

**IN THE SENIOR COURTS OF BELIZE
CENTRAL SESSION-BELIZE DISTRICT**

IN THE HIGH COURT OF JUSTICE

INDICTMENT No. Amended C0072 of 2014

THE KING

v.

CALANEY FLOWERS

BEFORE: The Honourable Mr. Justice Derick F. Sylvester

APPEARANCES:

Mr. Riis Cattouse & Shanell Fernandez – Counsel for the
Crown

Mr. Leeroy Banner – Counsel for the Accused

2024: June 09

June 17

JUDGMENT ON SENTENCING

[1] The accused was indicted by the Director of Public Prosecutions on a two-count indictment for the offence of murder, for that, Calaney Flowers on the 29th day of August 2012, in Belize City, in the Belize

District, in the Central District of the High Court murdered Lyndon Morrison, and the attempted murder of Sochyl Sosa.

- [2] The accused's trial proceeded before a single Judge pursuant to the provisions of section 65 (a) of the Indictable Procedure Act.
- [3] On the 14th of June 2024, the day set for the trial, the prosecution requested to amend the indictment from Murder to Manslaughter, prescribed in section 108 (1) (b) of the Criminal Code, and the particulars of crime as amended to now state as follows:

“That Calaney Flowers on the 29th of August 2012 in Belize City, in the Belize District in the Central District of the High Court, caused the death of Lyndon Morrison by unlawful harm by intentionally knocking him down, using a motor vehicle.”

The Crown omitted the second count of attempted murder from the indictment.

The Legal Framework

- [4] The accused's indictment was amended pursuant to section 77 of the Indictable Procedure Act, and she was re-arraigned pursuant to section 108 (1) (b) of the Criminal Code, Chapter 101 of the Revised Laws of Belize which reads as follows:

Every person who commits manslaughter: -

- (a) by negligence shall be liable to imprisonment for five years.
- (b) by any other cause shall be liable to imprisonment for life.

[5] The accused pleaded guilty and was left to be sentenced by the court.

[6] I am cognizant that in my determination as to whether to impose a custodial sentence in a matter where there is no fixed minimum custodial term, the court must have regard to the provisions of the **Penal System Reform (Alternative Sentences) Act**¹ (hereinafter referred to as **PSRASA**). The relevant sections are sections 28 and 31 which read in part as follows:

“28. -(1) This section applies where a person is convicted of an offence punishable with a custodial sentence other than one fixed by law.

(2) ...the court shall not pass a custodial sentence on the offender unless it is of the opinion,

(a) that the offence was so serious that only such a sentence can be justified for the offence; or

(b) where the offence is a violent.... offence (as defined in section 7 of this Act) that only such a sentence would be adequate to protect the public from serious harm from the offender.

31.-(1) ... a court in sentencing an offender convicted by or before the court shall observe the general guidelines set forth in this section.

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

(2) The guidelines referred to in subsection (1) of this section are as follows:

- 1. The rehabilitation of the offender is one of the aims of sentencing, except where the penalty is death.*
- 2. The gravity of a punishment must be commensurate with the gravity of the offence.”*

[7] This court takes judicial notice that the **Alternative Sentencing Act 2024**² (hereinafter the said Act), seeks to repeal the **PSRASA** pursuant to section 81 of the said Act. However, it was confirmed that the said Act has not come into force as it has not yet been gazetted, pursuant to section 83. The **PSRASA** is therefore still in force until such a time.

History of the Matter

[8] This matter has had a twelve-year history, and it is important that I state the meandering journey that has led the accused to be retried and falls now to be sentenced. The facts are as follows:

- i. On the 28th day of August 2012, the accused drove her car into the motorcycle that was being driven by her male companion with his girlfriend, Sochyl Sosa, being the pillion rider. Her male companion succumbed to his injuries and his female companion survived but sustained injuries. The accused was charged with murder and attempted murder of her ex male companion and his girlfriend respectively.

