IN THE COURT OF APPEAL OF BELIZE AD 2013
CRIMINAL APPLICATION FOR LEAVE TO APPEAL NO 16 OF 2010

THE QUEEN Applicant

v

HILBERTO HERNANDEZ Respondent

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BEFORE

The Hon Mr Justice Manuel Sosa	President
The Hon Mr Justice Dennis Morrison	Justice of Appeal
The Hon Madam Justice Minnet Hafiz Bertram	Justice of Appeal

C Vidal SC (since 31 January 2014), Director of Public Prosecutions, for the applicant.
H E Elrington SC for the respondent.

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1 November 2013 and 14 March 2014.

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Introduction

[1] On 17 October 2011, Hilberto Hernández ('the respondent') went on trial before Hanomansingh J and a jury in the court below for the murder between 2 and 3 October 2009 at Corozal Town in the Corozal District of Javier Castillo ('the deceased'). On 24 October, it was, according to the record, the stated expectation of the judge and counsel on both sides that the trial would be over by 1 November. The trial dragged on, however, until 11 November 2011, when it came to an abrupt end with the entry by the

respondent of a plea of guilty of the alternative charge of manslaughter, the subject of the second count of an amended indictment. On 14 November 2011, the judge sentenced the respondent to a term of 10 years' imprisonment, to be deemed to have commenced on 2 September 2011 and to run concurrently with a sentence he was then serving, that is to say a sentence of 12 years' imprisonment, commencing on 30 April 2010, for the crime of attempted murder.

[2] On 5 December 2011, Her Majesty's Director of Public Prosecutions for Belize filed an application for leave to appeal against the sentence, pursuant to sections 49(1)(c) and 49(2)(c) of the Court of Appeal Act, on the ground that it had been 'unduly lenient'.

Background

[3] In the Crown's opening, prosecuting counsel evinced an intention to call Dr Mario Estrada Bran to give evidence that the cause of the death of the deceased had been strangulation.

[4] Outlining the Crown case towards the end of the opening, prosecuting counsel said that the respondent was at the home of the deceased together with the deceased and a Hilberto Lima between the hours of 5.30 pm and about 7.30 – 8 pm on 2 October 2009, during which time all three engaged in the smoking of crack cocaine. Sometime thereafter, between 2 and 3 October, there was an altercation between the respondent and the deceased (by then, alone in the house) which resulted in the deceased being, first, stabbed and, then, strangled to death by the respondent, such strangling having been carried out through the use of an electrical cord.

[5] The main trial proceeded from 17 October to 24 October, when a *voir dire*, which (as things turned out) extended up to 11 November, commenced. As has already been indicated above, the respondent entered his plea of guilty of manslaughter on 11

November. Up to that point, the Crown had not yet called Dr Estrada Bran to the witness-box.

[6] Amongst the witnesses who had, however, already testified for the Crown up to that point was Enrique Castillo ('Enrique'), a younger brother of the deceased. He testified to having gone on 3 October 2009 to the house where the deceased lived and to have found him supine on the floor of his bedroom, wearing nothing but boxers. The deceased was bloody; and so, too, were the mattress on the deceased's bed and the floor. The deceased also had 'what seemed to be two puncture wounds' and wrapped around his neck was 'an electrical supply cord'. On touching him and calling out his name, Enrique realised that the deceased was dead.

[7] Hernán Cárcamo, a police officer of unknown rank, was another Crown witness who gave evidence of having seen the lifeless body of the deceased. It was his testimony that he witnessed what he called 'the examination' of the body at the Karl Heusner Memorial Hospital in Belize City on 5 October 2009. Although the poorly-prepared record of appeal does not contain a full transcript of this officer's evidence, it does clearly indicate that he testified to having also seen an electrical cord around the neck of the deceased's lifeless body and that, without objection from the defence, he further said that, according to the doctor who performed 'the examination', the cause of the death of the deceased was strangulation.

