IN THE SENIOR COURTS OF BELIZE

CENTRAL SESSION-BELIZE DISTRICT

IN THE HIGH COURT OF JUSTICE

INDICTMENT NO: C 34A/2023

BETWEEN

THE KING

and

TERRENCE SUTHERLAND

Prisoner

Before:

The Honourable Mr. Justice Nigel Pilgrim

Appearances:

Ms. Cheryl-Lynn Vidal S.C., Director of Public Prosecutions, with her
Ms. Romey Wade, Crown Counsel, for the Crown.

Mr. Leeroy Banner for the Prisoner.

2024: July 17th
July 25th

CAUSING DEATH BY CARELESS CONDUCT- PLEA AGREEMENT-SENTENCING

[1] PILGRIM J.: Terrence Sutherland ("the prisoner") is indicted for the offence of causing death by careless conduct arising out of his vehicular collision with Calvin Wright ("the deceased"),

contrary to section 108(2) of the **Criminal Code**[1] ("the Code"). The prisoner was initially indicted for the offence of manslaughter by negligence but the current indictment superseded it as part of a plea agreement concluded on 17th July 2024 under the **Criminal Procedure (Plea Discussion and Plea Agreement) Act, 2024** ("the Plea Act"). Another term of that plea agreement was that the Crown agreed not to oppose a request by the prisoner for a non-custodial sentence. After careful consideration of the agreed facts, the range of sentence for that offence set by decisions of the Court of Appeal, the victim impact statement, and after the conduct of the plea agreement hearing at section 24 of the Plea Act, the Court accepted the plea agreement in the interests of justice.

[2] The prisoner pleaded guilty to the single count in the indictment and accepted the Crown's summary of facts. He was allowed to make a plea in mitigation and helpful submissions on sentence were received on both sides.

[3] It would be helpful to consider the legal framework of this sentencing process.

The Legal Framework

[4] The sentencing regime for causing death by careless conduct is set out at section 108(2) of the Code which provides, where relevant:

> *"Every person who **causes** the **death of another** by any **careless conduct not amounting to negligence**, as defined in this Code, commits an offence and is liable to imprisonment for two years."* (emphasis added)

[5] The elements of that offence were elucidated by the Court of Appeal in **Cardinal Smith v R**[2]**.** Sosa JA, as the then was, noted that understanding this offence is tied to its relationship with manslaughter by negligence. The requirement of a finding of negligence, pursuant to section

[1] Chapter 101 of the Substantive Laws of Belize, Revised Edition 2020.
[2] Criminal Appeal No. 35 of 2005.

10 of the Code, is that a defendant fails to a **grave degree** to observe the standard of care which he ought reasonably to observe in all the circumstances of the case. Consequently, for a finding of careless conduct it requires a defendant to fail to **any degree** less than grave to observe the standard of care which he ought reasonably to observe in all the circumstances of the case[3]. The **Rules of the Road** at Part VII of the **Motor Vehicles and Road Traffic Regulations[4]** are of assistance in establishing that standard of care. Carelessness can also be inferred from the circumstances in which the killing occurred[5].

[6] The elements of this offence, in the Court's view, are as follows: (i) a person was killed; (ii) the prisoner caused that death; and (iii) that the prisoner caused that death carelessly, that is, by conduct failing by any degree less than grave to observe the standard of care which he ought reasonably to observe in all the circumstances of the case.

[7] The Court of Appeal considered sentencing for this offence in *Smith*, **Victor Cuevas v R[6]** and **DPP v Ravell Gonzalez[7]**. These cases demonstrate a sentencing range from one (1) year's imprisonment to a fine and compensation.

[8] 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[8]**,(the "PSRASA") which provides, 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] *Smith* at para 30.
[4] **Motor Vehicles And Road Traffic Act,** Chapter 230 of the Subsidiary Laws of Belize, Revised Edition 2020.
[5] *Smith* at para 34.
[6] Criminal Appeal No. 17 of 2007.
[7] Criminal Application for Leave to Appeal No. 2 of 2015.
[8] 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)

[9] The Court now looks to the guidance of the apex court, the Caribbean Court of Justice (the "CCJ") in the Barbadian case of **Teerath Persaud v R**[9] 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**

[9] (2018) 93 WIR 132.

