

Judgment Date: 2024: September 2
2024: September 15 Plead Guilty to
Manslaughter
Sentencing Date: 2024: October 9

DECISION ON SENTENCING

[1] **MR. FRANCIS M CUMBERBATCH; J:** The Accused was indicted by the Director of Public Prosecutions for the offence of murder for that he on the 14 August 2018, at Progresso Village in the Cayo District of the Central District of the Supreme Court murdered Israel Tesucum ('the Deceased') contrary to sections 117¹ read along with section 106(1)² Of the **Criminal Code** Chapter 101 of the Substantive Laws of Belize (Revised Edition) 2011.

[2] To that indictment the convicted man pleaded not guilty and eventually after much toing and froing he entered a plea of guilty to the lesser offence of manslaughter by virtue of his diminished responsibility contrary to the provisions of section 118 (2)³ of the **Criminal Code** aforesaid.

The Facts

[3] The Crown's case is that on the 14 August 2018, at about 9:00 a.m., the now Deceased, Israel Tesucum, his mother Eluteria Tesucum and his father John

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: 118.- (2) On a charge of murder, it shall be for the defence to prove that the person charged is by virtue of this section not liable to be convicted of murder.

Tesucum were at their home located in Progreso Village, in the Cayo District. They were seated inside the kitchen having a meal. Eluteria Tesucum and John were sitting at a table, whereas Israel, who was differently abled, was sitting in a chair which was about 10 ft away from Mr. and Mrs. Tesucum. Whilst they were eating, Eluteria's grandson, Bartimeo Tesucum, was cooking in an area that was close to where they were eating. As they continued to eat, Bartimeo Tesucum entered the kitchen and walked towards Israel who was still sitting in the chair. Bartimeo was carrying a machete which was about 3 ft in length. Bartimeo then chopped Israel to the back of his neck with the machete which he was carrying. After Bartimeo chopped Israel, he walked out of the home and went into the bushes located behind Eluteria's home. Israel Tesucum was transported to the San Ignacio Hospital and then later to the Western Regional Hospital where he succumbed to his injuries. He was pronounced dead at about 12:00 midday on that same day. On the 15 August 2018, Dr. Mario Estrada Bran conducted a postmortem examination on the body of Israel Tesucum. He formed the opinion that the cause of death was decerebration due to spinal cord injury due to the chop wound to the neck. Bartimeo Tesucum was detained in the Mountain Pine Ridge Area on the 15 August 2018. On the 16 August 2018, Bartimeo Tesucum was charged for the murder of Israel Tesucum.

- [4] Dr. Alejandra Matus Torres, Psychiatrist, evaluated Bartimeo Tesucum on three occasions at the Kolbe Foundation. His first evaluation was conducted on the 10 June 2021. Dr. Torres stated that Bartimeo Tesucum was diagnosed as having *"Mental and Behavioural Disorder due to multiple psychoactive substance use with psychotic disorder which is a mental health disorder in which the patient presents*

an abnormal condition that involves a loss of contact with reality". On this occasion the doctor found that Bartimeo Tesucum did not have active signs and symptoms of psychosis. On the 4 March 2022, Dr. Torres found that Bartimeo Tesucum had active signs and symptoms of psychosis. Due to the relapse of psychotic symptoms Bartimeo Tesucum was reintroduced to medication to control his symptoms. On the 24 March 2023, Dr. Torres found that Bartimeo Tesucum did not have active signs and symptoms of psychosis.

- [5] The court ordered that a sentencing hearing be conducted and ordered a social inquiry report be produced. The court also ordered that a psychiatric evaluation of the convicted man be conducted, and a report of the psychiatrist be produced.

The Social Inquiry Report

- [6] This report paints a bleak picture of the convicted man during his interview and interviews with family members. The convicted man still believed that his Deceased parents are still alive and did not know anything about his brother, the Deceased. He was also unable to tell the Community Rehabilitation Officer anything about his childhood. He admits to receiving an injection but did not know the reason why.
- [7] The Community Rehabilitation Officer expressed concern for the safety of the convicted man and his family. It was stated that the family members disassociated themselves from the convicted man. The Community Rehabilitation Officer expressed the belief that the convicted man suffered from mental illness from a very young age and his consumption of drugs and alcohol contributed to the worsening of his illness. A high level of animosity and anger was perceived by the Community Rehabilitation Officer towards the convicted man from his family. He is

considered to be a threat to himself and family. Moreover, the convicted man has previous convictions for violence and drug use. As a result of his mental illness the convicted man is unable to participate in any rehabilitation programs offered at the prison.