² Act No. 13 of 2024

- ii. The accused was remanded to prison.
- iii. The trial of the accused was conducted on the 10th and 30th May 2016, and the following year 24th March 2017, the trial Judge acquitted the accused on both charges.
- iv. The Crown, being dissatisfied with the verdict appealed the decision. The Indictable Procedure Act, Cap. 96 section 65 (C) of the Substantive Laws of Belize confers the prosecution with a right of appeal, when a judge sitting alone, without a jury, acquits an accused.
- v. Legal challenges were mounted in relation to the prosecution's right of appeal pursuant to section 65 (C) and the court failing to consider the alternative verdict of manslaughter, inter alia.
- vi. The above matter took a legal trajectory culminating in the final appellate court, the Caribbean Court of Justice. The matter was reverted to the Court of Appeal and a retrial was ordered.
- vii. The effect was that the Court of Appeal heard the appeal and ordered a retrial in a decision delivered in June 2022 but promulgated on the 4th of October 2022.

[9] The Court of Appeal in its reasoned judgment opined that the court had erred in the assessment of the facts, and failed to consider the alternative verdict of manslaughter, as specifically required pursuant to

section 126 (1) of the Indictable Procedure Act. In the Court of Appeal Bulkan JA, exposted at paragraphs 23 and 24 as follows:

(23) In our estimation, closer analysis of the evidence reveals a combination of separate pieces of evidence that, taken together, are at least consistent with an intention to harm, if not to kill. Out of an abundance of caution we will refrain from a detailed discussion of this evidence, and note only that the prosecution constructed a case built around eye witness testimony as to the manner and speed with which the respondent was driving – not just when she crossed over the speed bump but from the time the deceased overtook her, her conduct immediately after the collision in refusing to stop, and crucially her statement to the deceased's mother. It is difficult to interpret that statement as exculpatory or even neutral and considered alongside the respondent's driving and the parties' prior history, the evidence in its totality is certainly capable of supporting an intention to harm, if not an intention to murder.

(24) In light of the above, we therefore agree with the Crown that the trial judge erred in law by failing to consider the alternative of manslaughter, as specifically required by Section 126(1) of the Indictable Procedure Act, which led to a miscarriage of justice. Moreover, he also erred in his assessment of the facts, which contained no discussion of the evidential basis to support a verdict of manslaughter. We are satisfied that it can be inferred with a substantial degree of certainty that these failings constitute

material errors which, had they not occurred, would not have resulted in an acquittal of the respondent.

[10] Subsequent to the accused's acquittal, she migrated to the United States of America, and started a life wherein she had a daughter. This was her second child, since the father of her first child, named Triston Morrison, was deceased. He is now twelve years old and about to enter senior school. The accused's roller coaster ride restarted when her retrial was ordered and she was brought back to Belize, however not before being detained by United States Immigration and Customs Enforcement [ICE], in the United States of America for approximately six (6) months before returning to Belize, to face a second trial.

[11] The accused now stands to be sentenced after spending twelve (12) years in the justice system. The delays were partly systematic, in that the appeals process, the COVID pandemic³ and the backlogs no doubt would have had an impact on the time this matter took to be retried. The retrial was ordered by the Court of Appeal on the 16th of June 2022, to date it is almost two (2) years since. The Criminal Procedure Rules 2016, section 2.20 (1) states as follows:

"The time limits set down in this Part do not apply to retrials which:

(i) In the case of a re-trial upon appeal, shall be heard within (6) six months for persons in custody or (9) nine months for persons on bail, starting from the date of pronouncement of reasons by the Court of Appeal."

³ King v Calaney Flowers COA # 2 of 2017 [Par. 27]

[12] The accused's retrial was significantly more than the prescribed time limit, also her trial took (4) four years and (9) nine months from the date of the incident to the date of the delivery of the judgment in the High Court. The delay was inordinate, and it is matters of like nature that the **"Needham's Point Declaration on Criminal Justice Reform, achieving a Modern Criminal Justice System"** was meant to, address, curb and or eradicate. The offence in this matter occurred on the 28th of August 2012, the trial was conducted in May 2016 and the decision was delivered in March 2017. Article 19 of the declaration states as follows:

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

Agreed Statement of Facts

[13] The crown and the defence agreed on the statement of facts and it was read into the record as follows:

"On the 28th of August 2012, Lyndon Morrison was driving his motorcycle along with his girlfriend, Sochyl Sosa. Calaney Flowers the ex-girlfriend of Lyndon Morrison and mother of his

son was at that time driving a Saturn motor vehicle on the same Street in Belize City.

