

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

SOUTHERN DISTRICT – STANN CREEK

CASE No. RE 20190016C

THE QUEEN

v

AGRIPO ICAL

BEFORE: Hon. Justice Mr. Francis M. Cumberbatch

APPEARANCES: Ms. Jacqueline Willoughby, Counsel for the
Crown
Ms. Sharon Pitts, Counsel for the Respondent

RESENTENCING DATE: 30th July, 2019

JUDGMENT ON SENTENCING

[1] The convicted man was convicted by a jury on the 2nd day of April, 2007, for the murder of Julia Armstrong Minard (‘the Deceased’) committed on the night of November 13th, 2005. He was sentenced to life imprisonment. His appeal to the Court of Appeal was dismissed and his conviction and sentence were affirmed.

[2] In the decision of *Gregory August et Anor v The Queen* the Caribbean Court of Justice (“CCJ”) made the following ruling.

“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.”

The Facts

- [3] The facts as stated in the decision of the Court of Appeal are as follows. On the night of the November 13th, 2015, the convicted man was in the company of the Deceased and others. They were socializing. The convicted man in a statement to the police claimed that the Deceased who had previously indicated her agreement to having a sexual encounter with him had a sudden change of heart. He was, however, intent on obtaining sexual gratification from the Deceased and a struggle took place between them.
- [4] The convicted man was seen by a witness on top of the Deceased holding her by her neck and mouth choking her. Dr. Estrada Bran who later conducted a post mortem examination opined that the cause of death of the Deceased was manual strangulation in the form of mild to moderate application of pressure for at least three minutes.

The Hearing

- [5] In order to comply, with the directions of the CCJ aforesaid the Court held a sentencing hearing to determine what would be an appropriate sentence herein.
- [6] The Court ordered a sentencing hearing be held and also ordered that psychiatric evaluation of the convicted man be conducted. The Court further ordered that a social inquiry report, and a report from the Kolbe foundation on the convicted man's conduct whilst an inmate in that institution be provided.
- [7] The Court received written submissions from Crown Counsel and the convicted man. Defence Counsel also provided character affidavits on behalf of the convicted man. Both Counsels relied on the contents of their written submissions and authorities attached thereto. There was no viva voce evidence adduced by or on behalf of the Defence or the Crown.

The Law

- [8] Section 106 of the Criminal Code 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.

(2) ...

(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.”

[9] The principles of sentencing namely: retribution, deterrence, prevention and rehabilitation was 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

- [10] The convicted man and Deceased were friends prior to this fateful incident. His actions that night constituted a betrayal in the trust reposed in him by her and eventually led to the loss of her life in brutal and bizarre circumstances.
- [11] The Court must show its abhorrence for this type of conduct especially as has occurred here where the convicted man has taken the life of another whilst unlawfully in pursuit of sexual gratification.

Deterrence

- [12] I have examined and considered the report on the convicted man from the Kolbe Foundation together with the character statements submitted by Defence Counsel. It seems unlikely that the convicted man will reoffend in like manner on his release from prison.
- [13] However, whilst this principle might not be applicable to him current trends have shown the prevalence of the offence of homicide within the jurisdiction. Hence, the Court will apply this principle to serve as a form of restraint to those contemplating the commission of this type of offence.

Prevention

[14] As stated aforesaid it is unlikely that this offender will reoffend in like manner. I find that he will benefit from the sound of the proverbial shutting of the iron cell door. Moreover, there is no evidence before me that he is to be considered a danger to the society upon his release from prison.

Rehabilitation

[15] The prison report and character statements suggest that the convicted man seems to have been able to rehabilitate himself whilst in prison. He has acquired the skill of barbering and has the support of certain religious bodies to assist in his reintegration to the society.

[16] I have found the following to be the aggravating and mitigating factors herein:

[17] Aggravating factors

- i. The brutal manner in which the convicted man took the life of the Deceased;
- ii. The convicted man's insistence on obtaining sexual gratification from the Deceased notwithstanding her refusal to consent thereto;
- iii. The convicted man displayed callous disregard for the right of a woman not to accede to his sexual demands;
- iv. The convicted man's actions were planned and premeditated;

v. The breach of trust committed by the convicted man.

[18] **Mitigating factors**

- i. The violations of the convicted man's constitutional rights;
- ii. The remorse expressed;
- iii. The previous conviction does not relate to an act of violence;
- iv. The programs pursued by the convicted man in aid of his rehabilitation.

[19] In *Harry Wilson v Regina*, Rawlins JA (as he then was) outlined the manner in which the Court should approach sentencing in capital cases. In that decision, Rawlins JA stated thus:

“17. That 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

[20] I have conducted a balancing exercise with the aggravating and mitigating factors and find that the aggravating factors outweigh the mitigating ones. Though the convicted man is not a first offender I do not consider his previous conviction for using threatening words for which he was convicted and fined the sum of \$150.00 to have a significant negative effect on his character. I will, however, take into account in the convicted man’s favor the fact of him having to wait for an inordinately long period of time before he was afforded an opportunity to address the Court in mitigation of sentence. That resulted in his hearing being incomplete for want of the imposition of an appropriate sentence. I will also take into account in the

convicted man's favour his personal development and steps taken to rehabilitate himself.

[21] This offence was committed in a most heinous and brutal manner. Dr. Estrada Bran opined that the Deceased had to be choked for at least three minutes to cause her to lose her life. The facts, further disclose, that the convicted man literally choked the life out of the Deceased in pursuit of a sexual encounter.

[22] The Court ought not to sit passively tolerant of acts of homicide committed in such a manner as this but must show its abhorrence by the sentence it imposes. The Court must also bear in mind the prevalence of the offence of homicide within this jurisdiction. Thus the convicted man must be punished for taking the life of the Deceased by the imposition of a sentence commensurate with the seriousness of this offence. Accordingly, the convicted man is sentenced to life imprisonment of which he must serve a period of 25 years before he could be paroled. This sentence will take effect from the 15th day of November, 2005.

Dated this **Tuesday 30th day of July, 2019.**

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