The Prison Report

- [8] This report discloses that the convicted man's record indicates that he has been involved in two violations of prison rules to wit: offending good order and discipline by pretending to be punching at another inmate and committing an assault by punching another inmate in the face.
- [9] The convicted man has also been served with conviction warrants for the following offences, aggravated assault for which he was sentenced to six months imprisonment, harm for which he was sentenced to two months imprisonment and possession of controlled drugs one month's imprisonment.
- [10] His records do not indicate his involvement in or completion of any rehabilitative programs.

Psychiatric Reports

- [11] This court has during the course of this trial received four psychiatric evaluation reports on this convicted man. They range from him not exhibiting any active signs and symptoms of psychosis whilst he is receiving medication to him displaying active signs and symptoms of psychosis when he is not receiving medication. His most recent evaluation report dated 15 March 2024, discloses that there are no active signs and symptoms of psychosis. The report further discloses that the convicted man knows he was convicted of a crime, the reasons for his conviction and why the court could sentence him to an appropriate punishment.

The Law

[12] Section 118 of the ***Criminal Code***⁴ CAP 101 of the Substantive Laws of Belize (Revised Edition) 2020 provides thus:

“118.— (1) Where a person kills or is a party to the killing of another, he shall not be convicted of murder if he was suffering from such abnormality of mind (whether arising from a condition of arrested or retarded development of mind or any inherent causes or induced by disease or injury) as substantially impaired his mental responsibility for his acts and omission in doing or being a party to the killing”.

(Emphasis added)

[13] In the unreported decision of ***The Queen v Andrew Kagan Richardson***⁵ emanating from the ECSC St. Lucia, Benjamin J as he then was after having considered the relevant statutory provisions on sentencing, set out a comprehensive list of matters to be considered by the court to wit:

- i. “The Court must obtain and take into account the expert medical reports and the presentence report.*
- ii. The offender must be dealt with in the manner the Court deems to be most appropriate in all the circumstances of the case.*
- iii. Consideration must be given to the seriousness of the offence.*

⁴ CAP101 section 118(1) of the Substantive Laws of Belize Revised Edition 2020

⁵CASE NO. SLUHCRD 2009/0122 para. 61 *The Queen v Andrew Kagan Richards – Judgment on Sentencing*

- iv. *Any possibility of the need to protect the public from serious harm by the offender in cases of violent (or sexual) crime must be considered.*
- v. *The rehabilitation of the offender is to be treated as a primary objective of sentencing.*
- vi. *In appropriate cases, the Court can consider a non-custodial sentence.*
- vii. *The Court must weigh the likely effect of a custodial sentence on the condition of the offender and on the treatment of the offender.*
- viii. *The seriousness of the punishment must be commensurate with the gravity of the offence; and*
- ix. *The Court can impose a term longer than is commensurate with the seriousness of the offence including an indeterminate term where the protection of the public from serious harm from the offender is in its opinion required provided that its opinion is so stated in open Court and explained to the offender in ordinary language”.*

[14] I will consider and apply these principles whenever applicable in my determination of an appropriate sentence.

[15] The facts herein disclose that the Deceased met his death at the hands of the convicted man in a most brutal manner. I find the following to be the aggravating and mitigating factors herein.

Aggravating Factors

1. The seriousness of this offence.
2. The Deceased was a disabled person.

3. The gruesome manner in which the Deceased met his death.
4. The effect of the death of the Deceased on the family as disclosed in the social inquiry report.
5. The convicted man's consumption of narcotic drugs and alcohol.
6. The convicted man is not a first offender.

Mitigating Factors

1. The guilty plea offered by the convicted man.
2. His mental disorder at the time of the commission of this offence and thereafter.

[16] I find the *dictum* of Leonard J in ***R v Chambers***⁶ 1983 5 Cr App R (s) 190 to be most instructive and though lengthy is well worth repeating here:

"In diminished responsibility cases there are various courses open to a judge. His choice of the right course will depend on the state of the evidence and the material before him. If the psychiatric reports recommend and justify it, and there are no contrary indications, he will make a hospital order. Where a hospital order is not recommended, or is not appropriate, and the defendant constitutes a danger to the public for an unpredictable period of time, the right sentence will, in all probability, be one of life imprisonment".

