

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

CRIMINAL JURISDICTION

Central District

Indictment No C7/2015

THE KING

v.

EDWARD CABANAS

BEFORE: **The Honourable Justice Susan Lamb**

APPEARANCES: **Mr. Glenfield Dennison for the Crown**
Accused self-represented

DATES: **25 March 2022, 4 July 2022, 29 September 2022, 19 October 2022, 24 November 2022, 2 December 2022 and 8 December 2022**

SENTENCING

i. Introduction and Procedural History

1. On 19 October 2022, Edward Cabanas entered a plea of guilty to the offence of manslaughter, contrary to Section 116(1) read along with Section 108(1)(b) of the Belize Criminal Code.¹

¹ Sections 116(1) and 108(1)(b), Belize Criminal Code, Chapter 101 of the Substantive Laws of Belize (Revised Edition) 2020 (“Criminal Code”).

2. The agreed facts are that on 28 December 2012 at about 9:30 p.m., at the home of Ms. Deseree Bahadur at Sandhill Village, mile 19 ¾ on the Phillip Goldson Highway, an argument broke out between Mr. Cabanas and his brother, Brandon Bahadur. In the course of this confrontation, Mr. Cabanas inflicted three stab wounds to the thighs of Mr. Bahadur. After the incident, Mr. Cabanas was heard by his mother, Deseree Bahadur, to say: “I did not mean it.” He appeared to be frightened. Mr. Bahadur was rushed to the Karl Heusner Memorial Hospital in a taxi by Ms. Bahadur, Mr. Cabanas and a third person who had witnessed the fight.
3. Whilst Mr. Cabanas did not intend to bring about Mr. Bahadur’s death, Mr. Cabanas accepts that the injuries he caused to Mr. Bahadur were inflicted unlawfully. Despite receiving medical treatment, Mr. Bahadur later succumbed to these injuries.
4. This matter first came before me on 25 March 2022 and was remitted for Case Management on 4 July 2022. A Sentencing Indication Hearing was held on 29 September 2022. On 19 October 2022, Mr. Cabanas entered a plea of guilty to this offence. While Mr. Cabanas was self-represented in this matter, he benefitted from the assistance of Mr. Norman Rodriguez throughout all plea hearings. A Sentencing Hearing commenced on 24 November 2022, concluding on 2 December 2022.

ii. Applicable law

5. Section 116(1) of the Criminal Code provides that “[e]very person who causes the death of another person by any unlawful harm is guilty of manslaughter.”
6. Section 108(1)(b) provides that the maximum sentence for manslaughter is life imprisonment. The case law suggests that the sentencing range for the offence of manslaughter, depending on the circumstances of the case, has in previous instances ranged from five to twenty-three years of imprisonment,² with the Belize Supreme Court draft Sentencing Guidelines suggesting a range of five to fourteen years for the less serious cases of manslaughter.³
7. The Court of Appeal decision of *R. v. Yong Zheng Zhang*, a successful sentencing appeal in relation to manslaughter following a guilty plea, stresses that where conduct involves a lesser degree of culpability, this is to be reflected in the sentence: that is, the lesser the culpability, the lesser should be the sentence. On charges for serious crime where exceptionally there is little culpability, it is perfectly open to a court to impose a non-custodial sentence. It follows that “there is no automatic sentence to a lengthy prison

² See e.g. *R. v. Shawn Locke*, N12/2011 (2013) (18 years imprisonment); *R. v. Danie Elvis Ku*, N21/2011 (2017) (23 years imprisonment); *R. v. Henry Lima*, N18/2014 (2019) (14 years imprisonment); *R. v. Paul Martinez*, C62/2014 (2019) (20 years imprisonment); *R. v. David Ortiz*, S27/2015 (2016) (8 years imprisonment); *R. v. Dennis Reneau*, N4/2017 (16 years imprisonment); *R. v. Norma Pena*, N43/2017 (2017) (15 years imprisonment); *R. v. Tishaun Hamilton*, C79/2018 (2019) (15 years imprisonment); and *R. v. Noewellyn Williams*, C99/2019 (2020) (16 years imprisonment) (all unreported). Without reference to the facts of any case, a median sentence appears to be between fourteen to sixteen years of imprisonment.

