IN THE SENIOR COURTS OF BELIZE

CENTRAL SESSION-BELIZE DISTRICT

IN THE HIGH COURT OF JUSTICE

INDICTMENT NO: C 00103/2020

BETWEEN

THE KING

and

LEROY HAULZE

Prisoner

Appearances:

Ms. Sheiniza Smith, Senior Crown Counsel for the Crown.

Mr. Leeroy Banner for the Prisoner.

2023: May 3, 4, 8, and 9th
July 7 and 14th
December 20th.
2024: 17th January.

JUDGMENT

MURDER- SENTENCING

[1] PILGRIM, J: Leroy Haulze ("the prisoner") was indicted for the offence of murder, contrary to section 117 read along with section 106(1) of the **Criminal Code**[1], ("the Code") arising out of the shooting death of Jose Hilario Diaz ("the deceased") on 16th July 2019. After trial before this Court by judge alone he was convicted of murder on 14th July 2023. The Court ordered several reports on conviction to achieve a properly informed sentence as suggested by the apex court, the Caribbean Court of Justice (the "CCJ") in **Calvin Ramcharran v DPP**[2].

The Legal Framework

[2] The sentencing regime for murder is set out at section 106 of the Code which provides, where relevant:

> *"106.-(1) Subject to sub-section (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 sub-section (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 sub-section (3), the court shall have regard to–*
> *(a) the circumstances of the offender and the offence;*
> *(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."*
> .

[1] Chapter 101 of the Substantive Laws of Belize, Revised Edition 2020.
[2] [2022] CCJ 4 (AJ) GY at para 86.

[3] The CCJ in **August et al v R**[3] considered section 106 of the Code, per Byron PCCJ and Rajnauth-Lee JCCJ:

> *"[82]* ***We have concluded that under the amended s 106, where a person is convicted of murder, that person can be sentenced to death or to a maximum term of imprisonment for life. Accordingly, any life sentence imposed following a conviction for the offence of murder will be discretionary and not mandatory. Wherever on the scale the term is fixed, the term of imprisonment must necessarily be such that it is befitting of the circumstances of the offence and the offender****.*
> *[83]* ***Where a term of life imprisonment is imposed by the sentencing judge, the judicial tailoring function is preserved by sub-ss (3) and (4) which allow for the prescription of a minimum term that must be served by the offender before being eligible for release on parole. In individualizing that minimum period, the judge's exercise of his or her sentencing discretion is guided by the consideration of the key factors set out in sub-s (4).*** *" (emphasis added).*

[4] The Privy Council has opined in the Belizean case of **White v R**[4] that the death penalty is only appropriate in cases that were "'the worst of the worst' or 'the rarest of the rare'; and that there must be no reasonable prospect of reform of the offender and that the object of punishment could not be achieved by any means other than the ultimate sentence of death." There are also procedural requirements for the imposition of the death penalty set out in **R v Reyes**[5].

[5] The Court of Appeal has comprehensively considered sentencing for murder in Belize in **Michael Faux et al v R**[6] and made the following findings, per Hafiz Bertram P:

> *"[15] …****The statistics show the sentencing trend for murder is life imprisonment with a minimum term before being eligible for release on parole. The table also shows a few instances of the imposition of a fixed term sentence****.…****The Court notes that these fixed term sentences have only been imposed where there have been mitigating***

[3] [2018] 3 LRC 552.
[4] 77 WIR 165 at paras 12-14.
[5] [2003] 2 LRC 688.
[6] Criminal Appeal Nos. 24-26 Of 2019.

circumstances warranting a lesser sentence. It is at the discretion of the trial judge to determine whether to impose a sentence of life imprisonment or a fixed term sentence upon a conviction of murder.

[16] ***For a conviction of murder a custodial sentence is warranted as shown by the imposition of past sentences. The sentencing trend for murder since the amended section 106 and the case of August has been the imposition of a life sentence with a minimum term of 25 – 37 years after which the convicted person becomes eligible to be released on parole****.*

[17] ***Where a sentence of fixed term is imposed, the range is 25 – 35 years unless there are circumstances, when individualising a sentence, which warrants a lesser sentence****." (emphasis added).*

[6] The Court considers the guidance of the CCJ in the Barbadian case of **Teerath Persaud v R**[7] on the issue of the formulation of a just sentence, per Anderson JCCJ:

"[46] ***Fixing the starting point is not a mathematical exercise****;* ***it is rather an exercise aimed at seeking consistency in sentencing and avoidance of the imposition of arbitrary sentences. Arbitrary sentences undermine the integrity of the justice system****.* ***In striving for consistency, there is much merit in determining the starting point with reference to the particular offence which is under consideration, bearing in mind the comparison with other types of offending, taking into account the mitigating and aggravating factors that are relevant to the offence but excluding the mitigating and aggravating factors that relate to the offender****.* ***Instead of considering all possible aggravating and mitigating factors only those concerned with the objective seriousness and characteristics of the offence are factored into calculating the starting point****.* ***Once the starting point has been so identified the principle of individualized sentencing and proportionality as reflected in the Penal System Reform Act is upheld by taking into account the aggravating and mitigating circumstances particular (or peculiar) to the offender and the appropriate adjustment upwards or downwards can thus be made to the starting point. Where appropriate there should***

[7] (2018) 93 WIR 132.