[8] Another such witness for the Crown was Lucas Moh, a crime scene technician attached, at the material time, to the Corozal Town Police Station. It was his evidence that, on 3 October 2009, he visited an address in Corozal Town where he saw the motionless, partially nude body of 'a Hispanic male' which had what seemed to be cut wounds on the lower abdomen and right elbow. He also observed that what appeared to him to be 'an electrical cable' was tied around the neck of the body in question. This body was lying in a pool of what appeared to him to be blood; and there was on the floor a trail of what also appeared to be blood, leading from the room in which the body lay to a nearby bathroom.

[9] Mr Moh further testified to having found in the room in which the body was lying a knife, approximately a foot long, with a black handle. There is, however, no indication in the record as to whether anything was observed to be on this knife.

[10] It should be noted that the subject of the *voir dire* had been the admissibility of two statements said by the Crown to have been made under caution by the respondent. And the pace at which it was proceeding needs to be emphasised. The part of it concerned with the first of the two supposed statements under caution only came to an end (of sorts) on 2 November 2011, that is to say on the ninth day following its commencement. It was only an end of sorts, since the judge was not intending to rule on it until the second part was finished. It is of some interest that the record indicates (at p 357) that defence counsel expressed to the judge on 2 November a wish that the second part of the *voir dire* not be started until the following day. But it is clear from the record that there was no corresponding adjournment and that defence counsel had to press on into the next part of the *voir dire* without the desired break. The Crown was still in the process of presenting its evidence in the second part of the *voir dire* when the respondent offered to enter a plea of guilty of manslaughter and such offer was accepted (on 11 November, as already stated above).

The sentencing exercise

[11] After having heard the plea in mitigation of counsel for the appellant and a very brief address by prosecuting counsel, the judge asked the appellant whether he was in fact serving a sentence of 12 years' imprisonment at the time, as prosecuting counsel had just informed the judge, and the appellant replied that he was.

[12] The judge went on to remark that the appellant was formerly a Christian and pointed out that he, the appellant, now had the chance to 'get back on that road'.

[13] The judge then further stated that he had known 'from the start' that the appellant wanted to plead guilty to manslaughter 'from the beginning' and proceeded to sentence

him to 10 years' imprisonment 'to commence on the 2nd September 2011 and to run concurrently with the sentence you are currently serving'.

The submissions on the application

[14] The learned Director of Public Prosecutions rightly addressed at an early stage of her submissions the question of the relevant facts for purposes of the application. She emphasised that, as appears at p 463, record, the judge had said that the facts would be 'as stated on the record already'. Prosecuting counsel had been told, before the taking of the plea, that she would not have to 'give a summary of the facts' to the judge. The Director acknowledged that (a) the evidence in proof of the Crown case was contained in the later of the two statements said to have been given by the appellant under caution and (b) such second statement had not yet been tendered in evidence at the point where the plea of guilty to manslaughter was entered. She directed the attention of the Court to the judgment of the Court of Appeal of England and Wales in *The Queen v Tolera* [1999] 1 Cr App R 29 and submitted that it is authority for the taking into account by a sentencing judge of a statement purportedly given under caution, even where it has not in fact been tendered in evidence at trial. In *Tolera*, Lord Bingham CJ, delivering the judgment of the court, dealt with the procedure to be followed in a case where a defendant enters a plea of guilty. His Lordship stated, at page 31:

> 'In the ordinary way sentence will then be passed on the basis of the facts disclosed in the witness statements of the prosecution and the facts opened on behalf of the prosecution, which together we call the "Crown case", unless the plea is the subject of a written statement of the basis of the plea which the Crown accept … If the defendant wishes to ask the court to pass sentence on any other basis than that disclosed in the Crown case, it is necessary for the defendant to make that quite clear … The initiative rests with the defence which is asking the court to sentence on a basis other than that disclosed by the Crown case.'

The Court is convinced that the guidance contained in this passage is sound and that it constituted ample justification for the sentencing judge taking into consideration not only facts opened on behalf of the Crown by prosecuting counsel but also depositions and material that was intended to be tendered in evidence, such as a purported statement under caution and a *post-mortem* examination report.

