

IN THE SENIOR COURTS OF BELIZE

CENTRAL SESSION-BELIZE DISTRICT

IN THE HIGH COURT OF JUSTICE

INDICTMENT NO: C 0096/2018

THE QUEEN

and

ANKE DOEHM

Prisoner

Appearances:

Ms. Cheryl Lynn Vidal SC, DPP

Ms. Shanell Fernandez for the Crown

Mr. Adolph Lucas for the Prisoner.

UEE-----

2024: March 14th

April 8th

April 15th

April 17th

JUDGMENT

CRUELTY TO CHILD- SENTENCING

1. **SYLVESTER, J:** Anke Doehm (“the prisoner”) was indicted for the offence of Cruelty to a child, contrary to section 60 (1) of the **Criminal Code**¹, (“the Code”) Chapter 101 of the Substantive Laws of Belize Revised Edition 2020.
2. The specific particulars of the charge are as follows:

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

ANKE DOEHM, between the 1st day of January 2017 and the 4th day of July 2017, in San Pedro Town, in Ambergris Caye, in the Belize District, in the Central District of the Supreme Court, being over the age of eighteen years and by virtue of the law, having had custody of Faye Lin Cannon, a person under the age of eighteen years (18) years, to wit thirteen years of age, wilfully neglected the said Faye Lin Cannon, in a manner that was likely to cause injury to her health, namely, by failing to seek proper medical attention for her and failing to ensure that her nutritional needs were met.

3. On the 20th February 2020, the prisoner's trial commenced before a Jury, in accordance with section 65 of the **Indictable Procedure Act**² which reads:
 - (1) Every person committed for trial shall be tried on an indictment in the court.
 - (2) Subject to the provisions of sections 65 A to 65 E, the trial shall be had by and before a judge of the court and a jury constituted under the Juries Act.
4. The trial was heard on the 20th, 21st, 22nd, 27th, 29th February 2024 and 4th March, 2024.
5. On the 4th day of March 2024, the prisoner was convicted by a unanimous verdict of the Jury.

² Indictable Procedure Act Cap.96 S. 65 of the Substantive Laws of Belize Revised Edition 2020

6. In accordance with the guidance of the Caribbean Court of Justice (the “CCJ”) in **Linton Pompey v. DPP**³, this court was provided with useful guidance in relation to sentencing post-conviction. This would be dutifully followed in relation to the sentencing hearing.

The court’s guidance states as follows:

“[32] The Court suggests that the practice of passing sentence immediately after verdict should generally be eschewed, especially in cases where there is a likelihood that a lengthy prison term may be imposed. In such cases, the judge should hold a separate sentencing hearing at which mitigating and aggravating factors, including mental health or psychological assessments, can better be advanced and considered. We endorse Justice Jamadar’s views on the utility and value in facilitating Victim Impact Statements at such hearings in appropriate cases as well as his suggested approach for trial judges to determine a proper starting point while embarking upon the sentencing exercise.

7. This court ordered the production of several reports post-conviction including, Psychiatric, Social Inquiry, Antecedent and Prison Reports, also Victim Impact Statements, so as to enable a process of informed decision-making in sentencing. This would assist the court in holistically considering the public interest, deterrence, preventative and rehabilitative objects of sentencing, which were approved by the Caribbean Court of Justice (the “CCJ”) in **Calvin Ramcharran v DPP**⁴.
8. The prisoner was examined by Dr. Alejandro Matus Torres, Psychiatrist.⁵ A report was provided, and the prisoner was found, to have no history of mental illness, she is aware of the reason for her conviction and the possible penalties. She was deemed fit to be sentenced by this court.

³ [2020] CCJ 7 (AJ) GY

⁴ [2022] CCJ 4 (AJ) GY at para 85-90.

⁵ Mental Health Services Report dated 25th March 2024 [Dr. Alejandro Matus Torres]

9. The court will embark upon the process of sentencing in seven (7) parts by examining the following issues chronologically:

Part 1: Prosecution case as accepted by the jury.

Part 2: Defence case as rejected by the jury.

Part 3: The Belize legislative framework, for the offence of “Cruelty to a child”.

Part 4. The United Kingdom legislation and sentencing guidelines (*pari materia* to Belize s.60).

Part 5: Sentences imposed by the United Kingdom Courts (hereinafter “UK”) upon pleas of guilty and trial.

Part 6: Constructing the sentence, fixing the starting point (circumstances relevant to the offence and the offender).

Part 7: Disposition.

Part 1: Prosecution’s case as accepted by the Jury.

