IN THE COURT OF APPEAL OF BELIZE AD 2016

CRIMINAL APPLICATION FOR LEAVE TO APPEAL NO 2 OF 2015

IN THE MATTER OF Section 49(1)(c) and (2)(c) of the Court of Appeal Act, Chapter 90 of the Laws of Belize

AND

IN THE MATTER OF an application for leave to appeal against sentence.

DIRECTOR OF PUBLIC PROSECUTIONS Applicant

v

RAVELL GONZALEZ Respondent

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BEFORE

The Hon Mr Justice Sir Manuel Sosa	President
The Hon Madam Justice Minnet Hafiz Bertram	Justice of Appeal
The Hon Mr Justice Murrio Ducille	Justice of Appeal

C Vidal, SC, Director of Public Prosecutions, and S Smith, Senior Crown Counsel, for the applicant.
T Pitts Anderson for the respondent.

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2 March and 27 May 2016.

SIR MANUEL SOSA P

Introduction

[1] On 2 March 2016 this Court ('the Court') heard an application at the instance of the Director of Public Prosecutions ('the Applicant') under paragraphs (c) of section 49(1) and (2) of the Court of Appeal Act for leave to appeal against the sentence imposed by González J ('the judge') on Ravell González ('the respondent') on 3 August

2015 following his conviction on that same day on two counts of causing death by careless conduct. At the conclusion of the oral argument, the Court announced that, for reasons which it would reduce to writing and deliver in due course, it was granting the application for leave and treating it as the appeal, which was thus allowed. The Court then proceeded to set aside the order of the judge under which the respondent had been required to pay a fine of $4,000.00 on each count and to pay to the family of the deceased Martita López ('Miss López), one of the two persons whose death he had been convicted of causing, a sum of $1,000.00 by way of compensation. For that order, the court substituted one (a) requiring that, within the period of two years commencing on 2 March 2016, the respondent pay (i) a single fine of $8,000.00 and (ii) a sum of $10,000.00, by way of compensation, to the family of Miss López and (b) providing for nine months' imprisonment in default of payment. The promised reasons for judgment follow.

The ground of the application

[2] The ground of the application was, and could only have been, that the sentence imposed by the judge was unduly lenient. It was indicated in the notice of application that this was a valid complaint given the circumstances of the case and the range of sentences imposed by the Supreme Court in other cases involving convictions in respect of the offence in question in recent years.

The material facts

[3] The parties having agreed at the relevant case management conference ('CMC') that preparation of a transcript of the trial was unnecessary, none was prepared. At the time of that conference, there was already before the Court an affidavit of Ms Sheiniza Smith, Senior Crown Counsel, who had been prosecuting counsel at the trial of the respondent before the judge and a jury; and the CMC panel therefore proceeded on the basis that both sides considered the statement of facts provided by Ms Smith to be sufficient for purposes of the application.

[4] According to paragraph 3 of that affidavit, the Crown case at trial was that, on 15 June 2008, the respondent was driving his motor vehicle in the direction of Orange Walk Town between the mile 35 and mile 36 posts on the Phillip Goldson Highway when it struck Manuel Cotto ('Mr Cotto') and Miss López. At the time, Mr Cotto was walking 'on the edge of the highway on its right hand side' in the direction of Orange Walk Town and pushing a bicycle 'on his right hand'; and Miss López was sitting on the handle of that bicycle. The motor vehicle struck both Mr Cotto and Miss López from behind, as a result of which they were both 'catapulted' and died instantly. There was evidence from the doctor who performed *post mortem* examinations on the two bodies of various injuries found on them. On the body of Mr Cotto, he found multiple fractures of the

pelvis and lower limbs, multiple concussions of the head, 'dislocation of the head and neck', multiple fractures of the spine, 'multiple damages (*sic*)' to the organs of the chest and exposure of bowels and internal organs. On the body of Miss López, he found multiple concussions, a fracture of the left femur, separation of the forearm, dislocation of the neck and a complete separation of 'C4, C3 and C5'.

