IN THE SENIOR COURTS OF BELIZE

CENTRAL SESSION-BELIZE DISTRICT

IN THE HIGH COURT OF JUSTICE

INDICTMENT NO: C 0005/2021

BETWEEN

THE KING

and

OSCAR SELGADO

Prisoner

Before:

The Honourable Mr. Justice Nigel Pilgrim

Appearances:

Ms. Cheryl-Lynn Vidal, S.C., Director of Public Prosecutions, with her Mr. Dercene Staine for the Crown.

Mr. Arthur Saldivar and Mr. Darrell Bradley for the Prisoner.

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2023: October 3rd; 4th; and 11th.
November 6th; 8th; 23rd; and
December 1st; 6th; 19th.
2024: January 22nd; 23rd; 25th; and 26th.
February 1st; 7th, and 13th.
March 8th.
April 30th.
May 13th, 17th, 23rd 28th.
June 14th.

ABETMENT OF MURDER-SENTENCING-ILL HEALTH

JUDGMENT ON SENTENCING

[1] PILGRIM J: Mr. Oscar Selgado (the "prisoner") was convicted by judge alone trial on 8th March 2024 for the offence of abetment of murder arising out of his soliciting the murder of Ms. Marilyn Barnes ("Ms. Barnes") by Mr. Giovanni Ramirez ("Mr. Ramirez"), contrary to section 20(1)(a) read along with section 117 of the **Criminal Code**[1] (the "Code"). The Court requested and awaited various reports and information to attempt to construct a fair and informed sentence as guided by the apex court, the Caribbean Court of Justice ("CCJ") in **Linton Pompey v DPP**[2].

The Legal Framework

[2] The offence at bar is defined in the Code, where relevant, and the maximum penalty is, as follows:

> *"20.-(1) Every person who–*
> *(a) directly or indirectly…solicits…the commission of any crime, whether by his act, presence or otherwise.*
> *…*
> *shall be guilty of abetting that crime and of abetting the other person in respect of that crime.*
> *…*
> *(3) Every person who abets a crime shall, if the crime be not actually committed, be punishable as follows, that is to say–*
> *(a) if the commission of the crime be prevented by reason only of accident, or of circumstances or events independent of the will of the abettor, the abettor shall, where the crime abetted was murder, be liable to imprisonment for life…*
> *…*

[1] Chapter 101 of the Substantive Laws of Belize, Revised Edition 2020.
[2] [2020] CCJ 7 (AJ) GY at para 32.

117. Every person who intentionally causes the death of another person by any unlawful harm is guilty of murder, unless his crime is reduced to manslaughter by reason of such extreme provocation, or other matter of partial excuse..."

[3] In this case, the full crime of murder was prevented by events independent of the will of the prisoner, ironically, the conscience of the proposed hitman, Mr. Ramirez. Therefore, the sentencing regime at section 20(3)(a) of the Code is appropriate and the maximum sentence the prisoner faces is life imprisonment.

[4] The elements of abetment of murder in the context of this case, in the Court's view, are, following the decision of the Court of Appeal in **DPP v Delita Chavez**[3]:

i. **The defendant directly or indirectly**;

ii. **Solicited, that is, asked for or requested.** It is to be noted under the authority of *Chavez* that the crime can be committed by words alone; and

iii. **The commission of any crime**, there being no requirement that the crime solicited, actually occurred on the authority of *Chavez*. The evidence in this case was the crime solicited was that of murder, being the intentional killing of Ms. Barnes by unlawful harm, without justification or provocation.

[5] In determining the propriety or otherwise of a custodial sentence on these facts, the Court must have regard to the provisions of the **Penal System Reform (Alternative Sentences) Act**[4],(the "PSRASA") which reads, where relevant:

*"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**;*

…

[3] Criminal Appeal No. 34 of 2004.

