

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

Indictment No. C1 of 2021

Between:

The King

and

[1] **Jorge Galindo**

Defendant

Appearances:

Mr. Cecil Ramirez, S.C.C., counsel for the Crown.

Mr. Leeroy Banner, counsel for the Defendant.

Dates:

Trial Dates: 2023: March 20, 21, 22, 23, 28, and 30
April 16 and 26; 10, 22, 29
May 30
June 1, 5, 7, and 26
July 10, 20, 27
Judgment Date: October 16
December 6
2024: January 18
February 28
March 18
Sentencing Date: June 27

JUDGMENT ON SENTENCE

[1] **CUMBERBATCH, HON. MR. FRANCIS M.; J:** The convicted man was indicted by the Director of Public Prosecutions for the offence of murder contrary

to sections 106(1)¹ and 117² of the **Criminal Code** CAP 101 of the Substantive Laws of Belize (Revised Edition) 2011 for that he on the 25 August 2019 at Santa Elena Town murdered Nelson Flores ('the Deceased').

- [2] At his arraignment he entered a plea of not guilty and after a fully contested judge alone trial he was found guilty of murder as indicted. The court ordered a sentencing hearing be held and also ordered a Social Inquiry Report, a report from the prison, and a Psychiatric Report be provided.
- [3] At the hearing, the convicted man called one character witness who testified that he has known for the past 30 years. He further states, that he considers him to be a good person and asks the court to exercise sympathy on him.
- [4] The convicted man himself addressed the court and asked the court to have mercy on him. He apologised to the court for the time lost sought peace with everybody. He further stated that he has done programs in the prison that teach him how to control himself and act in society. He went on to say that God allows him to be in prison for a purpose so he accepts God's will. He stated that he expects to learn things in prison to make him a better person on his release.

¹ CAP 101 of the Substantive Laws of Belize Revised Edition 2011 section 106.—(1)Every person who commits murder shall suffer death, Provided that in the case of a Class B murder (but not in the case of a Class A murder), the court may, where there are special extenuating circumstances which shall be recorded in writing, and after taking into consideration any recommendations or plea for mercy which the jury hearing the case may wish to make in that behalf, refrain from imposing a death sentence and in lieu thereof shall sentence the convicted person to imprisonment for life.

² CAP101 of the Substantive Laws of Belize Revised Edition 2011 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.

- [5] The Social Inquiry Report is a compilation of interviews from the convicted man and family members. The convicted man was considered of and referred to in glowing terms. However, no mention was made of or about the relatives of the victim and the impact of his death to and on them. It seems apparent that there was no interaction with them in the preparation of this report. Thus, I find this report to be unbalanced, and the approach taken by the Community Rehabilitation Officer in its preparation to be misguided.
- [6] The report from the Belize Central Prison reveals that the convicted man has whilst an inmate on remand committed one infraction for testing positive for marijuana use. The report goes on to state that the convicted man has completed four rehabilitative programs therein between March 2020 and August 2023.
- [7] The Psychiatric Evaluation Report reveals that the convicted man was found not to have any active signs and symptoms of psychosis at the time of his examination.
- [8] Defence Counsel addressed the court on the wonderful things said about the convicted man and his relationship with his children and siblings. He submits that his client is a reformed man and asks the court to be lenient with him.

The Law

- [9] The court will consider and apply the classical principles of sentencing, to wit, retribution, deterrence, prevention and rehabilitation. These principles were laid down by Lawson LJ in the celebrated case of ***R v Sargent***³ 1974 60 Cr .App. Rep. 74. In that decision Lawson LJ opined that:

³ The ***Queen v James Henry Sargeant*** (1974) 60 Cr. App. R. 74 at p. 77.

“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

- [10] The facts disclose that on the night of the 25 August 2019, the convicted man whilst armed with a gun entered the home of the Deceased and his family and discharged a number of gunshots at him. His wife, son and daughter were present when this heinous and outrageous event took place.
- [11] Dr. Mario Estrada Bran who performed a postmortem examination on the body of the Deceased testified that the external examination revealed 6 orifices characterised by firearm injuries to various parts of the body. The internal examination disclosed the passage of bullets through the body of the Deceased and the damage caused thereto.
- [12] In the opinion of this witness, the direct cause of death was traumatic shock due to brain damage due to multiple gunshot wounds to the head.
- [13] This was a most heinous and brutal homicide for which the court must show its abhorrence by the sentence it imposes. Lawton LJ stated at page 77 of the decision in ***R v Sergeant*** aforesaid

“... society through the courts, must show its abhorrence of particular types of crimes, and the only way the courts can show this is by the sentences they pass”.

