

**IN THE SENIOR COURTS OF BELIZE
CENTRAL SESSION- BELIZE DISTRICT**

**IN THE HIGH COURT OF JUSTICE
(CRIMINAL DIVISION)**

INDICTMENT NO. CR20190039C

BETWEEN:

THE KING

and

JESSIE MEJIA

Before:

The Honourable Madame Natalie Creary-Dixon, J

Appearances:

Mr. Cecil Ramirez, SC, for the Crown

Ms. Paulette Elrington, for the Accused

2024: October 24
November 12, 22, 27
December 4, 6

JUDGMENT ON SENTENCING

[1] **NATALIE CREARY-DIXON, J:** On July 7, 2023, Jessie Mejia (“the convicted man”) pleaded guilty before the court to the offences of wounding (one count) and harm (one count), which arose when he used a machete to inflict chop wounds on Mr. Frank Tejada and Mr. Leroy Tejada respectively on September 10, 2016 contrary to sections 80 and 72 of the Belize Criminal Code, Chapter 101 of the Substantive Laws of Belize, Revised Edition 2020. (“The Code”).

[2] The Court was provided with the following documents to assist in arriving at a fair and appropriate sentence.

1. The agreed facts
2. The Victim impact statements
3. The Social Inquiry Reports
4. The Psychiatric Report
5. Criminal records; and
6. The report from Kolbe, where he is being housed awaiting his sentence

The Victim impact statements

[3] Mr. Frank Tejada explained that as a result of the chop wounds inflicted to his head, he has never been the same; mentally it affects him daily; the incident has left him helpless as he can’t work to assist his common-law wife with the bills; it affects him because he was a hard-working man before the incident; he has lost sight in his right eye; he can’t be in the sun to work because his eye hurts to the point that he has a lot of pain; the right side of his face is numb and he cannot eat on that side because of the pain; he feels like giving up sometimes because he is impaired and really cannot do anything.

[4] His brother Leroy Tejada detailed the emotional pain of seeing his brother Frank “struggle and in pain”; he and other family members are now left with the financial burden of caring for his brother; his brother was also his assistant at work, and now he can no longer assist him.

The Social Inquiry Report

[5] The report outlines that the convicted man came from humble beginnings; he grew up with his single mother, grandmother, and stepfather. He voluntarily withdrew from high school in the first form because he felt as if his mischievous behaviour and his attitude would get him expelled. He has a very close relationship with his mother and younger sister. The report describes him as respectful, open, willing to share information, and honest. He has had job opportunities but chose to sell drugs as he admitted that it was a much quicker means of earning a living and supporting his family. His maternal uncle Wallace Baldwin described him as a “good person who doesn’t deserve time”. His uncle stated that the convicted man “wants the opportunity to be reintegrated into society again particularly to care for his family and feel like a man”; also, he lamented that the convicted man wants to care for his 8-year-old daughter; he has missed 6 years of her life already.

The Psychiatric Report

[6] This report deems the convicted man fit to stand the proceedings in Court; he knows that he was convicted of a crime; why he was convicted and the possible penalties.

The criminal history

[7] Mr. Mejia is no stranger to these Courts; he has been convicted of keeping a firearm without a gun license; and keeping ammunition without a license in 2017. The convicted man also attempted to escape lawful custody in December 2023.

The report from Kolbe

[8] This report outlines that from December 2018 - the same year in which he was incarcerated, to present-he has violated a number of prison rules: possession of unauthorized articles being a stick of cannabis amongst

other things, and 2 guns made from cardboard; assaulting another inmate by punching him in the face; he tested positive for marijuana use twice, made threats to an officer; and as late as February 2024, he was found in possession of a piece of metal which was being sharpened.

[9] The report also outlines that he has completed the Gang Education and Rehabilitation Programme. The SIR also says that he completed the Journey to Freedom Programme.

[10] His mother, daughter, and sister all echo sentiments that he loves them and he is protective of his family. They begged for leniency from the Court.

[11] The Court will now proceed to sentence the convicted man.