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

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**…."* (emphasis added)

[6] The Court now looks to the guidance of the CCJ in the Barbadian case of **Teerath Persaud v R**[5] on the issue or the formulation of a just sentence, 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 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***

[5] (2018) 93 WIR 132.

credit for the period spent in pre-trial custody is then to be made and the resulting sentenced imposed*."* (emphasis added)

[7] The Court is also guided by the decision of the CCJ in **Calvin Ramcharran v DPP**[6] on this issue, per Barrow JCCJ:

> *"[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****.*
>
> *[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 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****)."* (emphasis added)

[8] In terms of sentencing for abetment generally, the Court is assisted by the guidance of the Court of Appeal in **R v Zita Shol**[7] in terms of the distance between sentencing for

[6] [2022] CCJ 4 (AJ) GY.
[7] Criminal Application No. 2 of 2018.

the substantive offence and abetment of it. Though it is a discussion in the context of abetment of rape, this Court believes that the dicta is generally appropriate in this case, per Bulkan JA:

> *"[28] Abetment of Rape is obviously not the same as rape, but* ***it is an exaggeration to treat these offences as immeasurably far apart in culpability. The law has long recognised that accomplices play an integral role in bringing about the actual crime – were it not for their facilitation and encouragement the crime might not even be committed – which no doubt explains why abetment is punishable in like manner as the completed offence under s. 20(4) of the Criminal Code****. Theory aside, the evidence led in this case as to the nature of the respondent's participation is not of a trivial nature."* (emphasis added)

The Facts

[9] The Court accepted the direct evidence of Mr. Ramirez's hearsay statement and secondary evidence of recordings of the prisoner heard by Wilfredo Ferrufino, which established that on 7th February 2019, and on several occasions thereafter, the prisoner asked Mr. Ramirez to kill Ms. Barnes in return for free legal representation for a case Mr. Ramirez faced. The prisoner wanted to kill Ms. Barnes to stop her from testifying at a disciplinary hearing before the General Legal Council which may have caused him to be dismissed from his profession, namely, as an attorney at law. Mr. Ramirez agreed but never intended to kill Ms. Barnes, but instead used this agreement as a device to coax money out of the prisoner. Ms. Barnes was in her early sixties at the time.

[10] Mr. Ramirez indicated that he needed money to get a gun to kill Mr. Barnes. The prisoner said he would provide it. The prisoner provided several tranches of money over their meetings. The prisoner showed Mr. Ramirez a picture of Ms. Barnes and the house in which she lived. As time passed and the killing had not happened, the prisoner told Mr. Ramirez

that the month was almost over and, "the lady no dead yet". After Mr. Ramirez threatened to expose the prisoner, certain events occurred which caused the former to become afraid for his life and reported the matter to the police. The prisoner was later charged.

Analysis

[11] The Court, following *Persaud*, will seek to isolate the aggravating and mitigating features of the offending and then individualize the sentence by considering the aggravating and mitigating factors of the offender.

[12] The aggravating factors of the offending, in the Court's view, are as follows:

i. *Offence intended to obstruct or interfere with the course of justice*: The Court was assisted in the identification of this factor by the United Kingdom Sentencing Guideline[8] ("UKSG") on attempted murder. This guideline was used because of that offence's similarity to this one, and it is to be noted they both have the same maximum sentence under the Code. The prisoner in this matter intended to kill Ms. Barnes to scuttle a hearing before a quasi-judicial body established under the **Legal Profession Act[9]** ("LPA"). His intention was to cause the course of justice before that body to miscarry by Ms. Barnes's absence. This was identified by the United Kingdom Sentencing Council ("UKSC") as an aggravating factor of, "very high culpability". The Court's sentence must deter anyone minded to interfere with witnesses, particularly through violent means.

ii. *Vulnerable victim*: The Court has an added responsibility to shield the elderly from harm and as indicated before Ms. Barnes was a lady in her early sixties. This is a factor indicating a high level of culpability according to the 2009 UKSG as noted in **Blackstone's Criminal Practice 2023 Supplement 1[10]** ("Blackstone's").

iii. *Abuse of a position of trust*: The prisoner was the attorney for Ms. Barnes. He used this knowledge of her to provide her home address to a potential assassin. This is an egregious breach of Ms. Barnes's trust and must be punished accordingly.