10. The case for the prosecution simply put was that the prisoner, wilfully neglected Faye Lin Cannon (hereinafter sometimes referred to as ‘the deceased’), in a manner that was likely to cause injury to her health, by failing to seek proper medical attention for her and failing to ensure that her nutritional needs were met. This conduct resulted in Faye Lin Cannon’s death.

11. The evidence of the following prosecution witnesses explained the nature, circumstances and manner of the neglect which ultimately led to the death of the deceased. The evidence germane to the above was elicited from the following witnesses namely:

-Dr. Lloyd Ken (Pathologist).

-Zoe Cannon (Sister of the deceased).

-David Cannon (Father of the deceased).

- Hector Trejo (Principal of the school where the deceased attended).

Dr. Lloyd Ken

12. Dr. Lloyd Ken was deemed an expert in Anatomical Pathology, and his evidence depicted a multiplicity of internal and external injuries, including severe malnourishment, physical and sexual abuse. Numerous photographs were tendered into evidence in support thereof.
13. Dr. Ken examined the Deceased, a female of 13 years. The body length was 60 inches wearing a long sleeve pink color blouse, a long pants and a yellowish-white underwear with apparent mucous stains to the interior aspect.
14. The scalp hair was black and straight of which after shaving there was soil on the right side of the head with bruising, the focal area had five small orifices, five holes approximately 0.3 cm that drained puss. The hair follicles had bacterial infection with abscessation, which was caused by an injury or low immune system and low defense. This injury could have been treated with a topical cream purchased from a Chinese store.
15. The sclera was pale, it is the white part of the eyeball which is the lining inside of the eyelid. If it is pale, it would mean that the person is low in blood count or anemic, malnutrition, infection, or tumors.
16. There was also conjunctival with petechiae hemorrhages, which is bleeding of the eyeballs in the white part of the eye. This was caused by any compression either dominant or chest or upper chest compression on the abdomen, neck region or to the face.

17. The mouth had a 1.5 cm tear to the upper lip inside the mouth. There was a legion of injuries with interior and surrounding bruises of the upper lip, caused by compression of the mouth or hitting, this was a fresh hemorrhage, less than a day before death.
18. The chest had multiple bruises to the interior aspect and upper aspect, the clavicle and collar bone, the lower clavicle and collar bone. The lower chest on both sides had bruises as well.
19. In the case of a thirteen (13) year old, you would have more budding of the nipples. The nipples should be much bigger. And even the breast fat should be much more. In this case the breasts were underdeveloped. This was caused by general malnutrition, diseases or long-term infections.
20. The body structure was not normal, it had generalized muscle dystrophy and fat dystrophy that translates into loss of body mass. This was caused by months of malnutrition, and sexual diseases.
21. There was a 1-centimeter superficial abrasion like a scratch with scab formation, on the posterior interior midline aspect of the chest.
22. There were old injuries with healing process, caused by trauma due to compression to the back. There were multiple bruises on the upper quadrants and scars with defined borders in that region. There was scab formation which was caused by blunt force trauma and compression.

23. In relation to the upper extremities there were multiple bruises of the arms, elbows, lateral proximal third of the forearm, lateral distal third of the left forearm and posterior lateral aspect of the left metacarpal region.
24. There were bruises caused by compression and blunt force trauma of the metacarpal area, the back of the hands. This was caused by compression to the body on a hard floor or pressure against the body.
25. When examining the 'Tanner Stages' of development, which ranges from stages 1-5, Faye Lin should have been in stage four of development, but she was between stages 2-3 which was that of a 9–11-year-old child.
26. There were injuries recent as a day prior to her death which included fresh hemorrhage to the collar bone region, the interior chest lateral with recent fractures of the sixth, seventh and eighth left ribs and fracture of the sixth right ribs with petechial hemorrhage to the surface of the lungs and diaphragm. This would have resulted in difficulty breathing, she had pectoral hemorrhage to the lungs and also in the windpipe. Her breathing was compromised.
27. There was a contusion to the left atrium and left ventricle extending to the anterior lateral surface to the posterior surface of the heart. That means there were bruises to the heart. Since the heart was compromised, in this case it had a contusion; it could not pump the blood efficiently. There was also a fresh hemorrhage to the myocardial which is the meat of the heart, which also contributed to the failure of the heart.

