

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

Indictment No. C75 of 2023

Between:

The King

and

[1] Augustine Gonzalez

Defendant

Appearances:

Ms. Natasha Mohamed, counsel for the King.

Mr. John Nembhard, counsel for the Defendant.

Dates:

Trial Dates: 2024: February 5
 March 14
 April 11
 May 28,
 June 28
 July 25, 30
 September 20, 30
Judgment Date: 2024: April 26 Plead Guilty
Sentencing Date: 2024: October 9

DECISION ON SENTENCING

[1] **MR. FRANCIS M CUMBERBATCH; J:** The Accused was indicted by the Director of Public Prosecutions ('the DPP') on one count of murder contrary to sections

117¹ and 106(1)² of the **Criminal Code** Chapter 101 of the Substantive Laws of Belize (Revised Edition) 2020 for that he on the 25 of June 2022, at San Ignacio Town in the Cayo district of the High Court murdered Ima Landero ('the Deceased').

[2] The Accused was also indicted on the second count for the offence of manslaughter contrary to section 116(1)³ read along with section 108(1)(b)⁴ and section 119⁵ of the **Criminal Code** Chapter 101 of the Substantive Laws of Belize

¹ CAP 101 of the 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.

² CAP 101 of the 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.

³ CAP101 of the Substantive laws of Belize revised Edition 2020 section:

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

⁴ CAP 101 of the Substantive Laws of Belize Revised Edition 2020 section:

108.-(1)(b) Every person who commits manslaughter—
(b) by any other cause shall be liable to imprisonment for life.

⁵ CAP101 of the Substantive Laws of Belize Revised Edition 2020 section:

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; or
- (b) he was justified in causing some harm to the other person, and that in causing harm in excess of the harm which he was justified in causing he acted from such terror of immediate death or grievous harm as in fact deprived him, for the time being, of the power of self-control; or
- (c) in causing the death he acted in the belief, in good faith and on reasonable grounds, that he was under a legal duty to cause the death or to do the act which he did; or
- (d) in the case of a woman who causes the death of her child recently born, she (while not insane) was deprived of the power of self-control by a disease or disorder of mind produced by childbearing.

(Revised Edition) 2020 for that he on the 25 of June 2022, at San Ignacio Town, in the Cayo District in the Central District of the High Court caused the death of Ima Landero by unlawful harm, to wit, stabbing her with a knife.

- [3] At his arraignment, the convicted man entered a plea of not guilty to the first count of murder and guilty to the second count of manslaughter aforesaid. The court ordered a Social Inquiry Report be produced and a report from the Central Prison be submitted on his conduct whilst a remand prisoner at that institution. The court also set a date for his sentencing hearing.

The Facts

- [4] The convicted man and the Deceased lived and cohabited in a common law union and were the parents of two minor children at the time of the commission of this offence. At around 12:10 a.m., on the morning of the 25 June 2022, the convicted man observed the Deceased arrive at the Legends Night Club and she was in the company of four men. Her presence at this night club angered him because he had seen her earlier that night at the Tu Gusto Bar where she was employed and she told him she would go home after work. He then observed her drink three beers then started dancing with two males. He became jealous and lost his mind. He went home and armed himself with two knives and returned to the said Legends Night Club at which time he saw the Deceased sitting on the leg of a man whilst having a drink. This made him even more jealous and angry.
- [5] When the Deceased left the company of her male companions and went to the bathroom the convicted man followed her. He entered the stall she was in and proceeded to stab her multiple times causing her death. Dr. Lloyd Ken, the anatomical pathologist who conducted a postmortem examination on the body of

the Deceased observed 39 stab wounds 35 of which were defensive wounds. He opined that the cause of the death of the Deceased was external and internal exsanguination as a consequence of multiple stab wounds.

The Hearing

- [6] At the hearing, the convicted man addressed the court and sought forgiveness for what he has done. He also apologised to the family of the Deceased and to his family and sought the forgiveness of his children and Almighty God. He said he was not that kind of person, and he doesn't know what happened to him.
- [7] The court also heard testimony from the sister of the convicted man who said she lived with him at one time. He took care of his children and was involved in community projects for the protection of members of the community at Cayo. She described him as a good brother, a good villager, and a good friend.
- [8] The convicted man's cousin Elida Gonzalez also testified on his behalf. She said they grew up together and she considers him to be humble and helpful to people in the village and asked the court to be lenient with him. His mother testified and asked the court for leniency with her son. She too described him as being a helpful person and grew up as an obedient child.

The Social Inquiry Report

- [9] This report contains views from family members who speak of the convicted man in positive terms. One family member, however, spoke of frequent disagreements between the convicted man and the Deceased which were worse when they were drinking. That family member expressed surprise when learning of the incident as the convicted man was always advised never to hit a woman. The family member stated that the convicted man needed to serve time and atone for his actions.

[10] The report discloses that the convicted man has taken responsibility for his actions and has sought to improve himself. He is enrolled in the Remand Rehabilitation Centre Program which involves introducing inmates to ways of coping with issues related to drug and alcohol addiction, anger management, and other harmful habits.