[8] https://www.sentencingcouncil.org.uk/offences/crown-court/item/attempted-murder-2/
[9] Chapter 320 of the Substantive Laws of Belize, Revised Edition, 2020, see sections 3(1) and 16.
[10] P 977.

iv. *Significant premeditation*: It is clear that this offence did not happen on the spur of the moment. He came ready to meet his potential assassin in their first meeting with a picture of Ms. Barnes on his phone, an indication of the reason for the "hit" and when Ms. Barnes should be killed by. This is a factor found by the UKSC as denoting a high level of culpability.

v. *Repeated acts of solicitation*: Though indicted only for the initial agreement on 7th February the Court cannot ignore the fact that the prisoner, when the plan started to fall through, did not take the opportunity granted him by Providence, to withdraw from his plan but continued repeatedly to insist that it be carried out.

vi. *Seriousness of the offence*: This is an offence of a grave nature which involved a plan to kill a citizen that was thwarted only by, ironically, the conscience of the potential assassin. It was noted in the *Blackstone's,* in the context of attempted murder but which the Court finds applicable in the case of abetment of murder, "Attempted murder requires an intention to kill. Accordingly, an offender convicted of this offence will have demonstrated a high level of culpability."[11] In her victim impact statement, Ms. Barnes indicated:

> *"1…In March of 2019, I was informed that there was an investigation being conducted into a complaint that Oscar Selgado had hired someone to kill me. Since then, I have suffered emotionally, physically and economically.*
>
> *2. Since the day that I was told, and up to now, I have lived in fear that I would be ambushed and killed. I have been afraid not only for my own welfare, but also for the welfare of my family. I have been on edge at all times and so have been my family members. We have hardly ventured out. We have kept to ourselves. At certain points I stopped residing with them, so as not to put them in danger, but being apart from them caused me significant grief.*
>
> *3. The fear that I have felt daily has caused my physical and mental health to deteriorate. I developed hypertension. I would constantly be checking windows and doors to make sure they were locked and examining the car. I moved from place to place at great personal expense. I have felt helpless and completely stressed. My earning potential has been greatly reduced as well because of my health and my inability to perform.*

[11] P 974.

4. I have seen the effects of what I have been going through on my family. They have been afraid, angry, and lacking in confidence. Regardless of the outcome of this case, our lives will never return to normal."

[13] The Court is of the view that the mitigating factor in relation to this offending is that no direct physical harm was caused to Ms. Barnes by the abetment. The Court is guided by the editors of **Archbold 2023 Sentencing Guidelines**. In relation to the guideline for attempted murder, which the Court sees parallels with this offending, the editors opined, "Where the degree of harm actually caused to the victim of an attempted murder is negligible, it is inevitable that this will impact on the overall assessment of offence seriousness"[12]. The Crown's case was that Ms. Barnes was never directly physically harmed by the prisoner's abetment. The Court accepts Mr. Saldivar's proposition that this is a mitigating factor.

The Starting Point

[14] The offence of abetment of murder is undoubtedly a very serious one. That is obviously indicated by its maximum sentence of life imprisonment. As noted in the *Blackstone's* any offence involving an intention to kill must involve a high level of blameworthiness. Indeed, of the convictions that have reached to the appellate level in this jurisdiction, and the Court is enjoined by the CCJ in *Ramcharran* to focus on decisions from the Court of Appeal, involved a sentence of 15 years imprisonment though that conviction was quashed[13]. The Court notes, applying the reasoning of Bulkan JA in *Shol*, that culpability-wise, abetment to murder and murder are not oceans apart and the involvement of the prisoner was not trivial. He was minded to finance the means, that is the firearm for the killing, he assisted with vital intelligence including taking a potential assassin to the sanctity of Ms. Barnes's home, and continually insisted that she be killed. The only reason that Ms. Barnes is not dead is because Mr. Ramirez was a criminal but there were even lines he would not cross, to kill a lady as he said in his statement that "could be my grandmother". The Court also must follow

[12] P 103, para S-14.3.
[13] **Giovanni Villanueva et al v R**, Criminal Appeal Nos. 19, 20, 21 of 2006.

the dictates of the PSRASA that the gravity of the punishment must be commensurate with that of the offence. This is very serious offending which requires as its starting point a custodial sentence.

