

IN THE SENIOR COURTS OF BELIZE
CENTRAL SESSION- BELIZE DISTRICT

IN THE HIGH COURT OF JUSTICE
(CRIMINAL DIVISION)

INDICTMENT NO. CR20230021C

BETWEEN:

THE KING

and

MERCEDES PAIZ

Before:

The Honourable Madame Natalie Creary-Dixon, J

Appearances:

Mr. Cecil Ramirez, SC, for the Crown

Ms. Rachel Montejo, for the Accused

2024: April 24
June 10, 12
July 8, 17, 22, 26
October 2, 8, 14
November 22, 26, 28, 29

JUDGMENT ON SENTENCING

[1] **NATALIE CREARY-DIXON, J:** Mercedes Paiz (“the convicted man”) pleaded guilty to one count of Manslaughter, contrary to section 108 of the **Criminal Code, Chapter 101 of the Substantive Laws of Belize, Revised Edition 2020, (“the Code”)**; the particulars are that he used a piece of iron to hit Angela Flores (“the deceased”) on her head after she intervened in a physical altercation between the convicted man and his wife. She died a few days later. The Victim was also the mother-in-law of the convicted man.

[2] The Court held a mitigation hearing where the convicted man gave an impassioned plea on his own behalf; submissions were made on sentence by both the Defence and the Crown.

[3] In order to arrive at a fair and appropriate sentence the Court considered the following documents:

(a) **The Agreed facts:** This document disclosed that after witnessing his partner (daughter of the deceased) being hugged by another man, and at the same time laughing at the convicted man and making disparaging comments about him, the accused attacked her, and her sister and elderly mother who attempted to stop him. During the fracas, the accused injured all three women with an iron pipe. The deceased, an elderly woman, was hit in her head with the iron pipe. She later succumbed to this injury. The convicted man turned himself in to the police that day.

(b) **Victim impact statements:** all three daughters of the deceased (to include a granddaughter who was raised by the deceased after her mother died), testified that the deceased was a loving caring mother who assisted them in caring for their own children; she was a very active participant in the lives of her children and grandchildren; she was well-loved by them all.

(c) **Social Inquiry Report:** the social inquiry report detailed a resilient, hardworking, forthright, and family-oriented man, who despite a less-than-ideal upbringing, overcame the odds to develop himself in areas such as carpentry and the arts. The report painted him as being very modest, calm, and humble with no criminal orientation.

(d) **Report from Kolbe Foundation (Prison):** The convicted man committed a few infractions whilst incarcerated. The Court noted, however, that he also completed rehabilitation programs whilst there.

(e) **Antecedent Record of the Prisoner** –the prisoner has prior convictions for unrelated offences such as obtaining property by deception.

(f) **Psychiatric Report from Dr. Matus:** according to this report, the convicted man suffers from no mental impairment and understands and can participate in the proceedings.

(g) **Submissions:** the accused penned a letter with the assistance of his counsel, indicating what the Court perceives to be genuine remorse and contrition. His counsel made an impassioned plea for lenience on his behalf, echoing the sentiments that the convicted is genuinely remorseful, a good father, and a hard-working, self-sufficient, and resourceful man. Counsel also submitted that the Court could consider imposing a sentence of time spent as the convicted had spent a little over three years in custody. Alternatively, Counsel urged the Court to consider a suspended sentence. The Crown strongly disagreed and reminded the Court that such matters usually attract a sentence range between fourteen and twenty years.

[4] The Court now proceeds to pass sentence.

According to Section 108 of the Code:

108.— (1) Every person who commits manslaughter, ...

(b) by any other cause shall be liable to imprisonment for life.

[5] This section prescribes a maximum sentence of life imprisonment. There is no mandatory minimum sentence. In accordance with the general principles of sentencing.

[6] A maximum sentence ought properly to be reserved for cases that fall into the category of the 'worst of the worst'. The Court does not believe that this case is the worst of the worst, given the expression of remorse and the accused man's cooperation with the police.

[7] The Court next considered whether or not to impose a custodial sentence in a matter where there is no fixed minimum custodial term; in such a case, a Court must have regard to the provisions of the Penal System Reform (Alternative Sentences) Act (PSRASA) which reads (where relevant) that:

"28. (1) This section applies where a person is convicted of an offence punishable with a custodial sentence other than one fixed by law.

(2) ...the court shall not pass a custodial sentence on the offender unless it is of the opinion.

a) that the offence was so serious that only such a sentence can be justified for the offence; ...

(1) ... a court in sentencing an offender convicted by or before the court shall observe the general guidelines set forth in this Section. (2) The

guidelines referred to in subsection (1) of this section are as follows: 1. The rehabilitation of the offender is one of the aims of sentencing, 2. The gravity of a punishment must be commensurate with the gravity of the offence.

[8] Whilst the Court will give considerable attention to the rehabilitation of the offender, the Court believes that the particular features of this case necessitate that due consideration is given to all of the ideological aims/principles of sentencing, as identified by the CCJ in Lashley v Singh CCJ Appeal No CR 002 of 2013:

- a) The public interest, in not only punishing but also in preventing crime (“as first and foremost” and as overarching),
- b) The retributive or denunciatory (punitive) aim;
- c) The deterrent, in relation to both potential offenders and the particular offender being sentenced
- d) The preventative, aimed at the particular offender; and, as already mentioned
- e) The rehabilitative, aimed at rehabilitation of the particular offender with a view to re-integration as a law-abiding member of society

[9] The Court concludes that a custodial sentence is warranted because:

- (i) It involves a death
- (ii) The offence is quite serious; family members of the deceased have suffered physical, psychological, and emotional damage as a result of the incident.
- (iii) This offence is prevalent in the Cayo District and by extension in Belize; a custodial sentence would serve the sentencing aim which addresses the public interest in preventing and punishing offenders.
- (iv) The breach of trust given that this was a domestic dispute

- (v) The vulnerability of the elderly deceased woman
- (vi) The use of a weapon.