[15] With regard to the proper range of sentences for manslaughter cases similar to the instant one, the Director referred the Court to *Raymond Flowers v The Queen*, Criminal Appeal No 5 of 1998 and *The Queen v Steven Hyde*, a 2002 trial in the court below, on the basis that both involved manslaughter by strangulation.

[16] The Director pointed out that, in the first of these cases, this Court confirmed the sentence of 18 years' imprisonment imposed by the trial judge on Flowers following his trial for murder and conviction for manslaughter. She highlighted the fact that Flowers was being sentenced for a crime committed in a prison cell whilst serving a 25 year term of imprisonment.

[17] With respect to the second of the two cases cited by her, the Director acknowledged that the sentence of twelve years' imprisonment there imposed was never appealed by either side. Hyde was indicted for murder but pleaded guilty to manslaughter. The victim's neck had been squeezed and she had then been left for dead in a room in which she, a bar waitress, and Hyde had had an argument over 'further payment for certain services', to quote the Director.

[18] The Director, having found only these two cases involving death by strangulation, took the view that "[t]here do not appear to be many cases of manslaughter arising from strangulation from which a range can be established". In this regard, the attention of both counsel was drawn by the President to the case of *Rudolph Neal v The Queen*, Criminal Appeal No 3 of 1998. There Neal and his victim, his former common law wife, had sexual intercourse in a certain house. There was a misunderstanding between them a short while later and his victim was said to have threatened to go to the police

and falsely report that he had raped her. He then strangled her to death and buried her body in a shallow grave. He made an inculpatory statement under caution to the police and later pleaded guilty to manslaughter, rendering a trial completely unnecessary. He was sentenced by Sosa J, as he then was, to 20 years' imprisonment and appealed against his sentence but his appeal was dismissed by this Court.

[19] The Director submitted that the appropriate sentencing range was 15 to 25 years, ie the range recognised by this Court (Mottley P and Sosa and Carey JJA) in *The Queen v Clifford Hyde*, Criminal Appeal No 2 of 2006. That range was so recognised in respect of cases comparable to the case then before the Court, which involved a fatal stabbing following an altercation in a parking area outside a nightclub.

[20] But the Director was not content to leave matters there. She further submitted that the facts of the instant case place it at the upper end of the relevant range. Referring to the seminal judgment of this Court (Georges P and Young and Liverpool JJA) in the appeals of *Enrique Soberanis v The Queen, Raymond Flowers v The Queen* and *Gregorio Osorio v The Queen*, Criminal Appeals Nos 10, 11 and 12 of 1996, she contended that it was a 'very bad case of manslaughter, on the borderline of murder' (echoing thus the memorable words of this Court at the 10th paragraph of that judgment).

[21] Concerning the aggravating factors in the instant case, the Director referred to the indisputable absence from the record of any indication that either (a) the respondent's previous conviction or (b) the fact that he killed the deceased whilst on bail for the first offence factored into the judge's consideration of the sentence to be imposed. The Court notes that this was not simply a case of a previous conviction. Beyond that, it was a case of a previous conviction in which the relevant sentence was still being served and was one for a total of 12 years. The Director contended that a previous conviction, particularly one for a like offence, is an aggravating factor and she cited *Archbold, Criminal Pleading, Evidence and Practice, 2012*, paras 5-70 in this regard.

[22] Dealing with the pertinent previous conviction, the Director drew the Court's attention to the fact that the respondent had been convicted of attempted murder on 1 April 2010 and sentenced to a term of imprisonment of 17 years. The victim had been stabbed several times in the shoulder and the left side of his chest following an argument. An appeal against sentence to this Court (Sosa P and Morrison and Carey JJA) had been allowed on 3 March 2011 and a sentence of 12 years' imprisonment had been substituted. As already noted above, the respondent's plea of guilty to manslaughter in the instant case was entered on 11 November 2011. (The President's note of the appeal hearing on 3 March 2011 contains no mention of any disclosure by Mr Hernández on 3 March 2011 of the fact that he was then awaiting trial for murder). The Director submitted that the commission of a crime whilst on bail in respect of another is an aggravating factor, citing in support of her submission *Millen* (1980) 2 Cr App R 357, where the Court of Appeal of England and Wales said, at page 360:

> 'Those who commit offences while they are on bail must expect to have their sentences on the second occasion made consecutive to the previous sentences'.