[17] In cases where the evidence indicated that the Accused's responsibility for his acts was so grossly impaired that his degree of responsibility for them was minimal, then

⁶ ***The Queen v. J Croll*** Neutral Citation no. [2011] NICA 58 pg. 11 para. 24 Guideline for Sentencing in cases of Diminished Responsibility

a lenient course will be open to the judge. Provided there is no danger of repetition of violence, it will usually be possible to make such an order as will give the Accused his freedom possibly with some supervision.

[18] There will, however, be cases in which there is no proper basis for a hospital order; but in which the Accused's degree of responsibility is not minimal. In such cases, the judge should pass a determinate sentence of imprisonment, the length of which will depend on two factors: his assessment of the degree of the Accused's responsibility and his view as to the period of time, if any, for which the Accused will continue to be a danger to the public.

[19] In the Attorney General's Reference No.2 of 1992⁷ Lord Hutton opined:

'The second duty of the judge..., is to assess the degree of mental responsibility retained by the Accused and the cases make it clear that this degree of residual responsibility can be very considerable'.

[20] I will apply the aforesaid principles to the case at bar to determine what would be an appropriate sentence herein. I will commence by considering the facts and circumstances surrounding the commission of this offence to assess the extent of the convicted man's blameworthiness or culpability. The court must also consider the effects of the convicted man's mental disorder on the seriousness of this offence. And having done so to assess the level of residual responsibility left in him.

[21] The psychiatric reports aforesaid disclose that the convicted man is capable of standing trial at the time when he entered a guilty plea to the offence of

⁷Attorney General's Reference No.2 of 1992 pg. 5 para. 3

manslaughter and thereafter. Indeed, Dr. Torres opines that the convicted man knows he was convicted of a crime, the reasons for his conviction and why the court could sentence him to an appropriate punishment. Hence, though his mental health issues are mitigating factors he is not completely absolved from responsibility for taking the life of the Deceased in the manner in which it was done. I must also consider whether the convicted man upon his release would pose a danger to the community and the likelihood of rehabilitation.

[22] The psychiatric history of the convicted man as opined by Dr. Torres on the 15 March 2024, discloses that he has been diagnosed as having mental and behavioural disorder due to use of multiple substances with psychotic symptoms which is a health disorder in which the patient presents an abnormal condition that involves a loss of contact with reality.

[23] The Social Inquiry Report reveals that the convicted man had a troublesome childhood and spent most of his free time drinking, smoking marijuana, and not attending school. He started smoking marijuana from an early age and became more rebellious day by day. He dropped out of school when he reached standard three or four and became very abusive to his parents. He was very violent and feared by everyone on the property. The convicted man bullied everyone until the time when he was arrested by the police for this offence. He is currently on strong doses of medication which are administered intravenously.

[24] In assessing the convicted man's blameworthiness I must take into consideration the first diagnosis of Dr. Torres on the convicted man's mental health condition aforesaid. I must also consider the fact that the Deceased who was his brother was a disabled person confined to a chair.

[25] The contents of the Social Inquiry Report on the condition of the convicted man, more particularly, that the convicted man is unaware that the person whose death he caused is his brother. Thus, in the circumstances I consider his blameworthiness to be moderate.

Sentence

[26] The maximum sentence prescribed for the offence to which the convicted man has pleaded guilty is life imprisonment. I find that the aggravating factors outweigh the mitigating ones. I have also concluded after a consideration of the facts and circumstances herein the convicted man's degree of blameworthiness to be moderate. Therefore, a custodial sentence must be imposed.

[27] The imposition of a hospital order is not an available option within this jurisdiction. However, I must now consider whether the convicted man will be a danger to the society upon his release from prison. As stated, aforesaid the convicted man does not have the benefit of strong family support on his release from prison. Indeed, his family has made it clear that he is not welcome at their homes. Moreover, the building once occupied by his now Deceased parents has been demolished.

[28] The court must also consider the likelihood of the convicted man being a danger to the society upon his release from custody if he discontinues taking his medications as prescribed and resumes using multiple psychoactive substances. He must also have access to a mental health facility. Thus, the court must make appropriate orders to cater for the care and treatment of the convicted man on his release.

[29] Accordingly, the convicted man is sentenced to 10 years imprisonment. Prior to his release from prison the CEO of the Belize Central Prison shall cause him to be evaluated by the personnel at the mental health department of the Western

Regional Hospital in Belmopan. This is to ascertain whether he is a fit candidate to be housed at the Palm View Centre. If he is designated to be an outpatient at that facility or any other facility a social worker shall be assigned to ensure that he has access to his medication and counsels him on abstinence from drug use and abuse.

[30] This sentence shall take effect from August 2018.

Hon. Mr. F M Cumberbatch

Justice of the High Courts