Deterrence

- [14] This principle is intended to be applied to deter the offender from re-offending in like manner in the future.
- [15] However, it is accepted that the convicted man is a first offender hence at first blush it would appear that this principle does not apply to him. However, the court must take into consideration the seriousness of the nature of the offence committed and the form and manner in which it was done when determining to what extent the convicted man should benefit from his hitherto clean criminal record. when he has committed an offence as heinous as this.
- [16] The court must also consider that this principle also applies to the public at large and should be used to ensure that an appropriate sentence is imposed to deter those persons who may contemplate committing similar offences in like manner. Thus, this principle will be considered and applied by the court in its determination of what is an appropriate sentence.

Prevention

- [17] In ***Desmond Baptiste et al v Regina***⁴ Sir Dennis Byron CJ opined thus on the application of this principle:

“...The goal here is to protect society from those who persist in high rates of criminality. For some offenders, the sound of the shutting iron cell door may have a deterrent effect. Some however never learn lessons from their incarcerations and the only way of curbing their criminality is through

⁴ High Court Criminal Appeal No.8 of 2003 pg. 19 para. 24

protracted sentences whose objective is to keep them away from society.

Such sentences are more suitable for repeat offenders.”

[18] As stated aforesaid it is accepted that the convicted man is not a repeat offender, hence, this principle is not applicable here.

Rehabilitation

[19] The rehabilitation of the offender is of utmost importance to ensure his reintegration to the society as a law-abiding citizen. It is to the benefit of the convicted man that he has whilst on remand participated in four rehabilitative programs.

[20] In ***Desmond Baptiste et al v Regina*** Sir Dennis Byron CJ opined thus on the application of this principle: *‘Here the objective is to engage the prisoner in activities that would assist him with reintegration into society after prison’*⁵. The court is not unaware that some prisoners reoffend in like manner shortly after their release from prison hence the importance of this principle cannot be overstated.

[21] Accordingly, the court must ensure by the sentence it imposes that the convicted man is fully rehabilitated to avoid him reoffending on his release from prison.

Aggravating and Mitigating Factors

[22] After due consideration of the facts and circumstances herein I find the following to be the aggravating and mitigating factors.

Aggravating Factors

1. The seriousness of the offence.
2. The use of a firearm to discharge a number of bullets to the body of the Deceased who was unarmed, helpless and lying on the ground.

⁵ High Court Criminal Appeal No.8 of 2003 pg. 20 para. 25

3. The prevalence of the offence of homicide committed with the use of a firearm within this jurisdiction.
4. This offence was committed in the presence of the victims' wife, son and daughter at their home.
5. The traumatic effect suffered by the relatives of the victim as a result of the commission of this heinous offence as disclosed in the trial.

Mitigating Factors Relating to the Offence

[23] I find that having considered the facts and circumstances herein there are no mitigating factors relating to the offence.

Mitigating Factors Relating to the Offender

1. The hitherto clean criminal record of the convicted man.
2. The positive opinions expressed by the relatives of the convicted man in the Social Inquiry Report.
3. The steps taken by the convicted man to reform himself whilst an inmate on remand.

Sentence

[24] Section 106 of the ***Criminal Code*** CAP 101 of the Revised Laws of Belize provides thus on the question of sentencing a person convicted of murder:

“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.

(2) A person who commits murder who was, at the time of the commission of the offence, under the age of eighteen years, shall be sentenced to detention at the court's pleasure.

(3) Where a court sentences a person to imprisonment for life in accordance with sub-section (1), the court shall specify a minimum term, which the offender shall serve before he can become eligible to be released on parole in accordance with the statutory provisions for parole.

(4) In determining the appropriate minimum term under subsection (3), the court shall have regard to–

- (a) the circumstances of the offender and the offence.
- (b) any aggravating or mitigating factors of the case.
- (c) any period that the offender has spent on remand awaiting trial.
- (d) any relevant sentencing guidelines issued by the Chief Justice; and
- (e) any other factor that the court considers to be relevant”.

