

IN THE SENIOR COURTS OF BELIZE

CENTRAL SESSION-BELIZE DISTRICT

IN THE HIGH COURT OF JUSTICE

INDICTMENT NO: C 0033/2024

THE KING

and

PONCIANO COC
MIRNA CANELO

Defendants

Appearances:

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

Mr. Andrew Bennett for the accused

2024: April 18th, 24th

JUDGMENT

CRUELTY TO A CHILD - SENTENCING

[1] **SYLVESTER, J:** Ponciano Coc and his common-law partner Mirna Canelo (“the accused”) were both indicted for three counts of cruelty to a child, contrary to **Section 60 (1) of the Criminal Code**¹, (“the Code”)

¹ Chapter 101 of the Substantive Laws of Belize, Revised Edition 2020.

Chapter 101 of the Substantive Laws of Belize Revised Edition 2020. However, Mirna Canelo was indicted for an additional count of Causing Harm, contrary to **Section 79 of the Criminal Code Chapter 101, read along with Section 4 (1) (a) of the Domestic Violence Act, Chapter 178 of the Substantive Laws of Belize Revised Edition 2020.**

- [2] The specific particulars of the charges are as follows:
- i. **PONCIANO COC AND MIRNA CANELO**, on the 1st day of November 2020, at Hattievillage Village, in the Belize District, in the Belize District, in the Central District of the High Court, both being over the age of (18) eighteen years and by virtue of the law, having had custody of Luis Canelo, a person under the age of eighteen years, to wit (12) twelve years of age, wilfully ill-treated the said, Luis Canelo in a manner likely to cause him unnecessary suffering.
 - ii. **PONCIANO COC and MIRNA CANELO**, on the 15th day of November 2020, at Hattievillage Village, in the Belize District, in the Central District of the High Court, both being over the age of (18) eighteen years and by virtue of the law, having had custody of **Luis Canelo**, a person under the age of (18) eighteen years, to wit, (12) twelve years of age, wilfully ill-treated the said **Luis Canelo** in a manner likely to cause him unnecessary suffering.
 - iii. **PONCIANO COC and MIRNA CANELO**, on the 15th day of November 2020, at Hattievillage Village, in the Belize District, in the Central District of the High Court, both being over the

age of (18) eighteen years and by virtue of the law, having had custody of **Michael Garcia**, a person under the age of (12) twelve years, to wit, (10) ten years of age, wilfully ill-treated the said **Michael Garcia** in a manner likely to cause him unnecessary suffering.

iv. **MIRNA CANELO**, on the 22nd day of November 2020, at Hattieville Village, in the Belize District, in the Central District of the High Court, intentionally and unlawfully caused harm to **Luis Canelo**.

[3] On the 18th of April 2024, the accused matter came on for Case Management Conference and the matter was about to be streamlined to commence before a jury, in accordance with Section 65 of the Indictable Procedure Act² which reads:

(1) "Every person committed for trial shall be tried on an indictment in the court.

(2) Subject to the provisions of Sections 65 A to 65 E, the trial shall be had by and before a judge of the court and a jury constituted under the "Juries Act."

[4] However, the accused gave early indication through their attorney that they wanted to accept responsibility for the offences and the prosecution willingly accepted. The accused namely, **Ponciano Coc** pleaded guilty to (3) three counts of Cruelty to a Child and **Mirna Canelo** pleaded guilty to (3) three counts of Cruelty to a Child and one count of Causing Harm.

² Indictable Procedure Act Cap.96 S. 65 of the Substantive Laws of Belize Revised Edition 2020

Ponciano Coc was born on the 22nd of June 1967 and is (57) fifty-seven years of age and **Mirna Canelo** was born on the 22nd of September 1991 and is (32) thirty-two years of age.

- [5] This court was provided with useful guidance from the Caribbean Court of Justice (the“CCJ”) in **Linton Pompey v. DPP**³,in relation to sentencing post-conviction. The court’s guidance states as follows:

“(32) The court suggests that the practice of passing sentence immediately after verdict should generally be eschewed, especially in cases where there is a likelihood that a lengthy prison term may be imposed. In such cases, the judge should hold a separate sentencing hearing at which mitigating and aggravating factors, including mental health or psychological assessments can better be advanced and considered. We endorse Justice Jamadar’s views on the utility and value in facilitating Victim Impact Statements at such hearings in appropriate cases as well as his suggested approach for trial judges to determine a proper starting point while embarking upon the sentencing exercise.”

- [6] Both the prosecution and the defence agreed to proceed to sentencing in the absence of Social Inquiry and other reports. They were all, of the view that the mitigation can be presented at the hearing, thereby saving judicial time. The prosecution also was given the opportunity to suggest

³ [2020] CCJ 7 (AJ) GY

a range for the possible sentence, however not necessarily the sentence.

