IN THE SENIOR COURTS OF BELIZE

CENTRAL SESSION-BELIZE DISTRICT

IN THE HIGH COURT OF JUSTICE

CR20130064C

BETWEEN

THE KING

and

ERVIN RENEAU

Prisoner

Before:

The Honourable Mr. Justice Nigel Pilgrim

Appearances:

Mr. Glenfield Dennison, Crown Counsel for the Crown.

Mrs. Peta-Gay Bradley for the Prisoner.

2024: May 10th; and
June 6th.

MURDER-RE-SENTENCING

[1] Ervin Reneau ("the prisoner") was convicted after trial by judge alone on 6th June 2016 of the 2010 double murder of Edgar Ayala ("Mr. Ayala") and David Longsworth ("Mr. Longsworth"), contrary to section 106 read along with section 117 of the then **Criminal Code**[1] ("the Code"). The offending, in brief, is that on 30th November 2010 the prisoner shot

[1] Chapter 101 of the Substantive Laws of Belize, Revised Edition 2000.

the two men to death in a gas station, while Mr. Ayala was in the course of his duty as a security guard and Mr. Longsworth had stopped with his wife and child to purchase gas[2].

[2] The prisoner was ordered to serve two concurrent life sentences with no minimum term before eligibility for parole set as was the law at the time. The Court of Appeal dismissed his appeal against conviction but upheld his appeal against sentence owing to legislative and common law changes post-conviction which required the setting of a minimum term of imprisonment before becoming eligible for parole if a prisoner was given a life sentence[3]. The Court of Appeal, on 29th September 2023, ordered the prisoner to be re-sentenced by a judge of the High Court[4].

[3] This re-sentencing exercise is made pursuant to that order.

The Legal Framework

[4] The Court considers the guidance of our apex court, the Caribbean Court of Justice ("CCJ") in the Barbadian case of **Teerath Persaud v R**[5] on the issue of 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***

[2] See **Ervin Reneau v R**, Criminal Appeal No. 7 of 2016.
[3] See *Reneau* at paras 6-14.
[4] See *Reneau* at para 2.
[5] (2018) 93 WIR 132.

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 in pre-trial custody is then to be made and the resulting sentence imposed*." (emphasis added)*

[5] 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***

[6] [2022] CCJ 4 (AJ) GY.

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)*

[6] The Court of Appeal has comprehensively considered sentencing for murder in Belize in **Michael Faux et al v R**[7] and made the following observations, per Hafiz Bertram P:

*"[15] …**The statistics show the sentencing trend for murder is life imprisonment with a minimum term before being eligible for release on parole. The table also shows a few instances of the imposition of a fixed term sentence**.…**The Court notes that these fixed term sentences have only been imposed where there have been mitigating circumstances warranting a lesser sentence. It is at the discretion of the trial judge to determine whether to impose a sentence of life imprisonment or a fixed term sentence upon a conviction of murder.***

*[16] **For a conviction of murder a custodial sentence is warranted as shown by the imposition of past sentences. The sentencing trend for murder since the amended section 106 and the case of August has been the imposition of a life sentence with a minimum term of 25 – 37 years after which the convicted person becomes eligible to be released on parole**.*

*[17] **Where a sentence of fixed term is imposed, the range is 25 – 35 years unless there are circumstances, when individualising a sentence, which warrants a lesser sentence**." (emphasis added).*

[7] Criminal Appeal Nos. 24-26 Of 2019.

Factual basis of sentence[8]

[7] In this case the prisoner murdered two people going about their business in a gas station. One was a security guard carrying out his protective duty, the other a husband/father driving his wife and child and who had stopped for gas. In shooting the driver of the car the prisoner discharged several bullets into the vehicle seemingly heedless of the presence of the wife and child.