THE LAW

[12] Count one-wounding

According to Section 80 of the Code:

80. Every person who intentionally and unlawfully causes a wound to a person shall be liable to imprisonment for two years.¹

Count 2 – Harm

Section 79 of the Code states that: Every person who intentionally and unlawfully causes harm to a person shall be liable to imprisonment for one year.²

[13] The above offences carry terms of imprisonment upon conviction. The Court considered the appropriateness or otherwise of imposing a custodial sentence. In this regard, the Court considered the following provisions of the

¹ The Code defines “wound” as “any incision or puncture which divides or pierces any exterior membrane of the body, and any membrane is exterior for the purposes of this definition which can be touched without dividing or piercing any other membrane”

² “Harm” means any bodily hurt, disease or disorder, whether permanent or temporary

Penal System (Alternative Sentences) Act:

Section 28(1) reads:

“...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”.

Section 31 (1) goes on to state that:

“... 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....”

- [14]** Before concluding this exercise of determining the appropriateness or otherwise of a custodial sentence, the Court must also consider the objectives of sentencing as outlined in the decision of the CCJ in **Calvin Ramcharran v DPP [2022] CCJ 4 (AJ) GY** on this issue, per Barrow J CCJ:

[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.

- [15]** The Court therefore concluded that a custodial sentence is warranted because:

(i) The offences are quite serious; both complainants have suffered psychological and emotional damage; the virtual complainant has suffered severe physical damage

(ii) These offences are 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 sexual offences.

(iii) There is a need to deter the convicted man and others from resolving disputes in this manner.

[16] 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.

[17] As Belize does not yet have its own sentencing guidelines, the Court finds instructive, the “Compendium Sentencing Guideline of The Eastern Caribbean Supreme Court (“the ECSG Guidelines”)” The approach to sentencing in the ECSG, is in accordance with the methodology suggested in Persaud.

In accordance with Persaud and the ECSG, the first step in constructing the sentence is to first assess the starting point for offences by considering the consequences of the harm flowing from the offence and the particular culpability of the Offender.

An appropriate range is then identified. Thereafter, the aggravating and mitigating factors of the offence are considered, and an appropriate starting point is determined within that identified range.

Factors relative to the Offender are then identified, which may result in an upward or downward adjustment to the starting point, or in some cases no adjustment at all.

Credit is also applied for a guilty plea , as well as deductions for any time spent in pre-trial custody *(Romeo Da Costa Hall v The Queen, 2011 CCJ 6 (AJ)* (“Romeo DaCosta Hall”).

The remaining figure is thereafter assessed against the totality principle, to ensure that the sentence which is imposed is neither too lenient nor excessive, but is commensurate with the gravity of the offence.

CONSTRUCTING THE SENTENCES

Count 1: wounding

[18] This offence would be considered under the rubric of “inflicting unlawful violence with intent to cause really serious harm” under the ECSG. The Court in terms of the consequences of harm caused by this offence would categorize it as high, Category 2, as it caused serious physical harm to the complainant, which has left him disabled and incapable of working to look after himself. The Court in judging the seriousness of the offence also categorizes it as high. This is on the basis that there was use of a weapon, namely a machete, and a wound to the head.

[19] This offence is also prevalent in the Cayo District.

[20] The Court finds a starting point of 65% of the maximum sentence would be an appropriate range for this case, having regard to the seriousness of the offending. This would result in a starting point of 1 year (rounded off).

[21] There are no mitigating factors of this offending.

[22] The Court would then individualize the sentence of the convicted man, by adding or deducting from the starting point.

[23] The aggravating factors in relation to the offender are, firstly, his serious prior conviction and numerous prison infractions. This would lift the sentence by 1 year taking it to 2 years.

[24] The mitigating factors in relation to the offender are as follows:

His guilty plea. The Court noted, however, that the guilty plea came four years after the accused was first remanded to custody for this offence. From the Court's records, the matter came before the court in January 2019. The guilty plea however was in July 2023. Counsel for the convicted man explained that in July 2023 when the accused pleaded guilty, that was the first opportunity for him, as he had hitherto had counsel but had expressed his discontent with said Counsel and had requested a change of attorney. The present counsel was assigned in June 2023. The convicted man pleaded guilty the next month, July 2023.