- [7] This indication was requested by the Court in accordance with the ruling of the Apex Court in **Roy Jacobs v State**⁴ in dealing with the role of the DPP's office in sentencing, wherein a sentencing range can be provided to guide the court in its deliberation. The pertinent paragraphs of the judgment being par. 40 and 42 are reproduced hereunder:

Role of DPP in Sentencing

“(40) An appointment in the Office of the Director of Public Prosecutions is not mere employment. It is a vocation and a calling. The DPP's Office is as responsible as any other agency of the State to ensure that justice prevails in criminal cases. In this sense the representatives of the Office are ‘ministers of justice’ assisting in the administration of justice. This is especially so in relation to serious crimes where the State stands in the shoes of the victim for the purpose of righting the criminal wrong, and, as far as the law can and permits, making good the criminal injury perpetrated.

(41).....

(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

⁴ [2024] CCJ par. 43

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."

- [8] The prosecution's range fell squarely with a non-custodial range, when the aggravating and mitigation factors of both the offence and offenders were examined. A like approach was adopted by this court.

Statement of Agreed Facts:

- [9] The Crown and Defence have agreed to the factual matrix and the same was read into the court's record. I would reproduce the facts hereunder:
- I. Between the 1st of November 2020 to 22nd of November 2022, Ponciano Coc and Mirna Canelo at the time resided at Hattievillle Village Belize District, along with their children including one Luis Canelo who was (12) twelve years old at the time.
 - II. Mirna Canelo is the biological mother of Luis Canelo, and Ponciano Coc is his stepfather.
 - III. Between the dates mentioned Luis Canelo displayed some behavioral problems in the household. As a result, Ponciano Coc and Mirna Canelo apprehended him, held his hand, lit a stove

and placed a comal, hot plate, on the stove and placed the child's hands on that hot plate, causing burns to the child.

- IV. The two accused, also on a separate occasion tied Luis Canelo and his brother Michael Garcia (10) ten years old at the time, with a rope around their hands and feet and hung them up on the ceiling inside the house.
- V. The children were left there hanging for some time while the parents went to eat. Later they cut the rope and the children fell from the ceiling.
- VI. The actions of both the accused caused Harm to Luis Canelo and their actions were "cruel" to both Michael Garcia and Luis Canelo.

[10] The accused were charged for Cruelty to a Child, pursuant to **Section 60 (1) of the Criminal Code, Chapter 101** as amended. Mirna Canelo was charged for causing Harm, contrary to **Section 79 of the Criminal Code, Chapter 101**. However, the complete sections including the relevant definitions states as follows:

Child Cruelty

"60.(1) Every person who, being (18) eighteen years or over and by virtue of law or any agreement or employment has the custody, charge to maintain, or care of a person under the age of (18) eighteen years and who wilfully assaults, ill-treats, neglects, abandons or exposes that person in a manner likely to cause that person unnecessary suffering, grievous harm or injury to health, commits an offence and is liable on

conviction on indictment to imprisonment for a term of ten years.

(2) Every person who, being eighteen years or over and having abducted a person under eighteen years in furtherance of an offence under subsection (1) commits an offence and is liable on indictment to imprisonment for a term not exceeding twenty years.

(3) Notwithstanding the provisions of subsections (1) and (2), where a person who, being eighteen years or over, commits an offence under subsection (1) or (2) and that offence is in relation to a person who is below twelve years, he is liable on conviction on indictment to imprisonment for a term not less than fifteen years but may extend to imprisonment for life.

(4) For the purposes of this section –

‘custody’ means having responsibility for;

‘wilfully’ means deliberately and intentionally, not accidentally or inadvertently; and

‘Abandon’ means to leave a child to its own fate.”

Causing Harm

Section 79 states as follows:

“79. Every person intentionally and unlawfully causes harm to a person shall be liable to imprisonment for five years.”

[11] This court is mindful of the CCJ's decision in **Calvin Ramcharran v. DPP**⁵, that sentencing is quintessentially contextual, geographic, cultural, empirical, and pragmatic and therefore sentences cannot be imported from other jurisdictions. This approach is wholly accepted by this court. The principle is stated thus:

“[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.”

[12] This court is aware of its tremendous responsibility, when embarking upon the sentencing of an accused. The President of the CCJ Adrian Saunders exposition in **Pompey v. DPP**⁶ is instructive:

“Sentencing is one of the most challenging aspects of a judge's functions. It is a tremendous responsibility vested in a judge that no one else in society may lawfully undertake. This awesome duty is often discharged in the face of impassioned expectations of victims and convicted persons alike, their respective families and friends and, of course, the public and the press. A dis-

⁵ [2022] CCJ 4 (AJ) (GY)

⁶ [2020] CCJ 7 (AJ) (GY) par. 1

service is done to trial judges when there are no guidelines to aid the exercise of their vast sentencing discretion.

- [13] In Belize the maximum penalty upon conviction on indictment for child cruelty is maximum (10) ten years imprisonment.

