

IN THE SUPREME COURT OF BELIZE, A.D 2020
(CRIMINAL JURISDICTION)

Central Division

Indictment No: C51/2019

THE QUEEN
V
VILDO WESTBY

BEFORE: Honourable Mr Justice Colin Williams

APPEARANCES: Ms Shanice Lovell, Senior Crown Counsel, for the Crown
Mr Oscar Selgado for the Defendant

Heard On: Wednesday, 23rd September 2020; Wednesday, 14th October 2020;
Wednesday, 21st October 2020.

SENTENCING

Procedural History:

1. On the 5th of August 2020, the Defendant Vildo Westby was convicted of the murder of Jose Felix Ayuso. His sentencing hearing was adjourned to Wednesday, 16th of September 2020. An Order was made following his conviction for the Crown to file and serve Victim Impact Statements, as well as the Defendant's Antecedent Record and Prison Report. At the request of the Defendant's counsel, an Order was also made for the Family Services Department to produce a Social Inquiry Report. The scheduled sitting of the 16th September 2020 had to be vacated because the Supreme Court was closed because of issues related to the COVID 19 pandemic. The Sentencing Hearing was accordingly rescheduled to the 23rd of September 2020.
2. The Crown, by the original adjourned date, provided its documents in addition to what it refers to as a "*Murder Sentencing History*", which is a listing of pertinent information in some selected cases. Counsel for the Defendant however was unavoidably absent for the rescheduled date. The Defendant at the 23rd September 2020 sitting indicated that he wanted the sentencing hearing to proceed even in the absence of his counsel. Also, the Family Services Department had not yet provided the Social Inquiry Report in

accordance with the Court's Order. Having noted the non-compliance with the 5th of August 2020 Order by the Family Services Department, a further Order was made for them to produce a Social Inquiry Report and the matter was again adjourned to Wednesday, 14th October 2020.

3. The Social Inquiry Report was still not available by the further adjourned date of 14th October 2020. However, the Defendant's counsel, Mr Oscar Selgado, although he had previously requested of the Court to make an Order for the Social Inquiry Report, indicated that he was willing to proceed with the Sentencing Hearing without the Report. The Defendant participated electronically from the Belize Central Prison (Kolbe Foundation), via the Prison Video Link

The Hearing:

4. Senior Crown Counsel, Ms Shanice Lovell, with the concurrence of the Defendant's Counsel, read into the record the two Victim Impact Statements which were previously served by the Crown. They were from Maria Del Carmen Eiley, who is a sister of the deceased, and Felix Jovan Ayuso, who is the deceased's son. The witnesses, who are from San Pedro, Ambergis Caye, were present at Court on the previous occasion but they were not present to testify *viva voce*.
5. Ms Lovell took the court through the various reports attached to the Crown's submissions (the Prison Report, the Police Criminal Record Card from the Criminal Records Office of the Belize Police Department and the Defendant's History from the Magistrate's Office). Ms Lovell also drew to the Court's attention two cases of persons who were sentenced in 2017 for committing murder by stabbing: C95/2012, The Queen v Matthew Gentle, Sherlock Myvette and Transito 'Ricky' Tzul and N6/2014 The Queen v Hernan Castillo.
6. Vildo Westby spoke on his own behalf. He did not call any witnesses on his behalf.
7. The Defendant in his statement said a number of things, including:

“At the moment as things transpire, I never had an intention. I just went in to the house to do the work. Things happen very fast... I didn't know what to do. I went to Mexico to rehabilitate... He was grandpa to my niece and nephew. I am sorry for what really happen. It happen very fast. I never mean for it to happen... I have to live with it every day... lock down in the cell and have nightmares. When I talk to my nephew and niece, they want me out. I know the day will come when they will ask me [about it]... I ask for leniency of the Court.”

8. Mr Selgado in mitigating on behalf of his client noted first that the weapon used in this offence was a bicycle spokes: that it was not an inherently dangerous weapon such as a knife. Counsel said that although the pathologist referred to multiple injuries being

present on the body of the deceased, only two of these injuries were particularly life-threatening. Mr Selgado noted that since his client has been incarcerated, the Defendant has not committed a single infraction of the prison rules.

