

IN THE COURT OF APPEAL OF BELIZE A.D. 2022

CRIMINAL APPEAL NO. 12 OF 2018

GLENFORD FERGUSON

APPELLANT

V

THE KING

RESPONDENT

Before

The Hon Madam Justice Minnet Hafiz Bertram

The Hon Mr Justice Arif Bulkan

The Hon Madam Justice Michelle Arana

President

Justice of Appeal

Justice of Appeal

Determined on written submissions

D Bradley for the appellant.

S Smith, Senior Crown Counsel, for respondent

Date of Promulgation: 22 December 2022

JUDGMENT

HAFIZ BERTRAM P

Introduction

[1] The Appellant was indicted for the offence of murder on 1 October 2008 which was alleged to have occurred on 16 February 2007. The trial commenced on the 21 January 2014 before Gonzalez J and a jury. The jury unanimously found the Appellant not guilty of murder but guilty of manslaughter on 6 February 2014. The Appellant was sentenced on the 14 February 2014 to 15 years imprisonment commencing from the date of the imposition of sentence.

[2] The Appellant was detained on 17 February 2007 and remanded to Kolbe foundation on 19 February 2007. By the date of imposition of sentence, the Appellant had spent almost 7 years in custody (4 days short of 7 years on remand and 2 days short of 7 years in police detention).

[3] The Appellant appealed his conviction and sentence on 9 July 2018. By an amended Notice of Appeal dated 5 August 2022, the Appellant filed further grounds of appeal challenging the sentence on the ground that the trial judge failed to give him full credit for his pre-conviction incarceration.

[4] Written submissions were filed by the parties as ordered at Case Management Conference. The Crown has conceded the Appeal on the basis that the trial judge made an error in not giving the Appellant full credit for the time spent in custody prior to sentencing.

[5] In the interest of justice, this Court has determined the Appeal on written submissions with the consent of both parties. The Appellant has already served his sentence and should be released without further delay.

The Appeal on sentence

[6] There are several grounds of Appeal filed by the Appellant. The Court will address only the grounds in relation to the sentence since the Appellant has already served his 15 years sentence. The grounds being: (a) The failure of the trial judge to give the Appellant full credit for the time spent on remand; (b) The sentence should have been calculated from date of arrest; (c) Failure to give reasons for not taking into consideration the time spent on remand and (d) The Appellant would have served his 15 year sentence by 15 February 2022 and therefore should be set free.

Submissions for the Appellant

[7] Mr. Bradley in his written submissions argued that the learned trial judge sentenced the Appellant to a term of imprisonment of 15 years, commencing from the date of conviction on 14 February, 2014. That the Appellant's counsel, (at page 181 at paragraph 10 of the Record of Appeal), specifically addressed the trial judge to take into account the period of the Appellant's pre-conviction incarceration in calculating his sentence. The trial judge noted that the Appellant had been on remand for almost seven years at that time, having been arrested on 16 February 2007, and for this entire period he has been awaiting trial. Nevertheless, the trial judge erred when he sentenced the Appellant to 15 years imprisonment to commence from the

date of conviction, being 14 February 2014, rather than from the date of arrest, which is 16 February 2007.

[8] Mr. Bradley in his written submissions relied on the oft cited case of **Romeo Da Costa Hall v The Queen** [2011] CCJ 6 (AJ), Privy Council case of **Gomes vs. The State** [2015] UKPC 8, and the Belize Court of Appeal case of **The Queen v Pedro Marin, Criminal Appeal No. 1 of 2017**, which show that unless there are exceptional circumstances which must be set out by the trial judge, a prisoner is to be given full credit for time spent incarcerated prior to conviction.

[9] Counsel submitted that in **Romeo Da Costa Hall**, the CCJ at paragraph 26 said that

“[t]he primary rule is that the judge should grant substantially full credit for time spent on remand in terms of years or months and must state his or her reasons for not granting a full deduction or no deduction at all.” He further relied on paragraph 27 where the CCJ said:

“In the interests of transparency in sentencing and in keeping with the principles relating to the imposition of custodial sentences in the Penal System Reform Act, Cap. 139 a sentencing judge should explain how he or she has dealt with time spent on remand in the sentencing process. As indicated above, if the judge chooses to depart from the prima facie rule of substantially full credit for time served prior to the sentence, he or she should set out the reasons for such departure. See also Callachand.”

[10] Mr. Bradley further submitted that the trial judge failed to give reasons for the departure from the general rule. As such, Counsel sought an Order directing the release of the Appellant on the basis that if the proper calculation for his sentence was done to include the period for his pre-conviction incarceration, the Appellant would have served his 15 year sentence by 15 February 2022.

Submissions for the Crown

[11] Learned crown counsel, Ms. Smith in her written submissions for the Crown agreed with the Appellant that the trial judge ought to have given the Appellant credit for the time

spent on remand or if he chose not to, ought to have given reasons for not so doing. As such, the trial judge erred in both respects.

[12] Counsel further submitted that the Appellant ought to be given credit for the entire period spent on remand. In that regard, the Appellant's 15 year sentence would have expired on the 16 or 18 February, 2022.

Determination

[13] The Court agrees with the submissions for the Appellant and the Respondent that the trial judge erred for not giving the Appellant full credit for the time he spent on remand before sentencing and since he chose not to do so, for not giving reasons for the departure. See **Romeo Da Costa Hall**.

[14] In the view of the Court, the Appellant's 15 year sentence expired on 16 February 2022, taking into consideration the period of almost 7 years spent on remand. The 15 year sentence should have commenced on 16 February 2007 which is the date the Appellant was taken into custody and not from the date of conviction as Ordered by the trial judge.

Conclusion

[15] Accordingly, the Appeal on sentence which is now spent is allowed. It is Ordered that the Appellant be released from Kolbe Foundation, immediately, unless there is reason to further detain him for any other matter.

HAFIZ BERTRAM P

BULKAN JA

ARANA JA