

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

CRIMINAL JURISDICTION

Central District

Indictment No C75/2022

THE KING

v.

MIRIAM RODRIGUEZ

BEFORE: **The Honourable Justice Susan Lamb**

APPEARANCES: **Mr. Glenfield Dennison for the Crown**
Mr. Lyndon Jones for the Accused

DATES: **11 October 2022, 19 October 2022, 15 November 2022, 22 November 2022 and 8 December 2022**

SENTENCING

- i. Introduction and Procedural History
 1. On 15 November 2022, Miriam Rodriguez entered a plea of guilty to the offence of manslaughter by negligence, contrary to Section 116 of the Belize Criminal Code.¹

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

2. The agreed facts are that on 16 April 2021 at around 11.15 p.m. in the San Mateo area, San Pedro Town, 27-year-old Miriam Rodriguez was driving a purple golf cart with licence plate number SP C-6260, along with 18 year old Bianca Guadalupe Reyes, 16 year old Evelin Paguada and 17 year old Mirna Paguada. Ms. Rodriguez lost control of the golf cart and collided with some stones on the roadside. This caused the golf cart to flip onto its left side, flinging Bianca Reyes off the cart and onto the other side of the road. Bianca Reyes sustained head injuries and was rushed to the Dr. Otto Rodriguez Polyclinic in San Pedro Town. Despite receiving medical treatment, Bianca Reyes succumbed to her injuries and was pronounced dead at around 11.55 p.m. that evening.
3. Ms. Rodriguez was detained shortly afterwards, interviewed by the police and formally arrested and charged on 18 April 2021 for causing the death of Bianca Reyes.
4. On 11 October 2022, Ms. Rodriguez was arraigned before the Supreme Court on a single count of manslaughter by negligence contrary to Section 116 of the Criminal Code, where she indicated a willingness to accept responsibility for this incident and requested a Sentencing Indication Hearing. Following the Sentencing Indication Hearing, which was held on 19 October 2022, Ms. Rodriguez entered a plea of guilty to this offence on 15 November 2022. A Sentencing Hearing, in relation to both victim impact and mitigation, followed on 22 November 2022.

ii. Applicable law

5. Section 116(1) and (2) of the Criminal Code provides that “[e]very person who causes the death of another person by any unlawful harm is guilty of manslaughter. If the harm was negligently caused, he is guilty only of manslaughter by negligence.”
6. The sentencing regime for the offence of manslaughter by negligence is contained in Section 108(1) of the Criminal Code. The case law has emphasized that manslaughter by negligence is contrasted with the less serious offence of causing death by careless conduct under Section 108(2) of the Criminal Code.²
7. The Court of Appeal in *Yong Sheng Zhang v. R* has clarified that there are situations where a non-custodial sentence is appropriate in relation to manslaughter, the clear example being manslaughter by negligence, which will generally not attract a sentence of imprisonment.³ The Court of Appeal in *Michael Espat v. The Queen* (a successful appeal against sentence for the offence of manslaughter by negligence) has also held that:

[T]he circumstances of the particular offender and of the offence ha[s] to be borne in mind. The negligent act [in this case] was speeding. The offender was a remorseful first offender who had pleaded guilty. [...] In all of [the cited cases of causing death by careless conduct]

² Section 108(1) of the Criminal Code (punishable by imprisonment for five years). By contrast, the offence under Section 108(2) of the Criminal Code envisages a maximum term of imprisonment of two years, although a custodial sentence is reserved for the most serious cases: *see also* *Cardinal Smith v. The Queen*, Criminal Appeal No. 35 of 2005, 14 July 2005 and *Director of Public Prosecutions v. Sherwood Wade*, Criminal Appeal No. 24 of 2015.

³ *Yong Sheng Zhang v. R*, Court of Appeal, Criminal Appeal No. 13 of 2009, at para. 13.

