

**IN THE SENIOUR COURTS OF BELIZE**  
**CENTRAL SESSION – CITY OF BELMOPAN, CAYO DISTRICT**  
**IN THE HIGH COURTS OF JUSTICE**

**INDICTMENT No.** C56 of 2020

**BETWEEN:**

**THE QUEEN**

and

**[1] THELMA WARRIOR**

Defendant

**Appearances:**

Mr. Cecil Ramirez S.C.C., for the Crown

Mr. Oscar Selgado, for the Defendant

**Dates:**

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Hearing dates: 2022: July 19; 22  
September 14; 23  
October 17  
November 15  
December 8  
2023 January 24; 26  
February 1, 9  
March 21  
April 26  
June 13

Judgment date: 2023: July 17  
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## JUDGMENT ON SENTENCING

- [1] **CUMBERBATCH. HON. MR. FRANCIS M.; J:** On the 17 July 2023, found Ms. Thelma Warrior guilty as per indictment by the Director of Public Prosecutions for the offence of murder for that she on the 23 June 2019, at Bullet Tree Falls Village, in the Cayo District, murdered Yolanda Requeña ('the Deceased'). At her arraignment she entered a plea of not guilty, hence, a judge alone trial was held pursuant to the provisions of section 65A of the *Indictable Procedure Act*<sup>1</sup>.
- [2] After the Court dealt with certain preliminary matters the convicted person changed her plea and entered a plea of guilty to the lesser count of manslaughter by virtue of extreme provocation contrary to the provisions of section 119(a) of the *Criminal Code*.<sup>2</sup>

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<sup>1</sup> Section 65A of the Indictable Procedure Act of the Substantive Laws of Belize Revised Edition 2020

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.

<sup>2</sup> Section 119[a] of CAP 101 of the Criminal Code of the Substantive Laws of Belize Revised Edition 2020

119. A person who intentionally causes the death of another person by unlawful harm shall be deemed to be guilty only of manslaughter, and not of murder, if there is such evidence as raises a reasonable doubt as to whether–  
(a) he was deprived of the power of self-control by such extreme provocation given by the other person as is mentioned in section 120 of this Act.

### **The Facts**

- [3] The Deceased was involved in an extra-marital affair with the husband of the convicted person. On the night of the 23 June 2019, she visited him at his farm in the New Area of Bullet Tree Village, Cayo District. Whilst there she and the convicted person had a physical confrontation during which the convicted person inflicted a single stab wound to the chest area of the body of the Deceased with a knife.
- [4] The police were summoned to the scene by the husband of the convicted person. On their arrival they processed the scene and transported the body of the Deceased to the San Ignacio Hospital where she was pronounced dead.
- [5] On the 25 June 2019, Dr. Loyden Ken, an anatomical pathologist performed a post-mortem-examination on the body of the Deceased. His findings were that the cause of death was cardiogenic shock pericardial tamponade caused by a stab wound to the heart due to a single penetrating stab wound to the chest.
- [6] The Court ordered a report be provided from the Belize Central Prison on the conduct of the convicted person whilst on remand at that institution. The Court also fixed a date for a sentencing hearing.

### **The Hearing**

- [7] At the hearing, the Court heard evidence from the children of the convicted person. They both testified that throughout their lives the convicted person has been good to them. They informed the Court that the convicted person is the mother of six children, and they are seeking the Court's leniency in its determination of what would be an appropriate sentence herein. The convicted person also gave sworn

testimony expressing remorse to the family members of the Deceased for what she has done. She also sought the leniency of the Court in the imposition of a sentence.

[8] The report provided by the prison on the convicted person's conduct reveals the following:

i. that she has not violated any prison rules whilst an inmate at that institution.

ii. she has during that time completed participation in some thirteen rehabilitative programs.

[9] Crown Counsel provided for the court's consideration a victim impact statement which informed the court on the devastating effect of the death of the Deceased on her family.

#### **The Law**

[10] I will consider and apply the classical principles of sentencing namely: Retribution, Deterrence, Prevention, and Rehabilitation as enunciated by Lawson LJ in the decision of ***James Henry Sergeant v. The Queen*** [1974] 60 Cr App Rep 74.<sup>3</sup>

[11] In that decision Lawson LJ stated the following:

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

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<sup>3</sup> James Henry Sergeant v. The Queen [1974] 60 Cr App Rep 74

### **Retribution**

[12] The facts disclose that this is a sad and unfortunate homicide. Adult persons by virtue of their age and life experiences ought to realise that certain actions are more than likely to have disastrous consequences, hence, they should rigidly avoid same.

