

[2] The trial was conducted before this Court by judge alone, and on the 5th June 2024, the accused was convicted as follows:

- a) Guilty of manslaughter in relation to Mark Tuyul contrary to section 116(1) read along with section 108(1)(b) of the **Criminal Code**¹ (“the Code”).
- b) Guilty of wounding in relation to Zemark Tuyul

The Legal Analysis

[3] The offence of manslaughter is defined in the Code as follows and the maximum penalty is, as follows:

“116(1) Every person who causes the death of another person by any unlawful harm is guilty of manslaughter.

...

108(1) Every person who commits manslaughter– ...

(b) by any other cause shall be liable to imprisonment for life.”

[4] And the offence of wounding is stated in the Code in section 80² and defined as follows:

“Every person who intentionally and unlawfully causes a wound to a person shall be liable to imprisonment for seven (7) years.”

[5] This Court in determining the propriety of a custodial sentence on these facts, is duty bound to take into consideration and pay due regard to the provisions of the **Penal System Reform (Alternative Sentences) Act**³, (hereinafter referred to as the “PSRASA”) which read, 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;

¹ Chapter 101 of the Substantive Laws of Belize, Revised Edition 2020.

² Chapter 101 of the Substantive Laws of Belize, Revised Edition 2020 [s. 80 & s. 6-9]

³ 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...."

[6] This Court is of the view that the rehabilitation of the offender must take center stage in this process, this shall be dealt with in more detail in this judgment.

[7] The court accept the guidance from the Apex Court, the Caribbean Court of Justice (hereinafter referred to as the "CCJ") in the case of Teerath Persaud v R⁴ on the formulation and starting point of a just sentence. Anderson JCCJ explicated 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 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

⁴ [2018] 93 WIR 132

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.”

[8] The CCJ also opined in relation to the multiple aims of sentencing wherein this Court is guided, in the decision of **Calvin Ramcharran v DPP**⁵ on this issue, per Barrow JCCJ he 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 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).”

[9] The court pursuant to the above guidance collated a list of local manslaughter sentences affirmed by the Court of Appeal and reproduced them hereunder as follows:

- i. In the matter of the **Queen v. James Moreira**⁶, the Court of Appeal of Belize, after quashing the murder conviction and substituting manslaughter, imposed a sentenced of fifteen (15) years for manslaughter.

⁵ [2022] CCJ 4

⁶ Criminal Appeal No. 12 of 2001

- ii. In the matter of **Glenford Ferguson v King**⁷, 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**⁸ 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.
- iv. In the matter of **Rosalilia v. Queen**⁹ 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**¹⁰, at the Court of Appeal her conviction for murder was substituted for manslaughter and sentenced to eight (8) years imprisonment.
- vi. In the matter of **Wyatt Anderson v. Queen**¹¹, the Court of Appeal, after a trial for murder and conviction for manslaughter, affirmed the sentence of fourteen (14) years imprisonment.
- vii. In the matter of **May Bush v Queen**¹², 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.
- viii. In the matter of **Tony Pasos v. Queen**¹³, 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.

⁷ Crim. Appeal No. 12 of 2018 Per Hafiz Bertram JA

⁸ Crim. Appeal No. 21 of 2013 per Morrison JA

⁹ Crim. Appeal No. 1 of 2015 per Hafiz Bertram JA

¹⁰ Crim. Appeal. No. 21 of 2012 per Hafiz Bertram JA

¹¹ Crim. Appeal No. 3 of 2011 per Morrison JA

¹² Crim. Appeal No. 5 of 2014 per Ducille JA

¹³ Crim. Appeal No. 11 of 2016 per. Sosa JA

- [10] This court has considered the retributive, deterrent, punitive and rehabilitative elements of sentencing and notes that the accused will need rehabilitation prior to returning to society. The punitive aspect of sentencing will be met with an appropriate starting point in like manner the retributive and deterrent factors will be taken into consideration.

