

IN THE SENIOR COURTS OF BELIZE

CENTRAL SESSION-BELIZE DISTRICT

IN THE HIGH COURT OF JUSTICE

INDICTMENT NO: C0001/2020

BETWEEN:

THE KING

and

MARLON EVERETT

Defendant

Appearances:

Ms. Sheiniza Smith, Senior Crown Counsel for the King

Mr. Bryan Neal Counsel for the Defendant

2023: October 11; 12; 13; 16; 18; 19; 23; 25;

November 6;

2024: January 18

February 2

SENTENCING: MURDER

History of the Matter

[1] **NANTON, J:** Marlon Everett (hereinafter referred to as “the Prisoner”) was indicted for the offence of murder, contrary to section 117 read along with section 106(1) of the

Criminal Code ¹ (“the Code”) arising out of a shooting involving the death of Albert Johnson (hereinafter “the deceased”) on 20th April 2018. The trial by judge alone began with the arraignment of the Accused on 11th October 2023 before this Court pursuant to **section 65 A (2)(a) of the Indictable Procedure Act** .²

- [2] On 6th November, 2023 the Prisoner was convicted of murder. Written reasons for the verdict of guilty were provided by this Court.
- [3] Pursuant to the guidance set out in **Calvin Ramcharran v DPP** ³ the Court ordered that psychiatric, social enquiry and prison reports as well as the antecedent history be prepared in relation to the Prisoner and the matter was adjourned for the purpose of obtaining said reports.
- [4] The Court has also been provided with a Victim Impact Statement from the brother of the Deceased which was read into the record by the Crown.
- [5] The Court has considered all submitted reports and is appreciative of the assistance provided by the relevant agencies and the submissions of the parties and their commitment to the Court’s stated timelines.
- [6] The Parties were given an opportunity to be heard and the Prisoner himself addressed the Court.

The Law

- [7] The sentencing regime for murder is set out at Section 106 of the Code which provides, where relevant:

*“106.-(1) Subject to sub-section (2), a person who commits murder shall be liable, having regard to the circumstances of the case, to–
(a) suffer death; or
(b) imprisonment for life.*

¹ Chapter 101 Criminal Code of the Substantive Laws of Belize Revised Edition 2020

² Chapter 96 of the Substantive Laws of Belize Revised Edition 2020

³ [2022] CCJ 4 (AJ) GY

...
(3) *Where a court sentences a person to imprisonment for life in accordance with sub-section (1), the court shall specify a minimum term, which the offender shall serve before he can become eligible to be released on parole in accordance with the statutory provisions for parole.*
(4) *In determining the appropriate minimum term under sub-section (3), the court shall have regard to–*
(a) *the circumstances of the offender and the offence;*
(b) *any aggravating or mitigating factors of the case;*
(c) *any period that the offender has spent on remand awaiting trial;*
(d) *any relevant sentencing guidelines issued by the Chief Justice; and*
(e) *any other factor that the court considers to be relevant.”*

[8] The CCJ in **August et al v R**⁴ considered the constitutionality of section 106 of the Code set out above and whether the Court against Section 7 of the Constitution which provides that “no person shall be subjected to torture or to inhuman or degrading punishment or other treatment.”, per Byron PCCJ and Rajnauth-Lee JCCJ:

“82] We have concluded that under the amended s 106, where a person is convicted of murder, that person can be sentenced to death or to a maximum term of imprisonment for life. Accordingly, any life sentence imposed following a conviction for the offence of murder will be discretionary and not mandatory. Wherever on the scale the term is fixed, the term of imprisonment must necessarily be such that it is befitting of the circumstances of the offence and the offender.

[83] Where a term of life imprisonment is imposed by the sentencing judge, the judicial tailoring function is preserved by sub-ss (3) and (4) which allow for the prescription of a minimum term that must be served by the offender before being eligible for release on parole. In individualizing that minimum period, the judge’s exercise of his or her sentencing discretion is guided by the consideration of the key factors set out in sub-s (4).”

[9] The Court reasons that it is clearly entitled to depart from the imposition of a life sentence in specific cases where to so do will result in a disproportionate sentence. This approach has similarly been adopted by in **Bowen v Ferguson**.⁵

[10] The Privy Council has opined in the Belizean case of **White v R**⁶ that the death penalty is only appropriate in cases that were “‘the worst of the worst’ or ‘the rarest

⁴ [2018] 3 LRC 552.