Calaney Flowers sighted the two on the motorcycle and intentionally increased her speed in which she was travelling, and intentionally caused her motor vehicle to collide into the back of the motorcycle, causing Lyndon Morrison and Sochyl Sosa to 'fly' off the motorcycle hitting the pavement.

Lyndon Morrison succumbed to his injuries a few hours later at the Karl Heusner Memorial Hospital [KMHM] on the 29th of August 2012, which he sustained from the collision.”

[14] The accused’s statement at the sentencing hearing shall be reproduced in full, as it was the words from her that were most telling, recognizing the singular criminal error, that has led her down a tumultuous path, one in which she alone can take responsibility, and a burden that would follow her for the rest of her days. She stated as follows:

- i. “Good morning, I would like to start off by saying, I am very thankful at this time to say on my behalf that I am deeply sorry, and I regret the accident that happened in addition to any pain and suffering that has been caused to his family and my family and most regrettably to my son.*
- ii. The accident has caused a lot of pain and suffering, and it is something that I truly didn’t want to happen. No one should go through that, and it is my humble and sincere wording that I accept responsibility for what happened and express my sincere remorse.*

- iii. *I would like you to consider what happen is not a reflection of my character and not who I am. At that time, I was working at the Bank for six [6] years. I graduated from SJC with an associate in business, I always work hard knowing that I came from a single mother. I work hard to ensure I can be gainfully employed and be a good representative to my mom for all the hard work.*
- iv. *Prior to this I had no conviction or issue with the law. While at prison I helped at the accounting office and did administrative work and still being productive, that's my character.*
- v. *I am a hard-working person. I have my son and that's my goal to provide for him and continue to be a good mother, person and citizen.*
- vi. *With all that said I am humbly asking for leniency from your honour considering all I have said that I accept responsibility and I am truly sorry and regretful for all the pain, and I will continue to be a good person and be there for my son and family.*
- vii. *I thank the court for your time and consideration*
- viii. *My son is twelve (12) years and going to high school in September-Triston Morrison."*

[15] The accused also tendered evidence from character witnesses, they shall be reproduced hereunder:

[16] **WITNESS STATEMENT OF INESITA VARELA**

I, **INESITA VARELA**, of Belize City, Belize say as follows:

- I. *“I am currently a teacher at Belize Elementary School, which is one of the leading primary schools in Belize.*

- II. *I am writing to provide a character reference for Calaney Flowers, whom I have had the honor of knowing for 28 years. As her neighbor and a close family friend, I have observed her consistently demonstrate qualities of humility, hard work, and dedication, particularly in her role as a mother to her children.*

- III. *Throughout the years, Calaney has been a model of integrity and kindness. She has always approached life with a humble demeanor, never seeking recognition for her many contributions. Her willingness to help others and her selfless nature are qualities that make her a beloved and respected individual.*

- IV. *Calaney is one of the most hardworking individuals I know. She balances her professional responsibilities and household duties with remarkable efficiency and grace. Her determination and resilience are evident in all she does, and she has earned a reputation for reliability and dedication in every endeavor she undertakes.*

- V. *As a mother, Calaney is exceptionally devoted to her children. She has created a nurturing and supportive environment for them, ensuring their well-being and fostering their development into respectful and capable children. Her maternal dedication is*

unwavering, and she consistently prioritizes their needs above all else.

- VI. *In conclusion, Calaney is a person of outstanding character. Her humility, strong work ethic, and unwavering dedication to her family makes her an exemplary individual. I have no doubt that she will continue to positively impact those around her. I fully support her and attest to her commendable character.*
- VII. *I therefore pray that the Honorable Court will be merciful when imposing a sentence on Ms. Flowers.”*

CERTIFICATE OF TRUTH

I, **INESITA VARELA**, of Belize City, Belize certify that I believe the facts in this witness statement to be true to the best of my knowledge, information, and belief.

