

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

SOUTHERN DISTRICT – STANN CREEK

CASE No. RE20190013C

THE QUEEN

v

PHILLIP TILLET

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 was an inmate at the Kolbe Foundation serving a sentence of 20 years imprisonment imposed on him on the 12th day of October, 1997, for the offence of manslaughter. On the 17th day of June, 2003, he committed the offence of murder whilst still an inmate at the prison. He was convicted for this offence on the 11th day of March, 2005, and was sentenced to life imprisonment. His appeals to the Court of Appeal and the Privy Council against his conviction for murder were both dismissed.

[2] On 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* on the constitutionality of the mandatory sentence of life imprisonment.

“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] The Criminal Code as a consequence of the foregoing was amended as follows:

“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 facts herein are extracted from the judgment of Lord Dyson who delivered the judgment of the Board on the 18th day of July, 2011.

[5] On the 17th day of June, 2003, a prison officer on guard duty observed two prisoners involved in an altercation. He saw one prisoner push the other and make a single punching motion towards his chest. The recipient of the blow was the Deceased.

- [6] The prisoner who delivered the blow then walked towards the stairs where another prison officer was standing. That prison officer confronted him and discovered that he was holding a knife. He pointed his gun at him and told him to drop the knife which he did. The second officer identified the convicted man as the prisoner holding the knife.
- [7] The convicted man at his trial admitted that he was stopped with the knife, but, he contends that he had noticed the knife on the floor in the vicinity of cell 12 where he saw two inmates struggling. And that he picked it up to prevent other inmates from getting hold of it.
- [8] The blade of the knife was seven inches long and was bloodstained. When the convicted man was asked, “Why he got involved in this incident? He replied, uttering words to the effect that the Deceased had disrespected his mother.”

The Hearing

- [9] As a consequence of the decision of the CCJ aforesaid the Court held a sentencing hearing to determine what would be an appropriate sentence for the convicted man. The Court ordered that a psychiatric evaluation of the convicted man be conducted and its findings be produced to the Court. It was further ordered that the Court be provided with a social inquiry report on the convicted man and a report on his conduct whilst an inmate at the Kolbe Foundation.
- [10] The Court ordered and received written submissions from Counsel for the Crown and the convicted man together with copies of authorities on which they relied. There were no oral submissions made by Counsel on either side.

[11] The Court also allowed the convicted man to make an address from the dock in mitigation. I will refer to Counsel's submissions and the address of the convicted man later in this judgment.

The Law

[12] The principles of sentencing to be followed are laid down by Sir Dennis Byron CJ in the decision of *Desmond Baptiste v R No. 8 of 2003*. In that decision Byron CJ adopted what are described as the classical principles of sentencing, namely: retribution, deterrence, prevention, and rehabilitation enunciated by Lawson LJ in *R v Sergeant 60 Cr. App. R. 74 at page 77*.

Retribution

[13] The facts herein reveal the loss of a human life for trivial reasons. The convicted man who at that time was a convicted prisoner for manslaughter acquired a knife with a blade seven inches long which he was not reluctant to use in full view of prison guards.

[14] There could be no reason other than to do unlawful harm for a prison inmate to walk around armed with a knife whilst within the confines of the prison. The Court must show its abhorrence for this kind of conduct by the sentence it imposes.

Deterrence

[15] This principle is intended to be general as well as specific in nature. The former is intended to be a restraint against potential criminal activity by others whereas the latter is a restraint against the particular criminal relapsing into recidivist behaviour.

[16] It is common ground that this convicted man on or around the 13th day of November, 1997, had unlawfully taken a human life; and, whilst serving a sentence in June 2003 unlawfully took another human life.

[17] The Court has noted the remarkable progress made by the convicted man over the years to rehabilitate himself. Thus, it appears unlikely that this principle is applicable to him. However, the Court is aware of the prevalence of the offence of homicide within the jurisdiction and as such an appropriate sentence should be imposed to deter others from committing this heinous offence for trivial reasons.

Prevention

[18] The Court finds that though the convicted man is a repeat offender for an offence as serious as homicide he ought not to be considered a danger to the society. Indeed, by virtue of the progressive steps taken by him to redeem and rehabilitate himself, he may be considered an asset to the society upon his release from prison. Thus this principle is not applicable to him.

Rehabilitation

[19] The report from the Kolbe foundation states thus on the convicted man's rehabilitation:

“Over the years his records show that he has engaged himself in programs: Introduction to Computers 2004; Inmate Education Program April 2004; HIV & STD Peer Educators Project September 2009; Peer Counseling Skills and Techniques August 2009; Medical First Responder course August – September 2011; alternative to

violence project. In June 2015, the convicted man became a member of the Inmate Advisory Committee.”

[20] It is clearly apparent that this convicted man has taken positive steps to turn his life around and eschew the temptation to be further involved in criminal activity.

[21] Indeed, he has already made efforts to address issues of violence in the society by speaking to youths about the dangers associated with this kind of conduct and the need to avoid unjustified violence.

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

[23] **Aggravating Factors**

- i. The gravity of the offence of homicide;
- ii. The convicted man’s previous conviction for homicide;
- iii. The convicted man’s unlawful acquisition of a knife to enable the commission of this offence;
- iv. The offence was planned and premeditated.

[24] **Mitigating Factors**

- i. The remorse expressed by the convicted man;
- ii. The violations of the convicted man’s constitutional rights;
- iii. The programs pursued by the convicted man in aid of his rehabilitation.

Sentence

[25] In *Harry Wilson v The Queen Rawlings JA* (as he then was) stated thus:

“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:

“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.”

[26] The convicted man is a repeat offender for the offence of homicide. In the usual course of things an indeterminate sentence would be appropriate more so when the place and manner of the commission of this offence are considered.

[27] I find that having balanced the aggravating and mitigating factors the aggravating factors outweigh the mitigating ones. However, I must consider the mitigating factors in the convicted man's favour. First among these is his rehabilitation. The social inquiry report discloses that he had to be sent to Listowel, a children's home because of indiscipline and running away from home. This unfortunate trend continued and he was imprisoned in 1997 at age 18 for robbery and murder.

[28] He has had an epiphany and has concentrated his energy on a non-violent approach to life. He has shown maturity and a departure from his time as a misguided youth.

[29] The Court must also give the convicted man credit for the breach of his constitutional rights as the recipient of an unconstitutional sentence. Nevertheless, I find it is fitting and proper for him to be suitably punished for this crime. Though a sentence of life imprisonment without parole may be required for his successive homicide offences, I find that having taken into account all of the circumstances of this case a determinate sentence is sufficient to bring home to this convicted man and the public at large the unacceptability of his conduct.

[30] Accordingly, the convicted man is sentenced to life imprisonment. He shall be paroled after having served a period of 25 years in prison. This sentence takes effect from the 11th day of March, 2005.

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

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