***then be a discount for a guilty plea**. **In accordance with the decision of this court in R v da Costa Hall full credit for the period spent in pre-trial custody is then to be made and the resulting sentence imposed**." (emphasis added)*

[7] The Court is also guided by the decision of the CCJ in *Ramcharran* on this issue, per Barrow JCCJ:

*"[15] In affirming the deference an appellate court must give to sentencing judges, Jamadar JCCJ observed that **sentencing is quintessentially contextual, geographic, cultural, empirical, and pragmatic. Caribbean courts should therefore be wary about importing sentencing outcomes from other jurisdictions whose socio-legal and penal systems and cultures are quite distinct and differently developed and organised from those in the Caribbean**.*

*[16] Jamadar JCCJ noted that in 2014 this Court explained the multiple ideological aims of sentencing. **These objectives may be summarised as being: (i) the public interest, in not only punishing, but also in preventing crime ('as first and foremost' and as overarching), (ii) the retributive or denunciatory (punitive), (iii) the deterrent, in relation to both potential offenders and the particular offender being sentenced, (iv) the preventative, aimed at the particular offender, and (v) the rehabilitative, aimed at rehabilitation of the particular offender with a view to re-integration as a law abiding member of society**.*

*[18]… **to find the appropriate starting point in the sentencing exercise one needed to look to the body of relevant precedents, and to any guideline cases (usually from the territorial court of appeal)**." (emphasis added)*

Factual basis of sentence

[8] The Prisoner was 22 years old at the time of the offence.

[9] At # 42 Cemetery Road on Tuesday 16th July 2019 at about 5:43 pm the deceased was killed by a single gunshot wound inflicted by another person with the assistance and/or encouragement of the prisoner.

Dr. Mario Estradabran opined that the cause of death of the deceased was exsanguination due to external bleeding from injuries to the left carotid vein due to a gunshot wound to the face. The Court inferred from all the circumstances that the prisoner directed the gunman to his target and acted as look-out for him. The gunman then executed the deceased on a busy and populated main road and the Court found that the prisoner specifically intended to assist the gunman to kill the deceased.

Constructing the sentence

[10] The Court begins by considering the aggravating features of the offending. Those are, in the Court's mind, as follows:

i. There was a substantial degree of premeditation or planning: The evidence on video footage showed clear evidence that the deceased was being scouted by the prisoner to be killed, and the prisoner directed the gunman's movements;

ii. The offence was committed with others: The Court found that this offence was committed with the assistance of one other apart from the prisoner;

iii. The offence involved the use of a firearm. The Court's sentence would need to demonstrate the Belizean society's abhorrence of gun related crime;

iv. The offence was committed in full view of the public: The Court found that the prisoner assisted in what was a public execution committed in broad daylight in a busy area, which sent passersby scampering as can be seen in the video footage; and

v. This is a serious and prevalent offence. The stepdaughter of the deceased, Ms. Isis Portillo, described the deceased in her victim impact statement as a very hardworking man who was the breadwinner and was always there for her as a stepdad. The killing made her feel helpless, hurt and angry. Mr. Emiliano Ack, the son-in-law of the deceased, said, in his victim impact statement, that he lost a great mentor because of the killing. He now also must shoulder the financial burden of supporting the deceased's family in his absence. The killing of the deceased shattered his family.

[11] The Court found no mitigating features of this offending.

[12] The Court cannot impose the death sentence as this case does not qualify as the "rarest of the rare" or "the worst of the worst" under the authority of *White.* The Court considers as an appropriate starting point

for the sentence of the prisoner a life sentence with a minimum term of 30 years imprisonment, well within the 25–37-year range mentioned in *Faux*. There are no mitigating factors which would make a fixed term sentence appropriate. This is a heinous murder, a daylight execution on a busy main road of an industrious family man trying his best to live by the sweat of his brow. The Court can only imagine the terror the members of the public shown in the video footage felt as the gunshot rang out and they saw the prisoner's confederate running through the street with a gun. To not seriously punish this offence is to give the Court's approval to wanton lawlessness.

[13] The Court will now individualize the sentence considering the mitigating and aggravating factors relevant to the offender.

[14] The prisoner was examined by Dr. Alejandro Matus Torres and found to have no history of mental illness.