[10] Having considered that a custodial sentence is warranted, the Court now looks to the apex Court, the Caribbean Court of Justice in the decision of *Teerath Persaud v R (2018) 93 WIR 132 ("Persaud")* for assistance in constructing a just sentence.

[11] As is the prescribed procedure under Persaud, the Court will consider the aggravating and mitigating factors of the offending to arrive at a starting point. The Court will then individualise the sentence by adjusting the starting point, if appropriate, upon considering the aggravating and mitigating factors of the offender.

[12] Credit should also be applied for a guilty plea well as deductions for any time spent in pre-trial custody.

CONSTRUCTING THE SENTENCE: ARRIVING AT A STARTING POINT

[13] AGGRAVATING FACTORS OF THE offence

- i. The offence is quite serious; in fact, a resulting death is as serious as it gets.
- ii. The offence is quite prevalent in the Cayo District and by extension in Belize
- iii. The Court considered that more than one person was injured as a result of the offence
- iv. The vulnerability of the victim due to age (63)
- v. The maturity of the convicted man (60 years)
- vi. The use of a metal pipe adapted for use as a weapon
- vii. The offence occurred at the home of the deceased
- viii. The deceased was related to the convicted man
- ix. The deceased was unarmed.

[14] MITIGATING FACTORS of the offence

- i. there was no intention to kill;
- ii. post-conduct behaviour: the accused cooperated with the authorities

[15] Given the aggravating and mitigating circumstances of the offence, the Court will now determine an appropriate starting point.

[16] Our local Court of Appeal has considered the appropriate sentencing range for persons convicted of manslaughter in a number of cases such as **DPP v Clifford Hyde, Criminal Appeal No. 2 of 2006, The Queen v Hilberto Hernandez (20 years); and Tony Pasos v The Queen (17 years, minus 3 years spent in pre-trial custody)**. All with their own unique set of circumstances. The Court of Appeal found in Pasos, that the range of 15-25 years identified in Hyde could apply to cases of manslaughter generally, not just to street fights. The Court finds no reason to depart from this suggested range for manslaughter cases.

[17] Given the features of this case, to include the gravity and prevalence of the offence, the domestic nature of the offence, as well as the injury of more than one person-which includes a vulnerable, un-harmed elderly person-the Court believes that a starting point on the higher end of the scale, that is, 24 years, is appropriate.

[18] Having arrived at a starting point, the Court now makes the appropriate adjustment to the aggravating and mitigating factors of the offender.

[19] AGGRAVATING FACTORS OF THE OFFENDER

- i. There were no aggravating features of the convicted man that had not already been considered in arriving at the starting point

[20] MITIGATING FACTORS OF THE OFFENDER

Guilty plea: The Court agrees that the accused pleaded guilty at the

earliest possible opportunity and has expressed genuine remorse. This expression of remorse was displayed in the apology read by his counsel, as well as the accused man's post conviction actions; he cooperated fully with the police officers . For his guilty plea, the convicted man is entitled to the full 1/3 discount. This amounts to a discount of 8 years, taking the sentence down to 16 years.

[21] **Character**: the Court notes that the convicted man does have previous offences but these are old and /or are for offending of a different nature, (e.g. obtaining property by deception); the new offence is not part of a pattern of offending and there is therefore a lower likelihood of re-offending. The Court considers that separate and apart from this, the convicted man's family as supported by the SIR-speak very well of him; The SIR speaks to the fact that he is family-oriented and a supportive and loving father; that he is not of a criminal orientation or disposition and presented as a calm and modest man.

[22] The Court also acknowledges that the convicted man had a few infractions whilst incarcerated, but on the other hand, had completed three rehabilitative programmes evidencing attempts at rehabilitation. For this, the Court makes a downward adjustment of 1 year. The sentence is now 15 years.

TIME ON REMAND

[23] It is now a well-settled principle of law supported by our Apex Court in **Da Costa Hall v the Queen (2011) 77 WIR 66 21**, that the Prisoner must be given full credit for the time spent in pre-trial custody prior to being sentenced. The convicted man has spent three years and 3 months in custody to date; deducted from 15 years, the remaining figure is eleven (11) years and nine months.

DISPOSITION

[24] THE Court orders that:

1. the convicted man be sentenced to 15 years imprisonment for the offence of manslaughter; however, three years and three months will be deducted for the time spent in pre-trial custody, taking the term of imprisonment to be served down to eleven (11 years) years and nine months. The sentence commences today November 29, 2024.
2. The convicted man is also to undergo anger management counselling; and to participate in other courses that will assist in his rehabilitation, to include attending church services and residing in non-smoking quarters where possible.

Given this **29th** day of **NOVEMBER 2024**

[25] This is the Judgment of the Court.

Natalie Creary-Dixon, J
High Court Judge

By the Court Registrar