[15] Bahamas has the offence of abetment of murder and their Court of Appeal upheld a sentence of 18 years imprisonment in the case of **Kervin Neeley v R[14].** In that case, the appellant had driven his confederate to a scene of a killing and afterwards drove him away seeing him with a knife in his hand. This case, though distinguishable in that the killing actually took place, demonstrates the seriousness with which the offence is treated. Indeed, the Court finds it appropriate to use, appropriately modified, the range of attempted murder in this jurisdiction, which is lower than that imposed in *Neeley*, because of the similarities in the offences and the requirement of the specific intention to kill. That range was set by the Court of Appeal in **R v Wilbert Cuellar[15]** as between 8-15 years imprisonment. In particular, the Court, owing to the very serious aggravating factor of trying to obstruct a quasi-judicial proceeding and after considering the mitigating factor, will choose a starting point of 13 years imprisonment.

[16] The Court would now individualize the sentence of the prisoner.

[17] The aggravating factors in relation to the offender are as follows:

i. *The prisoner's maturity*: The prisoner was 49 years old at the time of this offending and expected by his age to show more restraint and exercise better decision-making. The editors of the Trinidadian **Sentencing Handbook 2016[16]** opined of this aggravating factor, "Where the offender is an adult person in society, he is expected to appreciate the consequences of his wrongful act."

ii. *The breach of public trust by virtue of his profession*: By virtue of the LPA the prisoner is an officer of the Court[17]who, to take up practice, swore an oath to "truly and honestly conduct myself in the practice of law as an attorney-at-law according to the best of my knowledge, skill and ability and in accordance with the laws of

[14] SCCrApp No. 266 of 2016.
[15] Criminal Application for leave to appeal No. 13 of 2014 at para 31.
[16] At p XLV.
[17] Section 10(1)(b).

Belize."[18]This was an oath the prisoner owed to the people of Belize, which he disregarded in an egregious fashion and thereby provided fuel to the critics of this noble profession, lowering it inestimably. To be an attorney is to be given considerable power and privilege in our society. To whom much is given much is justifiably expected.

[18] These aggravating factors would cause the Court to uplift the sentence by 3 years to 16 years imprisonment.

[19] The mitigating factors in relation to the offender in the Court's view are as follows:

i. *The prisoner's public service in the law*: The uncontroverted evidence which the Court heard in mitigation is that the prisoner did considerable pro bono work for the Belizean public, numbering over 60 court-appointed cases, and made a substantial contribution to the criminal justice system. The evidence is that he zealously fought for the poor and downtrodden in navigating their legal issues. This is a weighty factor in favour of the prisoner in the Court's view.

ii. *Good character*: The prisoner was a man of hitherto exemplary character, a former teacher and soldier until this offence at age 49. This demonstrates that this matter is an aberration in his life and that rehabilitation must factor into his sentence.

iii. *The prisoner's service to his community*: The prisoner has done voluntary work on state boards and provided strong advocacy on labour issues. He similarly assisted his countrymen at law school, including serving as a babysitter. He also assisted others in his stint at the Belize Defence Force. He is spoken highly of by his seniors, neighbours, and colleagues. The sentence of the Court must reflect credit for the life he has led prior to his offending.

iv. *The prisoner's service to his family*: The prisoner seemed undoubtedly to be the lynchpin of his family and made meaningful contributions in caring for his mother and family members. This, and the other three factors identified above, were supported by his Social Inquiry Report ("SIR"). These are things for which he should be given credit.

[18] Section 9.

