

**IN THE SUPREME COURT OF BELIZE, A.D. 2019
CRIMINAL JURISDICTION**

SOUTHERN DISTRICT- STANN CREEK

Case No. RE20190012C

THE QUEEN

V

JEREMY HARRIS

BEFORE: Hon. Justice Mr. Francis M. Cumberbatch

APPEARANCES: Ms. Jacqueline Willoughby, Counsel for the Crown
Ms. Illiana Swift, Counsel for the Respondent

RESENTENCING DATE: 3rd October, 2019

JUDGMENT ON SENTENCING

[1] The convicted man and another person were indicted by the Director of Public Prosecutions for the murder of one, Phillip Chin ('the Deceased') which occurred on the 4th day of February, 2002. After a fully contested trial the convicted man was convicted on the 12th day of January, 2004, for the murder of 'the Deceased.' His co-accused was also convicted for murder. They were both sentenced to death; however, the Court of Appeal reduced that sentence to one of life imprisonment.

[2] On March 29th, 2018 the Caribbean Court of Justice ("CCJ") in *Gregory August & Alwin Gibb v R CCJ APPEAL NOS BZCR2015/001 and BZCR2015/002* ruled that the mandatory sentence of life imprisonment imposed on persons convicted of murder was unconstitutional to wit:

“1. In order to comply with the CCJ ruling in Gregory August & Alwin Gabb v R CCJ APPEAL NOS. BZCR2015/001 and BZCR2015/002, all persons sentenced to life imprisonment must have their sentences reviewed so as to address the issue of a “judicially determined sentence” and the possibility of parole. It is stated at paragraph 126:

“[126] Since the sentences of these persons have been vacated by this judgment, as a practical interim measure, we order that all such persons must remain incarcerated until, in relation to his or her case, respectively, a sentencing hearing is completed. In the event, that the sentencing judge should decide that a fit sentence is one of life imprisonment, then the judge shall stipulate a minimum period which the offender shall serve before becoming eligible for parole, or for a consideration of whether the prisoner has become eligible for parole. We would not expect that exercise to be rushed, but the entire exercise should be completed within a reasonable time. Fort the avoidance of doubt, a similar reasoning is to be applied to any person sentenced under the new regime to a mandatory life sentence for murder.”

[3] To facilitate the directions of the CCJ aforesaid Parliament enacted an amendment to Section 106 of the Criminal Code to wit:

“106 (1) Subject to subsection (2), a person commits murder shall be liable, having regard to the circumstances of the case, to:

(a) Suffer death; or

(b) Imprisonment for life.

(3) Where a Court sentences a person to imprisonment for life in accordance with subsection (1), the Court shall specify a minimum term, where 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 and 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.”

The Facts

[4] The Deceased was the owner of a .38 special revolver, a fact of which the convicted man was aware. He and his accomplice sought information about the Deceased such as his financial status, the times he left home, and where he would go when he does so, and whether any other persons resided at his home. Their source was one Kathrine Fairweather, the friend of Rosita Castellanos, the girlfriend of the Deceased.

[5] The convicted man and his accomplice had a conversation with the Deceased's girlfriend during which the convicted man's accomplice told her

he wanted the Chin's gun. She removed the gun from Chin's home and hid it. On realizing that his gun was missing the Deceased went to Fairweather's home where he met his girlfriend and questioned her about it.

- [6] Whilst the Deceased was at Fairweather's home the convicted man pushed him and pulled the gun from his pants waist. The Deceased was later seen on the ground tied up with either rope or a cord and lying face down on the floor. The convicted man told Fairweather and her friend to go to the Deceased's house and take all valuables which could be sold. The convicted man and his accomplice took the Deceased to his pick up and drove away.
- [7] In their statements to the police both the convicted man and his accomplice accused each other of shooting and killing the Deceased. However, they were both convicted for the murder of the Deceased.

The Hearing

- [8] The Court held a sentencing hearing in keeping with the dictates of the CCJ aforesaid. At the hearing I ordered a psychiatric evaluation, social inquiry report and a report on the convicted man from the Kolbe Foundation. These reports were received and I will make reference to them later in this judgment.
- [9] The Court also received written submissions from counsel for the convicted man and Crown Counsel together with authorities on which they relied. The convicted man sought and was granted an opportunity to address the Court on mitigation to which I shall refer later in this judgment.

The Law

[10] I will consider and apply the classical principles of sentencing, namely: retribution, deterrence, prevention and rehabilitation to the facts and circumstances of the case at Bar. They were laid down by Lawson LJ in the celebrated case of *R v James Henry Sergeant 1974 60 Cr. App. R. 74*. In that decision Lawson LJ stated that “*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

[11] The convicted man participated in a criminal activity which resulted in the death of the Deceased as a result of gunshot injuries. The facts disclose that the convicted man arranged for the girlfriend of the Deceased to acquire his gun and having obtained the gun he confronted the Deceased with same.

[12] There can be no doubt that the convicted man and his co-accused planned this event and on that fateful day put their plan into execution whilst the Deceased was tied up and incapacitated.

[13] This is another one of those brutal and deliberate acts of homicide which have become prevalent in this jurisdiction to which the Court must show its abhorrence by the sentence it imposes.

