

IN THE SENIOR COURTS OF BELIZE

CENTRAL SESSION-BELIZE DISTRICT

IN THE HIGH COURT OF JUSTICE

INDICTMENT NO: C00107/2020

BETWEEN

THE KING

and

SHANE JONES

Prisoner

Before:

The Honourable Mr. Justice Nigel Pilgrim

Appearances:

Mr. Glenfield Dennison, Crown Counsel, for the Crown.

Mr. Norman Moore for the Prisoner.

2024: October 28th, 29th, 30th, and 31st.
November 20th and 25th.
December 19th
2025: January 29th
February 4th

MANSLAUGHTER-SENTENCING-BELIZE SENTENCING GUIDELINES

[1] **PILGRIM J.:** Shane Jones (“the prisoner”) is indicted for the offence of manslaughter arising out of the 2019 unlawful beating death of Edwin Usher (“the deceased”), contrary to section 116(1) of the **Criminal Code**¹ (“the Code”). The prisoner was found guilty after a bench trial on 19th December 2024. This matter was docketed to this Court in 2023 and had come on for trial after interrogating several pre-trial issues which included the prisoner’s fitness to stand trial, upon which a doctor had to report, and requests for sentence indication to which the Court responded by way of a written ruling.

[2] It would be helpful to consider the legal framework of this sentencing process.

The Legal Framework

[3] The elements of the offence of manslaughter, as it relates to this case, under the Code are the causing of death by unlawful intentional harm².

[4] The sentencing regime for manslaughter is set out at section 108(1)(b) of the Code which provides, where relevant:

*“Every person who commits manslaughter–
... (b) by any other cause [than negligence] shall be liable to imprisonment
for life.” (emphasis added)*

[5] Manslaughter is not an offence that falls to be considered under the **Alternative Sentencing Act 2024** and its adumbrated principles because that legislation only covers offences that are purely summary or triable either-way³ and this charge is triable only on indictment.

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

² See **R v Calaney Flowers**, Criminal Application No. 2 of 2017, at para 12.

³ Section 2: “offence” **means**– (a) an offence triable on indictment which, with the consent of the prosecution and the accused person, may be tried summarily; or (b) an offence triable summarily and not otherwise;” The drafters have not used the word “includes” which may have permitted a more expansive interpretation of the word “offence” to cover indictable offences.

[6] The Court is now happily guided by the **Sentencing Guidelines of the Senior Courts of Belize**⁴, (“the Belize Sentencing Guidelines or BSG”) in the exercise of its sentencing discretion fulfilling the duty to sentencers as referenced by the apex court, the Caribbean Court of Justice (“CCJ”) per PCCJ Saunders in **Linton Pompey v DPP**⁵:

*“[1] Sentencing is one of the most challenging aspects of a judge's functions. It is a tremendous responsibility vested in a judge that no one else in society may lawfully undertake. This awesome duty is often discharged in the face of impassioned expectations of victims and convicted persons alike, their respective families and friends and, of course, the public and the Press. **A dis-service is done to trial judges when there are no guidelines to aid the exercise of their vast sentencing discretion.**”*
(emphasis added)

[7] It may be helpful to consider the legal status of the BSG. The BSG was made by the Rules Committee established by section 101(2) of the **Senior Courts Act 2022** (“SCA”). They are a series of practice directions made pursuant to that Committee’s power under section 101(1)(a)⁶ of the SCA. The Court is of the view that they are “rules of court” as defined by section 5 of the SCA⁷. The Court is, consequently, further of the view that the BSG is “subsidiary legislation” as defined by section 3(1) of the **Interpretation Act**⁸ (“IA”), namely, “any... rule of court...or other instrument made under or by virtue of any Act and having legislative effect...” The effect of the BSG being subsidiary legislation has the following consequences by virtue of section 22 of the IA:

⁴ Statutory Instrument No. 1 of 2025, gazetted on 8th January 2025.

⁵ [2020] CCJ 7 (AJ) GY at para 1.

⁶ This provision states where relevant, “...the Rules Committee may, from time to time, make rules of court and issue practice directions under this Act for the following purposes-(a) regulating and prescribing the procedure...and the practice to be followed in the Court in all...criminal causes and matters whatever in or with respect to which the Court has for the time being jurisdiction...”

⁷ This provision states, where relevant: “ “rules of court” means the rules of practice and procedure made... under this Act and under any other Act conferring the power on the... Rules Committee, to make rules and orders...”