9. Mr Selgado referred to dicta from the Honourable Mr Dennis Barrow, Justice of Appeal (as he then was), in Criminal Appeal No: 13 of 2009, Yong Sheng Zhang v The Queen, when Justice Barrow pointed to the need to consider the circumstances of the individual convicted person when imposing a sentence. Counsel felt that of the four established principles of sentencing – retribution, deterrence (general and specific), prevention and rehabilitation – that only rehabilitation was relevant. Mr Selgado also pressed for a sentence at the lower end of the scale.

Health and Fitness:

10. The Defendant is 32 years old, having been born on the 21st July 1988. He is single. He has one child, a 14-year-old boy.
11. There is no suggestion that Vildo Westby suffers from any illness or disease.
12. No psychiatric report was requested in relation to the Defendant. There is no suggestion from either side that Vildo Westby suffers from any mental health challenges.
13. Vildo Westby however has been treated previously for substance addiction. There was no suggestion that he has relapsed since undergoing the substance rehabilitation treatment.

Case Facts:

14. A brief recollection of the facts of this recently concluded matter may be useful.
15. Sometime after 6.30 p.m on Thursday, the 2nd of February 2017, the body of the deceased, Jose Felix Ayuso, was discovered in his room in the upper flat of a two storey structure at the corner of Jew Fish Street and Sea Weed Street in San Pedro Town, Ambergis Caye. The body bore multiple stab injuries.
16. Dr Mario Estrada Bran conducted a post mortem on the body of the deceased sometime after 1.00 pm the following day - on the 3rd of February 2017. The pathologist concluded that Jose Felix Ayuso died of bronchial aspiration syndrome, which was due to multiple trauma due to multiple stab wounds.
17. Shortly after midnight on the 4th February 2017, Vildo Westby went to the home of his former common law wife, Debbie Graniel, and told her that he had killed Jose Felix

Ayuso. The Defendant also told Ms Graniel where he disposed, in the area of the mangrove in the San Juan area, certain items that were removed from the deceased's home. Those items, which included clothing, a bicycle spokes and the deceased's wallet, were later retrieved from the mangrove. Vildo Westby told Ms Graniel that he was going to turn himself in to the police following the funeral. He however left San Pedro, Ambergris Caye and Belize later that day, the 4th February 2017. Vildo Westby was returned to Belizean authorities by Mexican authorities almost eighteen months later on the 1st September 2018.

Antecedents:

18. Two days after Vildo Westby was returned to Belize, he was committed to the Belize Central Prison (on the 3rd of September 2018) by a Magistrate on three charges: indecent language, driving without license and driving while intoxicated. His concurrent sentences amounted to six months. Following those sentences, the Defendant was on remand for this murder charge from the 4th March 2019. This time period of one year and five months, that is, from his date of remand on the 4th March 2019 until his conviction on the 5th August 2020, must be accounted for when imposing the sentence.

19. The Defendant has a number of convictions at the Magistrate's Court dating back to 2005. Ordinarily, given the age of those offences, one may say that the convictions ought to be considered as having been spent. But there is no applicable Rehabilitation of Offenders legislation in Belize that provides for wiping the slate clean after a period of time. However in appropriate circumstances, it is the reasonable and just thing to do. The Prosecutor initially considered that the offences were spent. What must be noted however, is that given the facts of this case, the nature of the offence and the manner of execution of the offence that consideration has to be given to some of the Defendant's previous offending. The Prosecution's case against the Defendant was that he went to the deceased's house to look for money and that the Defendant did indeed leave the deceased's premises with the deceased's wallet. The following previous convictions ought to be therefore borne in mind:
 - i. 10/10/2005 – Wounding (fined \$200 in default 2 months imprisonment);
 - ii. 26/03/2005 – Robbery (fined \$2,500 in default 5 years imprisonment);
 - iii. 02/02/2006 – Robbery (fined \$5,000 in default 5 years imprisonment);
 - iv. 16/01/2009 – Possession of articles with blade (fined \$150 or 2 months imprisonment).

