

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

**CRIMINAL JURISDICTION**

**Central District**

**Indictment No C16/2019**

**THE QUEEN**

**V.**

**GILBERT PALACIO**

**BEFORE:** **The Hon. Justice Susan Lamb**

**APPEARANCES:** **Ms. Sheiniza Smith for the Crown**  
**Accused unrepresented**

**DATES:** **14 February 2022, 28 February 2022, 14 March 2022 and 11 April 2022**

**SENTENCING**

1. On 14 March 2022, Mr. Gilbert Palacio entered a plea of guilty to the offence of use of deadly means of harm with intent to cause grievous harm contrary to Section 83(b) of the Criminal Code.<sup>1</sup>
2. The agreed facts are that on 25<sup>th</sup> October 2017 at 3.45 p.m., Mr. Palacio encountered Ms. Alexia Del Carmen Melendez while riding his bicycle in the San Mateo area of San Pedro

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<sup>1</sup> Section 83(b), Belize Criminal Code, Chapter 101 of the Substantive Laws of Belize (Revised Edition) 2011 (“Criminal Code”).

town. Mr. Palacio and Ms. Melendez are acquaintances. A disagreement occurred between them and words were exchanged. Mr. Palacio reached for his fishing knife, which he was carrying in his pocket, along with other fishing equipment. Mr. Palacio took hold of Ms. Melendez and in the course of the ensuing struggle, Ms. Melendez sustained cuts to her neck and to her hand after she grabbed the knife. Ms. Melendez had at the time been walking along the street with her friend, Ms. Melina Avilez, who witnessed the incident.

*i. Procedural history*

3. On the 26<sup>th</sup> October 2017, Mr. Palacio was arrested and formally charged with use of deadly means of harm (contrary to Section 83(b) of the Criminal Code), grievous harm (contrary to Section 81 of the Criminal Code), and attempted murder (contrary to Section 18(1) read together with Section 117 of the Criminal Code). On the 9<sup>th</sup> January 2019, Mr. Palacio was indicted before the Supreme Court on a single charge of attempted murder contrary to Section 18 read together with Section 117 of the Criminal Code.
4. Mr. Palacio, who is unrepresented, indicated in court on the 14<sup>th</sup> February 2022 that he wished to plead guilty. An urgent psychiatric assessment of Mr. Palacio's fitness to be tried was ordered and provided to the court by Dr. Alejandro Matus Torres on the 25<sup>th</sup> February 2022. Dr. Matus is a psychiatrist with 11 years professional experience, who has frequently provided expert psychiatric evidence before the Belize courts over the past four years.
5. During a hearing on the 28<sup>th</sup> February 2022, the results of Dr. Matus' report were conveyed to the Crown and Mr. Palacio. While determining that Mr. Palacio exhibited no signs and symptoms of psychosis at the time of examination, and that he was fit to be tried, Dr. Matus' report indicated that Mr. Palacio suffers from a mental and behavioural disorder due to psychoactive substance use. Two earlier reports following court-ordered assessments, dated the 17<sup>th</sup> June 2019 and 20<sup>th</sup> November 2019 respectively, had reached substantially the same conclusions. Proceedings were adjourned until the 14<sup>th</sup> March 2022 to enable Mr. Palacio to receive appropriate legal advice.
6. Upon the request of the court, Mr. Palacio was provided *pro bono* legal assistance by Mr. Leeroy Banner, who visited Mr. Palacio at the Belize Central Prison during the week commencing 7<sup>th</sup> March 2022. On the 14<sup>th</sup> March 2022, Mr. Banner informed the court that he had been able to obtain instructions from Mr. Palacio and to advise him of the consequences of a guilty plea. Mr. Palacio indicated, through Mr. Banner, that he wished to plead guilty to the lesser charge of use of deadly means of harm with intent to cause grievous bodily harm pursuant to Section 83(b) of the Criminal Code, and that he did so voluntarily. This plea was accepted by both the Crown and the court on the 14<sup>th</sup> March 2022. A sentencing hearing was duly scheduled, and took place on the 11<sup>th</sup> April 2022.

*ii. Section 83(b) of the Criminal Code*

7. Section 83(b) of the Criminal Code provides that “[e]very person who uses a sword, dagger, bayonet, firearm, poison or any explosive, corrosive, deadly or destructive means

or instrument, shall, [...] if he does so with intent unlawfully to wound or cause grievous harm to a person, be liable to imprisonment for ten years.”