28. The overall bleeding recent and old compromised the functions of the kidney. There was hypo-perfusion meaning the blood that reaches the kidneys is less.
29. In relation to the anus there was a funnel shaped dilation of the anus with exposure of the rectal wall. There was a total loss of the mucosal folds with irregular abrasions or small little tears with red borders of the lateral wall of the anus. There was dilation with exposure of the wall of the anus of the rectum. The walls of the anus were visible.
30. In relation to genital findings, there were contusions to the vagina wall, bruises to the vagina wall and the labia minora. The inferior part of the vagina, that's the entrance of the lower part, had bruising with recent tears of the hymen at five, seven and eleven o'clock. There was also bruising of the vaginal wall and cervix.
31. The cause of death was due to traumatic wounds to the body and compression to the chest. Also, the size of anal penetration, genital injuries due to abuse and signs of traumatic injuries in the healing process with new injuries. The deceased had trauma with blunt force, and in that same area she got traumatized again.

Zoe Cannon:

32. The evidence of Zoe Cannon was graphic and spoke to physical abuse meted out to the deceased at the request and in the presence of the prisoner. She also indicated the prisoner was the most feared parent in the household, that bread and sausage was served every day for breakfast and if wasn't eaten fast enough, then water was not served. Lunch was cream cheese sandwich and a hot dog daily.

Dinner consisted of rice with canned vegetables or steamed broccoli and beans. The prisoner and her husband cooked whatever they wanted or felt like for dinner and ate it for themselves. Prior to the deceased's death she was sick and in adult diapers. On occasions, when she refused to walk and use the bathroom, the prisoner would ask the stepfather (David Doehm her husband) to deal with it which included, punching her, beating her and burning her hair. The prisoner and her husband administered Valium and Benadryl to the deceased, sometimes purchased by Zoe Lin Cannon. The Saturday leading up to the deceased death the prisoner was aware that she was sick, medically deteriorating and in dire need of urgent medical attention, a doctor was only called after Faye Lin Cannon died. While the deceased was sick and lying on the floor, the prisoner's husband, in the presence of the prisoner, stomped the chest of the deceased; the prisoner made no comment. The said Saturday the prisoner left home to visit the doctor for her personal medical needs, notwithstanding the deceased was also in need of medical care and attention. The prisoner also performed, "Reiki" on the deceased, as a means of healing while she sought professional medical treatment for herself. The prisoner also requested that the deceased after her death, was to be dressed properly to ensure she looked nice for the doctor and was debating whether or not to put a rosary in her hand but she felt that would be too much.

David Cannon

33. His evidence was that he was married to the prisoner during the month of September 1997. On the 11th May 2005, they both adopted four children from China,

namely; Zoe Lin Cannon, Mia Lin Cannon, Siri Lin Cannon and Faye Lin Cannon (now deceased). Faye Lin Cannon was 13 months old when she was adopted. The prisoner was having an affair which led to David Cannon requesting a divorce, wherein the prisoner filed for divorce and was granted on the 11th August 2011. The prisoner had custody of the four (4) minor children, and there was a specific visiting arrangement for David Cannon, while the prisoner resided in Hawaii and then later Belize with her new husband, David Doehm. Consequent upon the divorce it was agreed that David Cannon would pay the sum of USD\$5,400.00 monthly for the maintenance of the four (4) children, which was done ceremoniously by bank transfer on or before the 20th of the month, (this evidence was confirmed by the prisoner in her unsworn statement). David Cannon would normally visit the children in Belize; however his last visit was December 2012, when he was notified by the prisoner that three of the children no longer wanted to participate in the visits, save and except Siri Lin Cannon. He notified the prisoner that he had health insurance in the USA for the children and further he was willing to pay 50 % of any medical cost incurred in Belize. There was nothing brought to his attention regarding Faye Lin's health between 2012 to 2017. The prisoner requested David Cannon to visit Belize on the 3rd July 2017, as she wanted to speak to him in person, it was at that visit the prisoner notified him that Faye Lin Cannon died. She told David Cannon that Faye Lin Cannon was mentally ill and peeing herself. Further, she would normally give Faye Lin Cannon, Valium and provide a healing treatment named, "Reiki". The prisoner also indicated that an autopsy and cremation had to be done quickly as there was no available refrigeration facilities for dead bodies in Belize. The prisoner also indicated while at the police station, that, 'it was not her, it was him', referring

to her husband, David Doehm, who later committed suicide. David Cannon later filed for custody in Belize for the other three (3) surviving children that was granted on the 20th day of September 2017. The three (3) children are now residing with David Cannon in the USA and Faye Lin Cannon (deceased) is buried close to where they live in the USA.