⁵ Cr App 6/2015, decision dated 24 March 2017

⁶ 77 WIR 165 at para 12-14.

of the rare'; and that there must be no reasonable prospect of reform of the offender and that the object of punishment could not be achieved by any means other than the ultimate sentence of death." There are also procedural requirements for the imposition of the death penalty set out in **R v Reyes**.⁷

[11] The Court further adopts the sentencing guidance for murder set out comprehensively by the Court of Appeal in **Michael Faux et al v R**⁸:

*"[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 mine)

[12] The CCJ has provided guidance on the formulation of a just sentence in the Barbadian case of **Teerath Persaud v R**⁹, 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

⁷ [2003] 2 LRC 688.

⁸ Criminal Appeal Nos. 24-26 of 2019.

⁹ (2018) 93 WIR 132

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.”

[13] The Court is also guided by the decision of the CCJ in **Calvin Ramcharran v DPP**

¹⁰ 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).”

The Facts

[14] The Crown’s case is that on 20th April, 2018 around 11:00 pm the Prisoner Marlon Everett shot and killed the deceased Albert Johnson at Rectory Lane Belize City in the presence of two other males. The shooting of the deceased was captured on video footage and the Prisoner was identified by two witnesses as the shooter. The

¹⁰ [2022] CCJ 4 (AJ) GY

direct cause of death was traumatic shock due to head injuries caused by two gunshot wounds.

Analysis

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

- i. The offence is the most serious of violent offences. The Victim's brother spoke of the Deceased, who was otherwise a joyful person but at the time of his death was suffering from depression and that he was not in a good mental state, since his own loss of his father. The Deceased's mother was greatly affected by the loss of her son and she has been emotional ever since his death.
- ii. The offence involved the use of a firearm which has become far too prevalent in Belizean society.
- iii. There was premeditation or planning. The evidence accepted by this Court from Jaden August was that Jaden August was approached before the murder by an unidentified male asking if he wanted a body which he interpreted to mean if he wanted to kill someone. He was given the firearm, and he along with the Prisoner, another unidentified male and the Deceased left his premises. When Jaden refused to shoot the Deceased the Prisoner took the firearm and shot the Deceased twice in the head. The irresistible inference drawn therefrom was that the Prisoner accompanied the Deceased on the walk with the pre-formed intention of that the Deceased was to be killed.
- iv. This was an unprovoked and brazen attack committed with the assistance (by force of numbers) of others.

[16] The Court has not found any mitigating factors relative to the offence.

[17] It is unarguable that the only proper sentence for the offence, in this case, is a custodial sentence.

[18] Notwithstanding, the aggravating features identified above; the Court does not consider that the death penalty is appropriate in this case as it is not 'the worst of the worst' or 'the rarest of the rare'. The Court finds in this case that the object of punishment can be achieved by means other than the ultimate sentence of death.

[19] The Court next turns to whether it should impose the sentence of life imprisonment, bearing in mind the decision of August mentioned above, and its dicta that the Court may depart from the sentence of life imprisonment for murder where there are mitigating factors relative to the offender.

[20] It is with this in mind that the Court will next consider the factors relative to the offender:

Aggravating factors

- i. The Court will only rely on the Prisoner's 2014 conviction for drug trafficking for which he served a sentence and was released in 2016- a mere 2 years before the commission of this offence.
- ii. The Prison Report records that the Prisoner has 8 prison infractions, the latest of these occurring in 2023.

Mitigating factors

- i. Completion of 3 rehabilitative Prison programmes.
- ii. Familial support of his extended family.
- iii. No history of violent offences.

[21] In **Faux** the Court of Appeal acknowledged that since the change in the law a fixed sentence is only imposed where there is some mitigating feature in the case. This Court considers that there are no mitigating factors which warrant the imposition of a lesser sentence than the statutory life imprisonment. This is a heinous murder,

which completely disregarded the sanctity of human life. To not seriously punish this offence is to give the Court's approval to wanton lawlessness. The Court is not of the view that a fixed sentence is appropriate.

[22] The Court distinguishes the circumstances of the cases under appeal which were considered by the Court of Appeal. In **Faux** the Court of Appeal set aside sentences of life imprisonment that had been imposed on the appellants and substituted fixed term sentences due to the presence of mitigating factors relevant to the particular offenders. Appellant **Faux** was a minor at the time of the commission of the offence and expressed genuine remorse. He attended counselling programmes and acted as a peer counsellor at Wagner's facility. Appellant **Torres** had ill health, was a model prisoner, non-Belizean and accepted accountability for his actions with a contrite expression of genuine remorse and had good prospects for rehabilitation having spent 18 years in prison and participated in rehabilitative programs. Appellant **Ramirez** had no previous convictions and no history of violent offences, he also suffered from intense headaches, high blood pressure and diabetes and suffered a stroke, his social enquiry report revealed that he was abandoned by his mother at the age of 12 and struggled with issues of abandonment including alcohol and drug addiction.

