

**IN THE SUPREME COURT OF BELIZE, AD 2014
(Criminal Jurisdiction)**

Central District

INDICTMENT NO C82/05

THE QUEEN

and

JAMIE DAWSON

BEFORE: Hon. Chief Justice Kenneth Benjamin

July 28 & August 12, 2014.

Appearances: Ms. Sheiniza Smith for the Crown.
Mr. Anthony Sylvestre for the accused.

JUDGMENT OF SENTENCING

[1] The accused was re-arraigned on an amended Indictment laid by the Director of Public Prosecutions on one count of murder and on an alternative second count of manslaughter in relation to the death of Maurice Neal on December 7, 2002 at Belize City in the Belize district. He pleaded not guilty to the offence of murder but pleaded guilty to the offence of manslaughter, to wit, causing the death of the deceased by unlawful harm contrary to section 116(1) of the Criminal Code, Chapter 101 of the Laws of Belize, Revised Edition 2003.

[2] The Crown accepted the plea of Manslaughter and stated the following facts: On December 7, 2002, at about 4:15 pm, Maurice Neal sustained one gunshot as a result of which he subsequently died. At the time, he was seated at a table with several other persons at Bismarck Club. One of the persons around the table was Nicholee Lewis, now deceased, who identified the accused as the person who shot the deceased. The gunshot damaged the heart and left lung of the deceased, who was 34 years of age at the time of his demise.

[3] The matter was set for the Court to entertain a plea of mitigation and to receive evidence from character witnesses on behalf of the accused. Mr. John Pollard, a friend of the accused's family and his former employer, was offered as a character witness. The accused himself also made a short statement to the Court.

[4] At the time of the incident, the accused was 23 years of age and in the employ of John Pollard in the construction field. His former employer described the accused as a friend whom he had known for the accused's entire lifetime and as an easy going young man who was a willing worker. Since his incarceration, Mr. Pollard maintained contact by telephone and expressed a willingness to re-employ the accused upon his release. The witness opined that from conversations he has had with him the accused has become a changed person since being confined.

[5] On his own behalf, the accused asked the family of the deceased for forgiveness and stated that, being now 35 years of age, prison has changed his life. He admonished young men not to make the mistake he made.

[6] The Crown laid over with the Court a listing of the previous convictions of the accused. The accused admitted to prior convictions for possession of controlled drugs in July 2000 and April 2002, harm in 1998, using threatening words, assaulting a police officer and obstruction in 2001; for these offences he was fined. On February 8, 2005, the accused was sentenced to three years' imprisonment for grievous harm in respect of a matter dating back to 2002. It is to be noted that the convictions for assaulting a

police officer, harm and grievous harm evidenced a propensity to violence on the part of the accused prior to his incarceration. Also of significance to the sentencing was the fact of the accused having served a sentence of three (3) years while on remand for the present offence engaging the attention of the Court.

[7] The offence of manslaughter is defined in section 116 of the Criminal Code as causing the death of another person by unlawful harm. The penalty as prescribed by section 108(1)(b) is imprisonment for life. It should at once be said that this represents the maximum sentence and this is reserved for the worst of the worst cases of manslaughter into which category the present case does not fall. Indeed, the accused has pleaded guilty and as a general, though not inflexible, rule, a reduction of one third has been held to be an appropriate discount (see: **R v Buffrey [1993] 14 Cr App R (S) 511**).

[8] The Court has been assisted with a compendium of sentences in cases of manslaughter in Belize dated back to 2000. The sentences have ranged from imprisonment as high as 25 years to as low as 10 years. Of these cases, two involved the use of a firearm and sentences of imprisonment for 10 years (**R v Josephat Choc – C135/06**) and 20 years (**Marcu Moh – C55/2010**) were imposed upon guilty pleas to manslaughter. Learned Counsel for the accused cited the sentencing judgment of Barrow, JA in the Court of Appeal in the case of **Yong Sheng Zhang v The Queen – Criminal Appeal No 13 of 2009**. In that case, guidance was offered as to the approach to be adopted in sentencing and guidelines were stated in a general way for sentencing. His Lordship reiterated the longstanding guideline that there ought to be consistency from which a range of sentences would emerge. Reference was made to the influence of mitigating factors operating in reduction of sentence and aggravating factors leading to an increase in the sentence. In particular, the following dictum is salutary (at para 13):-

“The particular facts of the case will determine where in the range of the sentencing court will come down ... The weapon used and how likely it

was to be lethal may be another factor in determining degrees of culpability and therefore severity of punishment. Similarly, an offender who has a criminal record will not get as much a reduction from the starting sentence as one who has no criminal record and is widely regarded in this community as a good caring person.”

