

IN THE SENIOR COURTS OF BELIZE

CENTRAL SESSION-BELIZE DISTRICT

IN THE HIGH COURT OF JUSTICE

INDICTMENT NO: C 35/2024

BETWEEN

THE KING

And

KRISTON FRANCIS

Accused

Appearances:

Ms. Shanell Fernandez Crown Counsel for the Crown.
Mr. Arthur Saldivar Attorney for the Accused.

2024: September 20th

JUDGMENT

MURDER- SENTENCING

[1] **SYLVESTER J:** Kriston Francis (hereinafter referred to as “the accused”) was born on the 29th day of October 2004, eighteen (18) years old at the time of the offence and was indicted for the offence of murder, contrary to section 117 read along with section 106 (1) of the **Criminal Code**¹, (hereinafter “the Code”) arising out of the shooting death of Adrian Albert Pook (“the deceased”) on 30th day of April 2023.

[2] On the 18th day of June 2024, at the first available opportunity and pursuant to the recently enacted, Plea Discussion and Plea Agreement Act No. 12 of 2024 (hereinafter ‘the Act’) the prosecution and defence requested to be engaged in discussions. Thereafter, the court was

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

notified that the accused would plead guilty to the offence charged, and the requisite form four (4) pursuant to the Act, would be provided to the court. The accused on said date pleaded guilty to the offence of Murder, with the understanding that he did so voluntarily, and devoid of any inducement or promise.

Law and Analysis

[3] Pursuant to the Belize Criminal Code Chapter 101, section 106, therein provides the maximum penalty for the offence of murder as follows:

“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. ...

(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.”

[4] This court in sentencing for murder, is cognizant that it can impose a life sentence with a minimum term for release on parole or a fixed term sentence. The Caribbean Court of Justice in the matter of **August et al v R**² examined section 106 mentioned above, and posited that any life sentence post a conviction for murder is discretionary and not mandatory and the section allows for the imposition of a minimum term to be imposed prior to being eligible for release on parole. President of the CCJ Byron PCCJ and Rajnauth-Lee JCCJ opined as follows:

“(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) Whereas 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).”

[5] The Court of Appeal of Belize in **Michael Faux et al v R**³ provided some useful learning on the imposition of life imprisonment or fixed term sentences which is in the discretionary domain

² 2018] 3 LRC 552.

of the sentencer after taking into consideration the varying individualized circumstances, Hafiz-Bertram JA opined as follows:

“(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 individualizing a sentence, which warrants a lesser sentence.”

Fixing the Starting Point:

[6] In fixing the starting point the court will take into consideration the Barbadian case of **Teerath Persaud v R**⁴ the CCJ provides guidance by examining how the starting point should be determined, by taking into consideration the aggravating and mitigating factors of the offence and excluding the same factors relevant to the offender. The formulation of a just sentence, was elucidated per Anderson JCCJ as follows:

⁴ (2018) 93 WIR 132.

“[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 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.”

[7] The CCJ in **Calvin Ramcharran v DPP**⁵ enunciated that sentencing courts should be wary of importing sentencing outcomes from other jurisdictions as sentencing is contextual, geographic and pragmatic. Further, the task of sentencing should have retributive, public interest, rehabilitative and preventative considerations. Barrow JCCJ explained the position 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

⁵ [2022] CCJ 4

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).”

Agreed Statement of Facts

[8] Both the prosecution and the defence submitted to the court the undermentioned agreed statement of facts as follows:

i. On Sunday April 30, 2023, at approximately 8:45 a.m., Adrian Pook was at his residence in Belize City assisting his father with yard work. Suddenly, a male intruder, namely Kriston Francis D.O.B. 29th May, 2004, entered the family's premises. Adrian Pook shouted at Kriston Francis and instructed him to leave, Mr. Francis complied.

ii. Adrian Pook then left home and made his way to the property adjacent to his family home, a property he was in the process of compacting. Soon after, Kriston Francis returned to the family's premises, this time armed with an F.E.G. brand, model P9M, caliber, semi-automatic pistol with an extended magazine. The mother of Adrian Pook began to shout, alerting the other family members of the intruder's presence. At this time Adrian Pook was heading back home and peered over the fence. This is when Kriston Francis turned his gun toward Adrian Pook and fired one gunshot.

iii. Adrian Pook sustained a single gunshot wound to his abdomen. He was rushed to the Karl Heusner Memorial Hospital and passed away at 9:57 a.m. while receiving treatment. Per the postmortem examination report of Dr. Loyden Ken, the cause of death was ruled as hypovolemic shock due to internal exsanguination due to a single perforating gunshot wound to the abdominal region.