[25] In ***Mervyn Moise v The Queen***⁶ Rawlings JA (as he then was) enunciated the principles the sentencer should apply in cases of homicide to determine the appropriate sentence. Though the court was at that time discussing whether to impose the death penalty I find the following principles to be applicable herein to *wit*:

“18. It is a mandatory requirement in murder cases for a Judge to take into account the personal and individual circumstances of the convicted person. The Judge must also take into account the nature and gravity of the offence; the character and record of the convicted person; the factors

⁶ St. Lucia Criminal Appeal No.8 of 2003 page. 7 paras. 18 and 19

that might have influenced the conduct that caused the murder; the design and execution of the offence, and the possibility of reform and social re-adaptation of the convicted person.... The sentencing Judge is fixed with a very onerous duty to pay due regard to all of these factors.

19. In summary, the sentencing Judge is required to consider, fully, two fundamental factors. On the one hand, the Judge must consider the facts and circumstances that surround the commission of the offence. On the other hand, the Judge must consider the character and record of the convicted person. The Judge may accord greater importance to the circumstances, which relate to the commission of the offence. However, the relative importance of these two factors may vary according to the overall circumstances of each case”.

[28] The *dictum* of Rawlins, J.A. was approved by the Board in the decision of **Leslie Pipersburg et Anor. v The Queen**⁷ P.C. Appeal No. 96 of 2006 from the Court of Appeal of Belize. In that decision Lord Roger of Earlsferry who delivered the decision of the Board added at paragraph 33:

‘It is the need to consider the personal and individual circumstances of the convicted person and, in particular, the possibility of his reform and social re-adaptation which makes the social inquiry and psychiatric reports necessary for all such sentencing hearings.

[29] I will now proceed to apply the *dictum* of Rawlins JA aforesaid to the facts and circumstances herein.

⁷ **Leslie Pipersburg et Anor. v The Queen** Privy Council Appeal Belize No. 96 of 2006 para. 33

[30] These facts of this case places it in the category enunciated by the UK Court of Appeal as a 'gun case'. In the decision of the English C/A in ***R v Wilkinson et al***⁸ 2009 EWCA CRIM 1925 the Lord Chief Justice opined thus about gun crimes:

“The gravity of gun crime cannot be exaggerated. Guns kill and maim, terrorise and intimidate. That is why criminals want them: that is why they use them: and that is why they organise their importation and manufacture, supply and distribution. Sentencing courts must address the fact that too many lethal weapons are too readily available: too many are carried: too many are used, always with devastating effect on individual victims and with insidious corrosive impact on the wellbeing of the local community”.

[31] Having considered this aforesaid dictum I find those views applicable to this case. It is common knowledge within this jurisdiction of the increase in cases of homicide committed with the use of firearms. The findings of Dr. Estrada Bran aforesaid were that the direct cause of death was traumatic shock due to brain damage due to multiple gunshot wounds to the head.

[32] Therefore, in considering the facts and circumstances surrounding this offence I find that the killing of the deceased in the manner in which it was done aforesaid places it in the category of a hit or an execution.

[33] I have considered the opinions expressed by family members in the Social Inquiry Report of the character of the convicted man, the fact that he is a first offender and the steps taken by him to rehabilitate himself even prior to his conviction.

⁸ ***R v Wilkinson et al*** [2009] EWCA CRIM 1925 para. 2

However, this is a gun case which was heinous and brutal. Indeed, this is reflected in the evidence of Dr. Dr. Estrada Bran aforesaid about the number of orifices to the body of the Deceased.

[34] I have also conducted a balancing exercise with the aggravating and mitigating factors and find that the aggravating factors outweigh the mitigating ones.

[35] Thus, I have considered all of the relevant facts and circumstances of this case and the personal circumstances of the convicted man. Having done so I find that I will attach greater importance to the facts and circumstances of this case than to the convicted man's personal circumstances.

[36] Accordingly, the convicted man is sentenced to life imprisonment. He shall spend a period of 27 years in custody before he could be considered for parole. He shall also participate in any additional rehabilitative programs to assist with his reintegration to the society as a law-abiding citizen.

Hon. Mr. F M Cumberbatch

Justice of the High Courts