His Lordship illustrated the importance of degrees of culpability by drawing the distinction between a case of unintentional homicide and homicide cases that border on murder, the case of **Enrique Soberanis v The Queen** - Criminal Appeal No 10 of 1996 being an example of the latter, attracting a sentence of 25 years’ imprisonment.

[9] The present case involved the use of a firearm which by any view is a lethal weapon. The deceased was the victim of a single gunshot which penetrated his left lung and heart. This emphasized the lethal nature of a firearm. It cannot be understated that firearm offences have become a scourge in Belize incurring the indignation and profound concern of law-abiding citizens. Accordingly, the use of a firearm in perpetrating homicide must be regarded as an aggravating factor.

[10] The evidence led at the sentencing hearing has provided the Court with the cautious assurance that the accused has undergone some measure of rehabilitation and that he has recognised the error of his youthful, misguided ways. While this is a mitigating factor, the Court cannot ignore the fact of the past violent offences committed by the accused. Having been incarcerated, there is no way of judging whether he would have ceased this type of behaviour had he been at liberty.

[11] The starting point for sentences of manslaughter has been prescribed as a range of 15 of 20 years’ imprisonment by Sosa, JA (as he then was) in **Director of Public Prosecutions v Clifford Hyde** – Criminal Appeal No. 2 of 2006. Having regard to the use of a firearm, I have adopted a starting-point of 18 years. From this, the accused is entitled to a discount for having pleaded guilty. Such discount ought not to amount to as much as one third of the starting sentence, given the late stage at which the guilty

plea has been entered. In my view, a discount of three years would adequately reflect the adoption of this course of action.

[12] The Court must take into account the manner in which the offence was carried out as an aggravating factor, that is, to say, the accused entered the premises where the deceased was sitting and discharged the firearm without any form of provocation, which was for all intents and purposes a deliberate act though lacking the requisite intention for the offence of murder. Also, to be considered are the previous convictions for offences of violence to which I have earlier alluded. These matters operate to increase the sentence. Making allowance for the public expression of remorse by the accused, such increase has been tempered.

[13] In the premises, the accused is sentenced to 17 years' imprisonment. I am guided by the following dicta of Justice Wit in the case of **Romeo Da Costa Hall v The Queen** [2011] CCJ 6 (AJ) at paragraphs 41 and 42.

“[41] When it comes to sentencing a convicted person, the sentence (in the real sense of time spent in prison) should, therefore, in principle, be effectively the same whether the person was on remand or free on bail when being sentenced. That will in quite a few cases avoid or at least diminish gross inequalities between those who can and those who cannot afford bail. It might in other cases even avoid sentenced prisoners from having to serve in effect a longer sentence than the maximum sentence. In all cases, however, it will do justice to the reality of incarceration.

[42] Those who perceive giving full credit for time spent on remand as being “soft on crime”, and I am mindful that there might be many with such a perception, are simply wrong. Crediting pre-sentence time is exactly what it says it is: crediting. It has nothing to do with mitigation but it has everything to do with computation and

calculation. Time spent on remand should therefore be *set off* against the sentence, and not be used to *reduce* it. This is also the reason why in some jurisdictions the crediting of pre-sentence time is done by the administration instead of by the courts. It is therefore important to distinguish between, on the one hand, the length of the sentence and, on the other hand, the manner in which that sentence is to be executed or served. These two aspects of the sentencing process should not be confused. This is the reason why time spent in custody has to be *counted* as time already *served* under the sentence without it having an effect on the length of the sentence itself.”

The accused is thus entitled to full credit for the time he has spent on remand and this shall be discounted in the computation of his sentence. For the avoidance of doubt, it needs to be made clear that the time spent serving the sentence imposed in 2005 shall not be included as part of the time spent on remand. This approach in some small measure addresses the inordinately long period spent by the accused on remand.

KENNETH A. BENJAMIN
Chief Justice