



[1] **MR. FANCIS M CUMBERBATCH; J:** In a judge alone trial, Marlon Padilla and Guillermo Duarte, the convicted men who were indicted by the Director of Public Prosecutions for the offence of murder for that they on the 2 April 2016, at Selena Village murdered Edgar Perdomo Aldana (“the Deceased”) contrary to the provisions of section 106(1)<sup>1</sup> read along with section 117<sup>2</sup> of the **Criminal Code** Chapter 101 of the Substantive Laws of Belize (Revised Edition) 2020. At their arraignment they entered pleas of not guilty, hence, a judge alone trial was held pursuant to the provisions of the section 65A<sup>3</sup> of the **Indictable Procedure Act**. At the close of their trial this court found them guilty of the offence of murder as indicted.

[2] The court ordered a sentencing hearing be held and made further orders for Social Inquiry Reports, Psychiatric Evaluations and Reports from the Belize Central Prison be provided on the conduct of the convicted men whilst on remand and be produced for the hearing. The convicted men were also informed that they had the right to call character witnesses to testify on their behalf at the hearing.

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<sup>1</sup> Criminal Code CAP 101 Substantive Laws of Belize (Revised Edition) 2020 section 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.

<sup>2</sup> Criminal Code CAP 101 Substantive Laws of Belize (Revised Edition) 2020 section 117: Every person who intentionally causes the death of another person by any unlawful harm is guilty of murder, unless his crime is reduced to manslaughter by reason of such extreme provocation, or other matter of partial excuse as in the next following sections mentioned.

<sup>3</sup> CAP 96 IPA Substantive Laws of Belize (Revised Edition) 2020 section 65A.-(1) Notwithstanding anything contained in this Act, the Criminal Code, the Juries Act or any other law or rule of practice to the contrary, every person who is committed for trial or indicted, either alone or jointly with others, for any one or more of the offences set out in sub-section (2) shall be tried before a judge of the court sitting alone without a jury, including the preliminary issue (if raised) of fitness to plead or to stand trial for such offences. (2) The offences referred to in sub-section (1) are– (a) Murder, (b) Attempt to murder, (c) Abetment of Murder, and (d) Conspiracy to commit murder. (3) In an indictment charging an accused person with any of the offences specified in sub-section (2), no other count for an offence not referred to in the said sub-section shall be added.

## THE FACTS

- [3] On the night of this fateful incident the convicted men and the Deceased were at the Deceased's premises having drinks. Present at this event was the witness, Reuben Monzon, who stated that when he reached home the two Accused were at home drinking with the Deceased right in front of the seesaw at the school. He knows the school as Selena School. He said they offered him a drink which he took and then he went to sleep. He had the drink with them and remained with them for about five minutes before he went to bed. Later that night, he came outside to urinate and saw the two convicted men chopping Mr. Edgar, the Deceased, by the see saw at the school. He said they used machetes and after he saw that they then attacked him with machetes. The first chop he got was under his nose after which he went running. He said they followed him and gave him a chop on his back and head, so he ran back to the school where there is a little house. He does not remember much of what happened after that. He said the Deceased was just there talking with them before they started chopping him on his head.
- [4] Dr. Mario Estrada Bran testified that he performed a postmortem examination on the body of the Deceased on the 4 April 2016, at the Karl Heusner Memorial Hospital autopsy room. In his opinion, the cause of death of the Deceased was thromboembolism ascribed to multiple chop wounds. He opined that heavy force was used to cause the injury to the nape of the neck and a sharp machete type of instrument caused the injuries. The fractures to the temporal bone were caused by heavy force of the use of a machete. The injuries to the upper limbs were characterised as defensive wounds.

## THE HEARING

### *MARLON PADILLA*

- [5] The convicted man, Marlon Padilla, addressed the court at the hearing. He described himself as a humble and hard-working person. He also offered condolences to the family of the Deceased for the loss of their loved one. He called no character witnesses to testify on his behalf.
- [6] The Social Inquiry Report for this convicted man discloses that he is the father of four children whose ages range from ten years to four months. He also has six siblings. He was employed at a farm at Spanish Lookout from the time he left school at around the age of 17. This report further disclosed that the convicted man has evinced an interest in the Rehabilitation Centre at the prison and focused on areas such as anger management.
- [7] The convicted man's siblings generally describe him as a commendable individual who consistently aimed to do what is right. One sibling, however, portrayed him as a person who initially abstained from alcohol but eventually succumbed to its influence and that he desperately fought to overcome this challenge. However, he was considered calm and good hearted when sober. I shall return to other aspects of this report later in this judgment.
- [8] This convicted man has one previous conviction for possession of cannabis for which he was convicted on 5 April 2015, and a non-custodial penalty was imposed. His report from the Belize Central Prison does not disclose any violations of prison rules whilst he was an inmate on remand. His psychiatric evaluation report states that he was not found to have any active signs and symptoms of psychosis at the time of his examination. The report goes on to state that the