Dated the 13th day of June 2024

INESITA VARELA

WITNESS STATEMENT OF ZAIDA LAVERNE FERGUSON

- [17] “I, **ZAIDA LAVERNE FERGUSON**, of St. Luke Methodist Primary School, Mahogany Street, Belize City, Belize, say as follows:

1. *"I am the Vice Principal of St. Luke Methodist Primary School, located on Mahogany Street in Belize City.*

2. *I am giving this witness statement on behalf of Ms. Calaney Flowers, who is currently before the High Court of Belize charged with murder and will be sentenced on the 14th day of June 2024 for the offence of manslaughter.*

3. *I write this letter to provide character reference for my former student, Calaney Flowers, who is now currently a parent of St. Luke Methodist Primary School, the school which she attended. My impressions of Calaney Flowers have been very positive, thus I have no reservations in writing on her behalf.*

4. *I taught Calaney Flowers for (3) three years; she was in my class in Standards four, five and six, and was one of my top students. I found her to be diligent, ambitious and hard-working. She held the post of class treasurer and was very instrumental in organizing class fund-raisers to purchase necessary resources for their class. I recall her to be respectful, humble, and pleasant. I have had positive interactions with her as a student and likewise as a parent, as she is supportive of her son, and ensures that he does well in school. She participates in school activities such as sports day events, is present at Parent-Teacher's meetings,*

and has called me on several occasions to check on her child's behavior in school. Her child is well-mannered, a trait that I believe he emulates from his mother.

5. I wish to state, based on my various connections with her, that Calaney Flowers exhibits fine moral character, and I ask your careful consideration of her case before you.

6. I want to thank this Honourable Court for giving me the opportunity to say a few words on behalf of Ms. Calaney Flowers.”

CERTIFICATE OF TRUTH

I, **ZAIDA LAVERNE FERGUSON**, of St. Luke Methodist Primary School, Belize City, Belize certify that I believe the facts in this witness statement to be true to the best of my knowledge, information, and belief.

Dated the 13th day of June 2024

ZAIDA LAVERNE FERGUSON

[18] This court is reminded of its tremendous responsibility when embarking upon the sentencing of an accused. The Caribbean Court of Justice

(CCJ) in its seminal decision of **Pompey v. Dpp**⁴, President of the CCJ Adrian Saunders opined as follows:

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

[19] Further, in the CCJ's decision of **Calvin Ramcharran v. DPP**⁵, Barrow JCCJ at par. 15 adopting Jamadar's JCCJ approach stated 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

⁴ [2020] CCJ 7 (AJ) GY

⁵ [2022] CCJ 4 (AJ) (GY)

importing sentencing outcomes from other jurisdictions whose socio-legal and penal systems and cultures are quite distinct and differently developed and organized from those in the Caribbean.”

Constructing the sentence, fixing the starting point (circumstances relevant to the offence and the offender).

Constructing the Sentence

[20] It has been settled law 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 which were enunciated by Lawton LJ in **R v Sergeant**⁶. These principles were judicially recognized by Sir Dennis Byron, Chief Justice, as he then was, in **Desmond Baptiste v The Queen**, and applied and followed in **Akim Monah v. Queen**⁷ at paras. 44 as follows:

*“(44)it is the law that in all sentencing cases, the Judge should advert to the relevant principles. These include the following principles: retribution, deterrence, prevention and rehabilitation as referred to above. Sir Dennis Byron, Chief Justice, as he then was, had cause to address these principles in **Desmond Baptiste v The Queen** and it is apposite to reproduce them, as I hereby do:*

⁶ [1974] 60 Crim. App Rep 74

⁷ GDAHCRAP2021/0015 (Formerly GDAHCRAP2014/0002) par. 44

Retribution

Retribution at first glance tends to reflect the Old Testament biblical concept of an eye for an eye, which is no longer tenable in law. It is rather a reflection of society's intolerance for criminal conduct. Lawton LJ stated at page 77 that: 'Society through the courts, must show its abhorrence of particular types of crimes, and the only way the courts can show this is by the sentences they pass.'

Deterrence

Deterrence is general as well as specific in nature. The former is intended to be a restraint against potential criminal activity by others whereas the latter is a restraint against the criminal relapsing into recidivist behavior. Of what value however are sentences that are grounded in deterrence? Specific deterrence may be an ineffective tool to combat criminal behavior that is spontaneous or spawned by circumstances such as addictions or necessity. Drug and alcohol addiction as well as need may trigger high rates of recidivism. Experience shows that general deterrence too is of limited effect. These sentences tend to lose their potency with the passage of time.

Prevention

The goal here is to protect society from those who persist in high rates of criminality. For some offenders, the sound of the shutting iron cell door may have a deterrent effect.