***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 sentenced imposed**."* (emphasis added)

[10] 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**)."*
> (emphasis added)

[11] This plea has been made pursuant to a plea agreement. It would be appropriate to consider the relevant provisions of the Plea Act and its effect on the sentencing process. The Plea

[10] [2022] CCJ 4 (AJ) GY.

Act became law in Belize, after passage in the National Assembly and assent by Her Excellency the Governor General, on 3rd June 2024 pursuant to the proclamation by the Honourable Attorney-General in **Statutory Instrument Number 82 of 2024**.

[12] A "plea agreement" is defined at section 2 of the Plea Act as:

> *"an agreement made in the interest of justice between the prosecutor and the accused person or suspect in which the accused person or suspect agrees to–*
> *(a) plead guilty to an offence which is disclosed on the facts and on which the charge is based; and*
> *(b) fulfil any other obligations specified in the plea agreement, and*
> *the prosecutor agrees to take a particular course of action;"*

[13] What that particular course of action the prosecutor may take is outlined in the same section:

> *"particular course of action" includes–*
> *(a) an application to the court to dismiss other charges;*
> *(b) the withdrawal or discontinuation of the original charge against the accused person;*
> *(c) the reduction of the charge against the accused person to a lesser offence than that charged;*
> *(d) a recommendation to the court that a particular sentence is appropriate;*
> *(e) an undertaking not to oppose a request by the accused person, or the attorney-at-law of the accused person or suspect, for a particular sentence;*
> *(f) an agreement that a specific sentence is appropriate for the disposal of the case;*
> *(g) an undertaking not to institute charges against family members or friends of the accused person or suspect where there is evidence to sustain such charges against such persons;*

(h) an undertaking to recommend summary trial rather than trial on indictment; and

(i) a recommendation to the court that the record of the plea discussion and the plea agreement be sealed;"

[14] What the Court immediately notes is the width of the two definitions. The phrase "particular course of action" which the prosecution may engage in uses the word "includes" in its definition, which is a statutory guide that the list enumerated is not exhaustive[11]. Also, the accused or suspect may be required to "fulfil any other obligations specified in the plea agreement." This wide phrasing leaves open the door, in the Court's view, for the Crown entering into co-operation plea agreements where accused persons or suspects may be required not only to plead guilty but also to give information or testify against co-conspirators as in the United States Court of Appeals Third Circuit decision of **US v Christopher Erwin**[12]. In that case, in return for a sentencing recommendation, Erwin agreed to testify against his co-conspirators in a drug operation and provide information to investigators[13].

[15] In the case at bar, there was both "charge bargaining" and "sentence bargaining". The agreement filed on 17th July 2024 included moving the sentence from the higher charge of manslaughter by negligence, to the lesser of causing death by careless conduct, thereby placing him in a different sentencing range. There was also sentence bargaining in that the Crown has agreed not to oppose a request for a non-custodial sentence.

[16] The process contemplated by the Plea Act looks holistically at criminal justice. The interests of the public are safeguarded by the fact that:

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[11] See **Bennion, Bailey and Norbury on Statutory Interpretation** at para 18.3.

[12] 765 F.3d 219 (2014).

[13] Ibid. at p 224: "*Erwin also entered into a written cooperation agreement with the Government. The agreement provided that, if the Government determined "in its sole discretion" that Erwin substantially assisted in the investigation or criminal prosecution of others, it would ask the court to depart downward from the Guidelines range pursuant to U.S.S.G. § 5K1.1. Supplemental Appendix ("Supp. App.") 47. However, "[s]hould Christopher Erwin ... violate any provision of this cooperation agreement or the plea agreement, ... this Office will be released from its obligations under this agreement and the plea agreement, including any obligation to file [the] motion...." Supp. App. 48 (emphasis added). "In addition, Christopher Erwin shall thereafter be subject to prosecution for any federal criminal violation of which this Office has knowledge...." Id. The plea and cooperation agreements "together constitute[d] the full and complete agreement between the parties."*