[23] It was submitted by the Director that, all in all, the few factors raised by the judge (already referred to above) were not enough to justify reducing the applicable sentence to a term of 10 years. Even the respondent's age, she further submitted, could not have displaced the aggravating factors in the present case. And she cited, in this connection, the judgment delivered by this Court (Rowe P and Mottley and Sosa JJA) on 27 March 2003 in *Deon Cadle v The Queen*, Criminal Appeal No 23 of 2001. The bottom line submission, advanced with force by the Director, was that the proper sentence was one 'far greater in length than a period of 10 years'.

[24] The judge's decision to order that the 10 year sentence should run concurrently with, rather than consecutively to, the sentence being served by the respondent on 14 November 2011 also came under strong attack from the Director.

[25] Quoting from the first paragraph of the judgment of this Court in *Flowers*, she said that the suggestion arising from her quote was that the 18 year sentence imposed by the learned trial judge in that case and affirmed by this Court was a sentence running consecutively to the sentence Flowers was serving at the time of his second sentencing. (The President indicated at this point that, as the trial judge who had imposed the 18 year sentence on Raymond Flowers in 1998, he was positive that the order had been for the second sentence to run consecutively to the first.) The Director submitted that the judge in the instant case ought properly to have ordered that the second term of imprisonment imposed on the respondent commence at the expiration of the 12 year term he was already serving. In support of this submission, she referred to Seetahal, *Commonwealth Caribbean Criminal Practice and Procedure*, 2nd ed, at page 369 of which it is stated that:

> 'If the sentence of imprisonment is imposed on a defendant who is serving another sentence which is unrelated, the new sentence will generally be ordered to run consecutively to the existing sentence.'

[26] The question to be asked, suggested the Director, is whether the total period of 12 years properly reflects the fact that the respondent first attempted to kill a man by repeatedly stabbing him and then, no more than two years later, actually killed another man by strangling him after having first repeatedly stabbed him.

[27] The approach of Mr Elrington SC, for the respondent, was initially to underscore that the charge to which the respondent pleaded guilty was manslaughter, not murder, and to point to the difference between these two crimes, as well as to that between attempted murder (the respondent's first offence) and manslaughter (his second).

[28] Mr Elrington proceeded then to submit that the caution statement might not have been admitted had the trial continued, in which case a verdict of not guilty would have had to be entered and the respondent discharged.

[29] At any rate, continued Mr Elrington, the judge was entitled to derive guidance in arriving at the sentence of 10 years from his own view as to the relative strength of the respective evidence of the Crown and the defence. Mr Elrington spoke confusingly in this regard of ignorance (presumably the respondent's) of what he called 'the fact that the counter statement [statement under caution?] would not have been admitted on the evidence adduced by the Crown'. Virtually in the same breath, counsel inexplicably attributed to the Director full knowledge that the later of the two purported statements under caution would not have been admitted in evidence.

[30] Mr Elrington contended further that the respondent's guilty plea entitled him to an 'automatic reduction of up to one third of [the] proper sentence …'

[31] On the important question of the propriety, in the circumstances of the case, of a second sentence running concurrently with the first, Mr Elrington's reasoning, if the Court has understood him aright, was that the judge was properly guarding against the eventuality that an appeal against such a sentence by the respondent would be hampered by the circumstance that an appellate court could regard a sentence running consecutively to another as an indication that the trial judge had considered the Crown evidence to be strong and 'liable to lead to a conviction'. The consecutive sentence might thus 'withstand the scrutiny' of an appellate court. A concurrent sentence, he said, would, in contrast, rightly reflect the judge's own view that the Crown evidence had been 'weak or very weak' and the fact that a murder charge inspires terror in an accused. The judge was thus seeking to ensure that the trial had a fair result for an accused who had been charged with the serious crime of murder on tenuous evidence and thereafter driven by sheer terror to plead guilty to manslaughter.

