

**IN THE SUPREME COURT OF BELIZE A.D. 2021  
(CRIMINAL SESSION)**

**CENTRAL DISTRICT**

**INDICTMENT NO.** Amended C48 of 2019

**THE QUEEN**

v.

**MR. RAFAEL MENCIAS**

- **Murder**

**BEFORE** **The Honourable Mr. Justice Francis Cumberbatch**

**APPEARANCES** Ms. Natasha Mohamed – Counsel for the Crown  
Mr. Arthur Saldivar – Counsel for the Accused

**DATES** 7<sup>th</sup>, 12<sup>th</sup>, 13<sup>th</sup>, 15<sup>th</sup>, 21<sup>st</sup>, 26<sup>th</sup>, and 27<sup>th</sup> of July; 18<sup>th</sup>, 22<sup>nd</sup>, 29<sup>th</sup> of September 2021; 1<sup>st</sup>, 3<sup>rd</sup>, 9<sup>th</sup>, 11<sup>th</sup>, 15<sup>th</sup>, and 17<sup>th</sup> of October 2021; 14<sup>th</sup> of December 2021; 7<sup>th</sup> of February 2022; 5<sup>th</sup> and 25<sup>th</sup> of May 2022; 9<sup>th</sup> and 16<sup>th</sup> of June 2022.

**JUDGMENT ON SENTENCING**

{1} The Accused was indicted by the Director of Public Prosecutions for the offense of murder for that he on the 29<sup>th</sup> day of November 2017, at Cotton Tree Village, in the Cayo District, murdered Hilton Wade Snr., (the ‘Deceased’). At his arraignment, he entered a plea of not guilty, hence, a fully contested trial was held before a single judge pursuant to the provisions of section 65a of the *Indictable Procedure Act*.

{2} At the end of the trial, the Accused was found guilty of the offense of murder as indicted.

{3} The Court ordered a psychiatric report, a social inquiry report, and a prison report to be provided. The Court also fixed a date for a sentencing hearing.

### **The Facts**

{4} The convicted man in a statement under caution described how he was contacted by another person who offered to pay him the sum of five thousand dollars (\$5, 000.00) to kill the Deceased. He agreed to carry out this heinous act in the manner described by, Dr. Mario Estrada Bran, who conducted a post-mortem examination on the body of the Deceased.

{5} The external examination revealed a total of 30 stab wounds located in various areas of the chest. The smallest of these is 25 mm in length whilst the largest is 50 mm in length. There were contusions to the knee caused by the dragging of the body.

{6} Internal examination revealed that the head was completely separated from the body by irregular cuts. Some of the stab wounds penetrated the chest cage, the lungs, the aorta, and the right kidney.

{7} The cause of death was determined to be exsanguination due to internal and external bleeding due to multiple stab wounds to the trunk. The doctor further

opined that a large, sharp, and pointed-end instrument used with heavy force was used to inflict the injuries that caused death.

### **The Hearing**

{8} At the sentencing hearing, the Court examined the reports that were provided.

#### *The Psychiatric Report:*

The psychiatric report was unremarkable as, Dr. Matus, found the convicted man to be stable with no active psychopathological symptoms.

#### *The Central Prison Report:*

The report from the Belize Central Prison reveals the:

- i. convicted man was an inmate of that institution on remand for the offense of murder from the 30<sup>th</sup> of July 2010.
- ii. He was convicted of the offense of manslaughter in 2015, for which he was sentenced to a period of ten years.
- iii. He was released on parole on August 2<sup>nd</sup>, 2017.
- iv. He was readmitted to prison in December of 2017 when he was charged for the commission of this offense for which he now stands convicted.
- v. He has committed three violations of prison rules for non-violent offenses.

*The Social Inquiry Report:*

This report provides details of the convicted man's background as supplied by him. There is no statement from any of his relatives, friends, or previous employers. He maintains his innocence and states that he was tortured by the police to give this statement.

**Aggravating and Mitigating Factors**

{9} I find the following to be the aggravating and mitigating factors in this hearing.

*Aggravating Factors:*

- i. The heinousness of the offense.
- ii. The level of brutality used in the killing of the Deceased.
- iii. The convicted man was prepared to take a human life for filthy lucre.
- iv. This is the second homicide committed by this convicted man.
- v. The prevalence of this offense in this jurisdiction; and,
- vi. And the absence of remorse.

*Mitigating Factors:*

After carefully and thoroughly examining the facts and circumstances surrounding the commission of this offense and the personal circumstances of the convicted man, I am unable to identify any mitigating factors in the convicted man's favour.

{10} The principles of sentencing namely: retribution, deterrence, prevention, and rehabilitation were laid down by Lawson LJ in the celebrated case of **R v. James Henry Sargeant** 1974 60 Cr. App. R. 74. in that decision Lawson LJ stated that:

*“any judge who comes to sentence ought always to have those four classical principles in mind and to apply them to the facts of the case to see which of them has the greatest importance in the case with which he is dealing.”*

### **Retribution**

{11} The facts disclose the extent to which the convicted man went to cause the demise of the Deceased. There seemed to be no restraint in the level of brutality exercised in causing the death of the Deceased. What makes this offense even more egregious is that this was done for the sum of five thousand dollars (\$5,000.00), which the convicted man said he had not received at the time of his detention and arrest by the police.