Some however never learn lessons from their incarcerations and the only way of curbing their criminality is through protracted sentences whose objective is to keep them away from society. Such sentences are more suitable for repeat offenders.

Rehabilitation

Here the objective is to engage the prisoner in activities that would assist him with reintegration into society after prison. However, the success of this aspect of sentencing is influenced by executive policy. Furthermore, rehabilitation has in the past-borne mixed results. Of course, sentencing ought not to be influenced by executive policy such as the availability of structured activities to facilitate reform.”

- [21] In relation to the issue of retribution this court accepts the submission of the accused that she has accepted full responsibility for the offence and is remorseful. Having committed the offence at the age of twenty-five (25), and twelve years after, she had the ‘sword of damocles’ hanging over her head would have been a daily living reality. The character witnesses all attest to the fact that the accused is remorseful, was of prior impeccable character and has one criminal infraction, albeit the most serious. A consequence she must live with, having taken the life of her son’s father, in the tragic circumstances above mentioned. The sentence will reflect the above and will take into consideration all the factors mentioned above.

[22] The prisoner has no prior conviction, and does not pose a threat to society, her conduct post-conviction shows that she was amenable to facing a second trial and abided by all her bail conditions. On the issue of deterrence, the court does not see this as a factor that it should take into consideration. The possibility of reoffending is minuscule, if not nonexistent.

[23] On the issue of prevention, the court views the prisoner's conduct, behavior and level of remorse shown as an indication that she would not be a danger to society or be likely to reoffend. The accused evidently learnt her lesson from the five [5] years spent at the prison in Belize and the six [6] months at the detention center in the United States of America prior to being sent back to Belize for her retrial. Thus, the Court must impose a suitable sentence in the circumstances.

Rehabilitation

[24] The rehabilitation of the accused is almost nonexistent as she is on bail and is gainfully employed. She had reintegrated into society, has children and despite her past offence, has remained on the straight and narrow path. I have observed the accused while giving her testimony, and she expressed genuine remorse for her actions, she was tearful, contrite and aware of the consequences her actions had, not only to her but also the society, her family and the deceased's family.

Fixing the starting point

[25] 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 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 considering 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

⁸ (2018) 93 WIR 132.

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.”

[26] The above methodology was adopted by the Court of Appeal, in the matter of **Tyron Reid v. King**⁹ at par. 7-8 as pr Bulkan JA thus:

“(7) The methodology to be adopted for this process was set out in detail in **Teerath Persaud v the Queen**. Writing for the court, Anderson JCCJ indicated that the sentencing court should fix a starting point with reference to the particular offence under consideration, and thereafter adjust the sentence upwards or downwards according to the aggravating and mitigating circumstances particular to the offender. In calculating the starting point, Anderson JCCJ said that instead of considering all possible aggravating and mitigating factors, only those concerned with the objective seriousness and characteristics of the offence should be taken into account. Other cases have provided examples of the types of factors bearing upon the seriousness of the offence – such as whether it involves violence, the manner of its commission (whether premeditated, highly organized; involving more than one participant), the specific role played by the offender, and importantly, its prevalence in society.

⁹ COA No. 3 of 2022

(8) Once the starting point has been identified, the sentencing court is then required to take into account the circumstances peculiar to the offender. These cover such aspects as the offender's antecedents – age, character and other relevant circumstances – along with any expression of remorse, including a guilty plea and/or cooperation with law enforcement. Also important is the impact on the victim, including whether any violation of trust is involved. Finally, the offender's conduct in mitigation is important, including the form that it takes, which could range from an apology to material reparation. Finally, full credit must be given to the period spent in pre-trial custody, after which the remainder constitutes the sentence to be imposed.

[27] Further, this court takes judicial notice and obedience to the CCJ's decision in *Ramcharran*, per Barrow JCCJ, on the issue of the objective of sentencing, and solidifies paragraph 64 (*ibid*) 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 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).”