Discussion

[32] The Court accepted the submission of the Director that the reference by the judge at the sentencing stage to a certified statement was to the later of the two purported statements under caution of the respondent.

[33] In the material part of that purported statement, the respondent claimed to have entered the deceased's bathroom for the purpose of taking a bath and went on to say:

> 'Suddenly [the deceased] just open the door and tell me he want to [anally penetrate] me and he had a knife in his hand and he come in a di bathroom where we wrestle and I take away the knife from him and I stab him. He run in a e room and start to stamp up the window to come out, where I went inside the room and I wrap the cable round e neck and I gan out and I gan, Dat da it.'

[34] The purported statement is at best a substantial understatement of the role played by the knife in question in the supposed counter-attack on the deceased. The *post-mortem* report, as the Director noted, refers to a total of four stab wounds on the body of the deceased. More seriously, however, the report identifies the direct cause of death as being (in the opinion of Dr Estrada Bran) strangulation. But in what context would the deceased have been strangled? The answer falls to be gathered from the purported statement. The strangling followed upon the stabbing of the deceased and his subsequent futile attempts to break open a window and escape through it from the respondent. The man strangled to death was neither attacking nor threatening anyone. He was merely seeking to escape after having been stabbed four times. The Court unhesitatingly agrees with the Director that the instant case belongs in the category of 'very bad cases of manslaughter, on the borderline of murder': *per* this Court in *Soberanis, Flowers* and *Osorio*, 10th paragraph of judgment.

[35] On the other hand, the Court is not prepared to take into account the 12 year sentence imposed in *The Queen v Steven Hyde* in ascertaining the range of sentences for manslaughter cases involving death by strangulation. There would have been no such reluctance had the sentence been appealed to this Court by either side and confirmed. In the other two cases of death by strangulation resulting in manslaughter convictions, viz *Flowers* and *Neal*, the sentences passed (as indicated above) by this Court were both significantly longer. And that imposed in *Flowers*, as shall appear later

in this judgment, may well have been as long as, if not longer than, that imposed in *Neal* had Raymond Flowers not been serving a 25 year term at the time of its imposition.

[36] This Court is unable to disagree with the Director when she says that there do not appear to be many cases of manslaughter arising from strangulation from which a sentencing range can be established. Her submission that the sentencing range applicable in the instant case, involving as it does the strangling to death of a person who had already been stabbed four times, should, in the light of the judgments of this Court in *Clifford Hyde* and *Flowers*, be between 15 and 25 years is also, in the view of the Court, eminently cogent. And, given the conclusion already expressed above that the instant appeal involves a very bad case of manslaughter, the Director's suggestion that such case belongs at the upper end of the relevant range is one which the Court finds impossible to reject.

[37] As already noted above in adverting to the Director's pertinent submission, there is nothing in the record to indicate that the judge factored into his consideration of the sentence to be imposed (a) the respondent's previous conviction and (b) the fact that he killed the deceased whilst on bail in respect of his first offence. The Court accepted the Director's submission that both of these matters constituted aggravating features of the case and concluded that they were not treated as such by the judge. In this regard, the Court will here refer again, for the sake of emphasis, to the observation of the Court of Appeal of England and Wales in *Millen* that a person who commits a crime while on bail should expect that the sentence imposed for it will run consecutively to any previous sentence. Furthermore, the Court fully endorses and derives reinforcement from the position taken by the Court of Appeal in the Hong Kong Special Administrative Region in *HKSAR v NG Yuet-hung*, Criminal Appeal No 20 of 2013 (judgment delivered on 17 January 2014), a case involving three charges of trafficking in dangerous drugs, one of which arose from an offence allegedly committed whilst on bail for the other two. The position taken by the Court is set out as follows, at para 23 of its judgment:

> ‘That is an extremely serious matter, for it shows a complete disregard and contempt for the order of the court which admitted her to bail pending her trial on the first two counts. Indeed, the deputy judge would have been entirely justified in adopting a higher starting point than she did on Count 3 for this aggravating factor … [S]he has used up any sympathy we might have had for the argument that the totality of sentence was in the circumstances manifestly excessive.’