[5] Ms Smith referred in paragraph 5 of her affidavit to the calling of a witness who attested to the good character of the respondent at the sentencing hearing.

[6] Predictably, the statement of facts thus provided by Ms Smith was not controverted in any respect by the respondent before the Court. But, without going so far as to file an affidavit of his own, the respondent referred, through the skeleton argument of his counsel, Mrs Tricia Pitts Anderson, to certain matters of fact not raised in the affidavit of Ms Smith. Thus, it was said that the respondent had not only stopped and rendered assistance after the accident but that he had also reported such accident to the police at the Orange Walk Town Police Station and secured a motor vehicle to transport the body of Miss López to hospital. It was further said that the respondent had expressed 'genuine remorse' both at the scene of the accident and 'in court', presumably in the court below. The skeleton argument also adverted to cooperation on the part of the respondent with the police and to his having been temporarily blinded by the bright lights of another motor vehicle at the time of the accident.

[7] The skeleton argument of Mrs Pitts Anderson also drew attention to what it described as the "unblemished character" of the respondent up to the time of his conviction of the offence under consideration. It further pointed out to the Court that the judge had been made aware of the service given by the respondent, a father of two, to the people of Orange Walk Town, first as a school teacher and later as their Mayor.

[8] The applicant took no issue with any of the matters of fact thus raised on behalf of the respondent before the Court.

The real question

[9] The real question before the Court, given the absence of dispute as to the facts, was as to the proper sentence to be imposed on the respondent in the light of the decided cases. The bulk of counsel's attention was directed to the guidelines given by the Court, comprised of Mottley P and Sosa and Carey JJA, in *Cardinal Smith v The Queen*, Criminal Appeal No 35 of 2005, in which judgment was delivered on 14 July 2006.

The rival contentions

[10] For her part, the learned Director of Public Prosecutions was quick to point to the obvious factual similarity between *Smith* and the present case. Both cases, she emphasised, involved a collision between a motor vehicle driven by the person who ended up being charged and a person on a bicycle who was at the side of the road.

[11] Noting next that, in *Smith*, Mottley P, writing for the Court, as regards the matter of sentence, had observed, at paragraph 67 of the judgment, that the offence of 'causing death by careless driving (*sic*)' is 'a very serious offence', the Director underlined the terms of the sentence imposed on Inspector of Police Smith by the Court in that case, viz (i) a fine of $10,000.00 payable in six months' time, in default 12 months' imprisonment, (ii) suspension of his driving licence for a period of two years; and (iii) payment to the family of the child killed in the accident of a compensatory sum of $10,000.00. The Director usefully contrasted those terms with the terms of the sentence which Arana J had imposed on Inspector Smith in the court below, on his conviction for the more serious offence of manslaughter by negligence, viz (i) a fine of $6,000.00; and (ii) payment of a sum of $5,000.00, by way of compensation, to the family of the child in question.

[12] While the Director did refer to the fact that the Court in *Smith* had considered imposing a custodial sentence on the inspector but decided not to do so in the light of the mitigating factors present in that case, she was not prepared to go so far as to contend that such a sentence would have been appropriate in the instant case. And though she further drew attention to the decision of the Court in *Victor Cuevas v The Queen*, Criminal Application for Leave to Appeal No 17 of 2007, in which judgment, affirming a sentence of one year's imprisonment, was delivered on 20 June 2008, her professed purpose in so doing was simply to reinforce her submission that the Court has amply demonstrated in recent years that it regards causing death by careless conduct as a very serious offence. Such demonstration, suggested the Director, appears to have been lost on the judge, judging from the sentence passed by him in the present case, which failed to reflect the similarities, in the facts as well as in the mitigating features, between it and *Smith*. The ignoring of these similarities, as well as of the dissimilarity that whereas only one life had been lost in *Smith* two had been lost in the instant case, had, in the Director's submission, resulted in an unduly lenient sentence.

