

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

SOUTHERN DISTRICT – STANN CREEK

CASE No. RE20190014C

THE QUEEN

V

WAYNE MARTINEZ

BEFORE: Hon. Justice Mr. Francis M. Cumberbatch

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

RESENTENCING DATE: 3rd October, 2019

JUDGMENT ON SENTENCING

[1] After a trial before Honourable Justice Adolph Lucas and a jury, the convicted man was convicted of the offence of murder on the 24th day of May, 2007. This offence was committed on or around the 9th day of October, 2005. He was sentenced to life imprisonment. His appeal before the Court of Appeal was dismissed and his conviction and sentence were affirmed.

[2] On the 29th day of March, 2018, the Caribbean Court of Justice (“CCJ”) made the following ruling in *Gregory August & Alwin Gibb v R CCJ APPEAL NOS BZCR2015/001 and BZCR2015/002*:

“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. For 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] Section 106 of the Criminal Code was also amended accordingly for ease of comfort in the application of the decision of the CCJ aforesaid:

“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 convicted man and another were charged with the murder of Reno Castillo (“the Deceased”). The convicted man together with the Deceased and others were drinking on the night in question. At some stage, an issue arose and a struggle ensued over a cap and a pair of sunglasses. During the struggle, the convicted man stabbed the Deceased some four times with a knife in the region of his face which resulted in his death.

The Hearing

[5] The Court held a re-sentencing hearing to determine what would be an appropriate sentence in view of the facts and circumstances herein and the

decision of the CCJ aforesaid. The Court ordered that a social inquiry report, psychiatric report, and a report on the convicted man's conduct whilst an inmate at the Kolbe Foundation be provided.

- [6] The Court also benefitted from written submissions from Counsel together with authorities on which they relied. I shall refer to the contents of these reports later on in this judgment.

The Law

- [7] Parliament has enacted new legislation following on the heels of the decision of the CCJ aforesaid. In the consideration and application of this legislation the Court shall first consider the four principles of sentencing, namely: retribution, deterrence, prevention, and rehabilitation. These principles were laid down by Lawson LJ in the celebrated decision of *The Queen v Sergeant*.

Retribution

- [8] This is one of those cases of homicide for which there seems to be no ascertainable cause or reason for the taking of a human life. From all appearances the fight which resulted in the loss of the life of the Deceased originated from a dispute over a cap and a pair of sunglasses. This dispute morphed into homicide. The Court cannot ignore the fact that prior to the

altercation the convicted man and others were all engaged in ‘drinking’ which in local culture involves the consumption of large quantities of various alcoholic beverages.

- [9] It has been recognized, however, that notwithstanding the fact of the consumption of alcohol with its attendant consequence that there is still in every human being a residual capacity for self-control, which the exigencies of a given situation may call for. Thus, the Court must show its abhorrence for the wanton taking of a human life over trivial issues by the sentence it imposes.

Deterrence

- [10] This principle is of general and specific application. General to deter those members of the public in this country which already has a high rate of homicides from committing this heinous offence and specific to the convicted man to deter him from reoffending in a similar manner upon his release from prison.
- [11] The convicted man has a hitherto clean criminal record and notwithstanding the eight prison infractions recorded against him these are mainly confined to unauthorized possession of cell phones and phone chargers rather than offences of violence. It therefore seems unlikely that he will reoffend in like or similar manner upon his release from prison.

Prevention

- [12] This principle is more applicable to those persons who are or may be considered to be a danger to the society upon their release from prison. The favourable statements from the family members of the convicted man are evidence that this convicted man does not fall into this category.

Rehabilitation

- [13] The rehabilitation of the offender is essential for his re-integration to the society. The social inquiry report discloses that the convicted man has participated and completed “many different programs including the Ashcroft Rehabilitation Centre (“ARC”) program, work ethics, and rehabilitation programs.” However, the report from the Kolbe Foundation states thus, “over the years his records show that he has not engaged himself in the 32nd generation of interns at the Ashcroft Rehabilitation Centre (ARC) May 22nd, 2017”. This anomaly has not been addressed by Defence Counsel in her submissions.

- [14] The convicted man has strong family support awaiting him upon his release from prison. He has expressed remorse for his actions and stated his regret at being unable to personally express his apologies to the family of the Deceased for his actions. Accordingly, he is a prime candidate for

rehabilitation; hence, it is unlikely that he will not benefit from the sound of the shutting of the iron cell door.

[15] I find the following to be the aggravating and mitigating factors herein:

[16] **Mitigating factors**

- i. The violations of the convicted man's constitutional rights;
- ii. The remorse expressed;
- iii. The programs pursued by the convicted man in aid of his rehabilitation;
- iv. The convicted man is a first offender.

[17] **Aggravating factors**

- i. The seriousness of the offence;
- ii. The use of a dangerous weapon, to wit a knife to inflict some four stab wounds to the face of the Deceased;
- iii. The prevalence of the offence of homicide.

[18] I will consider and apply the *dictum* of Rawlings JA (as he then was), in the decision of *Harry Wilson v The Queen* where he outlined the approach to be taken by a sentencing judge in cases of homicide. This *dictum* embraces the

amended provisions of section 106 of the Criminal Code aforesaid. Rawlins

JA stated thus:

“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.”

Rawlins, JA went on to state:

“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

- [19] I have conducted a balancing exercise with the aggravating and mitigating factors and find that the aggravating factors outweigh the mitigating ones. I must, however, take into consideration in the convicted man's favour the breach of his constitutional rights and the consequences arising there from.
- [20] I find that the seriousness of the offence committed by the convicted man militates against him benefitting from being a first offender. I find that this homicide cannot be classified as being amongst the worst of these cases. However, though the loss of life occurred for trivial reasons aforesaid this Court should not trivialize an offence as heinous as this.
- [21] In the decision of *Kenneth Samuel v R criminal appeal No. 7 of 2005* Barrow JA said that "... ... *the Court must vindicate the community's abhorrence for this killing by imposing a deserved rather than an extreme sentence.*" I find this *dictum* to be quite instructive having regard to the facts and circumstances herein.

[22] Accordingly, the convicted man is sentenced to life imprisonment. He shall serve a period of imprisonment of 20 years before he can be released on parole. This sentence takes effect from the 11th day of October, 2005.

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

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