

IN THE SENIOR COURTS OF BELIZE

CENTRAL SESSION-BELIZE DISTRICT

(Criminal Jurisdiction)

INDICTMENT NO: C172/2024

THE KING

and

FLORENTINO RUIZ

Before: Honourable Justice Derick F. Sylvester

Appearances:

Mr. Riis Cattouse &
Ms. Shanell Fernandez for the Crown.

Mr. Leeroy Banner Amicus Curiae for the Accused

2024: March 14th 21st
June 10th

SENTENCING- USE OF DEADLY MEANS OF HARM

[1] The accused Florentino Ruiz was indicted for the offence of attempted murder of Roberto Arana contrary to section 117 of the **Criminal Code**¹ (“the Code”) of the Substantive Laws of Belize.

¹ Chapter 102:01 of the Substantive Laws of Belize, Revised Edition, 2020, see section 25.

[2] The particulars of the offence are stated hereunder as follows:

‘**Florentino Ruiz**, on the 15th day of October 2022, at Scotland Halfmoon Village, in the Belize District, in the Central District of the High Court, attempted to murder **Roberto Arana**’.

[3] The accused was arraigned on the 4th day of March 2024, and pleaded not guilty to the offence of attempted murder. The matter was adjourned on a few occasions to enable the accused to retain an attorney, all to no avail.

[4] On the 10th day of June 2024, the matter was set for trial, and the accused remained unrepresented. Due to the serious nature of the offence, the accused being unrepresented and the prosecution being of the view that the accused should be represented due to the nature of the offence and the likely consequences that may follow, suggested that the accused be represented. Upon inquiry from the accused, it was revealed that he is indigent and in dire need of legal representation. The accused also stands to benefit immensely from a plea discussion in accordance with the recently passed legislation namely, the **Criminal Procedure (Plea Discussion and Plea Agreement) Act, 2024**².

[5] On the 1st day of June 2024, the **Plea discussion and Plea agreement Act** was gazetted and thereby passed into law, with a

² #12 of 2024

commencement date being 3rd June 2024³.

[6] This court takes judicial notice and endorses the **NEEDHAM'S POINT DECLARATION on Criminal Justice Reform, declaration 20-23**, in relation to support for accused persons who cannot afford legal representation and the dwindling of criminal practitioners appearing before the criminal Bar as is evident in Belize and other jurisdictions in the region. The relevant declarations are stated hereunder:

Representation and support of the accused

20. *That there should be the establishment of Public Defender Offices throughout Member States of the Caribbean Community.*
21. *That there be implementation, expansion and appropriate funding of legal aid schemes.*
22. *That measures be put in place to develop and strengthen competencies and resources at the criminal private bar.*
23. *That measures be taken to encourage aspiring Attorneys-at-Law to pursue a career in criminal practice.*

There are numerous accused appearing in court in the position of the accused at bar. The implementation of the above declarations, can assist those accused, improve the dispensation of justice, enhance the justice system holistically and improve public confidence in the justice system, by reducing the back log of cases and expedite hearings leading to a quicker disposal of matters.

³ SRO # 82 of 2024

[7] On the morning of the trial, the court, *sua sponte*, requested of Mr. Leeroy Banner of Counsel to assist the accused, *pro bono*, by representing him, utilizing the provisions of the **Plea Agreement Act 2024**. This request was readily accepted by both the accused and Mr. Banner.

[8] The prosecution thereafter made an application to amend the indictment pursuant to section 77 of the **Indictable Procedure Act Chapter 96** of the Substantive Laws of Belize. The application was granted, after there being no objection from the defence.

[9] The indictment was amended to section 83 (a) offence of the Criminal Code, that being the use of deadly means of harm. The amended indictment reads as follows:

‘**Florentino Ruiz** on the 15th day of October 2022, at Scotland Halfmoon Village, in the Belize District, in the Central District of the High Court, did intentionally and unlawfully use deadly means of harm on Roberto Arana contrary to section 83 (a) of the Criminal Code, Chapter 101 of the Substantive Laws of Belize.’

[10] The accused was rearraigned and pleaded guilty to the above amended indictment.

The Law

[11] The maximum sentence for the offence at bar is prescribed in the

Criminal Code at section 83 (1) (a) as follows:

“82. Every person who uses a sword, dagger, bayonet, firearm, poison, or any explosive, corrosive, deadly or destructive means of instrument, shall-

a) If he does so with intent unlawfully to cause harm to a person, be liable to imprisonment for five years.”

[12] As a precursor to sentencing, and to determine whether a custodial sentence should be imposed on these facts I will examine the provisions of the **Penal System Reform (Alternative Sentences) Act**⁴ (hereinafter referred to as the “PSRASA”) which states in part at paragraphs 28 and 31 as follows:

“28.-(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...*
- 2. The gravity of a punishment must be commensurate with the gravity of the offence....”*

⁴ Chapter 102:01 of the Revised Edition of the Substantive Laws of Belize 2020.