The Prisoner's Health Concerns

[20] Though the prisoner has been found devoid of any mental issues, the issue of the prisoner's ill-health has been argued as a significant mitigating feature of any sentence to be imposed on the prisoner.

[21] The Court would consider the legal principles touching and concerning ill-health and sentencing. The Court has received considerable assistance from certain decisions from the English Criminal Court of Appeal ("ECCA"). The case of **R v Bernard**[19] considered ill health of convicted persons and how that should factor into the sentencing process, and sought to reconcile certain authorities on that issue, per Rose LJ:

> *"It is apparent, as we have said, that these decisions are not easily reconcilable. However, we take the view that the following principles emerge from them:*
>
> *(i)* ***a medical condition which may at some unidentified future date affect either life expectancy or the prison authorities' ability to treat a prisoner satisfactorily may call into operation the Home Secretary's powers of release by reference to the Royal Prerogative of mercy or otherwise but is not a reason for this Court to interfere with an otherwise appropriate sentence****…;*
>
> *(ii)* ***the fact that an offender*** *is HIV positive, or* ***has a reduced life expectancy, is not generally a reason which should affect sentence****…;*
>
> *(iii)* ***a serious medical condition, even when it is difficult to treat in prison, will not automatically entitle an offender to a lesser sentence than would otherwise be appropriate****…;*
>
> *(iv) an offender's serious medical condition may enable a court, as an act of* ***mercy in the exceptional circumstances of a particular case****, rather*

[19] [1997] 1 Cr. App. R. (S.) 135 at ps 138-139.

than by virtue of any general principle, to impose a lesser sentence than would otherwise be appropriate." (emphasis added)

[22] The Court adopts the guidance of the ECCA in *Bernard* and finds it appropriate in the Belizean context. The prerogative of mercy in this jurisdiction is exercisable by Her Excellency the Governor-General pursuant to section 52 of the **Constitution**, acting in accordance with the advice of the Belize Advisory Council. Her Excellency can, on the basis of ill-health, or any other reason, "…remit the whole or any part of any punishment imposed on any person for any offence"[20].

[23] The Court was also helpfully referred to the case of **R v Qazi[21]** by the learned Madam Director of Public Prosecutions which adopted these principles in *Bernard* in the context of the European Convention on Human Rights. Article 3 of that Convention required a minimum humane level of treatment to those imprisoned and "…not subject them to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, their health and well-being are adequately secured by, among other things, providing them with the requisite medical assistance.[22]" These are values which are consistent with our constitutional prohibition against inhuman treatment at section 7 of the *Constitution*. This case underlines the applicability of *Bernard* in the context of a jurisdiction like Belize with a written constitution. That court also provided the guidance that suggested that a full medical report should be presented to the sentencing court before this issue is canvassed as part of sentence, as was helpfully done by Mr. Saldivar in this case.

[24] The Court is also assisted by the 2021 ECCA case of **R v DM[23]**, again helpfully provided by Madam Director. This was a case of a 77-year-old appellant who was suffering from cancer but had been convicted of historical sexual offences against his child. The Court dismissed

[20] Section 52(1)(d) of the *Constitution*.
[21] [2011] 2 Cr. App. R. (S.) 8.
[22] Gelfmann v France (2006) 42 E.H.R.R. 4 at para 50.
[23] [2021] 2 Cr. App. R. (S.) 34.

his appeal against sentence. That court upheld the principles in *Bernard* and opined further, per Spencer J:

> *"28…**Those who are gravely ill or severely disabled, or both, may well have to be imprisoned if they commit serious offences. Their condition cannot be a passport to absence of punishment.***
>
> *29 The court in Stephenson referred to the case mentioned by the judge in her sentencing remarks, R. v Clarke and Cooper [2017] EWCA Crim 393; [2017] 2 Cr. App. R. (S.) 18, where it was said, at [25]:*
>
> *"**Whilst we consider that an offender's diminished life expectancy, his age, health and the prospect of dying in prison are factors legitimately to be taken into account in passing sentence, they have to be balanced against the gravity of the offending, (including the harm done to victims), and the public interest in setting appropriate punishment for very serious crimes**. **Whilst courts should make allowance for the factors of extreme old age and health, and whilst courts should give the most anxious scrutiny to those factors … we consider that the approach of taking then into account in a limited way is the correct one**."*
>
> *30 In Stephenson the court acknowledged that in the event of significant deterioration in a known medical condition, a more flexible approach may properly be taken. The Court of Appeal may have regard to a significant deterioration in a medical condition known at the date of sentencing**, but the cases in which it will be appropriate to do so will be rare**. The case will have to be one where the appellant could bring himself within the Bernard principles. Moreover, the medical evidence establishing deterioration will have to be received by the court as fresh evidence pursuant to s.23 of the Criminal Appeal Act 1968.*
>
> *31 Applying these principles, we take full account of all the material placed before us. We have considered first whether the sentence is properly open to criticism on the basis that the judge paid insufficient regard to the appellant's ill-health. We reject any such criticism. The judge took into*

account the information which was available. Had she been supplied with the medical reports in existence at the date of sentence, to which we have already referred, there would have been nothing to indicate any greater degree of mitigation than she already acknowledged. ***Furthermore, in our judgment if she had been made aware of a reduced life expectancy that would not have affected her assessment of sentence having regard in particular to her reference to the cases of Clarke and Cooper****.*

32 As to the subsequent deterioration in the appellant's medical condition, there is, in our judgment, nothing to indicate that the appellant is not receiving appropriate care and treatment whilst in prison. Quite the reverse. ***His reduced life expectancy is not in our view in itself a justification for reducing his sentence even as an act of mercy. These were very serious offences which have had a lasting life-long impact on his victim. He continues to deny his guilt. He has roughly two-and-a-half more years to serve before he is eligible for parole. Should his condition deteriorate significantly it will be open to the Secretary of State to transfer him to hospital or to consider early release on compassionate grounds. Those are matters for the Secretary of State and the prison authorities and not for this court.***

33 For these reasons, despite the very helpful submissions of Mr Malik, we are not persuaded that this sentence was or has become manifestly excessive. Accordingly, the appeal must be dismissed." (emphasis added)

[25] The Court will finally refer to the decision of the ECCA in the case of **Attorney-General's Reference No 14 of 2015**[24]. In that case, a 90-year-old diabetic, who had suffered a stroke, heart attack and an onset of dementia, was convicted of historical sexual offences and was given a 2-year suspended sentence on the ground of those medical issues. The ECCA found that sentence unduly lenient, quashed it and increased it to 5 years imprisonment noting that even with those medical issues the public interest must be considered, per Lady Justice Hallett DBE, VP:

[24] [2015] EWCA Crim 949.

> *"[16]* ***The principles are clear. A sentencing judge is entitled to make some allowance for an offender's medical condition… However, such allowance is limited. The court cannot lose sight of the overall and principal purposes of sentencing, particularly in cases as serious as this****."* (emphasis added)

[26] In this case, there is evidence from Dr. Rahleel Elijio that the prisoner is diabetic, and suffers from hypertension and dyslipidaemia, which relate to issues with cholesterol. He has had these illnesses for at least 10 years. These are diseases which qualify him as having metabolic syndrome. These diseases, particularly his diabetic condition, could lead to disorientation, vertigo, extreme sweating, fainting, strokes, cardiac manifestation, seizures, or even death. Dr. Elijio has suggested a medical plan which includes regular monitoring of his glucose and blood pressure; provision of appropriate amounts of insulin and his blood pressure medication; scheduled medical check-ups, eye and foot examinations; and the provision of an appropriate diet. He testified that if this is done, the prisoner's ailments will be properly managed.