[38] The Court also agreed with the Director that the age of the respondent, given by his counsel as 29 years in the plea in mitigation, was not enough to displace the aggravating features of the present case. The Court has sent clear signals in the past that age will on occasion be reduced to relative insignificance by the overwhelming force of the aggravating features of a particular case. A case in point is that already referred to above of *Soberanis*, in which the offender was only 16 years old on the date of the pertinent killing (ie 26 July 1995) and in which the sentence of 25 years’ imprisonment, imposed after the offender had pleaded guilty to the lesser charge of manslaughter, was affirmed by this Court on 4 February 1997. Another such case is *Flowers*, also cited above, in which this Court affirmed, on the same date, the sentence of 25 years’ imprisonment imposed on Raymond Flowers, who was only 18 years old on the date of the relevant killing (ie 10 January 1995) and who had also pleaded guilty to the lesser charge of manslaughter. And a third such case is that of *Cadle*, also cited by the Director, in which this Court again affirmed a sentence of 25 years’ imprisonment imposed on a young offender (in this case, aged 21 years at the time of his trial). Since it was not referred to by the Director, the Court would also note for future reference the case of *Terry Reyes v The Queen*, Criminal Appeal No 16 of 1999, in which this Court (Liverpool, Mottley and Sosa JJA) affirmed on 22 March 2000 a sentence of 20 years’ imprisonment imposed on a young offender who pleaded guilty to the lesser charge of manslaughter before Elrington J (Ag) and a jury.

[39] The Court regarded as unanswerable the submission of the Director that the sentence imposed on the respondent upon his pleading guilty to manslaughter should

have been ordered to run consecutively to the sentence he was then, and is still, serving. And the Court also had readily to accept the Director's suggestion that the proper approach is for the Court to ask itself whether the total period of 12 years properly reflects the fact that the respondent first attempted to kill a man by repeatedly stabbing him and, then, no more than two years later, actually killed another man by strangling him after having first repeatedly stabbed him. The Court considered that that question admitted only of an answer in the negative. The Court can see how the adoption of this approach in the case of *Flowers* could have led to the imposition of the sentence of only 18 years' imprisonment which was ordered to run consecutively to the 25 year term that Raymond Flowers was already serving in 1998.

[40] As is to be gathered from the foregoing, the principal submissions of the Director were accepted in their entirety by the Court.

[41] The submission of Mr Elrington laying stress on the difference between manslaughter and murder admits of a short answer: no one was suggesting that the respondent be sentenced as if his crime were murder. The Court was of the view that counsel also missed the point with his further submission underlining the difference between attempted murder, the respondent's first offence, and manslaughter, his second. The submission of the Director was that a previous conviction, particularly one for a like offence, is an aggravating feature for purposes of the sentencing process. Implied by the submission is the proposition that, in this narrow context, manslaughter and attempted murder are similar offences. There seems to the Court to be nothing fundamentally wrong in such an implication. Commission of the former crime involves the unlawful taking of a human life whilst commission of the latter involves the forming of an intention to take such a life. Moreover, as was pointed out by the Director, a verdict of manslaughter, reached in a case where the defence raised was provocation, is not inconsistent with a finding that the accused intended to kill. This is not to suggest that, in every conceivable context, such a similarity will necessarily be of significance. Thus, in considering the appropriate sentence of an offender convicted of attempted murder, this Court (Hogan, Innis and Georges JJA) has warned that comparisons drawn

between the sentence imposed on him and those imposed on other offenders convicted of manslaughter are to be treated with reserve: see *Vallan Haylock v Regina*, Criminal Appeal No 1 of 1977. The Court can see no reason why, in a case where all other things are equal, an offender convicted of manslaughter who has also previously attempted to kill someone, should not receive a more severe sentence than one who has not.

