

IN THE SENIOR COURTS OF BELIZE

CENTRAL SESSION-BELIZE DISTRICT

IN THE HIGH COURT OF JUSTICE

INDICTMENT NO: C 22/2018

BETWEEN

THE KING

and

MICHAEL BAPTIST JR.

Prisoner

Before:

The Honourable Mr. Justice Nigel Pilgrim

Appearances:

Mr. Glenfield Dennison, Crown Counsel for the Crown.

Mr. Norman Moore for the Prisoner.

2023: November 21st, 22nd, 24th, 28th and 30th;
2024: January 30th;
February 8th and 13th.

DANGEROUS HARM-SENTENCING

[1] Michael Baptist Jr. (“the prisoner”) was indicted on 11th January 2018 for the 6th of July 2016 offence of dangerous harm arising out of the stabbing of Eugene Webster (“Mr. Webster”), contrary to section 82 of the **Criminal Code**¹ (“the Code”). The prisoner was tried before a

¹ Chapter 101 of the Substantive Laws of Belize, Revised Edition 2020.

judge and jury and was convicted by unanimous jury verdict on 30th November 2023. The Court requested various reports and information to attempt to construct a fair and informed sentence.

The Law

- [2] The offence at bar is defined in the Code, where relevant, and the maximum penalty is, as follows:

“82. Every person who intentionally and unlawfully causes...any dangerous harm to a person shall be liable to imprisonment for twenty years.”

- [3] The ingredients of the offence in the Court’s view are, and the jury would have found in this case: (i) the prisoner caused harm to Mr. Webster, which means any bodily hurt; (ii) the harm the prisoner caused was dangerous, in that it was life endangering; (iii) the prisoner intended to cause life endangering harm to Mr. Webster; and (iv) the prisoner had no legal justification for causing that harm.

- [4] In determining the propriety or otherwise of a custodial sentence on these facts the Court must have regard to the provisions of the Penal System Reform (Alternative Sentences) Act², (the “PSRASA”) which read, where relevant:

*“28.-(2) ...**the court shall not pass a custodial sentence on the offender unless it is of the opinion,***

*(a) **that the offence was so serious that only such a sentence can be justified for the offence;***

...

31.-(1) ... a court in sentencing an offender convicted by or before the court shall observe the general guidelines set forth in this section.

(2) The guidelines referred to in subsection (1) of this section are as follows,

² Chapter 102:01 of the Substantive Laws of Belize, Revised Edition, 2020, see section 25.

1. **The rehabilitation of the offender is one of the aims of sentencing...**
2. **The gravity of a punishment must be commensurate with the gravity of the offence....**” (emphasis added)

[5] The Court now looks to the guidance of the apex court, the Caribbean Court of Justice (the “CCJ”) in the Barbadian case of **Teerath Persaud v R**³ 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 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 sentenced imposed.” (emphasis added)

³ (2018) 93 WIR 132.

[6] The Court is also guided by the decision of the CCJ in Calvin Ramcharran v DPP⁴ 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)

The Facts

[7] Mr. Webster testified that on the evening of the 5th of July 2016 he was at his home. The prisoner came there to wash Mr. Webster’s vehicle and he hung around there for the day. Mr. Webster gave the prisoner money to catch the bus to go home. The prisoner left and he

⁴ [2022] CCJ 4 (AJ) GY.

came back, and he asked Mr. Webster if he could stay, and he would go early in the morning. Mr. Webster allowed him to stay. Mr. Webster locked up the house that night with the prisoner still inside. Mr. Webster went in his room and locked his door. He left the prisoner outside watching television and he went to bed. Mr. Webster fell asleep and when he woke up his neck was spraying with blood. He said that the prisoner was over him, whilst he lay on his bed. The prisoner had more than one knife and was making stabbing motions. He testified that he called out the name of Michael aka Chucky. Mr. Webster testified that he was stabbed in the head, side of his face, his neck, his hand, his back his chest and his foot. The prisoner was saying, "like you can't dead". Mr. Webster testified that he was not able to get off the bed. He tried to kick his feet by stamping and he used one of the pillows to get one of the knives from the prisoner. The prisoner then jumped up and ran out of the room. Mr. Webster took out his gun to try to follow the prisoner, but he got up and saw the door open. Mr. Webster spoke with his wife and was later taken for medical attention.

- [8] Dr. Emmerson Mungia testified that he treated Mr. Webster. He said Mr. Webster received multiple stab wounds to the thorax and abdomen. The stab wounds caused his lungs to collapse as well as severe injuries to his liver. He explained that he classified the harm in this case as dangerous harm. He explained why saying, "The thoracic injury or the abdominal injury that the patient received any of them can kill you. End in death." These were mortal injuries without medical intervention.