iv. Kriston Francis was charged with the offence of Murder and indicted for the same on the 2nd of April 2024 by way of indictment C35/2024. On the 18th of June, 2024, he pleaded guilty to the offence

v. On Wednesday 18th September 2024, the court invited both the Crown and the Defence to address the injuries received by the accused on the night of the incident which was documented by Officer Jose Yam in his statement dated 1st May, 2023 as follows:

“On Sunday 30th day of April 2023, about 8:45 am, acting upon information received of someone being shot on Ordonez Street, Belize City, Belize I along with other C.I.B. Precinct 2 personnel proceeded to the said location where upon arrival I met a dark skin male person wearing a black in color three quarter pants, a sleeveless under shirt who was at the time barefooted and who was already at the back of the Special Patrol Unit mobile. I also observed that the said male person had cut wounds all over his body and was covered with blood. I along with other Special Patrol Unit personnel escorted the male person to the Karl Heusner Memorial Hospital. Upon arrival at the Karl Heusner Memorial Hospital, I issued a pair of Medico Legal Form to the said male person his name was learnt to be Criston (sic) Francis: 18 years, date of birth: 29th May 2004 Belizean unemployed from #6789 Aloe Vera Street, Belize City, Belize. I then put the date, 30th April 2023; Time: 10:21; To M.O: KMHM; “Name: Criston (sic) Francis; injuries observed; apparent cut wound above left eye (1) apparent stab wound to the right chest area (1) apparent stab wound to the right arm (1) apparent cut wound to the forehead (1) apparent cut wound to the left ring finger (1) apparent stab wound to the left lower back. I then placed my signature and hand it over to the Doctor who was attending Cristo (sic) Francis.”

Both the crown and defence agreed the injuries were sustained on the day of the incident but disagreed when the accused received the injuries. The Crown asserted the injuries were caused after the accused shot the deceased and the defence asserted it occurred before. The timing of the injuries is not material in the circumstances, since the accused is not alleging any viable defence by virtue of his guilty plea. However, what the court accepts is that the accused received injuries on the day in question, which was also agreed by both the crown and defence.

Constructing the Sentence- Starting Point

[9] The court finds helpful guidance from the Court of Appeal decision of **Aguillera et al v The State**⁶ in listing the aggravating and mitigating factors in the context of the offence. The Court begins by considering the aggravating features of the offending. They are as follows:

- i. The offence involved the use of a firearm, and the prevalence of gun crimes in Belize is alarming and is adversely affecting the livelihood and psyche of the Belizean people.
- ii. The offence was committed in full view of the deceased family, and in broad daylight.
- iii. The deceased was at this home unarmed.
- iv. This is one of the most serious and prevalent offences in Belize. The Victim Impact Statement of the deceased's father Regino Pook who spoke on behalf of the family of the deceased and the devastating effect the accused's actions have had on the family, that is still reeling with grief, pain, and sorrow.

[10] The Court found no mitigating features of the offending.

[11] The Privy Council has adumbrated in two decisions; one from Belize, the authority of **White v R**⁷ and **R v. Trimmingham**⁸, from St. Vincent, that the death penalty is only appropriate in cases that were, " 'the worst of the worst' or 'the rarest of the rare'; and that there must be no reasonable prospect of reform of the offender. Further, that if the object of punishment could

⁶ 89 WIR 451 at para 19.

⁷ 77 WIR 165 at para 12-14.

⁸ [2009] UKPC 25

not be achieved by any means other than the ultimate sentence of death, only then it should be imposed.”

Starting Point

- [12] The Court considers as an appropriate starting point for the prisoner, a minimum term of thirty (30) years imprisonment.
- [13] The factual matrix is similar to the case of *Faux*, where there was shooting in public and the Court of Appeal held that the appropriate fixed sentence range was between 25-35 years, with a starting point of 29 years.
- [14] The Court will now individualize the sentence by considering the aggravating and mitigating factors in relation to the offender.
- [15] However, in relation to the aggravating factors relevant to the offender, the Court found one factor as follows:
- i. The accused has one conviction for the offence of, ‘Kept Ammunition Without a Gun Licence’. That on the 13th day of December 2021, when the accused was seventeen (17) years of age, the Social Inquiry Report (SIR) states, the accused committed the offence which said matter was concluded on the 27th October, 2022.
 - ii. The ‘court hearing event report/ transcript’ states, the Defendant was sentenced and placed on probation for one (1) year. During this time the accused was ordered as follows:
 - a) Not to be convicted of any offence.
 - b) Remain gainfully employed.
 - c) Attend skills training program.
 - d) Sign-in bi-weekly and be on curfew for the first six (6) months from 6pm to 6 am.

iii. On the 30th day of April 2023, the accused was charged for the offence wherein he now stands to be sentenced.