Deterrence

[14] The report from the Kolbe Foundation indicates that the convicted man is not a first offender. Paragraph 3 of that report reads thus:

“prior to his present incarceration our records also show that he was convicted to prison on 2 occasions, which are:

(1) September 4th, 1998 when he was convicted for kept prohibited firearm three years sentence, kept unlicensed ammunition six months sentence, and possession of controlled drugs. He was discharged on parole on September 18th, 2000;

(2) August 3rd, 2001, for kept unlicensed firearm sentenced \$1005.00 in default six months, kept unlicensed ammunition sentenced to \$1005.00 in default six months, and armed with an offensive weapon \$205.00 in default two months. He was discharged on remission on December 21st, 2001.”

[15] On the 4th day of February, 2002, the convicted man participated in the murder of the Deceased for which he was convicted. Paragraph 1 of the Kolbe report further discloses that the convicted man was admitted to prison on the 12th day of February, 2002, on remand for this matter and to serve a sentence of 18 months imprisonment for drug trafficking.

[16] It is obvious that at that time he did not benefit from the proverbial sound of the shutting of the iron cell door as his predilection for the having possession of unlicensed firearms and ammunition seems to have caused him to be a repeat offender. However, on this occasion his foray into criminal conduct resulted in the loss of an innocent life.

[17] The Court will consider the application of this principle to deter the convicted man and others in the society from reoffending in like manner.

Prevention

- [18] This principle is applicable to those persons who are considered to be a danger to the society and in respect of whom rehabilitation has failed. Though the convicted man is a repeat offender the Court is aware that he has undergone programs of rehabilitation for his reintegration to the society. Thus this principle will not be applied here.

Rehabilitation

- [19] The convicted man was enrolled in the 33rd generation of interns at the Ashcroft Rehabilitation Centre (ARC) on the 20th day of October, 2017. The social inquiry report discloses other programs in which he was enrolled such as the Inner Change for Freedom Belize (IFFB); Sydney Craig School and journey to freedom. A troubling revelation in this report is seen under the sub-heading of Assessment to wit: “*Jeremy maintains his innocence in the involvement of the crime and admits that because he was following friends he is bearing the consequences.*” This is in stark contrast to what the convicted man told the Court in his address on the 6th day of May, 2019.
- [20] Thus it seems that though the convicted man appears to be on the path to rehabilitating himself, that process will be negatively affected by his failure to take responsibility for what he has done. His conflicting statements in that regard have not been addressed by Counsel in her written submissions. Hence, the Court will attach very little weight to his expressions of remorse.
- [21] The numerous infractions recorded against him indicate that the process of rehabilitation will be a long and hard one. As stated aforesaid, the convicted man must come to terms with the fact that he was a willing participant in a criminal activity which resulted in the death of the Deceased.

[22] **Aggravating Factors**

- i. The offence was planned and premeditated;
- ii. The gravity of the offence;
- iii. The convicted man was not a first offender at the time of the commission of this offence;
- iv. The convicted man has failed/refused to take responsibility for his actions.

[23] **Mitigating Factors**

- i. The progress made by the convicted man whilst on remand to rehabilitate himself;
- ii. The violations of the convicted man's constitutional rights.

[24] The Court will consider and apply the *dictum* of Rawlings JA (as he then was) in *Harry Wilson v Regina No. 30 of 2004* to be instructive as to the manner in which I must balance these factors and the relevant legislation in Section 106 (1) of the Criminal Code as amended. In that decision Rawlings J.A. stated:

“17. 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 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 death sentence should only be imposed in those exceptional cases where there is no

reasonable prospect of reform and the object of punishment would not be achieved by any other means. The sentencing Judge is fixed with a very onerous duty to pay due regard to all of these factors.

18. *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.”*

Sentence

- [25] The facts disclose that the Deceased was beaten, tied up, robbed and finally killed by the convicted man and his accomplice. This is a most brutal and heinous murder. This offence was the culmination of a series of criminal offences committed by the convicted man from the time he was around 17 years of age. He seemed to be a victim of the revolving door syndrome as he was in and out of prison for serious offences between September 1998 and February 2002. Indeed, this offence which was committed on the 4th day of February, 2002, occurred shortly after his last release from prison in December 2001.
- [26] Though the convicted man ought to be commended for leaving school early to assist in the maintenance of his family it is clear that at some point in time

he chose a life of crime from which he never looked back until his incarceration for this offence. He is still, however, to come to terms with the fact that he was a willing participant in the murder of an innocent man and to take responsibility therefore.

[27] There is no evidence that the convicted man suffers from any mental disability and his rehabilitation seems to be well on course. From all appearances he seems to have eschewed the criminal lifestyle he adopted as a teenager. However, he must be suitably punished for this offence of murder.

[28] I find that the aggravating factors outweigh the mitigating ones. I further find that the convicted man should not be considered to be a danger to the society; hence, there is no need for the imposition of an indeterminate sentence. I am concerned about the several infractions committed by the convicted man whilst an inmate in prison which indicate that his rehabilitation is still incomplete.

[29] Accordingly the convicted man is sentenced to life imprisonment. He shall be considered for parole after serving 25 years imprisonment. This sentence shall commence from the 12th day of February 2002.

Dated this **Thursday 3rd day of October, 2019.**

Honourable Justice Mr. Francis M. Cumberbatch
Justice of the Supreme Court