.

Delivered this **26** day of **March 2024**

[43] This is the Judgment of the Court.

Natalie -Creary Dixon; J
High Court Judge

By the Court Registrar

denunciatory (punitive), (iii) the deterrent, in relation to both potential offenders and the particular offender being sentenced, (iv) the preventative, aimed at the particular offender, and (v) the rehabilitative, aimed at rehabilitation of the particular offender with a view to re-integration as a law abiding member of society.”