Prison Report

[11] The report from the Belize Central Prison discloses that the convicted man has been an inmate at that institution since the 28 June 2022, and his records show that he has never violated any prison rules. He has no previous imprisonment and has completed the rehabilitative programs as stated in the Social Inquiry Report aforesaid.

Victim Impact Statement

[12] Crown Counsel submitted to the court a victim impact statement sworn to by the sister of the Deceased, one Amada Landero. She states that the Deceased had four children with the convicted man, two of whom are adults and the other two are minors aged 11 and 12 years old. Since the death of the Deceased, she has been raising the two minor children. Her brother helps her with food, clothing, electricity, water, and other necessities and the minor children are doing very well in their studies.

[13] Amada Landero further states that the Deceased's minor children have embraced her as their mother. She said she cannot understand why the convicted man killed her sister in such a cruel and savage way. He could have easily left her if he did not want to live with her anymore.

Aggravating and Mitigating Factors

[14] I consider the following to be the Aggravating and Mitigating Factors herein.

Aggravating Factors

1. The level of brutality displayed by the convicted man in taking the life of the Deceased.
2. The effect of the death of the Deceased on her minor children.
3. The use of two knives by the convicted man to cause the death of the Deceased.
4. The prevalence of the offence of homicide within this jurisdiction.

Mitigating Factors (Relative to the convicted man)

1. The convicted man's early guilty plea.
2. The convicted man's hitherto clean criminal record.
3. The remorse expressed during the sentencing hearing.
4. The positive steps taken by the convicted man to rehabilitate himself whilst he was a remand inmate at the Belize Central prison.

[15] There are no mitigating factors relating to the commission of the offence. I have balanced and considered the aggravating and mitigating factors and find that the aggravating factors outweigh the mitigating ones.

[16] I will now apply the classical principles of sentencing to the case at bar. They are retribution, deterrence, prevention, and rehabilitation.

[17] They were laid down by Lawson LJ in the celebrated case of ***R v James Henry Sargeant***⁶ 1974 60 Cr. App. R. 74. In that decision Lawson LJ stated that,

⁶The Queen v. James Henry Sargeant 1974 60 Cr. App. R. 74

'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'.

Retribution

[18] There could be no doubt that this was a brutal homicide which in the opinion of the sister of the Deceased in the Victim Impact Statement could have been avoided. In her opinion with which the court concurs all the convicted man had to do was to leave the Deceased if he no longer wished to reside with her. Indeed, the Social Inquiry Report discloses that a family member spoke of the frequent disagreements between the convicted man and the Deceased especially when they were drinking.

[19] This court opines that adults who live and cohabit together and are the parents of minor children must seek to resolve their differences in a mature manner bereft of the loss of life by acts of sheer brutality. Thus, the court must show its abhorrence for this kind of conduct displayed by the convicted man in taking the life of the Deceased in the manner in which it was done by the sentences it imposes.

Deterrence

[20] This principle is intended to dissuade the convicted man from re-offending on his release from prison and to dissuade other members of the public from offending in like manner. It is common ground that the convicted man is a first offender and from all appearances is unlikely to reoffend in like manner upon his release from prison. However, the prevalence of the offence of homicide within this jurisdiction is a highly persuasive factor to convince the court to apply this principle to the

case at bar to dissuade those members of the public who may be contemplating offending in like manner to restrain themselves from so doing.

Prevention

[21] This principle is generally reserved for those chronic repeat offenders who are considered to be a danger to the society and those persons to whom the sound of the shutting of the iron cell door has no effect by way of deterrence.

[22] It is common ground that the convicted man does not fall into either of these two categories aforesaid. Hence, this principle is not applicable to him.

Rehabilitation

[23] The report from the Central Prison of Belize and the Social Inquiry Report discloses the steps taken by the convicted man to rehabilitate himself to ensure that upon his release from prison he does not re-offend in like manner or at all. This is encouraging for his re-entry into the community as a law-abiding citizen.

Sentence

[24] In Blackstone's Criminal Practice 2009 at Appendix 8 Sentencing Guidelines Council Guidelines⁷ 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.

⁷Blackstone Criminal Practice 2009 Appendix 8 Sentencing Guidelines Council Guidelines

2. 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.
3. An assessment of the degree of provocation as shown by its nature and duration is a critical factor in the sentencing decision.
4. The intensity, extent, and nature of the loss of control must be assessed in the context of the provocation that preceded it.
5. 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.
6. The use of a weapon should not necessarily move a case into another sentencing bracket.
7. The use of a weapon may reflect the imbalance in strength between the offender and the victim and how that weapon came to hand is likely to be far more important than the use of the weapon itself.
8. Post offence behavior is relevant to the sentence. It may be an aggravating or mitigating factor. When sentencing the judge should consider the motivation behind the offender's actions".

[25] It is common ground that the commission of this offence was motivated by jealousy on the part of the convicted man. This arose when he observed the Deceased in what he considered to be a compromising position whilst in the

company of males at a time when she told him that she would be at home. His actions thereafter inflicting some 38 stab wounds on the body of the Deceased amounted to a demonstration of sheer brutality in the commission of this crime of passion.