Analysis

[8] The Court begins, following *Persaud* by considering the aggravating features of the offending. The Trinidadian Court of Appeal decision of **Aguillera et al v The State[9]** is helpful in the identification of those features in the case of murder. Those are, in the Court's mind, in this case as follows:

i. There was the use of a weapon, namely a firearm: Belize, like the rest of the Caribbean, is reeling from an epidemic of gun involved homicides and the Court's sentence must deter future offenders.

ii. Multiple victims: The prisoner unleashed a hail of gunfire, and two persons were killed. Under the Eastern Caribbean Supreme Court Sentencing Guideline, **Sentencing for the Offence of Murder Re-Issue 2021[10]**, a case where there is the murder of two or more persons is a case of exceptionally high seriousness[11].

iii. The killing of Mr. Longsworth took place in the presence of his family: The Court is assisted by the Trinidadian Court of Appeal decision of **Lyndon Ramah et al v The State[12]** which identified that as a significant aggravating factor. They

[8] Taken from the judgment of the Court of Appeal.
[9] 89 WIR 451 at para 19.
[10] Practice Direction No. 3 of 2021.
[11] Para 5.
[12] Cr. App. Nos. 34 and 35 of 2015 at para 7.

adopted the dicta of an Irish case and the United Kingdom Sentencing Council guidelines:

> *"the Sentencing Guidelines Council (UK), Overarching Principles: Seriousness, "**Factors indicating a more than usually serious degree of harm: ……..Presence of others e.g. relatives, especially children or partner of the victim**"… The Queen v James Oliver Meehan where Morgan LCJ said that…"**The fact that this attack was carried out in the public street in front of the children of the deceased who were forced to witness their father being beaten to death is a particularly shocking aggravating factor**." (emphasis added)*

iv. Murder is a serious and prevalent offence in Belize which needs to be deterred. The father of Mr. Longsworth indicated in his victim impact statement the powerful effect of his murder, which would be felt similarly by the loved ones of Mr. Ayala:

> *"5. To ask any parent to describe the emotional agony of losing a child is like ripping the bandage off a fresh wound. Fresh because death doesn't always fade with time, and the memories are ever present with us.*
>
> *6. This is something that we would not wish on anyone, not even on our son's attacker. It has been one of the worst nightmares in our lives. To have to go through the pain of losing our son, no parent should go through this. Even though it has been what the future will be. The only thing we know is that our family still has a long way to go, and our future is uncertain.*
>
> *7. As a result of all this, David's stepson has Post Traumatic Stress Disorder (PTSD) and I don't know if he will ever recover or be the same as he was before the tragedy. He was in the vehicle with his mom when the shooting occurred, and he was seven years old.*
>
> *8. Marlon, my other son, and David best friend is still affected by his brother's death all these years later.*
>
> *9. David's sisters are still shedding tears and crying out for their playful brother. We are still grieving.*

10. David's two biological children, Cristina and Kristopher, still find it difficult to grasp the fact that their dad was taken from them in this gruesome manner.

11. Shania, his stepdaughter would go with him during the cold Christmas time to feed the homeless people in the downtown park in front of the Supreme Court with a hot bowl of soup in the wee hours of the night. His other stepdaughter's baby, Gladys, affectionately called, was thirteen at the time, recalled the unbelievable news that their father was dead.

12…David was a pillar of altruism and graciousness to our community. He dedicated his latter years to giving himself to those who possessed little and even then, he had more to spare."

[9] There are no mitigating features in relation to this offending.

[10] The Court must now consider a starting point. The range of sentence for murder as noted in *Faux* is a life sentence with a minimum term of between 25-37 years unless there are ameliorating factors which necessitate a fixed term sentence. The psychological report indicates that the prisoner has no current mental issues nor any history of mental illness. There is no evidence of any medical issue[13] nor any issue of youth, as the prisoner was 40 years old at the time of these murders, or any other issue which in the Court's view makes a fixed term sentence appropriate. This was a murder appropriately described by the Court of Appeal as "heinous"[14]. This was a double murder where a man's child was privy to his father being slaughtered in front of his very eyes. A life sentence, in the Court's view, in this case is entirely appropriate. The prisoner has cited the cases of **Eli Avila Lopez et al v R**[15] and **Patrick Robateau et al v R**[16] in which fixed sentences were imposed for double murders. The Court would observe that these sentences pre-dated *Faux* and those courts did not have the benefit of its guidance in terms of differentiating between fixed term and life sentences. Also, neither of those

[13] See p 6 of the Social Inquiry Report.
[14] *Reneau* at para 21.
[15] Criminal Appeals Nos. 22 and 23 of 2018.
[16] See para 28 of *Faux.*

cases has the particularly bad aggravating factor of killing the deceased in the presence of family members.

