

IN THE SUPREME COURT OF BELIZE, A.D. 2022

CRIMINAL JURISDICTION

Central District

Indictment No N9/2022

THE KING

v.

EARL ARMSTRONG

BEFORE: **The Honourable Justice Susan Lamb**

APPEARANCES: **Mr. Glenfield Dennison for the Crown**
Mr. Lyndon Jones for the Accused

DATES: **25 and 29 July 2022, 22 September 2022 and 11 October 2022**

SENTENCING

1. On 29 July 2022, Mr. Earl Ellis Armstrong entered a plea of guilty to the offence of causing death by careless conduct pursuant to Section 108(2) of the Belize Criminal Code.¹

¹ Section 108(2), Belize Criminal Code, Chapter 101 of the Substantive Laws of Belize (Revised Edition) 2020 (“Criminal Code”).

2. The agreed facts are that on 10 July 2020, Mr. Armstrong was driving a blue GMC Sonoma pickup truck with licence plate number 01302 on the Philip Goldson Highway at Carmelita Village in the Orange Walk District. His careless driving caused injuries to 39 year old Mr. Nestor Grant, who was pronounced dead at the Northern Regional Hospital at 09:15 p.m. by Dr. Delmy Lopez. It is accepted that these injuries caused the death of Mr. Grant.
3. On 14 April 2022, Mr. Armstrong was indicted before the Supreme Court on a single count of causing death by careless conduct contrary to Section 108(2) of the Criminal Code. Following his arraignment, Mr. Armstrong plead guilty to this offence on 29 July 2022.
4. Section 108(2) of the Criminal Code provides that “[e]very person who causes the death of another by any careless conduct not amounting to negligence ... shall be guilty of an offence and liable to imprisonment for two years.”
5. Whilst the case law has emphasized that causing death by careless conduct is undoubtedly a serious offence, it is contrasted in sentencing with the more serious offence of manslaughter by negligence.² Sentencing for the offence of causing death by careless conduct under Section 108(2) of the Criminal Code encompasses four elements:
 - a) *A maximum term of imprisonment of two years.*³ Although the courts have on occasion awarded a custodial sentence, more usually, any such sentence is awarded in default of payment.⁴ Terms of imprisonment in default of payment have ranged from between three months to two years duration, depending on the circumstances of the case⁵;
 - b) *A fine.* Depending on the circumstances, decided cases have imposed fines in the range of \$2,000.00 to \$9,000.00, with the quantum typically being in the range of \$2,500 and \$4,500.00 in incidents involving a single death⁶;
 - c) *Compensation to the deceased’s family.* Compensation under Section 108(2) of the Criminal Code does not seek to place a monetary value on human life. Instead, the quantum of compensation, when awarded at all under this provision, reflects considerations such as any payments previously made by the Accused to the deceased’s

² Section 108(1) of the Criminal Code (punishable by imprisonment for five years); *see also Cardinal Smith v. The Queen*, Criminal Appeal No. 35 of 2005, 14 July 2005; *Michel Espat v. The Queen*, Criminal Appeal No. 2 of 2015, and *Director of Public Prosecutions v. Sherwood Wade*, Criminal Appeal No. 24 of 2015.

³ *Director of Public Prosecutions v. Ravell Gonzalez*, Criminal Application for Leave to Appeal No. 2 of 2015 (“*DPP v. Gonzalez*”), at para. 14. *See also R. v. Joel Westby*, C23/2019, Supreme Court of Belize, 11 April 2022, at paras 4-5 and footnotes 4-9 and *R. v. Francisco Torres*, C31/2022, Supreme Court of Belize, 30 May 2022, at paras 5-8.

⁴ *See Victor Cuevas v. The Queen*, Criminal Application for Leave to Appeal No. 17 pf 2007 (imposing a one year custodial sentence in view of the Accused’s unexplained aggressive driving and excess blood alcohol level at the time of the incident); *cf. Cardinal Smith v. The Queen*, Criminal Appeal No. 35 of 2005, 14 July 2006 (“*Cardinal Smith v. The Queen*”) (declining to impose a custodial sentence in the light of mitigating factors present in that case).

⁵ *See e.g. N4/2014 R. v. Cesar Revolorio* (2014); C89/2017 *R. v. Jose Rodriguez* (2019); N18/2017 *R.v. Sixto Martinez* (2017); S28/2018 *R. v. Luis Tzul* and C104/2018 *R. v. Alfonso Noble* (2019) (all unreported).

⁶ *See DPP v. Gonzalez*, at para. 2 (noting the impact of Section 151(2) of the Indictable Procedure Act where more than one person killed and requiring the payment of a single fine of \$8,000 and a sum of \$10,000 by way of compensation to the family of one of the deceased (*id.*, at paras. 18-20)) and *Revolorio, Sixto Martinez, Jose Dominguez, and Luis Tzul* (*supra*, footnote 5) (imposing fines between \$2,500.00 and \$3,500.00).

family, prior or anticipated future insurance payments to the deceased's family, pending civil claims, and the financial means of the Accused.⁷ The Court of Appeal has, however, intervened in a case awarding compensation of \$1,000.00, considering this sentence to be unduly lenient.⁸ Compensation payments awarded to date has ranged from zero to \$10,000.00, with a range of \$3,500.00 to \$5,000.00 being the norm;⁹ and