20. Mr Selgado submitted that the Defendant was “*an honest person faced with a difficult situation.*” Mr Selgado pointed out that the Defendant never denied speaking with the crown's main witness, Miss Graniel and that the Defendant “*didn't mislead the Court... he came honestly but grounded his defence in self-defence and provocation.*” Counsel noted that Vildo Westby was “*a rehabilitated drug addict who reacted*” and counsel said

that what Westby needed to do was to “*control his anger.*” In Mr Selgado’s submission, he said that the Defendant went to the deceased’s house “*as an invitee, not a trespasser.*”

21. Counsel also canvassed that the fact that Vildo Westby left the jurisdiction after the offence was committed is not indicative of any attempt to escape the law or the consequences of his action, but rather to seek help.

Aggravating and Mitigating:

22. An aggravating feature of this offence is the sheer viciousness of the attack on the deceased. Although the pathologist did not give a precise number of injuries, he did indicate a range starting at 15. Counsel for the Defendant noted that only two of the injuries were classified as being potentially fatal; but it must be remembered that only one fatal stab was needed to commit the offence.
23. It is also noteworthy that the Deceased’s life was snuffed out in the sanctity of his home. Further, it was an unprovoked attack; the deceased was peacefully at his home when the Defendant went there.
24. Another aggravating feature is that it was an assault on a senior citizen, who belongs to a vulnerable group that needs society’s care and protection.
25. It was an attack as well on someone with whom the Defendant had a familial connection; the deceased was the grandfather to the Defendant’s niece and nephew.
26. Then, having stabbed the deceased, the Defendant then leaves the jurisdiction and he did not return voluntarily.
27. The sole mitigating factor is that the case was solved principally because of the admissions which the Defendant made to his ex-common law, Debbie Graniel. Had he remained silent, the case may never have been solved.
28. Although Vildo Westby said that he was “*sorry for what really happen*”, his limited words and his disposition did not communicate nor transmit remorse or contrition. He seemed to be saying that he is sorry that he is convicted for the offence. At no time did he fully and genuinely apologise to the family and relatives of the deceased, neither did he own up to the fact of what he did. This absence of remorse however cannot be held against him; it is not an aggravating factor, it is only an observation.
29. In evaluating the aggravating and mitigating circumstances, the scales are tilted in favour of the aggravating factors which exceed the mitigating factors.

Sentencing Principles:

30. The principles of sentencing are well settled and were referred to earlier.
31. It was Lord Justice Lawton, in R V Sergeant, 60 Cr App R 74 at p77 who listed the four headings that a sentencer must consider. Since then, Sir Dennis Byron Chief Justice of the Eastern Caribbean Supreme Court (as he was then) in Desmond Baptiste v The Queen, Saint Vincent and the Grenadines Criminal Appeal No: 8 of 2003, illuminated the principles (see paragraphs [22] to [25]) :

Retribution: This requires that the punishment must fit the crime. In this matter, the life of an innocent, productive member of society was taken. The deceased operated a unisex salon business in San Pedro. The deceased was the head of the AIDS Commission. His murder meant that he pre-deceased his mother and is survived by others, including a son whom the deceased raised while being a single parent from the time the younger Ayuso was 9 years old.

Deterrence: This is usually both specific and general. Given the extremely high homicide rate, the courts must do its part in sentencing persons to ensure that the message is sent to other would be offenders of the consequences of their action. As Sir Dennis said in Desmond Baptiste, general deterrence “*is intended to be a restraint against potential criminal activity by others.*” Sir Dennis went on to observe however that specific deterrence “*may be an ineffective tool to combat criminal behavior that is spontaneous or spawned by circumstances such as addictions or necessity. Drug and alcohol addiction as well as need may trigger recidivism.*”

Prevention: There is nothing to suggest that the Defendant is likely to re-offend or to commit any similar type offence. He did have some minor infractions several years ago, but apparently those brushes with the law did not have the desired effect. However of all the factors, this is the least applicable to the circumstances of the Defendant. Also, it is accepted that since the Defendant has been at the Belize Central Prison, that he has not displayed and propensity to break the rules, regulations or law.

