

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

**CRIMINAL JURISDICTION**

**Central District**

**Indictment No C54/2018**

**THE QUEEN**

**v.**

**FRANK BROWN**

**BEFORE:**                                   **The Honourable Justice Susan Lamb**

**APPEARANCES:**                       **Ms. Sheiniza Smith for the Crown**  
**Mr. Darrell Bradley for the Accused**

**DATES:**                                   **15 March 2022, 11 April 2022, 16 May 2022, 25 May 2022, 22 June 2022 and 27 June 2022.**

**SENTENCING**

i.       Introduction

1.       On 25 May 2022, Frank Brown entered a plea of guilty to the offence of aggravated assault contrary to Section 45(e) of the Belize Criminal Code.<sup>1</sup>
2.       The agreed facts are that on 30 June 2014, Albert Castro was driving with his girlfriend Vanessa Henkis along Faber’s Road, Belize City. The Accused was the ex-boyfriend of Ms.

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<sup>1</sup> Section 45(e), Belize Criminal Code, Chapter 101 of the Substantive Laws of Belize (Revised Edition) 2020 (“Criminal Code”).

Henkis. While Mr. Castro was driving, someone fired about four shots in his direction, hitting Mr. Castro in the head. Mr. Castro was severely incapacitated as a result and remains so to this day. He was hospitalized from June 2014 until late August 2014 and is still bedridden. He is unable to speak and remains dependent on the care of his elderly mother to meet his physical needs.

3. The Accused was detained on the scene of the crime and while in police custody, gave a statement under caution. In that statement, Mr. Brown admitted to driving past Mr. Castro's vehicle, accompanied by three men. He admits to having asked these men to teach Mr. Castro a lesson, but not to cause him serious harm.

- ii. Procedural history

4. On 23 March 2018, Mr. Brown was indicted before the Supreme Court on a count of abetment of the commission of the crime of grievous harm, contrary to Section 81, read together with Section 20(1)(a), of the Belize Criminal Code. In the alternative, Mr. Brown was charged with abetment of the commission of the crime of aggravated assault, contrary to Section 45(e), read together with Section 20(1)(a), of the Criminal Code.
5. On 11 April 2022, Mr. Brown requested an indication of the maximum sentence that would be imposed should he plead guilty to the lesser offence of abetment to the commission of aggravated assault. A sentencing indication hearing was scheduled for 16 May 2022.
6. On 16 May 2022, Mr. Brown was informed that the offence under Section 45(e) of the Criminal Code was punishable by a maximum term of 3 years of imprisonment. According to the Supreme Court Draft Sentencing Guidelines, the circumstances of this case comprise a Category 2 offence (entailing serious harm but moderate culpability), which has usually resulted in a prison sentence of between one and two years' imprisonment. In accordance with the re-issued Practice Direction on Sentence Indication, which took effect on the day of this hearing, the court indicated that the maximum custodial sentence that would be imposed upon Mr. Brown should he plead guilty to this offence was sixteen months of imprisonment.
7. On 25 May 2022, Mr. Brown indicated a wish to plead guilty to the lesser charge of abetment of the commission of the crime of aggravated assault, contrary to Section 45(e) of the Criminal Code, which was accepted by both the Crown and the court. The Accused entered a plea of guilty to this charge on the basis of the above agreed facts on the same date.
8. On 15 June 2022, the court received a Social Inquiry Report from the Community Rehabilitation Department of the Belize Ministry of Human Development, Families and Indigenous Peoples' Affairs ("Social Inquiry Report"), which provided useful information concerning Mr. Brown's family, education and professional background, as well as the impact of this incident on Mr. Castro and his family.

9. A sentencing hearing took place on 22 June 2022, where Ms. Sharlette Gabourel, the sister of Mr. Castro, also testified to the impact of this crime upon her family. Ms. Emma Gillett, a long-standing friend of Mr. Brown, provided character evidence on behalf of Mr. Brown.
10. At the sentencing hearing, the court also invited submissions from the Crown and the Defence as to whether its sentencing discretion in relation to this offence could extend to the imposition of a non-custodial sentence. Both parties agreed that a non-custodial sentence is within the court’s discretion to impose, although the Crown submitted that this would usually require exceptional circumstances.