8. This offence under Section 82(b) attracts a maximum penalty of ten years imprisonment.<sup>2</sup> Previously decided cases have however frequently awarded custodial sentences of five years or less. In *Eston Young*, an Accused indicted on a count of attempted murder and pleading guilty to the use of deadly means of harm with intent to cause grievous harm was sentenced to five years of imprisonment. A five year sentence was also imposed in *Dionicio Acosta* (where, following a verbal altercation, the Accused cut the victim with a machete on his left leg, left wrist and right thigh) and in *Romolo Garcia*, where the victim was cut twice with a machete.<sup>3</sup> Two other cases, where the victims were harmed by multiple gunshot wounds, resulted in 7 year sentences.<sup>4</sup> However in *Anthony Crawford*, the Accused was sentenced to four years of imprisonment and ordered to participate in drug rehabilitation programs whilst in prison after firing a weapon at a neighbourhood party, hitting the 13 year old victim in the cheek.<sup>5</sup> Other cases have not resulted in custodial sentences at all, or sentences in default. For instance, in *Alvaro Cucul*, where the Accused cut the victim twice and attempted to inflict more wounds, a fine of \$3,000.00 and 18 months imprisonment in default was imposed.<sup>6</sup> In *Renford Tillett Jr.*, the Accused was fined \$5,000.00 and ordered to pay \$2,000.00 compensation to the victim, having stabbed him once in the chest following a disagreement.<sup>7</sup>
9. In assessing the seriousness of this offence, I have considered the Accused’s culpability, as well as the actual and likely harm caused to the victim. While a verbal disagreement appears to have preceded this incident, Mr. Palacio’s reaction to it was by any measure disproportionate and concerning. Although the offence was not premeditated, the incident was serious and undoubtedly caused fear and injury to Ms. Melendez, with the medical report indicating that the victim suffered two cut wounds to the right neck, each about three inches long, and one cut to the left neck about three inches long, as well as a number of more superficial wounds, including to her right hand. In sum, this incident undoubtedly involved serious consequences for the victim, although it is not appreciably more serious than many of the decided cases already mentioned.

*iii. Aggravating and mitigating circumstances*

10. In imposing sentence, I must take into account not only of the gravity of the offence but also the individual circumstances of the Accused.
11. While sentences in like cases should be comparable, I have an obligation to tailor the penalties to fit the individual circumstances of the offender and the offence, meaning that

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<sup>2</sup> *Director of Public Prosecutions v. Eston Young*, Criminal Appeal No. 6 of 2006 (2006) (“*Eston Young*”), at para. 3.

<sup>3</sup> N16/06 *Director of Public Prosecutions v. Dionicio Acosta* (2007) and C20(1)/2013 *Director v. Public Prosecutions v. Romolo Garcia* (2013) (both unreported).

<sup>4</sup> C24/08 *Department of Public Prosecutions v. Norman McKenzie* (2008) and C46/2010 *Department of Public Prosecutions v. Leon Blease* (2010) (both unreported).

<sup>5</sup> C58/2017 *Department of Public Prosecutions v. Anthony Crawford* (2019) (unreported).

<sup>6</sup> N6/2015, *Director of Public Prosecutions v. Alvaro Cucul* (unreported).

<sup>7</sup> C48/2013 *Department of Public Prosecutions v. Renford Tillett Jr.* (unreported).

comparison between cases is often of limited assistance. Courts also consider the aggravating and mitigating factors in the circumstances of the case in order to reach an appropriate sentence, and these factors often dictate different results for every individual.

12. In the present case, aggravating factors are the gravity of the offence and its undoubtedly serious impact upon Ms. Melendez. Also aggravating is the Accused's reluctance to participate in prison-based drug use rehabilitation programs and to confront the root causes of his offending, which I address below.
13. Factors that have previously been taken into account in mitigation include the admission of guilt or a guilty plea; expressions of remorse; good character with no prior criminal convictions; comportment in detention; and diminished mental responsibility.
14. Mr. Palacio's guilty plea avoids the need for a trial, saves the court time and resources, and spares victims and witnesses the anxiety of having to give evidence.
15. During the 11<sup>th</sup> April 2022 sentencing hearing, Mr. Palacio expressed genuine remorse for this incident, and that he wished Ms. Melendez to know that he was sorry.
16. Mr. Palacio had no prior criminal convictions before this incident. Although an aggravated assault charge was brought against Mr. Palacio on the 23<sup>rd</sup> October 2018 while he was released on bail (with the result that he was returned to prison on the 31<sup>st</sup> October 2018), Mr. Palacio explained that this stemmed from a family dispute, and that the charge was later dismissed. This is borne out by Mr. Palacio's Defendant History. Mr. Palacio was released once more from prison on the 3<sup>rd</sup> December 2019, but for reasons which remain unclear, he was returned to custody on the 25<sup>th</sup> March 2020.
17. A report from the Kolbe Foundation at Belize Central Prison dated the 22<sup>nd</sup> March 2022 indicates that Mr. Palacio's comportment while in prison has been good, save for one minor infraction, for which he received a verbal warning.
18. Mr. Palacio states that he has used alcohol and marijuana habitually since he was approximately 18 years old. He acknowledged during the 11<sup>th</sup> April 2022 sentencing hearing that while in detention, he has had access to neither alcohol nor marijuana. Mr. Palacio admitted to having consumed both substances on the day before the offence, and also while released on bail (although in his view, not to excess).
19. The earliest court-ordered psychiatric assessment of Mr. Palacio occurred on the 17<sup>th</sup> June 2019, more than 18 months after the date of the offence. However, in view of Mr. Palacio's underlying medical condition, the apparently negative influence of drugs and alcohol on his comportment (when contrasted with his positive mental state and behaviour while in prison) and his consumption of drugs and alcohol on the day before the incident, I consider

it more likely than not that Mr. Palacio was suffering from at least some degree of diminished mental responsibility at the time he committed this offence.<sup>8</sup>