⁸ Chapter 1 of the Substantive Laws of Belize, Revised Edition 2020.

“Subsidiary legislation shall have the same force and effect and be as binding and shall be construed for all purposes as if it had been contained in the Act under which it was made.”

[8] In that regard, in the Court’s view, the BSG is to be regarded with the appropriate weight as if written in the SCA itself. However, as the BSG itself notes⁹, the CCJ has opined in **Burton et al v R**¹⁰ that the BSG is not a strait-jacket, but its ranges should not be departed from without sufficient justification. The BSG does not seek to make new law but reflects extant legislative and judicial guidance¹¹ on sentencing and recommends various ranges of sentence and sentencing procedures.

[9] The general principles of sentencing are helpfully captured in the **General Sentencing Guidelines of the Senior Courts of Belize** (“GSG”), as relevant to this case:

“ 3.1. In every case, it is the duty of the sentencing judge to strive to arrive at a just sentence. A just sentence is one which promotes respect for the law and its processes by reflecting adequately – and proportionately – an appropriate mix of all the relevant factors. Such a sentence is expected to fit the crime as well as the offender.

3.2. In order to arrive at a just sentence, the court is expected to apply the generally accepted principles of sentencing against the background of the nature and seriousness of the offence, the circumstances surrounding its commission and the personal circumstances of the offender.

3.3. The classic and primary objectives of sentencing which require consideration in conducting the sentencing process are–

⁹ **General Sentencing Guidelines of the Senior Courts of Belize** at PD 1.4.: *“Importantly, however, these Sentencing Guidelines are not intended to–*

(a) achieve exact uniformity in sentences; or

(b) restrict the courts’ discretion to determine the appropriate sentence to be passed in individual cases.”

¹⁰ (2014) 84 WIR 84 at para 13.

¹¹ PD4 at PD2.4: *“These Sentencing Guidelines codify longstanding sentencing practices and legal principles applicable to sentencing which are evidenced in decided cases.”*

- (a) *the retribution (otherwise referred to as “denunciation”);*
- (b) *deterrence (vis-à-vis both potential offenders and the particular offender then being sentenced);*
- (c) *prevention; and*
- (d) *rehabilitation.*

3.4. *The ‘first and foremost’ principle of sentencing is the public interest in punishing and preventing crime. The public interest provides an overarching framework in which the specific aims operate.*

3.5. *Ultimately, the sentencing process will require balancing both the public interest and the interests of the individual offender.”*

The facts

[10] On Saturday 23rd November 2019, after 2 p.m. in front of Li Zhen Bar and Game Room located at 2A corner Johnson and Vernon Street a fight broke out between the prisoner and an unknown individual. Thereafter the deceased was struck by the prisoner and fell to the ground on the sidewalk. There is no evidence that the deceased was armed with any weapon. The deceased was beaten with fists and stomped several times in the head by the prisoner while the former lay motionless on the ground. Ms. Mistyfern Usher, sister of the deceased, later that day found the deceased incapacitated and bleeding. The deceased was carried for medical attention to the Karl Heusner Memorial Hospital and several days later succumbed to his injuries.

[11] Dr. Mario Estrada Bran, a pathologist, opined that the direct cause of death of the deceased was intracranial haemorrhage, which is bleeding inside the cranial cavity, due to blunt force trauma to the head. In this case there was bleeding of different anatomical areas of the brain. The injuries found on the deceased included:

- i. An abrasion located to the right cheek.

- ii. Multiple fractures of the jaw.
- iii. Multiple abrasions, “post concussions” located on the middle part of the back up to the hip area.
- iv. Multiple parietal fractures, acute right thalamic bleeding, meaning bleeding in the center of the brain, fractures of the right zygomatic arches.
- v. Cerebral oedema, that is fluids collection, in the brain tissues.

[12] The prisoner was later arrested, and though initially charged for murder was subsequently indicted for manslaughter.

Analysis

[13] The controlling guideline for this offending would be the **Sentencing Guidelines of the Senior Courts of Belize for Homicide and Murder**¹² (“BSGH”), in particular, under the rubric “**Manslaughter by reason of terror of immediate death**¹³”. This sub-heading is selected having regard to the Court’s finding on conviction that the Crown had not satisfied the Court so that it was sure that the prisoner may not have been 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.

[14] The Court must begin the process by attempting to identify an appropriate starting point by considering the aggravating and mitigating factors of the offending only¹⁴.