[25] On this explanation, the Court exercised its discretion to award a 33 1/3% discount. This brought the sentence down to 1 year and six months.

[26] He completed rehabilitation programs in prison; the SIR is largely positive, and his relatives support the description of him as a family-oriented, caring person. The Court also considered the youth of the convicted man at the time. For all these considerations, the Court would be minded to deduct 6 months, taking the remaining sentence to 1 year.

Count 2: harm

[27] Following the sentencing methodology above, the Court will consider the aggravating and mitigating factors of the offending and then those of the offender to arrive at a just sentence. Guidance for this assessment is found

under the rubric of INFLICTING UNLAWFUL VIOLENCE WITH INTENT TO CAUSE REALLY SERIOUS HARM, in the ECSC Guidelines. The Court considered that the psychological and emotional impact on the victim is long-term, as his brother's present situation is a constant reminder of the horrible ordeal, and the fact that he has to assist him financially for the long term; the Court still considered that the harm caused by this offence falls into category 3: Lesser harm with no long term impact, given that the victim himself, in this offence, suffered minor injuries.

[28] In assessing the level of seriousness, the Court considered that the harm caused by this offence falls under Level A - High, given that more than one person was attacked, and a serious weapon was used. The suggestion from the guidelines is a starting point of 45% of the maximum sentence of 1 year. That calculates to 7 months.

[29] The aggravating factors of this offence were already factored into the starting point. There are no mitigating factors of the offence.

[30] The Court will now consider the mitigating and aggravating features of the offender and adjust the starting point accordingly.

MITIGATING FACTORS OF THE OFFENDER

[31] It is a mitigating factor that the offender pleaded guilty to the offence. This would attract a discount of 33 1/3%, since the Court accepted Counsel's reasons for the stage at which the plea was given: that is that the accused did not plead guilty at the earliest possible opportunity. The Court would also consider the youth of the offender at the time that the offence was committed. Given that the accused has already spent more than the maximum term of imprisonment for this offence (1 year) in custody, the Court considers that the accused has served his time for this offence.

TIME SPENT ON REMAND

[32] The Court must now address the issue of the time spent on remand, In accordance with the well-settled principle enunciated in **Romeo Da Costa Hall** The prison records demonstrate that the prisoner was remanded to prison on 9th November 2021 for both this offence and one for which he was sentenced to 6 months imprisonment.

[33] The Court is mindful of the guidance of the CCJ in Hall where it is stated that:

“...time spent on remand should be taken into account... We recognize a residual discretion in the sentencing judge not to apply the primary rule, as for example:

- (1) where the defendant has deliberately contrived to enlarge the amount of time spent on remand,
- (2) where the defendant is or was on remand for some other offence unconnected with the one for which he is being sentenced....
- 5) generally, where the same period of remand in custody would be credited to more than one offence.

[34] The Court finds that numbers 2 and 5 are applicable here; consequently, the Court will vary the primary rule and exercise its discretion to credit time spent on remand, only in respect of the lesser offence. The convicted man will be credited with time served in respect of the offence of harm.

[35] The Court would have considered that the sentences run consecutively, to give effect to the principle that the sentence passed must be commensurate with the gravity of the offence. It is felt that the sentence imposed does justice to the gravity of the offences for which the convicted man is being sentenced, especially having regard to the maximum sentences for these offences.

[36] The Court must at this time recognize the industry of Counsel for the prosecution and Counsel for the accused in disposing of this matter before the year end, as instructed by the Court, in observance of the essence of the Needham's Point Declaration on Criminal Justice Reform: Achieving A Modern Criminal Justice System ("The Declaration"). The Declaration requires that, amongst other things "...courts should adopt a focused and integrated approach to eliminate criminal case backlogs, by using tools and measures such as robust case-management..."

DISPOSITION

[37] The Court orders that:

1. The convicted man be sentenced to one **(1) year imprisonment** for the offence of wounding
2. Time served for the offence of harm
3. The convicted man is also to undergo anger management counselling and to participate in other courses that will assist in his rehabilitation.

[38] This is the Judgment of the Court.

Delivered this **6th** day of **DECEMBER 2024**

Natalie Creary-Dixon, J
High Court Judge

By the Court Registrar