### iii. Legal Framework

#### a. *Section 45(e) of the Criminal Code*

11. Section 45(e) of the Criminal Code provides that “[e]very person who commits an unlawful assault of any of the following kinds, namely – assault with any deadly or dangerous instrument or means ... shall be guilty of an aggravated assault and, on conviction thereof, be liable to imprisonment for three years.”
12. The draft Sentencing Guidelines of the Supreme Court of Belize specify sentencing ranges for all offences, progressing from less to more serious conduct.<sup>2</sup> They indicate that the court must decide whether the offence in question falls into one of three categories:

Category 1: The least serious category in which there is limited culpability and harm;

Category 2: The middle category, in which there is:

- a. Either serious culpability and limited/moderate harm or serious harm and limited/moderate culpability or
- b. Moderate culpability and moderate harm.

Category 3: The most serious category in which there will be both serious culpability and serious harm.

13. These Guidelines indicate that a Category 2 offence of aggravated assault under Section 45(e) of the Criminal Code usually attracts a custodial sentence in the range of 1-2 years, and a Category 3 offence 2-3 years.
14. Section 20(1)(a) of the Criminal Code provides that any person who “directly or indirectly instigates, commands, counsels, procures, solicits or in any manner purposely aids,

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<sup>2</sup> Draft Sentencing Guidelines of the Supreme Court of Belize (2015). These Guidelines state that the indicated sentencing ranges for each offence, progressing from less to more serious conduct, are based on a first time adult offender pleading not guilty. The Guidelines elsewhere address further relevant sentencing criteria, including aggravating and mitigating factors, reductions for guilty pleas and credit for remand time.

facilitates, encourages or promotes the commission of any crime [...] shall be guilty of abetting that crime.”

15. Section 20 of the Criminal Code does not distinguish between principal and secondary offenders for sentencing purposes. To the contrary, Section 20(4) provides that “[e]very person who abets a crime shall be punishable on indictment or summary conviction, according as he would be punishable for committing that crime”.<sup>3</sup>
16. Section 21(1) of the Criminal Code does, however, indicate that “[w]here a person abets a particular crime, [...] and the person abetted actually commits a different crime, or commits the crime [...] in a manner different from that which was intended by the abettor”, the following provisions shall apply:

if it appears that the crime actually committed was not a probable consequence of the endeavour to commit, nor was substantially the same as the crime which the abettor intended to abet, nor within the scope of the abetment, the abettor shall be punishable for his abetment of the crime which he intended to abet [...] and not for the] crimes [...] actually committed.<sup>4</sup>

17. Previously decided cases of aggravated assault or the abetment of this offence have resulted in sentences ranging from nine months to three years imprisonment.<sup>5</sup> Other cases have, however, imposed fines, with a term of imprisonment in default.<sup>6</sup> By contrast, the more serious offence of grievous harm under Section 81 of the Criminal Code has resulted in custodial sentences of up to four years,<sup>7</sup> although some cases under this provision have also imposed fines, compensation, and sentences of imprisonment in default.<sup>8</sup>

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<sup>3</sup> See also Section 20(2) of the Criminal Code, which states that “[e]very person who abets a crime shall, if the crime be actually committed in pursuance or during the continuance of the abetment, be deemed guilty of that crime.”

<sup>4</sup> Section 21(1) of the Criminal Code concludes with the proviso that “in any other case the abettor shall be deemed to have abetted the crime which was actually committed, and shall be liable to punishment accordingly.”

<sup>5</sup> See e.g. C135/07 *R. v. Wilfred Gillett and Beverly Brown* (2007) (9 months imprisonment); C2/2012 *R. v. Jose Cocom* (2018) (11 months imprisonment); S15/2011 *R. v. Newel Lyn Nicholas* (2011) (2 years imprisonment); C104/2012 *R. v. Andres Bailey* (2012) (2 years imprisonment); and C97/2012 *R. v. Bert Vasquez* (2017) (3 years imprisonment) (all unreported).

<sup>6</sup> See e.g. C105/06 *R. v. Jose Cho and Enrique Henes* (2006) (both fined \$BZD 4,000.00 and 12 months imprisonment in default) and N16/09 *R. v. Eder Pott* (2009) (fined \$BZD 3,000.00 and three years’ imprisonment in default) (both unreported).