i. The Court ought not to accept a plea agreement if it is not in the interests of justice[14]. Indeed, the very definition of a plea agreement, in section 2, includes the requirement that it is made in the interests of justice. That includes a consideration by the Court, according to section 24(3)(e) of the Act that, "the offence to which the agreement relates adequately reflects the gravity of the provable conduct of the accused person, unless in exceptional circumstances, the agreement is justifiable having regard to the benefits that will accrue to the administration of justice and the protection of society from the prosecution of the accused person."

ii. The victim or his relatives are involved from plea discussions to the plea agreement and sentence. They are required to be informed of their right to say how the offending has impacted them before plea discussions are concluded[15]. When a plea agreement is concluded, the victims must be informed of the substance and reasons for the agreement, the date of the plea agreement hearing, and the right to be heard at the hearing[16].

iii. In sentence bargaining, the extant sentencing guidelines should be considered. Section 34, in particular at subsections (5)[17] and (6)[18], provides assistance in terms of sentence bargaining by demonstrating that that process is not at large and must be done on a reasoned and principled basis.

[17] The interests of the defendant are considered in several ways including:

i. The Court must be satisfied that there was no improper inducement for entering into the plea agreement or the discussions held before accepting a plea agreement.

ii. The Court must be satisfied that the the accused person understands the nature, substance and consequences of the plea agreement.

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[14] Section 25(1): "*The court may reject a plea agreement entered into between a prosecutor and an accused person where it deems that it is in the interest of justice to do so."*

[15] Section 12(2)(a).

[16] Section 12(3).

[17] *"Where the court imposes a sentence without regard to the prescribed minimum penalty under sub-section (4), the judge shall provide detailed reasons why the particular sentence is imposed."*

[18] *"Where a particular sentence is outside of the sentence or sentencing range set out in any sentencing guidelines issued by the Chief Justice, if any, the judge shall provide detailed reasons why the particular sentence is imposed."*

iii. The Court must be satisfied that the accused person understands the nature of the offence with which the accused is being charged and is pleading to.

iv. The Court must be satisfied that the accused person understands that the court is not obligated to accept the plea agreement[19].

v. There is a duty to make appropriate disclosure to the accused before entering into plea discussions[20].

[18] The system of plea bargaining has been helpfully considered by a decision of the United States Supreme Court in **Santobello v New York[21]**, where Chief Justice Warren Burger opined in 1971:

> *"The disposition of criminal charges by agreement between the prosecutor and the accused, sometimes loosely called 'plea bargaining,' is an essential component of the administration of justice. Properly administered, it is to be encouraged. If every criminal charge were subjected to a full-scale trial, the States and the Federal Government would need to multiply by many times the number of judges and court facilities. Disposition of charges after plea discussions is not only an essential part of the process but a highly desirable part for many reasons. It leads to prompt and largely final disposition of most criminal cases; it avoids much of the corrosive impact of enforced idleness during pre-trial confinement for those who are denied release pending trial; it protects the public from those accused persons who are prone to continue criminal conduct even while on pretrial release; and, by shortening the time between charge and disposition, it enhances whatever may be the rehabilitative prospects of the guilty when they are ultimately imprisoned.*
>
> *…*

[19] Section 24(3)(a)-(d)
[20] Section 10.
[21] 404 U.S. 257 (1971) at ps 261-2.

However, all of these considerations presuppose fairness in securing agreement between an accused and a prosecutor.

…

The plea must, of course, be voluntary and knowing and if it was induced by promises, the essence of those promises must in some way be made known. There is, of course, no absolute right to have a guilty plea accepted…A court may reject a plea in exercise of sound judicial discretion.

…

This phase of the process of criminal justice, and the adjudicative element inherent in accepting a plea of guilty, must be attended by safeguards to insure the defendant what is reasonably due in the circumstances. Those circumstances will vary, but a constant factor is that when a plea rests in any significant degree on a promise or agreement of the prosecutor, so that it can be said to be part of the inducement or consideration, such promise must be fulfilled."