³ Sentencing Guidelines of the Supreme Court (2015) (draft and unpublished). These guidelines indicate that cases at the lower end of the scale have imposed sentences of five years imprisonment, but no reference to specific authorities.

term for manslaughter cases: everything depends on the facts of the particular case. [It is the] duty of the sentencing judge to arrive at a sentence that is deserved, which is to say a sentence that is fair both to the convicted person and to the community”.⁴

8. In a case with facts similar to the present before the Belize courts, an Accused was sentenced to eight years of imprisonment following a plea of guilty to manslaughter.⁵ In *Romeo da Costa Hall v. R*, the Caribbean Court of Justice evaluated findings of the Barbados Court of Appeal, which affirmed a sentence of six years’ imprisonment following a plea of guilty to manslaughter, faulting only the Barbadian courts’ failure to credit the Accused with the totality of the four years he had spent on remand towards the actual sentence.⁶
9. United Kingdom sentencing guidelines for manslaughter similarly indicate that a maximum sentence a judge can impose is imprisonment for life, but depending on the circumstances, a judge may impose other penalties, including a suspended term of imprisonment or in some circumstances, a community sentence.⁷ These guidelines emphasise that a suspended sentence is still nonetheless a custodial sentence, and that among the principles which guide sentencing is the general duty of a sentencing judge to determine the shortest custodial sentence commensurate with the seriousness of the offence, as well as awareness that custody should not be imposed where alternative sentences could adequately meet the goals of sentencing, including the rehabilitation of the offender.⁸ Nor should imprisonment be imposed if there would be an impact on dependants which would make a custodial sentence disproportionate to achieving the aims of sentencing.

iii. Determination of sentence

10. Ten years ago, a mother witnessed an argument between her two sons. In the course of it, one was fatally wounded, despite the desperate attempts of the other son, his mother and others to obtain him prompt medical attention. Her surviving son was incarcerated

⁴ *Yong Sheng Zhang v. R*, Court of Appeal, Criminal Appeal No. 13 of 2009, at paras 10-13 (substituting a sentence of 5 years’ imprisonment for the term of 14 years’ imprisonment that the lower court had imposed following a guilty plea to a charge of manslaughter).. The appellant in that case was also habitually non-offending and totally remorseful and very sorry for having killed, in the course of a heated argument, a person who had been his friend and a business associate.

⁵ *R. v. David Ortiz* (2016) (sentence of 8 years imprisonment following a plea of guilty in relation to two stab wounds inflicted on a family member during an argument).

⁶ *Romeo da Costa Hall v. R*, CCJ Appeal No. CR 1 of 2010 (BB Criminal Appeal No. 15 of 2008). In arriving at her sentence, Reifer J calculated the sentence as follows: “I have used the bottom of the scale for a grave case of manslaughter as my starting point. I have discounted it by six years in consideration of the guilty plea, and a further two years in recognition of the other mitigating factors, and by a further two years for the time spent on remand.” This case, while in many respects *in pari materia* to the present, is distinguishable as I do not regard the present facts to fall within the gravest category of manslaughter (paragraph 6, above).

⁷ For a helpful distillation, see Sentencing Council/Metropolitan Police Guidelines on Sentencing for Manslaughter, at: <https://www.sentencingcouncil.org.uk/wp-content/uploads/FINAL-Manslaughter-sentencing-leaflet-for-web1.pdf>

⁸ *Ibid.*, see also UK Sentencing Council Definitive Guideline on Imposition of Community and Custodial Sentences (2016), at pp. 7-9 (discussing criteria for the imposition of custodial sentences, community sentences and suspended sentences); at: <https://www.sentencingcouncil.org.uk/wp-content/uploads/Imposition-definitive-guideline-Web.pdf>

soon after the incident and released on bail after, it appears, four years in custody.⁹ He has been living a blameless life in the community since then, fully reconciled with his family. It is my duty to decide what sentence (and whether a further period of incarceration) should now be imposed on him following his plea of guilty to this offence.