[13] The Court is guided and will apply the principles enunciated by Anderson JCCJ in the authority of **Teerath Persaud v R**⁵ dealing with the issue of the formulation of an appropriate sentence';, fixing the starting point and examining the aggravating and mitigating factors relevant to the offence to fix the starting point and an upward or downward adjustment after examining the relevant aggravating and mitigating factors of the offender. Anderson JCCJ opined at par. 46 thus:

"[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

⁵ [2018] CCJ 10

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 R v da Costa Hall full credit for the period spent in pre-trial custody is then to be made and the resulting sentence imposed.”

- [14] As part of achieving the ideological objective of sentencing, the court will examine the public interest in not punishing but also preventing crime, the retributive aspect, deterrence and rehabilitation of the offender. The guidance was usefully provided in the authority of **Calvin Ramcharran v DPP**⁶ as postulated by per Barrow JCCJ at par. 16 hereunder:

[16] Jamadar JCCJ noted that in 2014 this Court explained the multiple ideological aims of sentencing. These objectives may be summarized 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 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

⁶ [2022] CCJ 4

rehabilitation of the particular offender with a view to re-integration as a law abiding member of society.

Agreed Facts

- [15] Both the prosecution and defence agreed on the facts relative to the offence and it was read into the court's record as follows:
- i. On the 15th day of October 2022, in the village of Half Moon, Florentino Ruiz [the accused], Roberto Arana and others were out drinking at a bar. The men were heavily intoxicated, as a result they were removed from the premises.
 - ii. Shortly after leaving the bar the accused, Florentino Ruiz and Roberto Arana, got into an altercation which resulted in the accused person chopping the Victim Roberto Arana with a Machete.
 - iii. The victim sustained multiple chop wounds to his face and lost two fingers.

- [16] The court invited the prosecution to indicate a range of sentence in accordance with the guidance from the Caribbean Court of Justice (CCJ) decision of **Roy Jacobs v State**⁷ in dealing with the role of the DPP role in sentencing, wherein a sentencing range can be provided to guide the court in its deliberation. The relevant paragraph of the judgment being 42 is reproduced hereunder:

Role of DPP in Sentencing

⁷ [2024] CCJ 9

(42) That responsibility does not come to an end in the event of a conviction. The guilt phase is properly followed by the penalty phase of the trial, usually involving a sentencing hearing. The ultimate objective of the penalty phase is to determine the appropriate sentence. Here the DPP's Office retains the critical function of ensuring that the sentencing tribunal is appraised of all factors relevant to the imposition of the appropriate sentence. This usually involves a victim impact statement, information on aggravating and mitigating factors of the offence and the offender. It may also include legal submissions targeting the nature or range but not necessarily the specific sentence that the Office considers appropriate. Indications from the Legislature as to the appropriate sentence even when enacted as 'mandatory' in relation to categories of offences are clearly relevant and helpful.

[17] The prosecution's range was compensatory and non-custodial in nature, when the aggravating and mitigation factors of both the offence and offender were examined. This reasoning was synonymous with the court's view.

Starting Point (Aggravating and Mitigating Factors of the Offence)

[18] The Court will now examine the aggravating and mitigating features of the offence, which in the court's view are the following:

Aggravating Factor:

- I. Use of a bladed weapon.

Mitigating Factors:

- i. The prisoners cooperated throughout the investigation.
- ii. Did not seek to avoid responsibility for the offence.
- iii. The offence was not premeditated.

Starting Point

[19] The maximum penalty for this offence is five [5] years] imprisonment.

After examining the aggravating and mitigating factors relevant to the offence, this court will therefore impose a starting point of eighteen [18] months.

Individualizing the Sentence (Aggravating and Mitigating Factors of the Offender)

[20] The Court will now individualize the sentence considering the mitigating and aggravating factors relevant to the offender.

Aggravating Factors:

- i. It was an unprovoked attack.
- ii. The accused was in a state of self-induced intoxication.
- iii. The accused and complainant were friends.

Mitigating Factors:

- i. The offer of compensation.
- ii. Show of genuine remorse coupled with an apology.
- iii. The prisoner is of prior Good Character having no prior convictions.
- iv. The prisoner pleaded guilty at the first opportunity that a lesser offence was presented to him.

[21] This court will take into consideration the fact that the prisoner has no prior convictions and has pleaded guilty at the first opportunity that presented itself. This would lead to a reduction from eighteen [18] months to a non-custodial sentence.

[22] The court will therefore sentence the prisoner as stated hereunder.

Sentence

[23] The sentence of the Court is as follows:

1. The accused shall pay as compensation to Roberto Arana the sum of twelve thousand [\$12,000.00] dollars within one year from today's date, in the following manner as follows:

- i. two thousand dollars [\$2,000.00] into the court on or before 3:00 pm on the 11th of June 2024, and
- ii. the balance of ten thousand dollars [\$10,000.00] shall be paid in equal monthly instalments of one thousand dollars per month commencing at the end of July 2024. and continuing until completion.
- iii. in default of payment, the accused will be sentenced to two (2) years imprisonment, pursuant to the Indictable Procedure Act sections.164 and 165 (2).

2. The accused is placed on a bond to keep the peace for two [2] years, in default twelve [12] months imprisonment pursuant to the Indictable Procedure Act sections 169 (1) & (2).

Derick F. Sylvester

High Court Judge