- d) *Disqualification from driving*. Despite the view expressed at paragraph 68 of *Cardinal Smith v. The Queen* that “where persons are convicted of an offence under this section, [...] [their driving] licence [...] should invariably be suspended”, other cases have criticized this approach as indefensibly rigid and inflexible and have refrained from ordering the suspension of the Accused's licence.¹⁰ I find no justification for this additional punishment in the current circumstances.
6. Having regard to the above sentencing framework and my duty to arrive at an individualized sentence which reflects the circumstances of the case, I have considered the grave consequence of loss of life, and thus the profound and enduring impact of this incident upon Mr. Grant's family.
 7. During the sentencing hearing on 22 September 2022, Ms. Clara Grant, a sister of the deceased, provided a victim impact statement. She described her close relationship with her elder brother, who she described as hard-working, cheerful, happy, helpful and responsible. At the time of his death, Mr. Grant was living with the witness' parents, and was thus the one who assisted them whenever he could. She described losing her brother in such a manner as devastating to the entire family, both emotionally and financially. The financial impact of this loss was compounded as it occurred during the COVID lockdown.
 8. At the time of his death, Mr. Grant did occasional mechanical work for Mr. Armstrong. Ms. Grant testified that she struggles to come to terms with the manner in which Mr. Armstrong responded to the incident, which she described as less than forthcoming regarding the circumstances in which Mr. Grant died. She acknowledged that Mr. Armstrong offered financial assistance to the family. However, the family declined to accept it, being unsure if this was appropriate given that the incident was by then a police matter, and also as it was emotionally difficult to be around Mr. Armstrong at that time.
 9. This profound loss to the Grant family, in unclear circumstances, is doubtless an aggravating feature of this offence. There are however no additional aggravating factors,

⁷ See e.g. N9/2014 *R. v. Donaldo Omar Can* (2015), N24/2018 *R. v. Abram Freisen* (2019) and N21/2017 *R. v. Jomar Hercules* (2019) (no compensation awarded but leave granted to reapply to the Supreme Court should insurance company not compensate deceased's family); N14/2018 *R. v. Norman Slusher* and N4/2018 *R. v. Jessy Garcia* (2018) (no compensation ordered as compensation already paid by insurance company); C42/2016 *R. v. Boyd Lopez* (2016) (no compensation payable due to pending civil claim); and C28/2018 *R. v. Ismael Garcia* (no compensation awarded following substantial insurance pay-out and the Accused's previous assistance to the deceased family with funeral expenses and having built the deceased's mother a house).

⁸ *DPP v. Gonzalez*, at paras 1 and 2.

⁹ See e.g. C24/2019 *R. v. Jessica Miller*; N4/2014 *R. v. Cesar Revolorio* (2014); S12/2013 *R. v. Josue Tello* (2014); N2/2015 *R. v. Hector Bobadilla* (2016) and *DPP v. Gonzalez*, at paras. 18-20.

¹⁰ *DPP v. Gonzalez*, at para. 21.

such as a blood alcohol concentration above the prescribed limit, or clearly excessive speed.

10. There are several mitigating features in the present circumstances, in particular Mr. Armstrong's early guilty plea and acceptance of responsibility, remorse, and good character.
11. Mr. Armstrong is a law-abiding citizen who, previous to this incident, had not been convicted of any crime. Mr. Armstrong cooperated with police investigation and opted to plead guilty at an early stage, thus saving the court time and resources and the family the trauma of a trial. He has also, through his counsel, expressed remorse.
12. In this statement, Mr. Armstrong indicated that he was genuinely sorry for the loss of Mr. Grant, describing Mr. Grant as a humble and respectful person, whose death is a tragedy. Mr. Armstrong indicated that while he was unable to say with precision what occurred, he acknowledged that Mr. Grant was travelling in the pan of his pick-up, which was *en route* to Belize City, prior to his death. Mr. Armstrong indicated that he too has felt the loss of Mr. Grant, and given this, can only imagine how the family feels. Mr. Armstrong concluded his statement by reiterating how sorry he is that Mr. Grant has lost his life.
13. On his behalf, Mr. Armstrong's counsel submitted that he is 43 years of age, is the father of 4 daughters and is the sole income earner of his household. He earns a living by repairing and painting cars. Mr. Armstrong has no prior criminal convictions. He knew the deceased for over two years, as Mr. Grant would often ask to run errands or to do occasional work for Mr. Armstrong.
14. On the day of the incident, Mr. Grant had approached Mr. Armstrong hoping to find work. After receiving a call from a client in Ladyville, Mr. Armstrong departed for Belize City and did not object to Mr. Grant accompanying him. When Mr. Armstrong heard on the news that evening that Mr. Grant had not returned and that a body had been found on the highway, he offered to help look for Mr. Grant. Mr. Armstrong also offered the Grant family money to assist with funeral expenses.
15. Mr. Armstrong has consistently maintained that while he does not know precisely what happened to Mr. Grant, he feels terrible about the entire situation and for this reason, sought at the earliest opportunity to accept responsibility and plead guilty.
16. In light of the above, I consider the following sentence to be appropriate in all the circumstances:
 1. A fine of \$3,000.00, payable within twelve (12) months of the date of this judgment;
 2. A term of imprisonment of six (6) months in default of payment; and

3. A sum of compensation of \$4,500.00, payable within twenty four (24) months of the date of this judgment, to the family of the deceased, Mr. Nestor Grant.

Dated this 11th day of October 2022

Susan Lamb
Justice of the Supreme Court of Belize