20. Dr. Matus was summoned to testify during the sentencing hearing on the 11<sup>th</sup> April 2022 in order to shed further light upon Mr. Palacio's diagnosis, prognosis, and to provide the court with recommendations following Mr. Palacio's release from prison.
21. Dr. Matus testified that Mr. Palacio suffers from a psychiatric disorder due to the use of drugs. He explained that drug-induced psychosis may cause sufferers to exhibit personality changes and unusual thoughts and behaviour, including a loss of contact with reality. However Mr. Palacio exhibited no symptoms of psychosis at the time of each examination, as at these times, he was in custody and thus with no access to drugs or alcohol. While Dr. Matus acknowledged some possibility of impairment stemming from Mr. Palacio's prolonged use of psychoactive substances, Dr. Matus opined that Mr. Palacio is unlikely to pose any risk to himself or others should he abstain from drugs and alcohol in the future. Upon his release from prison, Dr. Matus recommends that Mr. Palacio be admitted to a rehabilitation centre focused on drug addiction, that he submit to follow-up by the mental health team of the district where he is to reside (for either counselling and/or pharmacological treatment), and that he attend sessions of self-help groups such as Alcoholics Anonymous and/or Narcotics Anonymous in the district where he resides.
22. Mr. Palacio has also been, according to Dr. Matus, resistant to the drug rehabilitation programs offered by the Kolbe Foundation. The Kolbe Foundation report of the 22<sup>nd</sup> March 2022 also affirms that Mr. Palacio has not completed any rehabilitative programs while in prison. Dr. Matus further indicated that Mr. Palacio was reluctant in general to discuss his offending or his personal circumstances.
23. Mr. Palacio's explanation for this is that he does not consider himself to be either a psychiatric patient or in need of rehabilitation. He indicated that he wished to protect his personal privacy, and that he is disinterested in religiously-based programs. He states that he has, however, participated in a computer (vocational) course offered by the prison.
24. Whilst accepting that Mr. Palacio's reactions stem in part from natural reticence and legitimate concerns about stigmatization, some of his responses during the sentencing hearing also suggest that Mr. Palacio has thus far achieved little insight into his offending and the stressors and conditions that may have contributed to it.

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<sup>8</sup> In many jurisdictions, including before the International Criminal Court and other international criminal tribunals, the existence of mitigating factors is established on the balance of probabilities: *see e.g. Prosecutor v. Thomas Lubanga Dyilo*, ICC Trial Judgment, Case No. ICC-01/04-01/06, 14 March 2021, at para. 34, available at: [https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2012\\_03942.PDF](https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2012_03942.PDF); *Prosecutor v. Kunarac*, ICTY Trial Chamber, Case No. IT-96-23-1 & IT-96-23/1-T, 22 February 2001, at para. 847, available at: <https://www.icty.org/x/cases/kunarac/tjug/en/kun-tj010222e.pdf>; and *Aloys Simba v. The Prosecutor*, ICTR Appeals Chamber, Case No. ICTR-01-76-A, 27 November 2007, at para. 328, available at: <https://cld.irmct.org/assets/filings/ICTR-01-76-0564-1-SIMBA-APPEALS-JUDGEMENT.pdf>

*iv. Determination of sentence*

25. In light of the offence to which Mr. Palacio has plead guilty, coupled with the above-mentioned mitigating and aggravating factors, I consider a sentence of four (4) years to be appropriate in all the circumstances.
26. Mr. Palacio has been in custody from the 27<sup>th</sup> October 2017 until the 9<sup>th</sup> February 2018; between the 31<sup>st</sup> October 2018 and the 3<sup>rd</sup> December 2019, and continually since the 25<sup>th</sup> March 2020. To date, Mr. Palacio has thus spent a total of three (3) years, twenty one (21) weeks and three (3) days in custody. It follows that Mr. Palacio has already served a significant portion of this sentence.
27. I have given due consideration to the length of time that Mr. Palacio has already spent on remand, his medical condition, all information provided to me by both Mr. Palacio and the Crown over the course of these proceedings, and to the recommendations and reports provided to me by Dr. Matus.
28. I determine that Mr. Palacio may serve the remainder of his sentence on provisional release, provided he agrees to adhere, to the extent practicable, to all recommendations of Dr. Matus, namely that he
  - a) Seek admission to a rehabilitation centre focused on drug addiction;
  - b) Submit to follow-up by the mental health team of the district where he is to reside (for either counselling and/or pharmacological treatment); and
  - c) Attend sessions of self-help groups such as Alcoholics Anonymous and/or Narcotics Anonymous in the district where he resides.
29. Should Mr. Palacio agree to these conditions, the relevant orders will be issued immediately following this hearing to facilitate Mr. Palacio's release from custody.

Dated this 13<sup>th</sup> day of April 2022



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Justice Susan Lamb