[42] Respectfully, the Court considered that the same insuperable barrier of irrelevance confronted the submission of Mr Elrington as to what the fate of the later of the two purported statements under caution might have been. Any debate on that question had been foreclosed by the plea of guilty to manslaughter. Thereafter, further discussion could proceed only on the basis that the facts were as set out in the purported statement in question.

[43] And the very same goes for Mr Elrington's further contention that the judge was free to take into account his own view as to the relative strength of the respective evidence of the Crown and the defence. In this connection, the Director helpfully reminded the Court of its own words in *Director of Public Prosecutions v Sherwood Wade*, Civil Appeal No 24 of 2005, where Carey JA, delivering the judgment of the Court, said, at para 6:

> 'The principle that the sentence of the court must be based on the jury's findings is consonant with the principle of the separation of functions of judge and jury inherent in such a mode of trial. The principle is correctly stated in Archbold Criminal Pleading, Evidence and Practice para 5-28: "where an offender is convicted by the jury, the sentencer must adopt the factual implications of the verdict as the basis of the sentence, where it is clear that the verdict can have been reached only on one basis …" see *R v Boyer* 3 Cr App R(5) 35; *R v Solomon and Triumph* 6 Cr App R(5) 120; *R v McGlade* 12 Cr App R (5) 105.'

The import of these words is put beyond doubt by what was added in para 7 of the judgment, which reads:

> 'It only remains to state that there was agreement that the sentence was unduly lenient. That leniency was based on the mistaken view that the quality of the evidence adduced at trial was a relevant factor to be placed in the scales in arriving at an appropriate sentence.'

The position must be similar when the accused person voluntarily enters a plea of guilty. The suggestion that the judge can, in spite of the entry of such a plea, properly take into account his own assessment of the evidence against and for the accused is rejected. Moreover, having carefully read and re-read the record of appeal and, as well, considered the fact that the second part of the *voir dire* was not completed, the Court is at a loss to explain how counsel for the respondent could speak, in putting forward his pertinent submission, of 'the fact that the counter statement [statement under caution?] would not have been admitted on the evidence adduced by the Crown'. [emphasis added] There was, quite simply, no such fact. Counsel obviously went overboard in making this and related submissions and no more needs to be said about them.

[44] As to the submission of Mr Elrington that the respondent's guilty plea to the charge of manslaughter entitled him to an 'automatic reduction of up to one third of [the] proper sentence', it is one which the Court found itself entirely unable to accept. The proposition which underlies such a submission is patently inconsistent with the length of the sentences in cases such as *Cadle* and the trilogy of *Soberanis, Flowers* and *Osorio*, all of which, as has been pointed out above, were confirmed on appeal to this Court. It has to be assumed that this Court concluded, in all of these cases, that the sentencing judges had given due weight to all relevant mitigating features, including the pleas of guilty of manslaughter. If, however, the relevant underlying proposition, viz that a guilty plea entitles an offender to an automatic one third reduction, were sound, it would mean that the 'proper sentence' in the four cases mentioned was a figure in excess of 37 ½

years. This Court has no knowledge of the existence, past or present, of a 'proper sentence' of that approximate length.

[45] The Court must respectfully state that it was unable to derive any assistance from the submission of Mr Elrington on the propriety of the second sentence running concurrently with the first. The Court found altogether elusive the basis for his conclusion that the judge was guarding against the eventuality that an appeal against sentence would be hampered by the circumstance identified at para [31], above. Furthermore, for him to suggest that the decision to make the second sentence run concurrently with the first properly reflected the judge's view as to the strength or otherwise of the Crown evidence was to seek to negate the established governing principle to which the Court has already referred at para [43], above.

[46] It was for the reasons set out above, that on 1 November 2013, this Court, by majority, granted the Crown leave to appeal against sentence, treated the application as the appeal, allowed the appeal, set aside the sentence of 10 years' imprisonment which was to run concurrently with the sentence of 12 years' imprisonment already being served by the respondent on 14 November 2011 and substituted therefor a sentence of 20 years' imprisonment, to commence on the expiration of the said sentence of 12 years' imprisonment.

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HAFIZ BERTRAM JA