[19] The solemn nature of the guilty plea in the agreement was outlined in another decision of the United States Supreme Court of **Brady v US**[22], which it is submitted would apply with equal force in Belize, per Justice White:

"That a guilty plea is a grave and solemn act to be accepted only with care and discernment has long been recognized. Central to the plea and the foundation for entering judgment against the defendant is the defendant's admission in open court that he committed the acts charged in the indictment. He thus stands as a witness against himself and he is shielded by the Fifth Amendment from being compelled to do so—hence the minimum requirement that his plea be the voluntary expression of his own choice. But the plea is more than an admission of past conduct; it is the defendant's consent that judgment of conviction may be entered without a trial—a waiver of his right to trial before a jury or a judge. Waivers of

[22] 397 U.S. 742 (1970) at p 748.

constitutional rights not only must be voluntary but must be knowing, intelligent acts done with sufficient awareness of the relevant circumstances and likely consequences."

[20] The operationalisation of plea-bargaining legislation has the potential to be a game-changer in the criminal justice system of Belize with regard to reducing the criminal case backlog. The Court also takes judicial notice of the fact that a system of plea bargaining is a recommendation of the CCJ Academy for Law's **Needham's Point Declaration on Criminal Justice Reform: Achieving a Modern Criminal Justice System**[23], which is a statement of the aspirations and best practices for a properly functioning Caribbean criminal justice system.

[21] In this case, pursuant to section 19(3) of the Plea Act the parties filed the plea agreement, the prescribed forms along with the victim impact statement of Calvin McKoy, the son of the deceased. The parties also helpfully filed a summary of facts with those documents which helped the Court determine whether the plea agreement was in the interests of justice. The Crown outlined the substance and reasons for the plea agreement, pursuant to section 24(2)(a), which were (i) that on the facts of case, the lesser charge was reasonably open to the fact finder; (ii) savings in terms of the time and expense of a trial; (iii) due to the prisoner's good character and a mature view of the sentencing factors suggested a non-custodial sentence and (iv) the position of the surviving son of the deceased was that a non-custodial sentence was appropriate.

[22] The Court then, pursuant to section 24(3) of the Plea Act, questioned the prisoner and received indications from him that no promise or threat was made to him to enter into the plea agreement and that he entered into it of his own free will. He indicated that he understood that he was pleading guilty and would have a criminal conviction for causing death by careless conduct. He said he understood that he may pay a fine or compensation for entering into this plea agreement. He said he understood that he was pleading guilty to

[23] Declaration 10: *"That laws be enacted to guarantee prisoner remand timelines; to replace Preliminary Inquiries with sufficiency hearings and/or paper committals; provide for Maximum Sentence Indications (MSI) hearings and effective Early Guilty Plea/Plea Bargaining Schemes."*

an offence where it is alleged that he killed someone by driving a car carelessly. He also said understood that the court can reject the plea agreement. The Court as said before considered the agreed facts, sentencing range, victim impact statement[24], the substance and reasons for plea agreement and determined its acceptance was in the interests of justice.

The Agreed Facts

[23] The prisoner is a Corporal in the Belize Police Department. On 8th August 2020, he was a police constable and was detailed as the driver of a police pick-up truck bearing license plate CY-B-3292. This mobile patrol was under the command of Sgt. Elston Broaster, and the officers were patrolling in the St. Martins de Porres area in Belize City.

[24] The deceased was a 68-year-old man who suffered from weakness in his knees. On that morning he had fallen, and was in a seated position on Morning Glory Street, not too far from where he had been residing.

[25] Around 11:15 am, the prisoner was driving along Morning Glory Street, and drove over the deceased with both the front and back wheels of the police pick-up truck. Both he and Sgt. Broaster alighted the pick-up truck, placed the deceased in the tray of the truck and took him to the Karl Heusner Memorial Hospital. He died shortly after his arrival there. The cause of death was certified by Dr Loyden Ken to be "hypovolemic shock as a consequence of internal and external exsanguination, due to a rupture of the left subclavian artery, due to crush injuries to the chest". Dr Ken took post-mortem blood and vitreous fluid samples which were later sent to the Forensic Laboratory and analyzed. Ethanol was not detected in either sample.

