IN THE COURT OF APPEAL OF BELIZE, A.D. 2006

CRIMINAL APPEAL NO. 6 OF 2006

BETWEEN:

DIRECTOR OF PUBLIC PROSECUTIONS	**Applicant/ Intended Appellant**
AND	
ESTON YOUNG	**Respondent**

—

BEFORE:

The Hon. Mr. Justice Mottley	**-**	**President**
The Hon. Mr. Justice Sosa	**-**	**Justice of Appeal**
The Hon. Mr. Justice Morrison	**-**	**Justice of Appeal**

Mr. Kirk Anderson, Director of Public Prosecutions, for the applicant.
Respondent unrepresented.

—

10 July, 27 October 2006.

MORRISON, JA

1. The applicant, the Director of Public Prosecutions, applied to this Court for leave to appeal against the sentence of five years of imprisonment imposed by the learned Chief Justice on the respondent, who had entered a plea of guilty to a charge of Use of

Deadly Means of Harm with intent to cause Grievous Harm. The ground of the application, which was made pursuant to sections 49(1)(c) and 49(2)(c) of the Court of Appeal Act, Chapter 90 of the Laws of Belize, was that the sentence imposed by the learned trial judge was unduly lenient in the circumstances of the case and given the previous convictions of the respondent for offences of a similar kind.

2. At the conclusion of the hearing of the application on 10 July 2006, this court refused the application for leave to appeal, promising to put its reasons in writing, which we now do.

3. Section 83(b) of the Criminal Code, Chapter 101 of the Laws of Belize, prescribes a maximum sentence for the offence to which the respondent pleaded guilty of ten years' imprisonment. While the learned Director accepted that, as a general principle, "an offender who pleads guilty may expect some credit, in the form of a reduction in the sentence which would have been imposed if he had been convicted by the jury on a plea of not guilty" (see Archbold's Criminal Pleading, Evidence & Practice, 2005, paragraph 5-80), he nevertheless submitted that the sentence of five years in the instant case was unduly lenient in the light of the respondent's several previous convictions (his Police Criminal Record Card disclosed nine in all, including one for attempted murder, several for varying degrees of harm, housebreaking and aggravated theft). The Director suggested that in the case of a repeat offender, such as the respondent, the appropriate "discount" for a plea of guilty fell to be substantially reduced and that, in the instant case, "even if the maximum sentence had been discounted by as much as one-third, then a sentence of seven (7) years' imprisonment should have been imposed…rather than the

sentence of five (5) years which was in fact imposed." Taking all things into account, the Director submitted, a sentence of eight years' imprisonment would have been more appropriate.

4. In passing sentence on the respondent after his plea of guilty had been accepted, the learned Chief Justice said the following:

> "Mr. Young, you have pleaded guilty to a very serious offence, and I take a dim view of it, especially the circumstances in which this offence was committed, evidently without any provocation other than, as you say, you felt jealous. That was no excuse to inflict the harm you did on Ms. Wade.
>
> I have heard Ms. Wade. I have had the benefit of what she had to say as to the impact of the offence to which you have pleaded guilty.
>
> I will temper my view of the seriousness of the crime with the fact that you have pleaded guilty and from the dock you have shown remorse and you have said expressly that you are sorry for what you did, and Mr. Bradley, your court appointed attorney has urged in mitigation that mercy be shown.
>
> It is a very serious offence but nonetheless I will have to impose a custodial sentence on you to which the sentence of this court is that you shall serve a term of five years."

5. Taking all factors into account, including the learned Director's spirited submissions in support of this application, we were not persuaded that the learned Chief Justice fell into error any way in

his analysis or conclusion set out above. Even if, as the Director attempted to demonstrate, a more appropriate level of discount for the respondent's guilty plea might have resulted in a sentence of seven years (and his analysis assumed, which may not necessarily have been the case, that the maximum of ten years was the appropriate starting point in this exercise), it cannot be said, in our view, that the sentence imposed by the Chief Justice was on that basis "unduly lenient".

6. Before leaving this matter however, we would wish to comment on the exercise which the Chief Justice undertook, in the nature of a victim impact assessment, by eliciting information before sentencing from the virtual complainant, Miss Lorna Wade. When he was advised that Miss Wade was available the Chief Justice commented as follows:

> "Often times, I don't know if it has been done here but there is power in the Court to order a Victim Impact Statement. I will refer to **Attorney General's Reference (No. 2) R v S [1995] CLR 835**. It is not often done in this jurisdiction. It has never been done to my knowledge but there is provision in guiding the sentencer to hear the victim. There is power in this Court to do that although the Criminal Law of England is not the Criminal Law of Belize but Section 8 of our **Indictable Procedure Act** provides that where there is a lacuna in the practice you can have recourse to the practice in England. It would be helpful for the sentencer to hear the victim as to the impact of the crime especially the crime to which the accused had pleaded guilty."