[11] The Court notes the general range for the minimum term for murder when imposing a life sentence in *Faux* of between 25-37 years but also notes the guidance of Sosa P in **Edwin Hernan Castillo v R**[17] that, "A sentencing range is not, however, inscribed in granite. It is no more than a general guideline. There will inevitably arise from time to time cases calling for deviation therefrom". The Court notes that in one of the cases considered by the Court of Appeal in *Faux*, **Ernest Thurton Jr. v R**[18] a life sentence with a 35-year minimum term of imprisonment was imposed in a double murder. Also, in the case of **Patrick Reyes v R**[19] Honourable Chief Justice Benjamin imposed a life sentence for a double murder with a combined minimum term of 40 years imprisonment, following the Jamaican Court of Appeal decision of **Separue Lee v R**[20] where life sentences with consecutive minimum terms of 20 years imprisonment for each killing in a double murder were given. The Court has also noted the Jamaican Court of Appeal five-member panel decision of **Peter Dougal v R**[21] where in the case of a double murder life sentences with a minimum period of imprisonment before becoming eligible for parole was 45 years. The Jamaican Court of Appeal recently noted in **Rayon Williams v R**[22], which to this Court's mind would be common sense, that in cases of multiple murders the higher tariffs would be justified.

[12] The Court would select a starting point of life imprisonment with a minimum term of 40 years to be served before becoming eligible for parole to be served concurrently for both murders taking into account the principle of totality as outlined in the Guyanese CCJ decision of **Linton Pompey v DPP**[23], per Saunders PCCJ:

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[17] Criminal Appeal No 11 of 2017.
[18] Criminal Appeal No. 17 of 2018.
[19] Claim No. 372 of 2018.
[20] [2014] JMCA Crim 12.
[21] [2011] JMCA Crim 13.
[22] [2022] JMCA Crim 41 at para 240.
[23] [2020] CCJ 7 (AJ) GY.

*"[15] ... **barring special circumstances, courts should normally impose concurrent sentences where a person is convicted of multiple offences which arise out of the same set of facts or the same incident**….*

*[16] **The "special circumstances" mentioned in the previous paragraph is, in part, a veiled reference to what is known as "the totality principle". The principle may be thought of in much the same fashion as one may express the principle of proportionality. The sentence imposed upon a convicted person should ultimately be neither too harsh nor too lenient. It must be proportionate. The totality principle requires that when a judge sentences an offender for more than a single offence, the judge must give a sentence that reflects all the offending behaviour that is before the court. But this is subject to the notion that, ultimately, the total or overall sentence must be just and proportionate. This remains the case whether the individual sentences are structured to be served concurrently or consecutively**.*

…

*[33] **So far as the totality principle is concerned, in cases where it is necessary to sentence someone for multiple serious offences, before pronouncing sentence the judge should:***

(a) Consider what is an appropriate sentence for each individual offence;

(b) Ask oneself whether, if such sentences are served concurrently, the total length of time the prisoner will serve appropriately reflects the full seriousness of his overall criminality;

(c) If the answer to (b) above is Yes, then the sentences should be made to run concurrently." (emphasis added)

[13] The Court would now individualize the sentence.

