

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

CRIMINAL JURISDICTION

Central District

Indictment No C9/2021

THE QUEEN

v.

EVAN GILLETT

BEFORE: **The Honourable Justice Susan Lamb**

APPEARANCES: **Mr. Glenfield Dennison for the Crown**
Mr. Richard Bradley for the Accused

DATES: **21 February 2022, 6 June 2022, 13 June 2022 and 14 June 2022**

SENTENCING

1. On 6 June 2022, Mr. Evan Gillett 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
2. The agreed facts are that on 7 June 2019, at about 4.00 a.m., between Mile 3 and 4 on the Phillip Goldson Highway near the Fen Lan Company, a red/maroon coloured Saturn Vue SUV with licence plate number BC 33604 collided with a metal lamp post. The motor vehicle was driven at the time of the accident by Mr. Gillett. The collision caused injuries

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

to 25 year old Mr. Michael Andrew Young, a cousin of Mr. Gillett. Mr. Young was pronounced dead at the Karl Heusner Memorial Hospital at 5.52 a.m.. The collision which caused the death of Mr. Young resulted from Mr. Gillett's careless driving.

3. On 11 January 2021, Mr. Gillett 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 and plead guilty to this offence on 6 June 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 family, prior or anticipated future insurance payments to the deceased's family,

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).

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. Young’s family. There are no additional aggravating factors, such as a blood alcohol concentration above the prescribed limit, clearly excessive speed, or additional breaches of traffic regulations or laws. It is possible that repairs that were then being undertaken to the median barrier of the highway and poor visibility due to deficient street lighting may have contributed to the collision. It is undisputed that this was a tragic accident, involving two close cousins, with profound repercussions for both families.
7. There are several mitigating features in the present case, in particular Mr. Gillett’s early guilty plea, which saves the court time and resources, genuine remorse, and good character.
8. Mr. Gillett is 41 years of age. He is married with an adult child. Mr. Gillett is gainfully employed but of modest means. He works as a car-washer, having struggled to maintain his previous profession as a tour guide due to the COVID-19 pandemic. He is an industrious and law-abiding citizen and of good character. Prior to this incident, Mr. Gillett had never previously come before the courts.
9. Mr. Gillett was co-operative with the police investigation and from the outset, expressed a wish to accept responsibility for this incident. At a mitigation hearing on 13 June 2022, counsel for Mr. Gillett indicated that Mr. Young’s family have instructed their lawyers not to proceed with any civil action against Mr. Gillett. In Mr. Bradley’s submission, Mr.

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.

Young's family bear no ill-will toward Mr. Gillett and regard this incident as a painful memory which the family have collectively sought to surmount.

10. According to Mr. Bradley, Mr. Young's mother, the owner of the car involved in the collision, had previously expected that Mr. Gillett assist in replacing the vehicle, particularly as her insurance company declined payment, on grounds that Mr. Gillett had not been listed on the policy as an authorized driver. The family appear to have since purchased a new vehicle and while no specific sum in compensation has been suggested, any such payment would be regarded as a welcome gesture.
11. Mr. Gillett, both personally and through his counsel, has expressed genuine remorse for this incident. He acknowledges and profoundly regrets the loss of a beloved son and brother, and his role in it. Mr. Gillett described the deceased as not only his cousin but his best friend, with whom he spent almost every day. His loss is clearly deeply felt.
12. In light of the above, I consider the following sentence to be appropriate in all the circumstances:
 1. A fine of \$2,000.00, payable within twenty-four (24) months of the date of this judgment;
 2. A term of imprisonment of four (4) months in default of payment; and
 3. A sum of compensation of \$1,500.00, payable within twenty-four (24) months of the date of this judgment, to the family of the deceased, Mr. Michael Young.

Dated this 14th day of June 2022

Justice Susan Lamb