[16] This would cause the Court to increase the minimum term by two (2) years, from thirty (30) to thirty-two years (32) imprisonment.

[17] In relation to the mitigating factors relevant to the offender, they are as follows:

- i. The accused was eighteen (18) years at the time of the offence.
- ii. The accused pleaded guilty at an early stage.
- iii. The accused's genuine expression of remorse.
- iv. The accused's rehabilitation prospects.
- v. The accused cooperated with the police throughout the conduct of the investigation.

[18] This court is guided by the factors it must consider as enshrined in the CCJ authority of **Renaldo Alleyne V Queen**⁹ namely, rehabilitation, retribution, deterrence and the public interest, which will all be taken into consideration in this exercise. The accused has accepted responsibility and therefore his rehabilitation must be considered in this exercise. In relation to deterrence, retribution and the public interest this court must show its abhorrence for such prevalent crimes, so others who may be so inclined, should be dissuaded therefrom.

[19] The above principles were also alluded to in the cases of **R v Sargeant** 60 Cr. App. R. 74 at 77 and **Desmond Baptiste v R. St. Vincent Criminal Appeal No.8 of 2003**. In **Desmond Baptiste v R**, Byron CJ adopted the principles outlined by Lawton J in **R v Sargeant** regarding the purpose of sentencing. He expressed that in the absence of legislative guidance as to how to appropriately fix a sentence for a particular offence, it is necessary that certain principles be considered in the exercise.

[20] This court is mindful that full regard would be placed on the principles outlined above.

⁹ [2019] CCJ 6 par. 40-68

[21] The principles in **Edwin Farfan v The State Cr App No. 34 of 1980 (unreported) 7 May 1984, COA, T & T**, is adopted by this court in that one object of sentencing may be predominant while in other cases, other objects may prevail. Each case must ultimately turn and depend upon its own set of circumstances and various factors must be considered by the court in deciding which principle of sentencing should predominate. The court is of the view that rehabilitation is predominant in this case.

[22] One of the factors this court will consider is the suitability of the sentence to the offender. In **R v Coulston [1997] 2 VR 446 (CA)** Gleeson CJ opined that “the punishment is supposed to fit not only the crime, but also the criminal: individual justice”.

[23] This court is satisfied that one of the sentencing principles in the case at bar is the rehabilitation vis a vis the accused.

Social Inquiry Report (SIR):

[24] The Social Inquiry Report states the accused has expressed a strong desire to return to his studies and his plans to attend ITVET to study computer repairs. He has avoided confrontations while on remand at the prison, and he has participated in the Remand Rehabilitation Center (RRC) programs which include, Authentic Manhood, Life Skills, Gang Anonymous and Journey to Freedom Programs. He has learnt a lot from the programs.

[25] The SIR report further states as follows:

‘Kriston stated that he has benefitted from the prison rehabilitation programs, stating that they have changed him and taught him things he never knew before. He has gained new skills, which have contributed to his personal growth during his time in prison’.

Prison Report:

- [26] The prison report from Kolbe Foundation, Belize Central Prison signed by Mr. Jarrette Twist states that, inmate # 21381 Kriston Francis has been in prison since 10th May 2023 when he was admitted on remand for the crime of murder (MBZR23001297). His records indicate that he has not violated any prison rules.
- [27] The records of the accused also indicate that he completed a rehabilitative program and was awarded a Certificate of Completion in, 'Gang Education, Drug & Alcohol Preventative Treatment Therapy and Cognitive Development Treatment Programs', from November 2023 to May 2024.

Psychiatric Report:

- [28] The Psychiatric Report, albeit sparse in its content, stated the accused is competent to stand trial and understands that he was convicted of a crime, the possible penalties and is 'able for the proceeding of sentencing of the High Court'.
- [29] By virtue, of the mitigating factors the Court will therefore reduce the sentence by five (5) years from thirty-two (32) to twenty-seven (27) years.

Discount for Guilty Plea:

- [30] Upon a guilty plea the accused will be awarded one third discount for the following reasons, he pleaded at the first available opportunity, he utilized the plea discussion legislation without hesitation, the court's time to accommodate for a lengthy trial was averted and therefore the accused is entitled to one third (1/3) discount. The sentence will therefore be reduced to eighteen (18) years.
- [31] Pursuant to **R v DaCosta Hall**¹⁰ the Court would order the time spent on remand to be deducted from the final sentence imposed by this court.

¹⁰ [2011] CCJ 6

Order

[32] The court sentences the prisoner to a term of eighteen (18) years imprisonment, less the time spent on remand.

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