Hector Trejo (Principal)

34. Hector Trejo was the principal of La Isla Bonita Elementary School for the past twenty-four years. During the year 2012-2013, he was the vice principal and taught the Class of Standard 2. He testified that Faye Lin Cannon (the deceased) was a student in his class, and he also knew her other three (3) sisters who attended the school as they were always together.
35. The deceased was friendly, amicable and a very intelligent child that had very good manners, she was very quiet. She came first in her class in the last academic year. She enjoyed reading.
36. That nutritionally, the children including the deceased had, two slices of white bread and sausage for break and lunch which they brought to school daily. This was for the whole year he taught the deceased. Further they were not allowed to eat from anyone. They did not have money to buy snacks.
37. There was one occasion when Hector Trejo's ex-wife, Yvette Ramirez gave the deceased food, which was rice, beans, chicken, a typical Belizean dish. At 2:00 pm

on the said day the stepfather David Doehm, came to the school and behaved furiously, and told Ms. Ramirez she had no right to give any food to the children.

38. Finally, Mr. Trejo stated that the deceased was a very amicable, normal young child. She performed very well in her class. Whenever any question was asked in the classroom, she would answer very intelligently. She did not have any type of mental disability as far as he was aware. She was a very bright child.

Part 2: The Defence case.

39. It is important to state the Defence case in full, which was the unsworn statement of the prisoner. However, no witnesses were called on her behalf. The prisoner denied neglecting and or failing to provide medical care for the child, despite the evidence to the contrary.

40. The complete unsworn statement of the prisoner is set out hereunder as follows:

Defence Case: 28th February, 2024

- i. "My name is Anke Doehm. I am the adopted mother of Zoe Lin Cannon, the deceased, Mia Lin Cannon and Siri Lin Cannon. My children were adopted from China. They are not blood related. They are adopted from different orphanages and families. My children are all very different. Faye, from the day she was placed in my arms, she was thin built, slim, very slim. From the first day Faye did not want to eat much. She was never a big eater.
- ii. I always encouraged Faye to be warm like her sisters. When Faye was upset, she would sometimes refuse to eat but would always come back to her normal eating habit.
- iii. During the entire life of all the children that I spent with them, I would make every morning breakfast which would consist of peanut butter and jelly sandwich, cream cheese, and jelly or also cream cheese and bread. At lunch we would all eat sandwiches, cheese sandwiches and turkey sausages, I think it is what it is called here, which is a big sausage.

- iv. Turkey sausage as opposed to pork or beef, some fruit, water of course. That was the lunch and the style that we were used to eating in America. Where you cook at night a hot dinner which we did at night. So, they had the afternoon snack and at night we would eat together. We would sit together and have our dinner together, which was pasta with meat sauce, rice and vegetables, chicken and sometimes would have pizza or burgers, just the normal eating that we were used to before. Faye was always thin and tall. She grew tall, taller than her older sister Mia who was one year older. Faye started her period at the age of 12. She was 12 years old when she started her period. And, yes, Faye was flat chested. I see a lot of women, teenagers who were flat chested, including myself. So, that never seemed out of the ordinary, that was her body type I would say.
- v. So, I prepare the meal, breakfast especially every day unless I was not there then my husband, David Doehm would be in charge of all the children in care taking.
- vi. Yes, when I was not there David Doehm was in charge of the children. From the first day that he was in our lives, he was equally responsible for the care taking of our four daughters.
- vii. In March 2017, after I fell very ill, I was diagnosed with a very rare form of blood cancer that requires me to go two to three times a week to Belize city to see my doctor, Dr. Hidalgo from Belize Health Care Partners. I was also diagnosed with an ovarian tumor, so I had to start being away from the house especially for surgery.
- viii. So, during that time I started to be regularly away from the house and David Doehm was in charge.
- ix. Then in April, I was two (2) weeks in the hospital from the surgery. Then at that time, my daughter Zoe spent the entire time with me in the hospital. David Doehm stayed back taking care of the household and children.
- x. Up until today I have to do regular checkups at least once a week to monitor my blood situation. I was granted by the Supreme Court of Belize permission to leave the country of Belize to visit the specialist in Cancun in Mexico because I was also diagnosed with another form of Cancer. So, after today I regularly see a specialist there because there is no blood specialist especially in Belize. Dr. Hidalgo had urgently recommended to me that I see somebody else.