Rehabilitation: From the submissions of counsel for the Defendant, this factor also plays an important part in sentencing the Defendant who, according to the reports from the Belize Central Prison, has not participated in any rehabilitative programme. He must be given an opportunity to equip himself with the necessary skills to make himself a worthwhile, productive citizen upon his release from prison. Further, it is apparent that specialist intervention with regard to anger management is necessary for the Defendant.

The Cases:

32. Earlier, it was noted that Ms Lovell referred to two cases where the convicted persons were sentenced for killing their victim by stabbing.
33. In Matthew Gentle and others, a sentence of life imprisonment with eligibility for parole at 30 years was imposed on the Defendants who hired a taxi, then kidnapped the owner and locked him in the trunk of the vehicle. The victim was taken to a village where he was removed from the trunk and stabbed to death.
34. In Edwin Hernan Castillo, a sentence of life imprisonment with eligibility for parole after 25 years was imposed. This was a case where the Defendant, the deceased and others were socializing, then there was a dispute involving the deceased who spoke to the Defendant about the Defendant's consumption of the liquid refreshment that he had not contributed to. Things escalated into a fight and after the Defendant was pushed to the ground; he then armed himself and stabbed the deceased.
35. The case of Yong Sheng Zhang that was cited by counsel for the Defendant although it concerned an Appellant in a manslaughter matter, is stuffed with learning on the approach to sentencing. Barrow JA highlighted a number of critical considerations at paragraph [13]. He said:

“In the application of these sentencing principles guidelines have been developed that assist a sentencing judge in arriving at a sentence that is deserved, which is to say a sentence that is fair both to the convicted person and to the community, including the family and friends of the victim. A principal guideline is that there must be consistency in sentences. Where the facts of offences are comparable, sentences ought to be comparable, if rationality ought to prevail. The objective of consistency has led to the emergence of ranges of sentences... The particular facts of a case will determine where in the range the sentencing court will come down; thus an offender who had some time to regain self-control after provocation will attract a heavier sentence than the offender who had no time to regain self-control. An offender who delivers one blow in response will deserve a lesser sentence than one who delivers multiple blows. 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 of a reduction from the starting sentence as one who has no criminal record and is widely regarded in his community as a good and caring person. These examples are illustrative and not exhaustive.”

36. The Court of Appeal of Belize considered the range of sentences for murder in Gregory August v The Queen, Criminal Appeal No: 22 of 2012, the written decision of which was handed down on the 4th November 2016. President of the Court, the Honourable Sir

Manuel Sosa having heard arguments from the Appellant and the Crown as to the appropriate range, said, among other things in the final two paragraphs:

“The Court therefore, has a difficulty in accepting a range of 20 to 25 years.

“...a sentence in the range of 25 to 35 years is more appropriate.”

37. Based on the pronouncement from the Court of Appeal of Belize, sentences for murder reasonably could range from 25 to 35 years.

The Sentence:

38. Having noted the facts and circumstances of Vildo Westby’s case; noting that the aggravating features outweigh the mitigating features; and having assessed how the various principles of sentences ought to be applied to the defendant, I consider that the starting point of the Defendant’s sentence is life imprisonment with eligibility for parole after 30 years.

39. I note that the Defendant was on remand for this offence from the 4th March 2019 until his conviction on the 5th August 2020. That one year and five months period must therefore be credited to the Defendant. The balance therefore amounts to 28 years and 7 months. There are no other factors to warrant any discount. Vildo Westby is accordingly sentenced as follows: to life imprisonment, subject to parole after 28 years and 7 months, with effect from the 5th of August 2020.

Dated: 21st October 2020

Colin Williams
Supreme Court Judge