[24] *"24(4) If a victim impact statement is filed with the court, the court shall consider the views expressed in the victim impact statement before accepting or rejecting a plea agreement and the court may accept or reject all or any part of a victim impact statement."* : the Plea Act.

[26] The surveillance system of a resident of Morning Glory Street captured the incident. The footage that was obtained by the police during the course of the investigation shows that shortly before the police mobile enters the frames, another pick-up truck proceeded along Morning Glory Street and the driver of that truck drove around the deceased, thereby avoiding him completely. The footage demonstrated that the prisoner was not paying attention when he struck the deceased.

Analysis

[27] The Court, following *Persaud*, will begin the sentencing process by seeking to identify the aggravating factors relevant to the offending. This factor, in the Court's view, is as follows:

i. *Serious offence*: The prisoner ran over the deceased and there is a need for drivers to exercise maximum care when managing a dangerous device like a motor vehicle. The deceased's son, in his victim impact statement, said he had to bear a heavy financial burden following the arrangements that needed to be made after his father's death. He also said:

> *"6. I never had the opportunity of having a father-son relationship with my father, since he moved to the United States of America at an early stage in my life. With his return to Belize, I was hoping to have the chance to make up for the time lost, but I did not get to do so. This hurts me deeply, and it is a regret that I will have to live with for the rest of my life.*
>
> *…*
>
> *9 Dad was always smiling and always joyous. There was never a dull moment with him. I miss him a lot, his grandchildren they all miss him and his mother also misses him. His death made my grandmother 'trip a lot'."*

[28] The mitigating factors of the offending are as follows:

i. He immediately rendered aid to the deceased.

ii. He was not speeding or driving furiously.

iii. He co-operated with the authorities.

[29] The Court notes the sentencing range as established in the authorities of *Cardinal Smith* and others as referred to above and believes that this is case that is ripe for a non-custodial sentence. This was a momentary lapse which the prisoner tried immediately to right by seeking to assist the deceased. The Court is mindful of the injunction in the PSRASA that a custodial offence should only be imposed if the facts justify it. The Court's starting point would be the imposition of a fine.

[30] The Court will then individualize the sentence of the prisoner.

[31] There are no aggravating factors in relation to the offender.

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

i. He has expressed genuine remorse in a heartfelt apology to the Court.
ii. He is of good character, without even a disciplinary infraction.
iii. He is a provider for four (4) children and his common-law wife.

[33] I In light of these factors, and after considering the one-third discount to which the prisoner is entitled, the Court will forego a fine and impose an order for compensation pursuant to its powers under section 168(1)(b) of the **Indictable Procedure Act**[25] ("the IPA"). The Court notes, for the record, that the Crown also supported the order of compensation only in the sentencing hearing. The Court accepts the recommendation of the prisoner that a non-custodial sentence be imposed in this case.

[25] Chapter 96 of the Substantive Laws of Belize, Revised Edition 2020: "*168.–(1) The court, when a person is convicted of any crime, may at its discretion make either or both of the following orders against him in addition to any other punishment, namely–*

…

(b) an order for the payment by him of a sum to be fixed by the court by way of compensation to any person, or to the representative of any person injured in respect of his person, character or property by the crime for which the sentence is passed."

DISPOSITION

[34] The Court, pursuant to section 168(2)[26] of the IPA orders the prisoner to compensate Calvin Leonel Mckoy by the payment of five thousand dollars ($5,000.00) payable on or before 26th May 2025.

Nigel Pilgrim
High Court Judge
Dated 25th July 2024

[26] *"The court shall specify the person to whom any sum in respect of costs or compensation under this section is to be paid and payment thereof may be enforced in the same manner as if the amount thereof were a judgment debt due to that person, or in such other manner as the law for the time being directs."*