[23] In **Faux** the Court of Appeal also noted, by reference to a comprehensive review of recent authorities submitted by both the appellant and the Crown that 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. The Court departed from this trend due to the existence of mitigating factors in relation to each appellant as explained above.

[24] This Court of Appeal in **Faux** noted:

“A sentencing judge does not have an easy task and this is not a mathematical exercise. Further, Belize has no sentencing guidelines, but

*there are precedents for guidance which are not binding on the Court. The sentencing court strives for consistency by considering precedents of similar offences. Ms. Mendez provided the Court with mostly precedents of fixed term sentences. The Director on the other hand, has provided the Court with an extensive list of authorities which shows that the trend since **August** is life imprisonment with a minimum term.”*

Fixing the Minimum Term

[25] According to the Court of Appeal in **Faux** 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. The Court does not find that there are any mitigating factors relative to the offender which warrant a departure from the imposition of a life term.

[26] The Court has considered the aggravating factors of the offence outlined in paragraph 15 of this ruling and places an appropriate starting point for the minimum term at **27 years** before he becomes eligible for parole.

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

[28] The prisoner was examined by Dr. Alejandro Matus Torres and found to have no history of mental illness.

[29] The aggravating factors relevant to the offender which are outlined in paragraph 20 of this ruling paints a picture of the prisoner as a repeat offender, who by his own admission in his social inquiry report, first became involved with the law at the age of 19 years in the United States. He was deported to Belize. Upon his return, he continued to engage in criminal activity, which is evidenced by a series of lesser and/or non-violent offences to which this Court places no consideration, save for a drug trafficking conviction for which he was released from prison a mere two years

before the commission of the present offence. It is at the full age of 28 years that the Prisoner committed this murder. Despite the Prisoner's apparent efforts at rehabilitation evidenced by his completion of programs facilitated at the Prison, his continued and repetitive breaches of the Prison Rules are consistent with the conclusion formed by this Court that the Prisoner demonstrates a continuous disregard for rules.

[30] It should be noted that the Court has not put remorse on the scale as either a mitigating or aggravating factor. Counsel for the Crown had submitted that the absence of remorse should be considered an aggravating feature. The Court has declined to adopt this approach and opts to place same in a neutral setting. In his social enquiry report the Prisoner maintained that he did not commit this crime and that he was wrongly convicted. In his own oral address to the Court, the Prisoner said that he was sorry to the family for their loss but the Court observed that he never openly accepted any responsibility for his role in that loss. The Court did not find any expression of genuine remorse despite Counsel for the Prisoner's contention to the contrary.

[31] As Barrow JCCJ noted in Ramcharran that the public interest is an "overarching" consideration. The sentence of the Court must protect the Belizean citizen from those seemingly intent on wreaking havoc.

[32] For these aggravating features specific to the Offender, the Court increases the starting point for the minimum term to 2 years bringing that figure up to **29 years**.

[33] The mitigating factors identified in paragraph 20 of this ruling demonstrates that the Prisoner has some support from his extended family members. Although, it is noted that he has no immediate family members residing in Belize. The support of his extended family may assist his rehabilitation. It also appears that the loss of his mother may have affected the Prisoner considerably as his run-ins with the law seemingly started around the same time of her passing. The Prisoner has completed three (3) rehabilitation courses whilst in prison the RRC (Remand Rehabilitation

Program) Journey to Freedom, Willson Reading program, and RACHEL Program. The Prisoner stated when interviewed that he was a facilitator for the Journey to Freedom program.

[34] The Court commends these efforts and this personal mitigation would lead the Court to reduce the minimum term by 1 year to lead to a final sentence **of life imprisonment with a minimum term of 28 years imprisonment.**

[35]In Romeo da Costa Hall v The Queen¹¹ the CCJ highlighted the importance of awarding full credit for the time spent in pre-trial custody. The prisoner has already spent 5 years 9 months and 12 days on remand for this offence and full credit will be awarded for that time. **The minimum term of 28 years will run from April 21st 2018** which is the date that he was remanded in custody for this offence.

Disposition

[36] The Prisoner Marlon Everett is hereby sentenced to life imprisonment with a minimum term of 28 years imprisonment, before he is eligible for parole effective from April 21st 2018.

Candace Nanton

High Court Judge
Senior Courts Belize
Dated 2nd February 2024

¹¹ [2011] CCJ 6 (AJ)