- xi. From last week from Dr. Ken, I think the autopsy doctor, describing Faye's rape in July in 2017, I have never heard from Faye or her sisters or any other voice from anybody that Faye was raped. He was accused in 2017 to have raped Faye. David Doehm is not here today because he killed himself on the 5th of October 2017. He killed himself at the Princess Hotel in a hotel room. He left a suicide note. I got a copy of the suicide note from the police which was handwritten. I know his handwriting because he wrote many times to me and I also have his passport, his social security card and his driver's license that has his signature. In that suicide note, he stated, "*I am sorry for what I did. Sorry, for all the people that I hurt.*"
- xii. I never gave Faye any Valium. Also, in 2017 David Doehm had a separate charge for "*Possession of Valium Without a Prescription*". He plead guilty to that and was fined \$150.00.
- xiii. In 2011, I filed for divorce against David Cannon. The Court ordered a Divorce Decree. He was ordered to pay \$5,400.00 US dollars monthly to maintain the living standards of the children. I came to Belize in 2012 to San Pedro and we rented a four-bedroom house by the sea with a front yard, four bedrooms, two bathrooms, living area, dining area and kitchen. So, we rented that and in June 2017 we then moved to the Grand Caribe which was more expensive. Then we rented a three-bedroom apartment with living, dining, kitchen by the sea with swimming pool. Then each bedroom had a bathroom attached. In 2015, I suggested for several reasons we had Faye and Mia home schooled as we did in Hawaii, where we lived.
- xiv. It is very common to home school your children there. So, Zoe was going already at the time attending High School online. She was online in Belize attending classes online in America. The other two Faye and Mia were attending online school program with a company called (Inaudible) and I ordered all the books and everything (inaudible) Siri remained on her own wishes at the private school, La Isla Bonita Primary School in San Pedro. Before home school they all went to private school.
- xv. The children attended sailing classes, two of them because one was not interested in or too small. At the yacht club in San Pedro two of them attended. The others attended dance classes. They always attended, always in the month of June. Because school was out and our whole family of six went on yearly vacations for six weeks to Playa Del Carmen and Merida or summer camp.
- xvi. Yes, because school was out. We would go on yearly vacations usually at the end of August to the first week of October to Playa Del Carmen, Mexico

which is a resort town and rent three-bedroom condos on each occasion. We also went to Merida where we rented a three-bedroom condo on each occasion we also went to Merida in Mexico.

- xvii. We went to Merida in Mexico. On Monday, July 1, I went in the morning to Faye's room, and I woke them up and told Faye, we are going to the doctor today. Please get ready. She did not want to go to the doctor. She did not want to put her clothes on. When I came to the room to check on her if her clothes were on, she had congestion so when I checked to see if she was ready, I saw Faye lying on the bed fully dressed but not breathing. I started crying and screamed out to David Doehm to come. She was not breathing. I didn't know at all why she was not breathing. I never thought of putting a rosary into her hand because we are not even Catholics, so we didn't even have a rosary.
- xviii. On Saturday, which is the 1st of July, I went for my blood situation in the city. In my presence, I did not witness David Doehm kicking Faye's chest.
- xix. The last seven years since all of this happened, I spent every day staying alive because before this court today. Because I wanted to be reunited with my remaining children. That was my hope for me to stay alive this far with this constant diagnosis of diseases.
- xx. In 2018, it was my birthday January 1, my daughter posted "*Happy Birthday, momma*" on Facebook. And, also when I was given ten minutes when the children left to say goodbye in the presence of the authorities. We had one last chance to see each other. It was very emotional close to each other hugging each other and I was also given by the children letters saying how much they loved me and how concerned they were. They were all leaving me behind in Belize because they were on their way to America. Why would they do that? They could have said if there were any accusations of any of that. Why would they hug me? So, I stayed all seven years here, I have even been to Cancun, and I came back from Cancun to Belize to be here today. Because why would they do this if anything that was stated yesterday is true, thank you".

- 41. This court saw it necessary to document the complete unsworn statement, since the prisoner at no time expressed any remorse, parental loss, sorrow, pain or regret as a result of the death of Faye Lin Cannon. The statement was a blanket denial of the charge and some assertion that it was David

Doehm who provided Valium and Benadryl to the deceased as he was convicted at the Magistrate's Court for its possession. This evidence was rejected by the jury.

42. The prisoner filed an affidavit on the 11th April 2024 intituled, Re victim impact statements of David Cannon and Zoe Lin Cannon, which was in effect a response to the victim impact statements, tendered by the Crown. At par. 6 of the prisoner's affidavit, she referred to Zoe Lin Cannon's evidence in court as, 'lies'⁶. This statement was unfortunate, in that the jury having found the prisoner guilty, beyond a reasonable doubt, therefore, the prisoner cannot at this stage challenge the evidence, the time for doing so has long expired.

43. This court takes cognisance of the fact that letters of medical practitioners were appended to the prisoner's submission, providing medical evidence on behalf of the prisoner. This shall be dealt with later in this judgment.

Part 3: Belize Legislative framework (Child Cruelty).

44. The Country of Belize is bound by its international treaty obligations, requiring the protection of children from all forms of abuse. It is worthy of note that, the **UN DECLARATION ON THE RIGHTS OF THE CHILD**

⁶ Par. 6

"In terms of Zoe Lin Cannon I am even more astonished. But in a way I should not be because of the lies she made when she was giving evidence virtually at my trial".