<sup>7</sup> See e.g. N12/06 *R. v. Dionicio Acosta* (2007) (2 years imprisonment); C15/05 *R. v. Dennis Gabourel* (2005) (2 years imprisonment); C44/04 *R. v. Gilbert Alvarez* (2004) (3 years imprisonment); S38/05 *R. v. Jason Flores* (2006) (4 years imprisonment) and C12/08 *R. v. Alfred Billary* (2008) (4 years imprisonment) (all unreported).

<sup>8</sup> See e.g. N11/08 *R. v. Braulio Ruperto Copo* (2008) (\$BZD 4,000.00 fine and \$BZD 8,000.00 compensation); N12/08 *R. v. Hilberto Perez* (2008) (\$BZD 4,000.00 fine and \$BZD 3,000.00 compensation); N15/05 *R. v. Ervin Guerra and Herson Guerra* (2005) (\$BZD 3,000.00 fine and \$BZD 1,000.00 compensation); C68/10 *R. v. Mauricio Recinos* (2011) (\$BZD 5,000.00 fine and \$BZD 3,000.00 compensation); C55/09 *R. v. Herman Lanza* (2009) (\$BZD 3,000.00 fine and \$BZD 2,500.00 compensation); C115/07 *R. v. Dennis Gabourel* (2007) (\$BZD 10,000.00 fine and \$BZD 3,000.00 compensation); S10/2016 *R. v. Juan Cal Chen* (2016) (\$BZD 5,000.00 fine and \$BZD 4,000.00 compensation and 12 months imprisonment in default); and C144/2013 *R. v. Erwin Hamilton* (2018) (\$BZD 2,000.00 fine and \$BZD 1,000.00 compensation and 12 months imprisonment in default) (all unreported).

*b. Discretion to impose a non-custodial sentence*

18. Unless otherwise prescribed in the law, Section 164 of the Indictable Procedure Act confers a discretion to fine an offender *in lieu* of any other sentence which the court is empowered to impose.
19. Section 168 of the same act also provides that when a person is convicted of any crime, the court may issue either or both of the following orders:
  - (a) For the payment of the prosecution costs, in whole or in part; and/or
  - (b) For payment of a sum by way of compensation to any person injured by the crime in question.
20. Finally, Section 169(1) of the Indictable Procedure Act empowers the court to require undertakings that an offender keep the peace and be of good behaviour, with Section 169(2) of the same act further permitting the court to impose a term of imprisonment in default of a fine or recognisance.<sup>9</sup>

iv. Aggravating circumstances

21. To arrive at a sentence within the contours of this legal framework, I have taken account of the seriousness of the harm caused to Mr. Castro and his family, and the extent of Mr. Brown's culpability.

*a. Gravity of the crime and its impact*

22. The principal aggravating circumstance in this case is the extremely serious harm that this offence has caused to Mr. Castro and his family. Before this incident, Mr. Castro worked as a taxi driver and at the Casino as a steward. He had no physical infirmities, and provided financial and emotional support to his family.
23. The Social Inquiry Report provides considerable detail regarding the debilitating impact of this crime on the Mr. Castro and his family. On 22 June 2022, Ms. Sharlette Gabourel testified that as a result of this offence, Mr. Castro has lost the ability to speak or walk on his own. The family must assist him with all tasks such as feeding, bathing and grooming. As he cannot use the bathroom on his own, he wears diapers that his mother has to change. His inability to speak causes particular distress to Mr. Castro's 11 year old daughter, who struggles to communicate with her father. Mr. Castro may benefit from further medical

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<sup>9</sup> Section 169(1) of the Indictable Procedure Act states that the "[c]ourt before which a person is convicted of any crime may according to the circumstances of the case order that, in lieu of or in addition to any other punishment, he enters into his own recognisance, with or without sureties, to be of good behaviour and to keep the peace." Sections 165(1) and (2) and 169(2) of the same Act further empowers the court to impose a term of imprisonment in default of a fine or recognisance, but stipulate that unless expressly permitted elsewhere in the legislation, the length of any sentence of imprisonment in default shall not exceed 12 months.

attention or therapy, but this is beyond the family's means, as they struggle to meet day to day expenses. Since the incident, Mr. Castro has been cared for principally by his mother, who is now 65 years of age, and herself suffering serious health problems that restrict her mobility. Ms. Gabourel visits her mother and younger brother to help out whenever she can, which means she bears the financial and emotional burden of managing two households.