[26] The court is aware that the convicted man and Deceased have on prior occasions had frequent disagreements when under the influence of alcohol. The court has also approved the opinion expressed by the sister of the Deceased that all the convicted man had to do if he found that he could not get along with the Deceased was to leave her. Instead, however, he went home and armed himself with two knives and returned to the Legends Night Club to take the life of the Deceased.

[27] In A. G's reference Nos. 74, 95, and 118 of 2002 in the English C/A decision of ***Regina v Suratani et al***⁸, 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.***

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***

⁸ . G's reference Nos. 74, 95 and 118 of 2002 in the English C/A decision

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.*

22. *Moreover, the sentencing judge must make these assumptions whether the offender has been found not guilty of murder but guilty of manslaughter by reason of provocation by a jury after a contested trial, or the Crown has accepted a plea of not guilty of murder but guilty of manslaughter by reason of provocation”.*

[28] I have considered the *dictum* of the court in *Regina v Suratan* and applied the same to the facts and circumstances of the case at bar. On his own admission, the convicted man did on that fateful night lose his self-control to the extent that he committed the acts of sheer brutality to the body of the Deceased. His hitherto clean criminal record and his willingness to participate in the rehabilitative programs whilst on remand taken together with the fact that the convicted man has not committed any breaches of prison rules whilst an inmate on remand is indicative of the fact that the convicted man experienced a loss of self-control that night for which he is remorseful.

[29] I will now go on to consider the *dictum* of Shaw LJ in the decision of *R v Bancroft*⁹ (1981) 3 CAR (S) 119,120:

⁹ *R v Bancroft*⁹ (1981) 3 CAR (S) 119,120

“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 recognised 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 recognise that there is still some degree of culpability, notwithstanding that the jury have found provocation”.

[30] Having taken into consideration the *dictum* of Shaw LJ in ***R v Bancroft*** I will seek to determine the degree of culpability attributable to the convicted man herein. Quarrels, disagreements, and differences of opinions exist in the best of relationships from time to time. The facts in the Social Inquiry Report disclose that the convicted man and the Deceased did experience such situations especially when under the influence of alcohol. It is against that background that I find that the convicted man had a moderate degree of culpability for the commission of the offence of manslaughter.

[31] In assessing the degree of culpability, I have considered that the convicted man upon observing the Deceased in the company of other male persons went home and armed himself with a pair of knives and returned to the Legend Night Club

where he inflicted some 39 stab wounds of which 34 were defensive wounds to the body of the Deceased. I have also considered that the convicted man did not suffer any injuries.

[32] In **Yong Sheng Zhang v The Queen**¹⁰ Criminal Appeal No. 13 of 2009, Barrow JA opined thus at paragraph 14, to wit:

“The judgment of Sosa JA in Criminal Appeal No. 2 of 2006 D.P.P. v Clifford Hyde at paragraph 12.... establishes that for the standard street fight type of manslaughter case the usual range of sentence is between 15 to 20 years imprisonment. The fact 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 the Court has upheld sentences of 25 years imprisonment...”

[33] Ms. Mohammed for the Crown submitted to the court the Court of Appeal decisions of **DPP v Clifford Hyde**¹¹ Criminal Appeal No.2 of 2006 and **R v Tony Pasos**¹² in support of her contention that the applicable range of sentencing for,

¹⁰Criminal Appeal No. 13 of 2009

¹¹Criminal Appeal No.2 of 2006

¹² Criminal Appeal No.2 of 2006

as a result of excessive stabbing, is between 15 to 25 years imprisonment. In the Clifford Hyde decision, the court opined thus at paragraph 12:

***“... ..As we stated in Anthony Pop v. The Queen Criminal Appeal No. 2 of 2005, at para 15, our approach is that taken by the Court of Appeal in Northern Ireland in McCullough v R [1981] NICA 1, at para 28, where Carswell LCJ, as he then was, said:
‘... it is not profitable to cite [comparable appeal cases] as exact comparisons by which the court should calculate the appropriate sentence in a mechanistic manner. It is proper, however, to look at the trend of reported decisions to establish the approximate range of sentence normally regarded by appellate courts as appropriate for the type of case which is under consideration”.***

- [34] Though brutal and heinous, I hesitate to find that the case at bar has reached the threshold of being among the worst of the worst cases of manslaughter by virtue of provocation. Hence, I find that the appropriate benchmark is 23 years imprisonment.
- [35] It is common ground that shortly after Counsel was assigned to appear for him at his trial the convicted man indicated that he was prepared to enter a plea of guilty to the lesser count of manslaughter. Hence, he will be accorded the full one thirds reduction in sentence for his early guilty plea.
- [36] The court will also make a further reduction for his efforts at rehabilitating himself whilst on remand and his conduct as a model prisoner.

[37] Accordingly, the convicted man shall serve a period of imprisonment of 15 years commencing from the 28 June 2022.

Hon. Mr. F M Cumberbatch

Justice of the High Courts