(1959)⁷ was Proclaimed by General Assembly resolution 1386(XIV) of 20 November 1959, wherein Belize is now a signatory and expressly states:

Whereas the peoples of the United Nations have, in the Charter, reaffirmed their faith in fundamental human rights and in the dignity and worth of the human person, and have determined to promote social progress and better standards of life in larger freedom,

Whereas the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth,

Whereas the need for such special safeguards has been stated in the Geneva Declaration of the Rights of the Child of 1924, and recognized in the Universal Declaration of Human Rights and in the statutes of specialized agencies and international organizations concerned with the welfare of children,

Whereas mankind owes to the child the best it has to give,

Now therefore,

The General Assembly

Proclaims this Declaration of the Rights of the Child to the end that he may have a happy childhood and enjoy for his own good and for the good of society the rights and freedoms herein set forth, and calls upon parents, upon men and women as individuals, and upon voluntary organizations, local authorities and national governments to recognize these rights and strive for their observance by legislative and other measures progressively taken in accordance with the following principles:

Principle 2

The child shall enjoy special protection, and shall be given opportunities and facilities, by law and by other means, to enable him to develop physically, mentally, morally, spiritually, and socially in a healthy and normal manner and in conditions of freedom and dignity. In the enactment of laws for this purpose, the best interests of the child shall be the paramount consideration.

Principle 4

The child shall enjoy the benefits of social security. He shall be entitled to grow and develop in health; to this end, special care and protection shall be provided both to him and to his mother, including adequate pre-natal and post-natal care. **The child shall have the right to adequate nutrition, housing, recreation and medical services.**

⁷ <https://archive.crin.org/en/library/legal-database/un-declaration-rights-child-1959.html>

Principle 9

The child shall be protected against all forms of neglect, cruelty and exploitation. He shall not be the subject of traffic, in any form.

- 45. The above is an expression of Belize international treaty obligation to ensure its children are protected from all forms of abuse. The parliament of Belize went further and enacted domestic legislation to confirm its commitment.

- 46. The Child Cruelty legislation was amended in Belize on the 22nd day of February 2014 by Act #2 of 2014. The now section 60 created the offence of child cruelty. The original offence was abandonment of an infant and carried a penalty of two years imprisonment.

- 47. The prisoner was charged for Cruelty to a child pursuant to section 60 (1) of the Criminal Code Chapter 101 as amended. However, the complete section including the relevant definitions states as follows:

60.(1) Every person who, being eighteen years or over and by virtue of law or any agreement or employment has the custody, charge to maintain, or care of a person under the age of eighteen years and who wilfully assaults, illtreats, neglects, abandons or exposes that person in a manner likely to cause that person unnecessary suffering, grievous harm or injury to health, commits an offence and is liable on conviction on indictment to imprisonment for a term of ten years.

(2)

(3)

(4) For the purposes of this section –

“custody” means having responsibility for;

“willfully” means deliberately and intentionally, not accidentally or inadvertently.

“Abandon” means to leave a child to its own fate.”

48. The court’s research reveals that this is the first person who falls to be sentenced pursuant to the amended section 60 (1) of the Criminal Code Chapter 101. This court is further aware that sentencing guidelines are presently being embarked upon in Belize, and the sentencing committees are actively pursuing the task of recommendations and submissions, to ensure its implementation. However, this court will seek to examine the United Kingdom framework on sentencing, albeit not bound by them.

49. This court is mindful of the CCJ’s decision in **Calvin Ramcharran v. DPP**⁸, that sentencing is quintessentially contextual, geographic, cultural, empirical, and pragmatic and therefore sentences cannot be imported from other jurisdictions. This approach is wholly accepted by this court. The principle is stated thus:

[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.

⁸ [2022] CCJ 4 (AJ) (GY)

50. This court is aware of its tremendous responsibility, when embarking upon the sentencing of a defendant. The President of the CCJ Adrian Saunders exposition in

Pompey v. Dpp⁹ is instructive:

“Sentencing is one of the most challenging aspects of a judge's functions. It is a tremendous responsibility vested in a judge that no one else in society may lawfully undertake. This awesome duty is often discharged in the face of impassioned expectations of victims and convicted persons alike, their respective families and friends and, of course, the public and the Press. A dis-service is done to trial judges when there are no guidelines to aid the exercise of their vast sentencing discretion.

51. In light of the above decisions this court will restrict its examination of the sentencing guidelines and authorities of the UK, by looking at the circumstances, consideration, ranges and process of their model in sentencing.