Analysis

- [9] Belize does not yet have formal sentencing guidelines, however, the Court found great assistance from the Eastern Caribbean Supreme Court's, "**A Compendium Sentencing Guideline of The Eastern Caribbean Supreme Court, Violence Offences**"⁵ ("the ECSG", Eastern Caribbean Sentencing Guidelines). The Court considers the ECSG in its sentencing process in reliance of the dicta of the CCJ in **Linton Pompey v DPP**⁶ per Jamadar JCCJ:

⁵ Re-Issue, 12th April 2021

⁶ [2020] CCJ 7 (AJ) GY

“[111] Thus, in so far as one may wish to look to other jurisdictions for trends in sentencing, one should first look to relatively comparable jurisdictions, such as those in this region....As I have already alluded to, a truly Caribbean jurisprudence must be born and grounded in the sitz im leben of Caribbean peoples and Caribbean spaces.” (emphasis added)

[10] However, the Court notes that guidelines are not a strait-jacket and that judicial discretion must remain at the heart of the sentencing process, as noted by the CCJ in the Barbadian case of **Burton and Anor. v R**⁷.

[11] This offence would be considered under the rubric of “inflicting unlawful violence with intent to cause really serious harm” under the ECSG. The Court in terms of the consequences of harm caused by this offence would categorise it as high, Category 2, as it caused serious physical harm to the Mr. Webster⁸. In his victim impact statement (“VIS”) Mr. Webster described himself as “partially handicapped”. He said, “I have to depend on my wife to do everything for me, as I have to drag my left foot so as to get around but can't do almost anything. I am also partly paralyzed in my right hand because the stabs that he inflicted on me touched my nerves so I don't have strength in my right hand.”

[12] The Court in judging the seriousness of the offence also categorises it as high. This is on the following bases:

- i. This was a sustained attack with multiple stab wounds⁹;
- ii. There was use of a weapon, not one but two knives; and
- iii. This attack appeared premeditated.

[13] The recommended starting point under the ECSG is a range of 45-75% percent of the maximum sentence¹⁰, with a suggested starting point of 60%. The Court finds a starting

⁷ 84 WIR 84 at para. 13.

⁸ P. 5 ECSG.

⁹ P. 6 ECSG.

¹⁰ P. 14 ECSG

point of 65% of the maximum sentence would be an appropriate one for this case, having regard to the seriousness of the offending in this case. This is offending that clearly merits a custodial sentence as was noted by the Court of Appeal in **R v Garbutt**¹¹. This would result in a starting point of 13 years imprisonment. The Court thinks that that is an appropriate starting point in the circumstances of this case.

[14] The other generalised aggravating factors of the offending, in the Court's view, are as follows:

- i. The offence is serious and prevalent.
- ii. Mr. Webster was attacked in his own home.
- iii. This attack involved a breach of Mr. Webster's trust. Mr. Webster noted that he had treated the prisoner as his own son and had helped raised him. The prisoner had been given money by Mr. Webster mere hours before the stabbing.

[15] The Court is of the view that there are no mitigating factors in relation to this offending.

[16] The Court would increase upwards the starting point by 2 years for the general aggravating features of the offending. This would then give a sentence of 15 years imprisonment.

[17] The Court would then individualize the sentence of the prisoner.

[18] An aggravating factor in relation to the offender is a previous conviction for theft from May 2015. The Court notes that this was a little over a year before this offence. This would cause the Court to increase the sentence by 6 months, giving a sentence of 15 years and 6 months.

[19] The prisoner was assessed and found to have no mental issues.

[20] The mitigating factors in relation to the offender are as follows:

- i. He was a young person at the time of the offence, 20 years of age;
- ii. He has expressed genuine remorse in his Social Inquiry Report ("SIR") and in the face of the court;

¹¹ Criminal Appeal No. 15 of 2009.

iii. He has a positive SIR and had a difficult upbringing. The prisoner is described as hardworking, responsible, and a provider and protector. It has noted that he wants to be better and redeem himself. The prisoner grew up in a broken home with an absent father and a mother who was mentally unstable. He had to essentially raise himself since he was fifteen years old.

[21] These mitigating factors would cause the Court to reduce the sentence by 4 years and 6 months. The Court reminds itself of the guidance in the PSRASA that rehabilitation is a core principle of sentencing. This would leave a final sentence of 11 years imprisonment.

[22] The time spent on remand is 23 months and 8 days, or 1 year 11 months and 8 days. That period is subtracted from the sentence of 11 years imprisonment and the sentence will be appropriately backdated to account for the 8 days imprisonment pursuant to the Court's powers under section 162 of the Indictable Procedure Act¹² as considered in R v Pedro Moran¹³.

DISPOSITION

[23]. The sentence of the Court is that the prisoner serves a sentence of 9 years and 1 month imprisonment with effect from 22nd November 2023.

Nigel Pilgrim

High Court Judge

Dated 13th February 2024

¹² Chapter 96 of the Substantive Laws of Belize, Revised Edition 2020.

¹³ Criminal Application No. 1 of 2017 at para. 38.