convicted man knows that he was convicted of a crime and the reasons for his conviction. It further states that he is aware of the possible penalties and why the court could sentence him to an appropriate punishment.

*GUILLERMO DUARTE*

- [9] At his sentencing hearing, this convicted man did not address the court nor did he call any character witnesses to testify on his behalf.
- [10] His Social Inquiry Report discloses that he is one of six children of his parents and that his father is now deceased. He has a wife and is the father of three children. Both his mother and wife consider him to be a good father and provider. He drinks occasionally but is not considered to be an alcoholic. His former employer stated that he has no complaint about the convicted man and found him to be responsible and trustworthy.
- [11] The Social Inquiry Report concludes by stating that the convicted man has not participated in any of the rehabilitation programs at the Kolbe Foundation.
- [12] The report from the Belize Central Prison states that the convicted man's records do not indicate if he violated any prison rules or participated in any rehabilitative programs whilst an inmate on remand at the prison. His report from the criminal records office discloses that he has not been convicted for any previous criminal offence.
- [13] This convicted man's psychiatric report discloses that at the time of his examination no active signs and symptoms of psychosis were found. The report further concluded that the convicted man is aware that he has been convicted for a crime and knows the reasons for his conviction. It further states that the convicted

man knows the possible penalties and why the court could sentence him to an appropriate punishment.

### **ADDRESSES**

[14] Mr. Saldivar, for the convicted Marlon Padilla submitted that he has one previous conviction for possession of controlled drugs whilst the convicted man, Guillermo Duarte, has a hitherto clean criminal record and could be considered to be a person of good character prior to his conviction.

[15] Defence Counsel went on to address the court on the classical principles of sentencing, to *wit*, retribution, deterrence, prevention, and rehabilitation. He reminded the court of the interest shown by the convicted man Marlon Padilla in rehabilitation and his address to the court.

[16] Ms. Mohammed for the Crown submitted that the Crown was unable to acquire a victim impact report, and that the Deceased was 63 years old at the time of his tragic death whilst the convicted man was, 22 years old and 24 years old, respectively. Crown Counsel further contended that, there was no remorse expressed or exhibited by the convicted man at any time during the hearing.

### **THE LAW**

[17] I find the following to be the aggravating and mitigating factors arising from the facts and circumstances of this case herein.

#### **AGGRAVATING FACTORS**

1. The seriousness of the offence.
2. The extreme degree of force and brutality used to inflict the fatal injuries to the body of the Deceased.

3. The significant difference in the ages of the convicted men and the Deceased, the Deceased was 63 years old whilst the convicted men were in their early twenties.
4. The offence was unprovoked.
5. This offence was planned and premeditated.
6. The prevalence of the offence of homicide within the jurisdiction.
7. The absence of remorse by the convicted man.

#### **MITIGATING FACTORS**

1. The previous clean criminal record of the second convicted man.
2. The previous conviction of the first convicted man is for a non-violent offence.
3. The favourable remarks made of the character of the convicted man in their Social Inquiry Reports.

[18] I will proceed to consider and apply the classical principles of sentencing to the facts and circumstances surrounding the commission of this offence.

[19] The principles of sentencing namely, Retribution, Deterrence, Prevention, and Rehabilitation were laid down by Lawson LJ in the celebrated case of ***The Queen v James Henry Sergeant***<sup>4</sup> 1974 60 Cr. App. R. 74., in that decision Lawson LJ stated that,

***'any judge who comes to sentence ought always to have those four classical principles in mind and to apply them to the facts of the***

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<sup>4</sup> ***The Queen v James Henry Sergeant***

***case to see which of them has the greatest importance in the case with which he is dealing’.***

### **RETRIBUTION**

[20] The nature and extent of the injuries inflicted to the body of the Deceased as disclosed in the unchallenged evidence of Dr. Estrada Bran are indicative of the brutal and inhumane nature of the attack carried out to the body of the Deceased by the convicted man. There is no evidence that the Deceased was at any time armed with an instrument prior to or during the time of the attack on him. Indeed, the doctor found that some of the injuries to the upper limbs of the Deceased were defensive injuries.