...[i]n none [...] was a prison sentence imposed. In the one case where there was a conviction for causing death by negligence – *Rafael Guerra* decided at the sessions held on June 18, 1991 – was a sentence of imprisonment imposed. The sentence was one of 18 months. As in this case the negligence was excessive speed. One person was killed. The defendant did not stop. He pleaded not guilty and was found guilty after a trial.⁴

8. I do not consider that a custodial sentence is warranted in the present case. It is undisputed that this was a tragic accident. Ms. Rodriguez has accepted responsibility and acknowledged that her driving on that evening fell beneath the expected standard, causing Ms. Reye’s death. However, I do not regard her conduct to have been grossly negligent, or that the public interest would otherwise be served by the imposition of a term of imprisonment.
9. Concerning applicable pecuniary penalties in relation to manslaughter by negligence, there is scant guidance to date in the case law of Belize.⁵ However the non-custodial sentencing regime under Section 108(2) of the Criminal Code, which contains the following elements, is of general guidance:
 - a) *A maximum term of imprisonment of five years.*⁶ Although as mentioned, custodial sentences are not the norm in relation to this offence, the courts have on occasion awarded a custodial sentence in default of payment.⁷ Terms of imprisonment in default, where ordered, have ranged from between three months to two years duration, depending on the circumstances of the case⁸;
 - 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 \$2,500.00 and \$4,500.00 in incidents involving a single death⁹;

⁴ *Espat v. The Queen*, Court of Appeal, Criminal Appeal No. 8 of 1993 (imposing a sentence of imprisonment of 9 months following negligent driving causing four deaths, giving due allowance to the plea of guilty, the absence of previous convictions and the expressed remorse).

⁵ Most of the available case law concerns the lesser charge of causing death by careless conduct. Although the facts are not identical to the present, in *R. v. Hubert Martinez* (2018), the Accused plead guilty to manslaughter by negligence for having caused the death of a three year old and having injured a six year old. In that case, Justice Marilyn Williams imposed a pecuniary penalty of \$10,000.00, comprising a fine of \$2,500.00, compensation to the family of the deceased child of \$6,000.00, and a payment of \$1,500.00 to the child who was injured.

⁶ See e.g. *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, paras 4-5 and footnotes 4-9 and *R. v. Francisco Torres*, C31/2022, Supreme Court of Belize, 30 May 2022, paras 5-8.

⁷ See e.g. *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*”).

⁸ 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).

⁹ 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 \$8,000.00 and a sum of \$10,000.00 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) (all in relation to causing death by careless conduct); see also *R. v. Hubert Martinez* (2018) (imposing a pecuniary penalty of \$10,000.00, comprising a fine of \$2,500.00, compensation to the family of the deceased child of \$6,000.00, and a payment of \$1,500.00 to the child who was injured).

- c) *Compensation to the deceased's family*. Compensation in relation to the offences contained in Section 108 of the Criminal Code does not seek to place a monetary value on human life. Instead, the quantum of compensation, when awarded 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, pending civil claims, and the financial means of the Accused.¹⁰ The Court of Appeal has, however, intervened in a case awarding compensation of \$1,000.00, considering this sentence to be unduly lenient.¹¹ 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;¹² 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 automatic suspension of the Accused's licence.¹³

iii. Determination of sentence

- 10. 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 Ms. Reyes' family. I have also weighed a number of mitigating features in the present case, in particular Ms. Rodriguez' early guilty plea, which saves the court time and resources, genuine remorse, and good character.
- 11. During the Sentencing Hearing, Ms. Yvonne Reyes, the sister of Bianca Reyes, testified regarding the significant emotional toll that the loss of her sister has had on her family. Bianca was 18 years of age at the time of her death and had no dependents. However, the loss of her sister caused a significant deterioration in Ms. Reyes' mental health and that of her mother. She recounted feeling consistently tearful in the aftermath of the incident, and of having lost the will to live. Her grandmother also struggled to come to terms with the death of Bianca, and passed away two months later, thus compounding the family's loss. Ms. Reyes indicated that family and friends, as well as the Rodriguez family, assisted with funeral expenses. However, this was insufficient to cover all costs.
- 12. Ms. Reyes acknowledges Ms. Rodriguez' contrition and appreciates that Ms. Rodriguez intended her sister no harm. The family trust in a higher power, knowing that no court

¹⁰ 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).

¹¹ *DPP v. Gonzalez*, at paras 1 and 2.