The Facts

- [11] On the 10th of January 2020, Zema Requena the mother of the children left the children home with the accused, the stepfather. When she left there were no issues with her and the accused, everything was good, and the children were all normal. However, when she returned at about 5:00pm, the accused looked upset, and she enquired what happened. The accused told her next time carry her 'pickney'. When she went inside the house she saw Mark Tuyul, with injuries on his face. When she enquired of the accused what was wrong, he said, 'the pickney them frustrate me'. Zema Requena then took the baby (Mark Tuyul) to the hospital. Upon arrival at the hospital, she passed out. Later, the ambulance took the other children from the home. While at the hospital Mark Tuyul was pronounced dead from injuries. The evidence was that both the accused and the mother of the children would penalise the children; they would clap them with their hands or use a belt.

- [12] The accused confirmed that he physically clapped Mark Tuyul in his head with his hands, but he maintained the fatal injuries were inflicted on the children by Zema Requena after he indicated to her that he could not continue with the relationship. [A theory the court rejected].

(46) Dr. Lloyd Ken when he conducted the postmortem detailing the injuries and confirmed Mark Tuyul died from asphyxiation due to combined multiple blunt force traumatic injuries with bronchopulmonary aspirations of gastric contents as a consequence of thoracoabdominal compression.

- [13] The accused was twenty-seven (27) years old at the time of the offence, having been born on the 19th day of August 1992.

Analysis

- [14] The court, following the authority of *Persaud*, will seek to determine the starting point by examining

the aggravating and mitigating factors of the offending:

The aggravating factor/s are:

- i. The age of the deceased, a mere toddler.
- ii. Mother's loss of a child [irreplaceable].

[15] The mitigating factors in relation to this offending are as follows:

- i. The prisoner self-reported the offending to the police via the interview stating he clapped the child, and to the mother of the deceased. [albeit not stating the gravity].
- ii. The action was not premeditated.

[16] The court will therefore impose a starting point of twenty- four (24) years for manslaughter and four (4) years for wounding (concurrently).

[17] The Court shall now individualize the sentence by considering the aggravating and mitigating features of the offender.

[18] The aggravating factors are as follows:

- i. The accused has four previous convictions for violent offences recorded against him.

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

- i. The genuine expression of sorrow expressed by the accused, as mentioned in the Social Inquiry report.
- ii. The completion of one Rehabilitative Program namely, Completion of Journey to Freedom Small Group Program.

Testimonials

[20] The Court heard from the prisoner's sister, Kyla Reynolds, Cousin, Justin Longworth. They all painted a picture of a young man who loves his family, and always try to do the right thing. He grew up in impoverished condition and the fact that his father was killed when he was young, thereby, he grew up with a single mother who died in January of this year while he was at prison. The above

affected him greatly.

Prison Infractions:

- [21] The accused, while at prisons, had nine (9) breaches of prison rules wherein he was either punished or warned. The infractions spanned the period 2020 to 2023. These offences were mostly ill-discipline charges, wherein he was punished.
- [22] The mitigating factors of the offender to the Court's mind, outweigh the aggravating factors, therefore this court will decrease the sentences, in the following manner: in relation to the charge of manslaughter by five [5] years, and the offence of wounding by one [1] year.
- [23] The above sentence is premised on the Court's consideration of the guidance in the PSRASA that rehabilitation is a core principle of sentencing, wherein the accused is in dire need of. The Court does not believe that the prisoner is a danger to society but would need to be rehabilitated prior to re-entering society.

Order:

- [24] In this regard the final sentence of the Court is nineteen (19) years imprisonment for the offence of manslaughter and three (3) years imprisonment for the offence of wounding, the sentences are to run concurrently. The prisoner has been remanded since 10th day of January 2020, therefore this time spent on remand shall be deducted from the above sentences on the authority of **R v Da Costa Hall**¹⁴. Further, the prisoner should enroll in programs at the prison geared towards rehabilitation to enable future re-entry into society.

**Derick F. Sylvester
High Court Judge
Dated 30th August, 2024**

¹⁴ [2011] CCJ 6