Manslaughter Sentences from the Court of Appeal

[28] The court through its research has compiled a list of manslaughter sentences, confirmed by the Court of Appeal of Belize, and are listed hereunder:

- i. In the matter of the **Queen v. James Moreira**¹⁰, the Court of Appeal of Belize, after quashing the murder conviction and substituting the offence of manslaughter, imposed a sentenced of fifteen [15] years for manslaughter.
- ii. In the matter of **Glenford Ferguson v King**¹¹, after trial the jury found the accused not guilty of murder but guilty of manslaughter. The accused was sentenced to fifteen years. The issue before the Court of Appeal was credit for the time spent on remand, however the fifteen [15] years sentence was undisturbed.
- iii. In the matter of **Vincent Tillett v. Queen**¹² after trial the accused was convicted of manslaughter and sentenced to

¹⁰ Criminal Appeal No. 12 of 2001

¹¹ Crim. Appeal No. 12 of 2018 Per Hafiz Bertram JA

¹² Crim. Appeal No. 21 of 2013 per Morrison JA

twelve [12] years imprisonment. He appealed his conviction and sentence, and it was affirmed by the Court of Appeal.

- iv. In the matter of **Rosalilia v. Queen**¹³ after trial the accused was convicted of manslaughter and sentenced to twelve [12] years imprisonment. He appealed his conviction and sentence, and it was affirmed by the Court of Appeal.
- v. In the matter of **Lavern Longsworth**¹⁴, at the Court of
- vi. Appeal her conviction for murder was substituted for manslaughter and sentenced to eight [8] years imprisonment.
- vii. In the matter of **Wyatt Anderson v. Queen**¹⁵, the Court of Appeal after, after a trial for murder and conviction for manslaughter, affirmed the sentence of fourteen [14] years imprisonment.
- viii. In the matter of **May Bush v Queen**¹⁶, the Court of Appeal, after a trial for murder and conviction for manslaughter in the lower court, affirmed the sentence of thirteen [13] years imprisonment.

¹³ Crim. Appeal No. 1 of 2015 per Hafiz Bertram JA

¹⁴ Crim. Appeal. No. 21 of 2012 per Hafiz Bertram JA

¹⁵ Crim. Appeal No. 3 of 2011 per Morrison JA

¹⁶ Crim. Appeal No. 5 of 2014 per Ducille JA

- viii. In the matter of **Tony Pasos v. Queen**¹⁷, the Court of Appeal, dismissed the appeal and affirmed a sentence of seventeen [17] years imprisonment after a trial for murder and conviction for manslaughter in the lower court.

Fixing the Starting Point

- [29] 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. As already alluded to, this court is guided by the CCJ authority of **Teerath Persaud v R**¹⁸ .

Factual Basis of Sentence (Mitigating and Aggravating)

- [30] The court has a duty to examine the aggravating and mitigating factors of the offence and the offending by ensuring the factors do not overlap into the offence for which the accused was already charged, thereby avoiding double counting.

Aggravating and Mitigating Factors of the Offence/Starting Point:

- [31] The court will now determine the aggravating and mitigating features of the offence.
- [32] The court invited the prosecution and defence to list the aggravating and mitigating factors of the offence and the offender, and the same was adopted by this court as an accurate representation as follows:

¹⁷ Crim. Appeal No. 11 of 2016 per. Sosa JA

¹⁸ (2018) 93 WIR 132.

AGGRAVATING AND MITIGATING FACTORS: [OFFENCE]

Aggravating

- i. Convict knew and had a relationship with the deceased, and her child is now fatherless.

Mitigating

- i. The accused immediately reported the offence to the mother of the deceased.
- ii. The accused cooperated with the police and took responsibility from the outset.

[33] This court also found as a mitigating factor, the overall delay in this matter, both in relation to the first trial and with the resentence. The court will take this into consideration in a limited way in sentencing.

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

Starting Point

[35] The maximum penalty for this offence under the law is life imprisonment. The court will therefore impose a starting point of fifteen (15) years, after examining the aggravating and mitigating factors relevant to the offence.

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

Aggravating and Mitigating Factors (Offender)

[37] Aggravating Factors of the Offending

- i. The accused did not seek to render any assistance to the deceased after knocking him down but fled from the collision scene.
- ii. Attack was unprovoked.

Mitigating Factors of the Offending

- i. Clean criminal record/no criminal history.
- ii. The accused is now a contributing member of society, gainfully employed.
- iii. The accused has a family, two minor children.
- iv. Express genuine remorse.
- v. Pleaded guilty albeit not at the first opportunity, but on the morning of the trial.