[13] The Director further referred the Court to its decisions in the cases of *Michel Espat v The Queen*, Criminal Appeal No 2 of 2015, and *Director of Public Prosecutions v Sherwood Wade*, Criminal Appeal No 24 of 2005, submitting that both exemplify the seriousness with which the Court has viewed the kindred offence of manslaughter by negligence and suggesting that the seriousness accorded to the offence of causing

death by careless conduct, though not on the same level, is proportionate, for which reason sentences passed on conviction for these two classes of offences should not be disparate. She also commended to the court the general guidance to be found in *Espat* and *Wade*.

[14] On behalf of the respondent, Mrs Pitts Anderson laid emphasis at the very outset on the fact that the maximum term of imprisonment permitted by law for the offence of causing death by careless conduct is one of two years only. A sentencing judge, she further stressed, is required to give due consideration to both mitigating and aggravating factors but has a discretion to exercise in the matter. The importance of *Smith*, for present purposes, was, she contended, that it laid down guidelines setting out mitigating and aggravating factors to which the sentencer in the instant case had unquestionably been obliged to give due consideration. Just as there was no denying the presence of the aggravating factor that two lives had been claimed by the accident, it was impossible to overestimate the seriousness of the offence under consideration. But, she argued, there were, to be sure, counterbalancing mitigating features which were weighty in their own right. (These have already been identified at paragraphs **[6]** and **[7**], above.) These features, she said, cannot have been disregarded by the judge and, together, constituted abundant justification for the sentence he imposed. The sentences passed by the judge in the present case and by the Court in *Smith*, she added, were both appropriate, given that the facts and circumstances of the two were not identical; and, in this regard, sight ought not to be lost of the fact that alcohol consumption had been a factor in the latter case.

[15] Mrs Pitts Anderson submitted that neither *Cuevas* nor *Wade* were of significance to the determination of the application before the Court.

Discussion

[16] There are, indeed, striking similarities between the facts of the present case and those of *Smith*. Both accidents occurred after dark on a Sunday and on a major highway. As already noted above, in both of them a child travelling on a bicycle, other than alone, was struck by a motor vehicle, while on the edge of the highway, and killed. Both drivers were, at the time of the accidents, well-known, upstanding citizens of Belize occupying positions of leadership in their respective communities. But there are also two salient differences, one tending, at first blush at least, to aggravate and the other tending to mitigate. The first, already referred to above, is that in the present case not one but two persons were struck by the motor vehicle concerned and lost their lives as a result. (To this difference the court shall in due course return.) The second, also already referred to above, is that alcohol consumption was not a factor in the instant case. In contrast, there was, in *Smith*, expert testimony that alcohol proportions above the legally prescribed limits were found in blood and urine specimens provided by the

inspector to the police after the accident; and his attempt to explain that evidence was derisory. Of some significance, as well, is the fact that, in the case at hand, the respondent stopped with a view to rendering aid to the accident victims whereas in *Smith* the inspector continued on his way although (a) he later credibly explained why he did so and (b) it was not disputed that he did return to the scene of the accident later the same night while the police were there conducting their investigations.

[17] As already mentioned above, Mrs Pitts Anderson sought, valiantly, it should be added, to make something of the fact that the respondent's explanation for the accident, an explanation undisputed at the hearing before the Court, was that he was momentarily blinded by the bright lights of an oncoming motor vehicle. But the Court sees nothing in the fact that such an explanation was given at trial. It is by no means an uncommon experience for people who drive on the highways of this country at night momentarily to be blinded by the bright lights of oncoming motor vehicles. The reasonably cautious driver will drive with the risk of being so blinded constantly in mind and will ensure that his speed will be such as to permit him sufficiently to slow down or even stop while so blinded in order to avoid colliding with any person or thing that may, though unseen, be in his path. It is no surprise that the respondent was convicted after having given such an explanation to the jury. The Court certainly does not consider that that explanation put the respondent in a position any more advantageous, for purposes of sentencing, than that of the inspector in *Smith's* case, who had claimed that the accident there was the result of the cyclist in question having swerved into his path. Both explanations were, as the Court sees it, properly rejected by the respective juries and neither could resurface in the guise of a mitigating factor, of all things, at the sentencing stage.