[15] It is to be noted as the GSG itself states at PD 6.4, “There is no exhaustive list of aggravating and mitigating factors.”

¹² Practice Direction 12 of 2025.

¹³ P 16.

¹⁴ Ibid.

The offending

[16] The aggravating factors relevant to the offending in this matter, in the Court's view, are as follows:

- i. **The persistence of the violence**: The repeated acts of violence by the prisoner captured on video long after the deceased had been incapacitated and lay spreadeagled on the ground speak to raw vengeance and unbridled aggression. The violence displayed by the prisoner was barbaric and extreme. The prisoner's actions, in the Court's view, sought to obliterate the deceased.
- ii. **Prevalence of the offence**: Unlawful killings have reached epidemic proportions in not only Belize, but the wider Caribbean. The Court's sentence must deter others in the public interest from being so enticed to resolve disputes by extreme violence.
- iii. **The offence was committed in view of the public**¹⁵: The video footage of the intentional harm caused to the deceased showed that this offence was committed at a relatively busy area where members of the public were nearby. The Court is willing to find as a matter of human experience that some mental trauma must have been caused to the public having to witness the sight of a human being having someone jump on top of his head.
- iv. **The offence caused significant psychological and financial harm to the family of the deceased**: The mother of the deceased, Alma Usher said in her Victim Impact Statement ("VIS"):

"It tore my heart to see my son in a bad condition and suffering from his injuries, so I took him to the hospital...His death was devastating to me as he was my first son. I couldn't cope with his (sic) lost that I got sick and completely lost my appetite mourning his death. All I do is (sic) staring at his pictures and having

¹⁵ BSGH p 5.

remembrance that once he stood right beside me and now in a blink of an eye he is gone and taken away from me...All I have reflections when he would tell me every time that he love me. My son was very loving, caring and very helpful to me. I don't know how to express the much that I lost on his death...I only know that it aches my heart to know the cruel death that he had at the hands of the person that killed him. I could imagine that it was so painful and that I could not do anything to save him...It just reminds me in the cruel world that we are living (sic)"

In her VIS the sister of the deceased stated:

"My brother had one daughter and she was also devastated that she was unable to attend the funeral. She took it very hard and up to this date she can't cope with the loss of her father... I personally got affected but I had to keep it to myself, because I had to keep strong for my mother and all my other siblings. It was more internally so that it doesn't reflect outside and believe me this is so painful that when I was in the confine [in] my house on my own, I had to let it loose off my chest... It hurts me that my brother had to suffer and endure pain for all the days he was hospitalized. I would never wish anyone to see his love (sic) one helpless on a bed and watch him die slowly...Apart from mourning, I was left with a huge medical bill as remembrance that apart from death came debts. I have been constantly reminded throughout all this time by the Karl Heusner Memorial Hospital's staff via phone calls to clear the bill in reference to the hospitalization of my brother. This has created a great burden and another stress on me."

[17] The Court does not believe that there are any mitigating factors of this offending. It has been submitted that the fact that the prisoner did not use a weapon is a mitigating factor. The Court rejects that argument in principle because in its view the absence of an aggravating

factor does not convert itself into a mitigating factor. It should not be an argument to mitigate, generally speaking, that “I could have done worse but I didn’t”.

The starting point

[18] The BSGH suggests a starting point of 15 years imprisonment and a range of sentence of 12-20 years’ imprisonment¹⁶. The Court thinks that a starting point of 16 years imprisonment is appropriate. This is based on the extreme violence used by the prisoner towards the deceased and the very public nature of it and the need to deter that sort of violence from reoccurring.

The offender

[19] The Court will now consider the aggravating and mitigating factors as they relate to the offender.

[20] The aggravating factor relative to the offender is his previous convictions for violence, namely a 2023 conviction for harm and a 2008 conviction for robbery, as shown in his prison history¹⁷. The Court will uplift the sentence by 2 years as, though there appears to be a break between the offending, the prisoner seems to have a problem with refraining from acts of violence. Also, the Court is concerned that the 2023 harm offence took place while awaiting trial in this matter. This will take the sentence to 18 years imprisonment.

[21] The mitigating factor relative to the offender is that he may be taking steps to address his behaviour. The Social Inquiry Report (“SIR”) spoke to an assessment that he, “demonstrates a strong sense of accountability for his actions” and his appreciation that he needs to make better choices. The report also finds, “Mr. Shane Jones demonstrates potential for rehabilitation and growth.” He also appears to have family support available. The Court must adjust the sentence in view of the prisoner’s rehabilitative prospects which must be balanced

¹⁶ P 16.