Part 4: The United Kingdom Legislation and Sentencing Guidelines.

52. At the outset, it is important to state that this court will examine the sentencing guidelines and authorities, utilised in the United Kingdom, solely as a guide, being cognisant of the guidance in paras. 49 and 50 above. An informed decision shall be made solely on the exercise of the court's discretion as it relates to sentencing principles being guided by the decisions of **Linton Pompey**¹⁰ and **Calvin Ramcharran**⁴⁶.

53. The court in its research discovered that the **Child and Young Persons Act 1933** (Section (1) of the United Kingdom is in *pari materia* to section 60 (1) of the *Criminal*

⁹ [2020] CCJ 7 (AJ) (GY) par. 1

¹⁰ [2020] CCJ 7

Code of Belize Chapter 101 of the Revised Laws.) Further, the United Kingdom has sentencing guidelines for the offence of cruelty to a child.

54. As of the 3rd May 2015 the offence of Cruelty to a child in the United Kingdom was circumscribed in the Children and Young Persons Act 1933 s. 1 (1) being an offence that was tried indictable or summary, carrying a maximum sentence of ten years. On the 28th June 2022, there was an amendment wherein the indictable offence penalty was increased to fourteen (14) years. Both sections are reproduced herein for completeness.

Cruelty to Persons Under Sixteen. [3RD May 2015]¹¹

- (1) If any person who has attained the age of sixteen years and has responsibility for any child or young person under that age, wilfully assaults, ill-treats (whether physically or otherwise), neglects, abandons, or exposes him, or causes or procures him to be assaulted, ill-treated (whether physically or otherwise), neglected, abandoned, or exposed, in a manner likely to cause him unnecessary suffering or injury to health (whether the suffering or injury is of a physical or a psychological nature), that person shall be guilty of [an offence], and shall be liable—
- (a) on conviction on indictment, to a fine . . . or alternatively, . . . , or in addition thereto, to imprisonment **for any term not exceeding [ten] years;**
- (b) on summary conviction, to a fine not exceeding [£400] pounds, or alternatively, . . . , or in addition thereto, to imprisonment for any term not exceeding six months.
- (2) For the purposes of this section—
- (a) a parent or other person legally liable to maintain a child or young person, or the legal guardian of a child or young person, shall be deemed to have neglected him in a manner likely to cause injury to his health if he has failed to provide adequate food, clothing, medical aid or lodging for him, or if, having been unable otherwise to provide such food, clothing, medical aid or lodging, he has failed to take steps to procure it to be provided under the enactments applicable in that behalf;

¹¹¹¹ <https://www.legislation.gov.uk/ukpga/Geo5/23-24/12/section/1/2015-05-03>

(b) where it is proved that the death of an infant under three years of age was caused by suffocation (not being suffocation caused by disease or the presence of any foreign body in the throat or air passages of the infant) while the infant was in bed with some other person who has attained the age of sixteen years, that other person shall, if he was, when he went to bed or at any later time before the suffocation, under the influence of drink or a prohibited drug, be deemed to have neglected the infant in a manner likely to cause injury to its health.

55. The above section was amended as of 28th June 2022¹², the said section reads as follows:

Cruelty to Persons Under Sixteen.

- (1) If any person who has attained the age of sixteen years and has responsibility for any child or young person under that age, wilfully assaults, ill-treats (whether physically or otherwise), neglects, abandons, or exposes him, or causes or procures him to be assaulted, ill-treated (whether physically or otherwise), neglected, abandoned, or exposed, in a manner likely to cause him unnecessary suffering or injury to health (whether the suffering or injury is of a physical or a psychological nature), that person shall be guilty of an offence, and shall be liable—
- (a) on conviction on indictment, to a fine . . . or alternatively, . . . , or in addition thereto, to imprisonment **for any term not exceeding [14] years;**
 - (b) on summary conviction, to a fine not exceeding [**£400**] pounds, or alternatively, . . . , or in addition thereto, to imprisonment for any term not exceeding six months.
- (2) For the purposes of this section—
- (a) a parent or other person legally liable to maintain a child or young person, or the legal guardian of a child or young person, shall be deemed to have neglected him in a manner likely to cause injury to his health if he has failed to provide adequate food, clothing, medical aid or lodging for him, or if, having been unable otherwise to provide such food, clothing, medical aid or lodging, he has failed to take steps to procure it to be provided under the enactments applicable in that behalf;

¹² <https://www.legislation.gov.uk/ukpga/Geo5/23-24/12/section/1/2022-06-28>

(b) where it is proved that the death of an infant under three years of age was caused by suffocation (not being suffocation caused by disease or the presence of any foreign body in the throat or air passages of the infant) while the infant was in bed with some other person who has attained the age of sixteen years, that other person shall, if he was, when he went to bed or at any later time before the suffocation, under the influence of drink or a prohibited drug, be deemed to have neglected the infant in a manner likely to cause injury to its health.