[18] Returning now to the fact that the accident in the present case claimed two lives, the Court finds it necessary to focus its attention on the provisions of section 151(2) of the Indictable Procedure Act, which, so far as material for present purposes, read as follows:

> 'If a person by one act … kills several persons …, he shall be punishable only in respect of one of the persons so … killed …, but ***in awarding punishment*** the court may take into consideration all the … probable consequences of the crime.' (emphasis added)

Considering the tone of undiluted resignation with which Mrs Pitts Anderson referred to this fact in her submissions to the Court, the Director must be commended for having, in the highest traditions of prosecuting counsel, directed the attention of the Court to the general guidance contained in the judgment in *Espat*, already cited above. That general guidance was, after all, primarily related to elucidation of the important point (of which the sentencing judge in the court below in that case had shown no awareness) that, by

virtue of the identical provisions found in section 156(2) of the Indictable Procedure Act in force in 1993, Mr Espat was punishable in respect of only one of the four children killed in the horrific accident with which that case was concerned. The Court, in the final paragraph of it judgment, explicitly stated:

> 'For the guidance of trial judges in future where similar situations arise the proper course in sentencing would be to impose sentence in respect of only one count and note that by reason of the provisions of section 156(2) of the Criminal (*sic*) Procedure Code (*sic*) no sentence is imposed in relation to all the other counts.'

In sentencing the respondent in the instant case in respect of both counts of the indictment, the judge committed the very same error of pure law that the sentencer in *Espat* had committed some 23 years earlier.

[19] In the light of the foregoing, while the two fines imposed by the judge quite clearly could not stand, the Court was satisfied that justice would not be served by a single fine in an amount as low as $4,000.00. On the other hand, it was not the view of the Court that a fine of $10,000.00, such as was imposed in *Smith*, would be appropriate in the present case. It was for these reasons that the two fines of $4,000.00 each were both set aside and a single fine in the amount of $8,000.00 substituted for them. For the avoidance of all doubt, we will here state that that fine relates to one only of the lives claimed by the accident, viz that of Miss López.

[20] As regards the order of the judge for the payment of $1,000.00 by way of compensation to the family of Miss López, the Court could not for a moment regard it as anywhere near adequate and could, moreover, think of no reason why the figure awarded on the appeal in *Smith* would not be appropriate in the present case. The order for the payment of the compensatory sum of $10,000.00 to the family of Miss López is thus explained.

[21] Contrariwise, the Court deliberately refrained from ordering the suspension of the driving permit of the respondent, being respectfully of the opinion, following the most mature and anxious consideration, (a) that the view expressed in the part of the judgment in *Smith* written by Mottley P, at paragraph [68], that –

> '… where persons are convicted of an offence under this section that (*sic*) the [driving] licence [of such person] should invariably be suspended…',

(assuming the word 'section' in this quote to be a reference to section 108 of the Criminal Code) is indefensibly rigid and inflexible and (b) that there is no justification in the instant case for the imposition of such further punishment.

The delay in indicting and trying the respondent

[22] The Court cannot conclude these reasons for judgment without availing itself of the opportunity to comment, first, on the delay of the chambers of the Director in preferring an indictment against the respondent. Such step was not taken until 3 April 2013, some four years and eight and a half months after the date of the accident in question. As if that was not sufficiently scandalous, the respondent's trial on that indictment, for reasons not clear to the Court, did not commence until 20 July 2015, that is to say after the lapse of another two years and three and a half months. The Court is left wondering whether such inordinate delay, totalling in excess of seven years, was inevitable. When matters are dealt with in this way a shadow is cast over the entire justice system of Belize and there is a fuelling of public speculation as to, among other questions, whether we are, in truth, all equal before the law.

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SIR MANUEL SOSA P

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HAFIZ BERTRAM JA

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DUCILLE JA