24. Ms. Gabourel testified that she forgives Mr. Brown for what has happened, adding that if he could assist the family financially to enable them to more easily purchase groceries and diapers, this would be appreciated.

*b. Degree of culpability*

25. While the harm caused by this offence is extremely serious, Mr. Brown's culpability is moderate. Mr. Brown was not the person who inflicted this harm on Mr. Castro. He admitted responsibility for abetment of this offence, but also states that he expressly told the principal perpetrator not to seriously harm Mr. Castro. While Mr. Brown may not have intended the result, he nonetheless initiated a crime which is by any measure serious and whose consequences for Mr. Castro and his family are profound and enduring.
26. Mr. Brown's Defendant History shows that at the time of this offending, he had previously come before the courts. His prior convictions are for common assault and property damage, in addition to minor motor vehicle offences.

v. Mitigating factors

27. In determining sentence, I have also weighed several mitigating circumstances. Mitigating factors in the present case include Mr. Brown's guilty plea and acceptance of responsibility, co-operation with the authorities, genuine remorse and willingness to provide restitution to the Castro family. I have also taken account of Mr. Brown's personal and family circumstances, including poor health.

*a. Guilty plea and acceptance of responsibility*

28. Immediately after the incident, Mr. Brown gave a statement under caution to the police, and showed willingness to cooperate with the authorities. Mr. Brown's guilty plea avoids the need for a trial, thus saving the court time and resources, and sparing victims and witnesses the anxiety of having to give evidence. By pleading guilty to this offence, Mr. Brown has also acknowledged his wrongdoing and taken responsibility for his conduct, which he acknowledges reflected extremely poor judgment on his part, and which he wholly regrets.

*b. Remorse*

29. At the 22 June 2022 hearing, Mr. Brown expressed genuine remorse for this incident. Through his counsel, he acknowledged the seriousness of his offending and its grave consequences for Mr. Castro, as well as its profound financial and emotional impact on the Castro family. Mr. Brown personally apologized to Ms. Gabourel, expressing regret for the

incident and stating that he had not intended for it to unfold as it did. In asking for forgiveness, Mr. Brown concluded by saying that the crime weighs heavily on his conscience, and that he was very sorry.

*c. Willingness to provide restitution*

30. At the sentencing hearing, Mr. Brown stated that he was willing to assist the family in meeting their day to day expenses, and to do anything in his power to help them. He has also since volunteered a sum of \$BZD 3,500.00 in restitution.
31. On 24 June 2022, his counsel indicated in a written submission to the court that Mr. Brown is employed as a taxi driver and earns on average \$BZD 300.00 per week. From this, he spends \$BZD 50.00 for room rental, \$BZD 75.00 for food, \$BZD 75.00 on his family and \$BZD 50.00 pro-rated for monthly utility bills. He also incurs intermittent medical expenses for his chronic kidney disease. Given these circumstances, Mr. Brown offers restitution in the sum of \$BZD 3,500.00 payable by way of weekly installments of \$BZD 50.00. While acknowledging that this sum in no way compensates for the loss or harm suffered, Mr. Brown is nonetheless willing to own up to his responsibilities and to assist to the extent possible.

*d. Personal and family circumstances*

32. The Social Inquiry Report states that Mr. Brown grew up in a family of lower economic status, the second eldest of eight children. Mr. Brown's mother tried her best given her own difficult circumstances to provide for the family, but despite these efforts, the disadvantages of Mr. Brown's upbringing had an inevitable impact. Mr. Brown's education was interrupted and ceased altogether in the third form, and in his younger years he struggled to find and sustain employment. Despite this, the Social Inquiry Report describes Mr. Brown as a respectful, open, and hard-working person who continues to provide for his family in spite of his current illness. He has been self employed as a taxi driver for past 15 years. Ms. Emma Gillett, who has known Mr. Brown for over twenty years, also testified during the sentencing hearing to his pleasant and caring nature. She indicated that she has over the years frequently observed Mr. Brown's interactions with friends, family and members of the public, which she describes as invariably friendly and never rude or aggressive.
33. Mr. Brown has three grown-up children and a younger, dependent child – a daughter of 4 or 5 years of age. The Social Inquiry Report describes him as a family-oriented person, with positive relationships with his siblings and children. In this Report, he is described by an elder daughter as an easy-going and helpful person, and a good father. It notes that Mr. Brown has done his utmost to care and provide for all his children, despite his poor health. Various family members are depicted in the Report as humbly asking the court to take into consideration the needs of his dependent child in particular, as well as his illness.