[21] Lawson LJ further opined at page 77 of the decision aforesaid 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”.*

[22] The excessive commission of the offence of homicide either by the use of firearms or as in this case machetes must be met by the imposition of appropriate sentences by the courts.

### **DETERRENCE**

[23] 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 particular criminal relapsing into recidivist behaviour.

[24] The convicted men are not known to be persons usually involved in acts of violence; hence, it is unlikely that they would reoffend in like manner upon their release from prison. However, this principle is general in nature as well. Thus,



having regard to the prevalence of the offence of homicide the court should impose an appropriate sentence to deter those inclined to offend in like manner to desist from so doing.

### **PREVENTION**

[25] In applying this principle in the decision of the C/A of the ECSC Sir Dennis Byron opined thus,

*“... .. 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”.*

[26] I find that having considered the background of the convicted man as disclosed in their Social Inquiry Reports and their previous criminal records that it seems unlikely that they would be inclined to reoffend in like manner. I therefore find that, the sound of the shutting of the iron cell door would have a deterrent effect on them.

[27] Hence, notwithstanding the seriousness of the offence and the degree of brutality exhibited during its commission I do not find that the imposition of an indeterminate sentence or an extremely lengthy determinate sentence would be appropriate herein.

## REHABILITATION

- [28] The objective behind the application of this principle is to engage the prisoner in activities that would assist him with reintegration into society after prison. The fact that the First Accused has evinced an interest in his rehabilitation is encouraging. However, with respect to the Second Accused the court must make the appropriate orders for the rehabilitation of both Accused to ensure their reintegration to the society as reformed persons.

## SENTENCE

- [29] Section 106 of the ***Criminal Code*** CAP 101 of the Revised Laws of Belize provides thus on the question of sentencing a person convicted of murder:

***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.***

***(2) A person who commits murder who was, at the time of the commission of the offence, under the age of eighteen years, shall be sentenced to detention at the court's pleasure.***

***(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 subsection (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; Poison explained. Murder. 22 of 2017. [ ] Criminal Code [CAP. 101 85  
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**(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”.**

[30] In the decision of the ECSC in *The Queen v. Harry Wilson* Rawlings JA (as he then was) stated, the manner in which the court should approach the question of sentencing in cases where the death penalty is considered. Though this case does not fall into the category of a death penalty decision, I find that the principles considered by Rawlings JA are equally applicable to this case of homicide to wit:

[31] Rawlins JA stated thus:

*“That it is a mandatory requirement in murder cases for a judge to take into account the personal and individual circumstances of the convicted person. The judge must also take into account the nature and gravity of the offence, the character and record of the convicted person, the factors that might have influenced the conduct that caused the murder, the design and execution of the offence, and the possibility of reform and social re-adaptation of the convicted person”.*

Rawlins, JA went on to state:

*“In summary, the sentencing judge is required to consider fully two fundamental factors. On the one hand, the judge must consider the facts and circumstances that surround the commission of the offence. On the other hand, the judge must consider the character and record of the convicted person. The judge may accord greater importance to the circumstances, which relate to the commission of the offence. However, the relative importance of these two factors may vary according to the overall circumstances of each case”.*

[32] The facts and circumstances surrounding the commission of this offence indicate *inter alia* that this offence was planned and premeditated. The two convicted men still in the prime of their youth proceeded to inflict chop wounds to the Deceased who was a senior citizen, unarmed and defenceless. The fatal injuries were in the opinion of Dr. Estrada Bran inflicted with heavy force.

[33] I have considered the aggravating and mitigating factors aforesaid. The mitigating factors pertaining to the convicted man and not to the offence. Thus, in the circumstances the aggravating factors outweigh the mitigating ones. Indeed, as stated aforesaid there are no mitigating factors relating to the offence.

[34] Accordingly, the convicted men are sentenced to life imprisonment. They shall serve a period of 25 years imprisonment before becoming eligible for parole. They shall undergo appropriate rehabilitative programs to ensure their abstinence from involvement in criminal activities involving the use of excessive violence intending to cause serious harm or loss of life prior to their release.

**Hon. Mr. F M Cumberbatch**

Justice of the High Courts