[13] Whilst the Court understands the grief and anger suffered by the convicted person upon learning of her husband's paramour, her reaction thereto which resulted in a loss of life is something to which the Court should show its abhorrence by the sentence it imposes.

### **Deterrence**

[14] Homicide offences have been on the rise within this jurisdiction in recent times. Thus, the Court must impose a suitable sentence to deter not only the offender herein but also the public at large from offending in like manner.

### **Prevention**

[15] This principle has been defined as being applicable for repeat offenders. Indeed, in the decision of ***Desmond Baptiste et al v The Queen***<sup>4</sup> Sir Dennis Byron CJ 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*

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<sup>4</sup> HC Crim App No. 8 of 2003 Desmond Baptiste et al v. The Queen

*to keep them away from society. Such sentences are more suitable for repeat offenders”.*

[16] It is common ground that the convicted person is a first offender, hence, this principle would not be applicable to her.

### **Rehabilitation**

[17] The importance of this principle is paramount. The convicted person must be suitably rehabilitated to re-enter society upon her release from prison well prepared to be a law-abiding citizen. It is encouraging to note that the convicted person appears to have spared no pains at engaging herself in all relevant rehabilitation programs available at the prison.

[18] Moreover, of equally great importance is the fact that her family members have not deserted her and from all appearances will provide all necessary assistance to ensure that she does not reoffend in like manner or at all.

### **Aggravating and Mitigating Factors**

[19] After having considered the facts and circumstances herein I find the following to be the aggravating and mitigating factors.

#### **Aggravating Factors**

1. The seriousness of the offence of homicide.
2. The use of a weapon, to wit a knife during the confrontation with the Deceased.
3. The effect of the death of the Deceased person on her family members as stated in the victim impact statement.

### **Mitigating Factors**

1. The guilty plea entered by the convicted person, though not at the first available opportunity, avoided the relatives of the Deceased from experiencing the trauma of a fully contested trial.
2. The remorse expressed by the convicted person.
3. The convicted person is a first offender.
4. The steps taken by the convicted person to rehabilitate herself whilst on remand.

[20] I have carried out a balancing act with the aggravating and mitigating factors and find that the aggravating factors outweigh the mitigating ones.

### **Sentence**

[21] In Blackstone's Criminal Practice 2009 at Appendix 8 Sentencing Guidelines Council guidelines under the heading **Manslaughter by Reason Of Provocation** it is suggested that the following factors are to be taken into consideration by the sentencing Court. I will consider and apply the following principles therefrom:

1. *"That sentences for public protection must be considered in all cases of manslaughter;*
2. *The presence of any of the generally aggravating factors identified in the Council's **Guideline Overarching Principles; seriousness** or any of the additional factors identified in this guideline will indicate a sentence above the normal starting point;*
3. *This offence will not be an initial charge but will arise following an initial charge of murder. The council Guideline **Reduction in***

**sentence for a guilty plea** will need to be applied with this in mind.

*In particular, consideration will need to be given to the time at which it was indicated that the Defendant will plead guilty by reason of provocation;*

4. *An assessment of the degree of provocation as shown by its nature and duration is the critical factor in the sentencing decision;*
5. *The intensity, extent, and nature of the loss of control must be assessed in the context of the provocation that preceded it;*
6. *Although there will usually be less culpability when the retaliation to provocation is sudden, it is not always the case that greater culpability will be found where there has been a significant lapse in time between the provocation and killing;*
7. *The use of a weapon should not necessarily move a case into another sentencing bracket”.<sup>5</sup>*

[22] These guidelines are equally applicable in cases of the guilty plea herein as well as in findings of guilt by a jury. In A. G's reference Nos. 74, 95, and 118 of 2002 in the English C/A decision of **Suratan et al. v The Queen** the Court set out assumptions which a sentencer must make in favour of an offender found guilty of manslaughter by virtue of provocation. These are:

18. *“First, he must assume that the offender had at the time of the killing, lost his self-control. Mere loss of temper or jealous rage is not sufficient.*

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<sup>5</sup> Blackstone's Criminal Practice 2009 at Appendix 8 Sentencing Guidelines Council