*e. Ill-health*

34. While the courts have previously held that a medical condition is not generally a reason to interfere with an otherwise appropriate sentence, an offender's serious illness may nonetheless enable the Court as an act of mercy to take this into account when sentencing.<sup>10</sup>
35. In the present case, Mr. Brown's counsel has tendered a letter from Dr. Fernando Cuellar, an Internal Medicine and Critical Care specialist at Belize Medical Associates, indicating that Mr. Brown has been diagnosed with kidney disease. He is incapacitated as a result and suffers severe adverse symptoms due to his condition. His productivity and mobility are reduced, and he requires frequent medical evaluation to manage his condition.

*f. Passage of time and subsequent conduct*

36. This crime occurred almost exactly eight years ago. Such a significant lapse of time between the offending and its punishment must inevitably impact the degree to which the animating principles of sentencing (such as rehabilitation and deterrence) are served. The English courts have also observed that

[t]here may be exceptional cases where the sentencing court ought not to shut its eyes to subsequent events. It is the duty of the court to sentence for the offence. The offence had not changed by the passage of time, but the man had. There may be exceptional cases where the sentencing Court ought not to shut its eyes to subsequent events and some credit should be given for changed behavior in the interim.<sup>11</sup>

37. Since this incident, Mr. Brown has had no involvement in violence or any other serious offence of this type. He has sought to be a family-oriented and productive member of society and there is no indication that Mr. Brown will not continue to be a law-abiding citizen.

vi. Determination of sentence

38. In view of the extremely serious consequences of this crime for Mr. Castro and his family, I concur with the Crown that a custodial sentence would usually be appropriate in relation to an offence of this type.
39. Mr. Brown was incarcerated at the Belize Central Prison between 2 July 2014 and 29 December 2014. He has thus already spent five (5) months and twenty-seven (27) days in custody. In deciding whether a further term of imprisonment is now warranted, I have had regard to the following factors.
40. Eight years have elapsed since the commission of this crime. Mr. Brown has in this period shown no propensity for violence. His character witness and Social Inquiry Report both attest

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<sup>10</sup> *R. v. Bernard* [1997] Cr. App. Reports (S) 135.

<sup>11</sup> *R. v Bird* [1987] 9 Cr. App. Reports (S) 77.



to his positive relationship with his family and friendly disposition. The Castro family face financial hardship in providing for the ongoing care for Mr. Castro, and will likely continue to do so for the foreseeable future. Mr. Brown has acknowledged his responsibility for this offence and expressed his sincere remorse, as well as his desire to do everything in his power to assist the Castro family. He is 45 years old and suffers from a chronic and debilitating kidney condition. Although of modest means, Mr. Brown remains gainfully employed, and is willing to pay a sum of restitution to the Castro family.

41. Given the Castro family's difficult financial circumstances, Mr. Brown's willingness to mitigate this to the extent he is able, his acceptance of responsibility and genuine remorse, and the extra hardship an additional term of imprisonment would entail given Mr. Brown's medical condition, I find that no positive purpose would be served by imposing a further term of imprisonment at this juncture.
42. I instead consider the following sentence to be appropriate in all the circumstances:
  1. A fine of \$BZD 100.00, payable within one (1) month of the date of judgment; and
  2. A sum of compensation of \$BZD 3500.00 payable to the family of Albert Castro to assist with the costs of Mr. Castro's care, in the sum of \$BZD 50.00 per week.
43. Mr. Brown is also bound over to keep the peace and to be of good behavior, on his own recognizance. In default of the above \$BZD 100.00 fine or this recognizance, a custodial sentence of six (6) months imprisonment shall be imposed.

Dated this 27<sup>th</sup> day of June 2022

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Susan Lamb  
Justice of the Supreme Court