¹⁷ The Court was regrettably only made aware of this information after the prisoner was convicted.

by its consideration of the overarching criteria of the public interest. The Court will consequently reduce the sentence by 1 year to 17 years imprisonment.

[22] The Court would like to address three matters that it has not placed on the scales of mitigation. The first is the issue of genuine remorse. Though the prisoner, when prompted by the Court, made a statement that the death of the prisoner occurred in the context of a fight and he was sorry, the Court did not find that this was an expression of genuine remorse. He appeared to be deflecting blame and not taking full moral responsibility for his actions, nor did he apologize to the family of the deceased. Also, given the strength of the evidence, the acts that resulted in the death of the deceased being recorded on video, the post-conviction statement by the prisoner after the sister of the deceased had to view the beating of her brother on film, was relatively weak and merited no consideration¹⁸.

[23] The prisoner also submitted, though faintly and without support of medical evidence, that stomach issues from a three-year-old gunshot wound should be a mitigating factor. The Court ascribes to the position as set out by the English Criminal Court of Appeal in the case of R v Bernard¹⁹, which dealt with medical conditions and sentencing and rationalized seemingly contradictory precedent, per Rose LJ:

“It is apparent, as we have said, that these decisions are not easily reconcilable. However, we take the view that the following principles emerge from them:

*(i) **a medical condition which may at some unidentified future date affect either life expectancy or the prison authorities' ability to treat a prisoner satisfactorily may call into operation the Home Secretary's powers of release by reference to the Royal Prerogative of mercy or otherwise but is not a reason for this Court to interfere with an otherwise appropriate sentence**...;*

¹⁸ See Edwin Hernan Castillo v R, Criminal Appeal No. 11 of 2017 at para 28 and R v Zita Shol, Criminal Application No. 2 of 2018 at para 29.

¹⁹ [1997] 1 Cr. App. R. (S.) 135 at ps 138-139.

(ii) **the fact that an offender is HIV positive, or has a reduced life expectancy, is not generally a reason which should affect sentence...**;

(iii) **a serious medical condition, even when it is difficult to treat in prison, will not automatically entitle an offender to a lesser sentence than would otherwise be appropriate...**;

(iv) *an offender's serious medical condition may enable a court, as an act of **mercy in the exceptional circumstances of a particular case**, rather than by virtue of any general principle, to impose a lesser sentence than would otherwise be appropriate.” (emphasis added)*

[24] The Court takes from this decision that medical conditions, apart from exceptional cases, ought not to be a passport to the absence of punishment²⁰ and reduce a merited sentence. There is nothing about the purported condition of the prisoner or the facts of the case that makes this an exceptional circumstance meriting mitigation.

[25] The Court also considered the issue of delay, as this offence was from 2019. Substantial delay was caused by the awaiting of a medical report; the exhaustion of trial aversion strategies including plea bargaining and sentencing indications; and the delays caused by the COVID pandemic after the indictment was filed in 2020. The delay in this matter is not in the Court's view unreasonable and in any event, even if it was, there is no right to a remedy²¹ in particular a reduction in sentence. However, having regard to the brutish nature of this crime and the public interest in appropriately punishing this type of conduct²² would lead the Court to provide no further reduction for delay.

[26] The Court would deduct the time spent on remand. The prison records indicate a pre-conviction remand of 585 days which is 1 year, 7 months and 10 days. This would leave a final sentence of 15 years, 4 months and 20 days imprisonment and the Court would

²⁰ **R v DM** [2021] 2 Cr. App. R. (S.) 34 at para 28.

²¹ **Solomon Marin Jr. v R** [2021] CCJ 6 (AJ)BZ at para 104 et al.

²² See *Marin* at para 111.

backdate it to the date of conviction pursuant to its powers under section 162 of the **Indictable Procedure Act**²³.

Disposition

[27] The Court sentences Shane Jones for the manslaughter of Edwin Usher on 30th November 2019 to a term of 15 years, 4 months and 20 days imprisonment with effect from 19th December 2024.

Nigel C. Pilgrim
High Court Judge
Central District
Dated 4th February 2025

²³ Chapter 96 of the Substantive Laws of Belize, Revised Edition 2020 and see **R v Pedro Moran**, Criminal Application No. 1 of 2017 at para 38.