19. *Second, he must assume that the offender was caused to lose his self-control by things said or done, normally and as in the cases with which we are concerned, by the person whom he has killed.*
20. *Third, he must assume that the Defendant's loss of control was reasonable in all the circumstances, even bearing in mind that people are expected to exercise reasonable control over their emotions, and that as society advances it ought to call for a higher measure of self-control.*
21. *Fourth, he must assume that the circumstances were such as to make the loss of self-control sufficiently excusable to reduce the gravity of the Defendant's offence from murder to manslaughter".<sup>6</sup>*

[23] The facts herein disclose that the husband of the convicted person was entertaining his paramour at his farm, a place which could be considered to be part of the matrimonial home. Whilst they were there the convicted person arrived and met her and a confrontation took place. The knife used to inflict the fatal injury was a kitchen knife and only one stab wound was inflicted on the Deceased by the convicted person.

[24] I have no doubt that the presence of the Deceased at the matrimonial home was indeed an act of extreme provocation. At that time, the parties were married and lived and cohabited for a period in excess of thirty years.

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<sup>6</sup> Attorney General's reference Nos. 74, 95, and 118 of 2002 Court of App. in Suratan et al v. The Queen

[25] In *Ian Trevor Bancroft v The Queen* [1981] 3 Cr. App. R. (s) 119, a decision of the English Court of Appeal Shaw LJ stated thus:

*“Theoretically and logically, though in a sense remote from human affairs, if there is a successful defence of provocation, and it is recognized by the jury that the Accused whom they are trying was not in possession of his self-control because of conduct of his victim, one could argue that the sentence should be virtually a nominal one. However, it has to be recognized in human affairs, notwithstanding that a man’s reason might be unseated on the basis that the reasonable man would have found himself out of control, that there is still in every human being a residual capacity for self-control, which the exigencies of a given situation may call for. That must be the justification for passing a sentence of imprisonment, to recognize that there is still some degree of culpability, notwithstanding that the jury has found provocation”.*<sup>7</sup>

[26] The offence of manslaughter carries a maximum sentence of life imprisonment. However, in the decision of the *Clifford Hyde v. Director of Public Prosecutions*<sup>8</sup> Sosa JA opined thus, on the approach to be taken by the sentencing Court on an Accused found guilty of this offence to wit:

*“That for the standard street fight type of a manslaughter case the usual range of sentence is between 15 to 20 years’ imprisonment. The fact*

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<sup>7</sup> *Ian Trevor Bancroft v The Queen* [1981] 3 Cr. App. R. (s) 119

<sup>8</sup> *Clifford Hyde v Director of Public Prosecutions*, Crim App No. 2 of 2006

*that there is a usual range of sentence underscores the fundamental truth that the starting point in imposing a sentence is not usually the maximum penalty. As a matter of reasoning the maximum penalty must be considered as appropriate for only the worst cases. The features of this case make clear that it does not fall into the category of worst cases. A significant difference exists between this case of unintentional homicide and homicide cases “on the borderline of murder”, in which this Court has upheld sentences of 25 years’ imprisonment”.*

[27] It is common ground that the convicted person is a first offender and a mother of six children. The aggravating factors outweigh the mitigating ones. However, the Court must consider that only one stab wound was inflicted to the body of the Deceased. Though a knife was used by the convicted person during the confrontation no evidence has been disclosed to the effect that the convicted person deliberately armed herself with a knife to harm the Deceased. The Court must consider that a kitchen knife is an instrument usually available in a home. The Court also considers the conduct of the convicted person whilst an inmate at the prison and her strenuous efforts at rehabilitating herself whilst on remand. Moreover, I am satisfied that the convicted person would benefit from the strong family support system as was evidenced from the testimony of her children during the sentencing hearing.

[28] I do not consider this offence to be at the higher end of the scale as enunciated by Sosa JA (as he then was) in the **Clifford Hyde** decision aforesaid. This is an unintentional homicide and one which cannot be categorised as being the worst of the worst type of case.

[29] Accordingly, having considered the facts and circumstances and the principles of law and guidelines on sentencing aforesaid I find that a starting point of 12 years' imprisonment would be appropriate. Though the guilty plea was not entered at the first available opportunity this was done at the conclusion of two case management hearings prior to the commencement of the main trial. Thus, in the circumstances, I will deduct four years for the guilty plea. I will deduct another two years for the delay in bringing this matter to trial and a stage of finality.

[30] Thus in the circumstances, the convicted person is sentenced to six years' imprisonment which will **take effect from the 24 June 2019**.

**Hon. Mr. F M Cumberbatch**

Justice of the High Courts