[15] The aggravating factor relevant to the offender, in the Court's view, is as follows:

i. Previous convictions. He has previous convictions from 2018 for unlawful possession of a firearm and ammunition. This was approximately 7 months before this murder. He was also convicted for the offence of aggravated robbery in December 2019. This was approximately 5 months after the murder. This paints a picture of the prisoner as serial offender with a penchant for an involvement with weapons. The Prisoner in one calendar year went seemingly on a crime spree which only ended with his remand in December 2019. As Barrow JCCJ noted in *Ramcharran* that the public interest is an "overarching" consideration. The sentence of the Court must protect the Belizean citizen from those seemingly hellbent on wreaking havoc.

[16] This would cause the Court to uplift the minimum term by 3 years to 33 years imprisonment.

[17] The mitigating factors relevant to the offender are as follows:

i. A positive social inquiry report and completion of rehabilitation programs: The report in relation to the prisoner shows that he is family oriented and has a good family structure that could assist his rehabilitation. It also appears that the loss of his mother at an early age may have affected him. The prisoner has completed 1 rehabilitation course whilst in prison.

[18] This personal mitigation would lead the Court to reduce the minimum term by 1 year to lead to a final sentence of life imprisonment with a minimum term of 32 years imprisonment.

[19] The Court has not put remorse on the scale as either a mitigating or aggravating factor as though the prisoner did say sorry before the court, in his social enquiry report he stated emphatically that he did not commit the crime and was merely caught on video "talking to individuals in the shop". The Court did not find the expression of remorse genuine. The Court is reminded of the words of Sosa P sitting in the Court of Appeal, where he opined in **Edwin Hernan Castillo v R[8]:**

> *"[23] The appellant made sure to mouth an expression of remorse early on in his statement at the sentencing phase. But he also kept on insisting, despite the verdict of the judge, that he was not the deceased's killer and that Amir Garcia, the chief Crown witness at trial, 'lied and got away with it', thanks to the shortcomings of his (the appellant's) counsel.*
>
> *…*
>
> *[28] It should come as no surprise that, given the remarks already made at para [23], above, the Court finds it impossible to accept as genuine such expressions of remorse as were articulated by or on behalf of the appellant in the present case. It does not lie in the mouth of an offender to claim to be remorseful when he steadfastly insists that he is innocent of the crime of which he has been convicted. Implicit in a feeling of remorse is an acceptance of one's guilt. A false claim of remorse made before a sentencing court is a most reprehensible display of utter disrespect for that court. That said, however, the Court will not treat the appellant's claim of remorse as an aggravating feature in the present case. That is not to suggest that in a future case the advancement of such a claim will be met with the same, or any, degree of indulgence."*

[20] The prisoner has spent 8 months on remand for this offence, rounded up, and the Court deducts that from the minimum term, which would make the final sentence one of life imprisonment with a minimum term of 31 years and 4 months imprisonment before he is eligible for parole.

[8] Criminal Appeal No 11 of 2017.

[21] The prisoner is currently serving a 5-year sentence for an unrelated offence and is scheduled for release, by the prison report, on 28th April 2026. The Court is mindful of the provisions of section 161 of the **Indictable Procedure Act**[9]:

> *"161. Where the court sentences any person to undergo a term of imprisonment for a crime, and the person is already undergoing, or has been at the same sitting of the court sentenced to undergo imprisonment for another crime, the court may direct that the imprisonment shall commence at the expiration of the imprisonment which the person is then undergoing, or has been so previously sentences to undergo, as aforesaid."*

[22] The Court is guided by the interpretation of that section by our Court of Appeal in **Winston Dennison v R**[10], that it requires an order by this Court as to how this sentence is going to run in relation to the one the Prisoner is already serving.

[23] The Court is of the view that this sentence should be made to run consecutively to the sentence the prisoner is now serving, as it is in the public interest and the interests of justice to have the prisoner account separately for this very serious offending. In this regard the Court relies on the decision of the CCJ in **Bridgelall v Hariprashad**[11] where they opined, per Saunders JCCJ, as he then was:

> *"[32] … consecutive sentences may be given where the offences arise out of unrelated facts or incidents."*

[24] The Court is of the view that this sentence should take effect from 29th April 2026.

DISPOSITION

[25]. The sentence of the Court is that the Prisoner is to serve a term of life imprisonment with a minimum term of 31 years and 4 months before becoming eligible for parole consecutive to the sentence of 5 years imprisonment for the previous conviction for aggravated robbery which the Prisoner is now serving, to wit, the sentence will be with effect from 29th April 2026.

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[9] Chapter 96 of the Substantive Laws of Belize, Revised Edition 2020.
[10] Criminal Appeal No 1 of 2013 at para. 38.
[11] (2017) 90 WIR 300.

Nigel Pilgrim

High Court Judge

Dated 17th January 2024