¹² 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.

¹³ *DPP v. Gonzalez*, at para. 21.

action can bring Bianca back. Ms. Reyes forgives Ms. Rodriguez for what was an unfortunate incident, which could nonetheless have been avoided had Ms. Rodriguez been more careful on the night in question. Ms. Rodriguez has a minor daughter and Ms. Reyes stressed that she has no wish to see Ms. Rodriguez serve a term of imprisonment and be separated from her child. Her overriding objective is instead to ensure that Ms. Rodriguez is held accountable in some way and that a similar incident is not repeated. To this end, Ms. Reyes suggests the suspension of Ms. Rodriguez' licence as an appropriate penalty.

13. In mitigation, Ms. Rodriguez expressed an intention to accept responsibility for this incident during her first appearance before the Supreme Court. On Ms. Rodriguez' behalf, her counsel submitted that the events giving rise to this matter were a tragic incident. On that evening, Ms. Rodriguez went out with her sister and sister-in-law, intent only on enjoying an evening out with her family. At the end of the evening, she turned too sharply into the road as she neared home, losing control of the golf cart. All passengers, including Ms. Rodriguez herself, sustained harm in the accident, but unfortunately Bianca passed away due to her injuries. Ms. Rodriguez has acknowledged that she was at fault. Her early guilty plea saves the court's time and resources, and also spares the Reyes family the trauma of a trial and of giving evidence.
14. In mitigation, Ms. Rodriguez tendered four affidavits: from her two sisters, one from her mother and another on her own behalf.
15. Ms. Rodriguez has expressed genuine remorse for this incident, stating that she is truly sorry that someone lost their life due to her actions. She has apologized to the Reyes family and to her own family for putting them through so much pain and suffering. The deceased was her sister-in-law, and the incident was in no sense intentional. Ms. Rodriguez further stated that since the night of the accident, her life has not been the same. She has trouble sleeping, as the events of that night continually replay in her head.
16. Ms. Rodriguez' mother and two sisters state that Ms. Rodriguez is a good, kind and loving person and a good mother, who would never intentionally hurt, let alone kill, anyone. Ms. Rodriguez' life changed forever on that evening; had the family been wealthier and able to afford a vehicle rather than a golf cart, in all likelihood, nobody would have been harmed at all. Her mother stated that Ms. Rodriguez has not had an easy life, but always assists the family whenever possible. She became a mother at a young age and has always been there for her child. Ever since the accident, her family has also been profoundly affected, and have had to live with the knowledge that a fun night out as a family turned into a disaster in which her daughter-in-law lost her life. She has also apologized to the Reyes family for the loss of their child.
17. While Ms. Rodriguez has previously come before the Magistrates Court in relation to a number of minor matters, I accept that she is generally law-abiding and poses no risk to the public.
18. Ms. Rodriguez is 28 years of age. She is a single mother of a young daughter. Ms. Rodriguez is currently unemployed and of modest means. It was submitted on Ms.

Rodriguez' behalf that suspension of her driver's licence would have a disproportionate impact on Ms. Rodriguez' young child, given that the child's school is a considerable distance from the family home. Accordingly, I have declined to suspend Ms. Rodriguez' licence. However I will require that she complete an approved rehabilitative driving course capable of addressing any shortcomings in her driving ability.

19. Ms. Reyes' family bear no ill-will toward Ms. Rodriguez and express that they have no wish that she serve a custodial sentence. The Reyes family acknowledge that the Rodriguez family provided some financial assistance to them for funeral expenses, although the amount of this assistance is disputed or unknown.

iv. Disposition

20. In light of the above, I consider the following sentence to be appropriate in all the circumstances:
 1. A fine of \$1,500.00, 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;
 3. A sum of compensation of \$3,500.00, payable within twenty-four (24) months of the date of this judgment, to the family of the deceased, Ms. Bianca Reyes.
21. As an alternative to any suspension of her licence, Ms. Rodriguez is further ordered to satisfactorily complete an approved rehabilitative driving course within twelve (12) months of the date of this judgment.

Dated this 8th day of December 2022



Susan Lamb
Justice of the High Court