[38] In **Perkins and others**¹⁹ the Court embraced the principle that the sentencing process must reflect the appropriate sentence taking into consideration, 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

¹⁹ [2013] EWCA Crim. 323

of the offender, taking into account, so far as the court considers it appropriate, the impact on the victim.”

Character Witnesses

[39] This court is aware that the accused has indicated both in her statement in court and through her character witnesses, that she was a citizen of prior good character, and even upon her release from prison her disposition did not change but has accepted full responsibility and is a productive member of the Belizean society with her minor children who depend on her.

Remorse

[40] Further, the accused has expressed genuine remorse for what has transpired, and I have no doubt that this incident had, and will continue to have a dire effect on the life of the accused. This incident will also negatively impact her son, and the accused has committed to seeking counselling for both her and her son.

[41] The court took into consideration the public interest, which is indeed an overarching factor.

[42] This would cause the court to decrease the minimum term by five (5) years to ten (10) years imprisonment. This has also taken into consideration the accused's guilty plea. The plea of guilty came on the morning of the trial.

[43] The court will therefore deduct the time spent on remand²⁰ being four [4] years and seven [7] months from August 2012 to the date of acquittal being April 2017. This leaves a remaining sentence of five years and five months.

[44] This court also takes judicial notice of the six [6] months the accused was in custody in the USA prior to being sent back to Belize for her retrial, in the final sentencing of this matter.

Sentence

[45] The sentence of the court is as follows:

- i. The accused is sentenced to ten years imprisonment, less than four years and seven months spent on remand, leaving (5) five years and (5) five months to be served.
- ii. The remaining five years and five months are suspended.

Epilogue

[46] The court being cognizant of the ruling of the Apex court in **Roy Jacobs v State**²¹ and the role of the DPP's office in sentencing, invited the Crown through Mr. Riis Cattouse to make representation relating to a range of sentences in this matter.

[47] The court has seen it fit to reproduce the relevant sections of the Apex court guidance on the role of the DPP in sentencing as stated hereunder from par. 40 et seq as follows:

²⁰ Da Casta Hall quoted in Teerath Persaud v. R [2018] 93 WIR 132 par. 46

²¹ [2024] CCJ 9 par. 41 et seq

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) When a person falling under the protection of the laws of the State is the victim of murder and the Office of the DPP is satisfied that there is an adequate evidential basis to proceed against the person or persons accused of that crime, it is the responsibility of the Office to bring the prosecution promptly and thoroughly. The representatives of the DPP's Office do not strain for a conviction but must present the available evidence and legal submissions in conscientious accordance with their function as ministers of justice. This entails scrupulous fairness to the victim and to the accused.

(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.

[48] Crown Counsel Mr. Cattouse, has submitted and the representation he has made fell squarely within the court's judicial discretion taking all the factors into consideration, including the public interest requirement.

[49] Mr. Cattouse has epitomized what Lord Hope of Craighead opined in the matter of **Benedetto v. R**²² at paragraph 54 when dealing with the duty of prosecuting counsel, I reproduce hereunder for completeness thus:

54. In **Randall v The Queen** [2002] UKPC 19; [2002] 1 WLR 2237, 2241G, para 10(1) the Board drew attention to the fact that

²² [2003] UKPC 27 par. 54

the duty of prosecuting counsel is not to obtain a conviction at all costs but to act as minister of justice. Reference was made to the description of the prosecutor's role by R and J in the Supreme Court of Canada in ***Boucher v The Queen*** (1954) 110 Can CC 263, 270 which is so much in point in this case that it is worth repeating again:

"It cannot be over-emphasised that the purpose of a criminal prosecution is not to obtain a conviction; it is to lay before a jury what the Crown considers to be credible evidence relevant to what is alleged to be a crime. Counsel have a duty to see that all available legal proof of the facts is presented; it should be done firmly and pressed to its legitimate strength, but it must also be done fairly. The role of prosecutor excludes any notion of winning or losing; his function is a matter of public duty than which in civil life there can be none charged with greater personal responsibility. It is to be efficiently performed with an ingrained sense of the dignity, the seriousness and the justness of judicial proceedings."

[50] Crown counsel is commended in that he has exuded and epitomised the above stated prosecutorial role throughout the conduct of this matter.

Derick F. Sylvester

High Court Judge

Delivered: June 17, 2024