[27] Mr. Virgilio Murillo, Chief Executive Officer of the Belize Central Prison ("BCP"), which holds the prisoner, has undertaken to effect such a plan. He has indicated, without contradiction, that there is a 24-hour ambulance attached to the prison, and a doctor attached to the prison and support staff. There is also instantaneous communication to facilitate the authorities being informed of any medical emergencies. Dr. Javier Novelo has indicated that there is a treatment plan for the prisoner and that the prison has been attending to prisoners, numbering 12, suffering from diabetes, one who has been housed there since 2004. The Court accepted the evidence of Mr. Murillo and Dr. Novelo as credible, as they are largely consistent, and they testified forthrightly. The prisoner has raised the case of two isolated incidents of prisoners with diabetes who have died while serving time, but it is not clear at all that this was due to poor management by the prison. The conditions at the BCP are not perfect, but as the Privy Council indicated in **Bell v DPP,**[25] allowances must be made for local conditions and Belize's economic terrain.

[25] (1985) 32 WIR 317 at p 327.

[28] In any event, the Court harkens back to the principles of the ECCA cases cited above. The management of the prisoner at the prison is primarily a matter for the Executive and if there are medical issues that arise in his incarceration it is their responsibility. This Court is bound by the PSRASA and the common law to impose a sentence commensurate with the offending and as *Bernard* indicated "…a serious medical condition, even when it is difficult to treat in prison, will not automatically entitle an offender to a lesser sentence than would otherwise be appropriate." The Court observes that in the *AG's Reference* a 90-year-old diabetic with dementia in a far worse active condition than the prisoner had his sentence increased on appeal owing to the seriousness of the offending. The case of the prisoner is not exceptional, as the Court takes judicial notice of the sad Caribbean reality that our rich diets have made many of us susceptible to diabetes, hypertension and poor cholesterol management. That does not allow the prisoner to avoid being held to account for very serious offending, such as occurred in this case. The Court notes that the prisoner's health issue is a very limited factor to consider in mitigation.

Other Issues

[29] The Court has not considered remorse in this matter, because in the Court's view, the prisoner has made no expression of remorse because he has not accepted guilt, as the Court of Appeal noted in **Edward Hernan Castillo v R**[26]. The Court will show the prisoner mercy by not treating his generalized apologies to Ms. Barnes as an aggravating factor and leave it off the scale entirely.

[30] The prisoner has pleaded his financial commitments and the dependence of his mother on him as a reason not to impose a custodial sentence. The Court will observe that the law for one must be the law for all. There are many people who are convicted of serious crimes with financial and family commitments. This prisoner is not special in that regard. Where there has been a serious breach of the law which merits a custodial sentence, on balance of all

[26] Criminal Appeal No. 11 of 2017 at paras 23 and 28.

the factors, the Court's sworn duty is to impose that sentence. *Ramcharran*, from the CCJ, guides the Court that the public interest is overarching. The Court also observes that the prisoner has a strong family unit with many members who are employed. They will have to pick up the slack during the prisoner's incarceration.

[31] The Court cannot leave this matter, without commenting on the tone and substance of the SIR. A SIR is a valuable tool required to fill out the picture of the offender to assist in the difficult task of sentencing as noted by the CCJ in *Pompey*. It is to apply social science to identify generally the prospects for rehabilitation, family support and the chances of recidivism. It is not to advise the judge as to what sentence to impose as was, rather unusually, done in this case. It may be appropriate for the relevant authorities to consider whether the issuance of such unsolicited advice may, in future, be appropriate.

The Effect of the Mitigation

[32] The Court reminds itself of the guidance in the PSRASA and the common law that rehabilitation is a core principle of sentencing and the mitigating factors in this case would cause the Court to reduce the sentence by 6 years. This would leave a final sentence of 10 years imprisonment.

[33] The prisoner was only remanded in this matter on the date of conviction on March 8th, 2024. The Court's sentence will run from that date.

Disposition

[34] The order of the Court is that Oscar Selgado, for the crime of abetment of murder involving the solicitation of the murder of Marilyn Barnes, serves a sentence of 10 years imprisonment with effect from 8th March 2024.

Nigel Pilgrim

High Court Judge

Dated 14th June 2024