11. In order to arrive at an appropriate sentence, I have had regard to the above sentencing framework and my duty to weigh the circumstances and impact of this crime, as well as all aggravating and mitigating factors.
12. At the Sentencing Hearing, the Crown declined to call any evidence of victim impact. This in no sense implies that the offence was devoid of impact. To the contrary, Brandon Bahadur was a much loved eldest son and brother, and his loss has shattered the family. He is deeply mourned, including by Mr. Cabanas himself. Instead, and at the heart of the difficulty of this case is that victim impact and mitigation are now so closely intertwined as to be almost inseparable.
13. While noting the influence of alcohol and the rupture of family bonds as aggravating factors, the Crown also acknowledges a large number of mitigating circumstances, including Mr. Cabanas' guilty plea, genuine remorse, positive comportment since this offence, and good character. Given the age of this matter, this is not an early guilty plea, but it nonetheless saves the court time and resources. Mr. Cabanas' Defendant History also shows, and the Crown accepts, that he has not since been convicted of any other offence while on bail and that he is not a person with any inclination to break the law.
14. Ms. Deseree Bahadur, called by Mr. Cabanas in mitigation, also testified to the impact of losing her eldest son. She described this loss as profound. Despite this trauma, she has attempted to stay strong and to serve as a role model for all her children, including Edward, particularly following the death of her husband four years ago. She stated that although a piece of her heart will always be broken by Brandon's loss in these circumstances, the family have navigated this together, and have united to embrace Edward back within it. She describes Edward as a humble person with a good attitude, who made a terrible mistake. Ms. Bahadur stated that Edward himself is profoundly remorseful for this incident and has had great difficulty in coming to terms with it, but that she has counseled him to look ahead and to do his best to move forward, as she too has done. As Brandon left behind a son, she has asked Edward to ask for God's forgiveness, and to strive to be a father figure to his nephew. She has forgiven Edward and describes herself as being at peace. She stated that Edward had no propensity to commit crimes before this incident, and nor does she consider there to be any risk that he will in future.
15. Ms. Bahadur, who is 49 years of age, has not worked since Easter, following an accident from which she has yet to fully recover. Edward has taken care of her since then. She describes her son as extremely hard-working, to the point of workaholism, very family-oriented, whose life revolves entirely around the family home, his workplace and church

⁹ Regretfully Kolbe Prison were unable to furnish me with definitive prison records in this respect. The above is based on that information which is available.

group. She described the period of her son's incarceration as a terrible time, because it was as if she had lost two sons. During this time, she never gave up on Edward, and also worked to ensure that the wider family bore him no grudge, and that the family continued to navigate this incident as one upon his release. When asked how she would feel if Edward were to now be sent back to prison, she replied that in view of her present condition, this was not a situation she felt at all equipped to handle or to survive.

16. Mr. Cabanas' sister, Amesha Vicente, also spoke to the significant impact of Brandon's death, although she was very young at the time. She also testified to being negatively affected by Edward's incarceration, and her immense sense of relief when he was released. Like her mother, she bears him no grudge, and states that if he were to be sent back to prison, this would be immeasurably difficult for the entire family to cope with.
17. Mr. Cabanas is 30 years of age. He has been gainfully employed as a manager of a travel company for approximately four years, from around the time of his father's death. Mr. Cabanas' employer, Mr. Leo Batty, attested to his conscientiousness as a worker, describing him as sober, even-tempered and trustworthy, and as having good future prospects within the company.
18. On his own behalf, Mr. Cabanas stated that he has learned from his mistakes. He has since ceased drinking altogether, as he regards alcohol as having played a highly negative influence on his life in the past. He stated that he has done everything in his power to follow a straight path and to move forward in a constructive way, and he tries to be a father figure and role model for his nephew. He has sought forgiveness from his family and this has been granted. Following the incident, he is only just beginning to feel optimistic about his professional future and to understand that he has a lot of things to accomplish and to achieve in his life.
19. In view of the above, I do not consider the public interest to require the imposition of a further period of incarceration. Nor do I consider that Mr. Cabanas poses any risk to the public. Whilst acknowledging the seriousness of this offence, I note also that sentencing in this instance has been vastly complicated by the long period of pendency of this case, particularly given Mr. Cabanas' positive comportment during the past six years, and the wider efforts within the family to come to terms with and heal from this incident. I also note the detrimental impact that further incarceration would inevitably have on Mr. Cabanas' continued rehabilitation and reintegration: indeed I consider it would do him no good whatsoever. Its impact upon his wider family, many of whom depend on him, would also be significant and detrimental, including to those who witnessed and were most directly impacted by the crime itself. For sentencing and rehabilitative purposes, it has long been recognized that a sentencing court ought not to shut its eyes to subsequent conduct, and that credit should be given for an Accused's changed or positive behaviour in the interim, and I too have had reference to this in reaching my present decision.¹⁰

¹⁰ See e.g. *R. v. Bird* (1987) 9 Cr. App. R (S) 77.

iv. Disposition

20. In light of the above, I consider a term of imprisonment of five (5) years to be appropriate in all the circumstances.
21. As Mr. Cabanas has already been incarcerated for four (4) years on remand, the remainder of his sentence is suspended provided that Mr. Cabanas is not convicted of any other indictable offence within three (3) years of the date of this judgment.

Dated this 8th day of December 2022

Susan Lamb
Justice of the High Court