7. The learned Chief Justice subsequently heard from Miss Wade, and the record discloses that this is what then took place:

"THE COURT: You say the victim is here? I would like to hear from her. It is not usual in this jurisdiction but it is allowed for the court to hear victim impact.

THE COURT: Ma'am, good morning. You are hear (sic) this morning, Mr. Eston Young has been brought to this court charged with the offence of Using Deadly Means of Harm to inflict harm on you and to which offence he has pleaded guilty.

I have read the Medical Report which the Prosecution was kind to put. Do you have anything to say how this offence has affected you?

MS. WADE: It affect me by I have headaches everyday and majority of the time I go into seizures. I lose sight to one of my eyes. I cannot taste or smell nothing. All those nerves have been damaged.

THE COURT: He has expressed remorse. He says he is sorry and he throws himself to the mercy of the court; but I think it is proper that I hear from you.

MS. WADE: I have headaches, I lost one eye, I go into seizures majority of the time. I live with headaches everyday. In last week coming on to this week I lone di vomit blood too. I stay di vomit blood.

THE COURT: One and a half years after the event, because it happened in 2004. Anything else?

MS. WADE: No.

THE COURT: Are you working now?

MS. WADE: Yes, I am. I am working at the Belize City Council as a security officer.

THE COURT: Other than those effects you have described --.

MS. WADE: Sometimes I noh feel good but I have to work because I am the mother and father for my children right now and I have to take care of them, you know, and if I noh work I can't mind them, you know, but some days I noh feel good and I still have to go pan mi job.

THE COURT: Anything else you want to say to me for the attack by Mr. Young on you?"

8. Having heard Miss Wade, the Chief Justice then proceeded to pass sentence on the respondent, as already indicated. We have no doubt that in appropriate cases the court's approach to sentence can and will derive benefits from an exercise such as that undertaken by the Chief Justice in this instance. However, section 8 of the Indictable Procedure Act notwithstanding, there may be dangers, it seems to us, in embarking on this kind of exercise in an ad hoc and therefore essentially unstructured way. It may, for instance, seriously be doubted whether much of what Miss Wade told the court could have been of any possible value in the absence of expert medical evidence. And what if the respondent disagreed with the medical assessment? Ought there not to be some known procedure whereby his views might receive a hearing, or, at the very least, some consideration?

9. The learned Director very helpfully provided us with a consolidation of practice directions in criminal proceedings in the United Kingdom (reported as Practice Direction (Criminal Proceedings) (Sup Ct)

[2002] 1 WLR 2870) paragraph 28 of which deals with "Personal statements of victims" (page 2888) and is set out in full below:

> "28. Personal statements of victims
>
> 28.1 This section draws attention to a scheme, which started on 1 October 2001, to give victims a more formal opportunity to say how a crime has affected them. It may help to identify whether they have a particular need for information, support and protection. It will also enable the court to take the statement into account when determining sentence.
>
> 28.2 When a police officer takes a statement from a victim the victim will be told about the scheme and given the chance to make a victim personal statement. A victim personal statement may be made or updated at any time prior to the disposal of the case. The decision about whether or not to make a victim personal statement is entirely for the victim. If the court is presented with a victim personal statement the following approach should be adopted.
>
> (a) The victim personal statement and any evidence in support should be considered and taken into account by the court prior to passing sentence.
>
> (b) Evidence of the effects of an offence on the victim contained in the victim personal statement or other statement must be in proper form, that is a witness statement made under section 9 of the Criminal Justice Act 1967 or an expert's report, and served upon the defendant's solicitor or the defendant, if he is not represented, prior to sentence. Except where inferences can properly be drawn from the nature of or circumstances surrounding the offence, a sentencer must not make assumptions unsupported by evidence about the effects of an offence on the victim.
>
> (c) The court must pass what it judges to be the appropriate sentence having regard to the circumstances of the offence and of the offender, taking into account, so far as the court considers appropriate, the consequences to the victim. The opinions of the victim or the victim's close relatives as to what the sentence should be are therefore not relevant, unlike the consequence of the offence on them. Victims should be advised of this. If, despite the advice, opinions as to sentence are included in the statement, the court should pay no attention to them.

(d) The court should consider whether it is desirable in its sentencing remarks to refer to the evidence provided on behalf of the victim."

10. It will be seen from this that the practice direction attempts to balance the unquestionably laudable objective of giving victims "a more formal opportunity to say how a crime has affected them" against the continuing right of a defendant, albeit one who has already been found or pleaded guilty, to be heard on any matter that may weigh against his interests in the crucial final stage in the trial process that consideration of the appropriate sentence represents. We would suggest that active consideration be given to designing and introducing a similar scheme in Belize, but that until this is done the greatest care should be taken to ensure that an accused person is not prejudiced by informal victim assessments. Having said that, however, it may also be fair to say that we have seen no evidence that the respondent suffered any prejudice whatsoever from the exercise that was carried out in this case.

MOTTLEY P

SOSA JA

MORRISON JA