**Constructing the Sentence, Fixing the Starting Point
(Circumstances Relevant to the Offence and the Offender)**

Constructing the Sentence:

- [14] It has been settled law⁷ that trial courts when dealing with sentencing must examine the relevant factors namely, retribution, deterrence, prevention and rehabilitation as a precursor to imposing a sentence.

- [15] The above principles were further restated in the CCJ decision of *Ramcharran*, per Barrow JCCJ, on the issue of the objective of sentencing, as follows:

“(16) 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 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

⁷ James Henry Sergeant [1974] 60 Crim. App Rep 74

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

(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).”

[16] In relation to the issue of retribution this court accepts the submission that the accused accepted full responsibility for the offences, including the remorse shown in court, as alluded to by defence counsel. Further, both accused have no prior convictions and were victims of abuse themselves when they were minors.

[17] On the issue of prevention and rehabilitation, the court views the accused conduct, post the offence as commendable, that they took positive steps by attending and completing parenting skills counselling sessions to ensure they are better members of the society. Their rehabilitative step is one in the right direction to being better parents to their children, in an atmosphere devoid of abuse and cruelty.

Fixing the Starting Point:

[18] In this jurisdiction the court is called upon to fix the starting point taking into consideration the **aggravating and mitigating circumstances relevant to the offence**. This court is guided by the CCJ authority of

Teerath Persaud v R⁸ per Anderson JCCJ on the issue of the formulation of a just sentence as follows:

“(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 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

⁸ (2018) 93 WIR 132.

in pre-trial custody is then to be made and the resulting sentence imposed.”

Factual Basis of Sentence

Aggravating and Mitigating Factors of the Offence/Starting Point:

[19] The Court is called upon to examine the aggravating features of the offence. These are in the court’s view the following:

Aggravating Factors (Offending)

- i. The accused violated their position of trust being the parents of the children.

Mitigating Factors (Offending)

- i. The accused cooperated throughout the investigation.
- ii. They took immediate remedial action in the form of counselling and completed parenting skills sessions.

[20] The court finds that the mitigating factors outweigh the aggravating factors, and an appropriate starting point is necessary.

Starting Point

[21] The maximum penalty for this offence of cruelty to a child under the law is ten (10) years and causing harm is five (5) years.

[22] After examining the aggravating and mitigating factors relevant to the offence, this court will therefore impose a starting point of two (2) years for cruelty to a child and one (1) year for causing harm.

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

Aggravating Factors (Offender)

[24] The aggravating factors relevant to the offender, in the Court's view are as follows:

- i. They were the parents of the children and owed them a duty of care.
- ii. There existed a pattern of behaviour towards the children.

Mitigating Factors (Offender)

[25] The mitigating factors relevant to the offender are as follows:

- i. The accused are of prior good character having no prior convictions.
- ii. The accused pleaded guilty at the first opportunity and expressed remorse.
- iii. They were both engaged in, and completed counselling and parenting skills sessions.

[26] In **Perkins and others (2013) EWCA Crim. 323, (2013) 2 Cr. App. R (S) 72**, the Chief Justice, cited the judgment in Nunn with approval, stating that the Court should pass an appropriate sentence taking into consideration the circumstances of the offence and the offender. The principles have since been embraced by the Consolidated Practice Direction which at Part 3 paragraph 28(c) reads:

"(c) The court must pass what it judges to be the appropriate sentence having regard to the circumstances of the offence and of the offender, taking into account, so far as the court considers it appropriate, the impact on the victim."

- [27] When examining the five factors that the court should take into consideration in sentencing, the public interest, which is a factor the court must take cognizance of, is indeed an overarching consideration as per Barrow JCCJ highlighted in *Ramcharran*.
- [28] In relation to the charge of cruelty to a child, this would cause the court to increase the minimum term by one (1) year to three (3) years. In relation to Causing Harm from (1) one year to (2) two years.
- [29] This court will take into consideration, the fact that both accused have no prior convictions.
- [30] This mitigation and the Guilty Plea would cause the court to reduce the minimum term for Cruelty to a Child by (1) one year in relation to Causing Harm to a child to (6) six months. This would lead to a final sentence of (2) two years for the Child Cruelty offence and (1) one year for the Causing Harm offence.
- [31] The court will therefore sentence the accused as stated hereunder.

Sentence

[32] The Sentence of the Court is as follows:

- i. Ponciano Coc and Mirna Canelo in relation to the three (3) counts of Child Cruelty, are sentenced to (2) two years on each count to run concurrently. However, the two (2) years sentences are suspended on each count. If any offence is committed during the two-year period, the accused shall be brought back to the court to be sentenced.
- ii. Ponciano Coc and Mirna Canelo are fined the sum of \$500.00 each to be paid within three (3) months; in default (3) three months imprisonment.
- iii. Mirna Canelo, for the offence of causing harm is sentenced to one (1) year. The (1) one year sentence is suspended, however if any offence is committed during the two-year period the accused shall be brought back to the court to be sentenced.

Derick F. Sylvester
High Court Judge