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

i. His maturity: The prisoner was 40 years old and expected by his age to show more restraint and exercise better decision-making. The editors of the Trinidadian **Sentencing Handbook 2016**[24] 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. His antecedents: The prisoner has several relevant convictions for unlawful possession of firearm and ammunition. He also while at prison racked up 11 prison infractions, worryingly, some including for assaults and improvised weapons.

iii. Absence of remorse: The Court is concerned that the prisoner has not expressed any remorse in his Social Inquiry Report ("SIR"). At a time where he has seemingly come to the end of the road to challenge his conviction, he uses his time in the SIR to complain about not receiving transcripts from the Court of Appeal and impugning his trial instead of seeking to make any positive outreach to the family of the deceased. The Court notes the strong guidance by Sosa P in **R v Wilbert Cuellar**[25] in very similar circumstances:

> *"[35]…the Court must go a little farther, being unable to wink at the glaring reality that, at the sentencing hearing of 2014, the accent was decidedly on the claim of innocence, to which, for some reason, not only Cuellar, but also those called to speak on his behalf, steadfastly clung. The trial was long over by then: it was past time for coming to grips with the jury's verdict of Guilty. To insist on guiltlessness after the jury have spoken is tantamount to seeking to perpetuate untruth. The adoption of such a stance is, moreover, inconsistent with true remorsefulness. Unsurprisingly, Cuellar's silence on the matter of remorse has been nothing short of ear-splitting. That fact does not redound to his advantage at this stage. In the eyes of the Court, it is unquestionably an aggravating factor."*

[24] At p XLV.
[25] Criminal Application for leave to appeal No. 13 of 2014.

> The prisoner's SIR is remarkable for his seeming inability to accept responsibility for any of his poor life choices. The prisoner grew up in a privileged and disciplined home in King's Park and sought to apportion some blame on his falling to the wayside on his attraction to women from "gang areas" and their influence on him. He never points the finger inward to "man up" and own his bad decisions that have landed him where he is.

[15] The Court would uplift the minimum term of 40 years imprisonment by 4 years to 44 years.

[16] The mitigating factors in relation to the offender are as follows:

i. Positive activities in the prison: The prisoner has completed seven programs from 2014 onward. The Court is impressed by the prisoner's attempt to deepen his spirituality and faith. The Court sees this as efforts by the prisoner at rehabilitation and properly equipping himself for the life after incarceration.

ii. A positive SIR: He has family support to assist in his rehabilitation. His aunt, Ms. Suzette Massiah, has described him as very intelligent and she keeps in contact with him. She opines that he can be a productive member of society on release.

[17] With a view to the prisoner's arc towards rehabilitation the Court will reduce the minimum term of imprisonment by 3 years to 41 years imprisonment.

[18] The Court would also vindicate the right of the prisoner to a fair hearing within a reasonable time under section 6(2) of the **Constitution**, pursuant to the declaration granted by the Court of Appeal[26], by a reduction of the minimum term of imprisonment by 2 years to 39 years imprisonment. This is, as noted above, a heinous crime. The discount for delay must as the CCJ said in **Solomon Marin Jr. v R**[27] must take into account, "the nature of the crime and the impact on the society's sense of justice".

[26] See *Reneau* at para 2.
[27] [2021] CCJ 6 (AJ) BZ at para 111.

[19] This would leave a final sentence of two concurrent terms of life imprisonment with a minimum term of 39 years imprisonment before becoming eligible for parole.

[20] Pursuant to the Court's powers under section 162 of the **Indictable Procedure Act**[28] as considered in **R v Pedro Moran**[29] the Court would order the sentence to run from 2nd December 2010.

DISPOSITION

[21] The Court sentences Ervin Reneau for the crimes of the murder of Mr. Edgar Ayala and Mr. David Longsworth on 30th November 2010 to two life sentences with a minimum term of 39 years imprisonment before becoming eligible for parole. Those sentences are to be served concurrently with effect from 2nd December 2010.

Nigel Pilgrim
High Court Judge
Dated 6th June 2024

[28] Chapter 96 of the Substantive Laws of Belize, Revised Edition 2020.
[29] Criminal Application No. 1 of 2017 at para. 38.