{12} It is common ground that this is not the first act of homicide committed by the convicted man. Indeed, the prison report discloses that he was released on parole for the offense of manslaughter on the 2<sup>nd</sup> of August 2017, and this offense was committed on the 29<sup>th</sup> of November 2017, some four months after his release from prison for manslaughter.

{13} The decapitation and inflicting of 30 stab wounds to the body of the Deceased, escalate this offense to a level for which the Court must show its abhorrence by imposing a suitable sentence commensurate with its gravity.

### **Deterrence**

{14} It is common ground that the convicted man is not a first offender. Apart from his previous conviction for manslaughter the prison report also reveals that he was convicted for the offense of escape from lawful custody when he and others escaped from the prison.

{15} It follows that this principle is applicable in the determination of a suitable sentence for this offense of murder.

### **Prevention**

{16} The Court views the criminal history of the convicted man together with the level of brutality inflicted by him on the victim herein to be compelling evidence that the convicted man ought to be considered a danger to society. Thus, the Court must impose a suitable sentence to protect the public from further criminal activities of similar ilk by this convicted man.

### **Rehabilitation**

{17} The rehabilitation of the convicted man is essential. However, I find this to be a long and arduous project. Thus, I would order that whilst he is within the

confines of a controlled environment he should be made to participate in all useful rehabilitative programs to wean him off his penchant for excessive violence.

### **Sentence**

{18} Section 106 of the *Criminal Code* CAP 101 of the Revised Laws of Belize provides thus on the question of sentencing a person convicted of murder:

*“106(1) Subject to subsection(2), a person who commits murder shall be liable, having regard to the circumstances of the case, to;*

*(a) Suffer death; or*

*(b) Imprisonment for life.*

3. *Where a court sentences a person to imprisonment for life in accordance with subsection(1), the court shall specify a minimum term, which the offender shall serve before he can become eligible to be released on parole in accordance with the statutory provisions for parole.*

4. *In determining the appropriate minimum term under subsection (3), the court shall have regard to:*

*(a) The circumstances of the offender and the offense.*

- (b) *Any aggravating or mitigating factors of the case.*
- (c) *Any period that the offender has spent on remand awaiting trial.*
- (d) *Any relevant sentencing guidelines issued by the Chief Justice; and*
- (e) *Any other factor that the court considers to be relevant.”*

{19} In *Harry Wilson v Regina* Rawlins JA (as he then was) outlined the manner in which the Court should approach sentencing in capital cases. In that decision Rawlins JA stated thus:

*“That it is a mandatory requirement in murder cases for a judge to take into account the personal and individual circumstances of the convicted person. The judge must also take into account the nature and gravity of the offense, the character, and record of the convicted person, the factors that might have influenced the conduct that caused the murder, the design and execution of the offense, and the possibility of reform and social re-adaptation of the convicted person.”*

Rawlins, JA went on to state:

*“In summary, the sentencing judge is required to consider fully two fundamental factors. On the one hand, the judge must consider the facts and circumstances that surround the commission of the offense. On the other hand, the judge must*



*consider the character and record of the convicted person. The judge may accord greater importance to the circumstances, which relate to the commission of the offense. However, the relative importance of these two factors may vary according to the overall circumstances of each case.”*

{20} The facts of this case have disclosed how the exercise of sheer brutality by the convicted man demonstrated his scant regard for the life of the living. Moreover, there are no mitigating factors herein.

{21} It is against this background that I find that greater importance must be accorded to the circumstances of this case rather than the character of the convicted man.

{22} However, aware of the *dictum* of Justice Graham-Perkins, in the case **R v. Cecil Gibson** (1975) 13 JLR 207 to wit:

*“... It should never be thought that a convicted person standing in the dock is no more than an abstraction, he is what he is because of his antecedents and justice can only be done to him if proper and due regard is act to him as an individual and a real attempt is made to deal with him I reference to the particular circumstances of the case. To ignore these is to ignore an essential*

*consideration for the purpose of punishment, namely, the rehabilitation of the offender.”*

{23} Thus, notwithstanding the seriousness of the offense this Court must show due regard to him as an individual and seek to ensure that all possible steps are taken to result in his rehabilitation as part of his sentence.

{24} Accordingly, the convicted man is sentenced to life imprisonment. He shall serve a period of 35 years imprisonment before he becomes eligible for parole.

{25} He shall be enrolled in all suitable and appropriate programs of rehabilitation as long as is necessary to facilitate his re-entry into society as a law-abiding citizen. This sentence shall take effect from the 2<sup>nd</sup> of December, 2017,

Dated this **16<sup>th</sup> day of June 2022.**

---

Honourable Justice Mr. F M Cumberbatch  
Justice of the Supreme Court  
Central District