56. The amendment increased the penalty for conviction from ten years to fourteen years.

In Belize the maximum penalty upon conviction on indictment is ten years imprisonment.

United Kingdom Sentencing Guidelines:

57. The United Kingdom Courts adopt a ten (10) stage approach to sentencing in child cruelty cases, the stages are reproduced hereunder as follows¹³:

<p>STEP ONE Determining the Offence Category</p>
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The court should determine the offence category with reference only to the factors listed in the tables below. In order to determine the category, the court should assess culpability and harm.

The court should weigh all the factors set out below in determining the offender's culpability. Where there are characteristics present which fall under different levels of culpability, the court should balance these characteristics to reach a fair assessment of the offender's culpability.

Culpability demonstrated by one or more of the following:

A. High Culpability:

¹³ <https://plus.lexis.com/uk/document/?pdmfid=1001073&crd>

- Prolonged and/or multiple incidents of serious cruelty, including serious neglect.
- Gratuitous degradation of victim and/or sadistic behaviour.
- Use of very significant force.
- Use of a weapon.
- Deliberate disregard for the welfare of the victim.
- Failure to take any steps to protect the victim from offences in which the above factors are present.
- Offender with professional responsibility for the victim (where linked to the commission of the offence).

B. Medium Culpability:

- Use of significant force.
- Prolonged and/or multiple incidents of cruelty, including neglect.
- Limited steps taken to protect victim in cases with category A factors present.
- Other cases falling between A and C because:
 - Factors in both high and lesser categories are present, which balance each other out; and/or
 - The offender's culpability falls between the factors as described in high and lesser culpability.

C. Lesser Culpability:

- Offender's responsibility substantially reduced by mental disorder or learning disability or lack of maturity.
- Offender is victim of domestic abuse, including coercion and/or intimidation (where linked to the commission of the offence).
- Steps taken to protect victim but fell just short of what could reasonably be expected.
- Momentary or brief lapse in judgement including in cases of neglect.
- Use of some force or failure to protect the victim from an incident involving some force.

- Low level of neglect.

Harm

The court should consider the factors set out below to determine the level of harm that has been caused or was intended to be caused to the victim.

Psychological, developmental, or emotional harm

A finding that the psychological, developmental, or emotional harm is serious may be based on a clinical diagnosis, but the court may make such a finding based on other evidence from or on behalf of the victim that serious psychological, developmental, or emotional harm exists. It is important to be clear that the absence of such a finding does not imply that the psychological, developmental, or emotional harm suffered by the victim is minor or trivial.

- Category 1
 - Serious psychological, developmental, and/or emotional harm.
 - Serious physical harm (including illnesses contracted due to neglect).
- Category 2
 - Cases falling between categories 1 and 3.
 - A high likelihood of category 1 harm being caused.
- Category 3
 - Little or no psychological, developmental, and/or emotional harm.
 - Little or no physical harm.

STEP TWO

Starting point and category range

Having determined the category at step one, the court should use the corresponding point to reach a sentence within the category range below. The starting point applies to all offenders of plea or previous convictions.

Where a case does not fall squarely within a category, adjustment from the starting point may be required before adjustment for aggravating or mitigating features.

Culpability			
Harm	A	B	C

Category 1	Starting point 6 years' custody	Starting point 3 year's custody	Starting point 1 year's custody
	Category range 4 – 8 years' custody	Category range 2 – 6 years' custody	Category range High level community
Category 2	Starting point 3 years' custody	Starting point 1 year's custody	Starting point High level community
	Category range 2 – 6 years' custody	Category range High level community Order – 2 years 6 mths. Custody	Category range Medium level community Order – 1 year's custody
Category 3	Starting point 1 year's custody	Starting point High level community	Starting point Medium level Community Order
	Category range High level community order 2 years – 6 months' custody	Category range Medium level community Order – 1 year's custody	Category range Low level community Order – 6 months' Custody

The table below contains a **non-exhaustive** list of additional factual elements providing the context of the offence and factors relating to the offender. Identify whether any combination of these, or other relevant factors should result in an upward or downward adjustment from the sentence arrived at so far. In particular, relevant recent convictions are likely to result in an upward adjustment. In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

Factors Increasing Seriousness.

- Statutory aggravating factors:
- Previous convictions, having regard to a) the **nature** of the offence to which the conviction relates and its **relevance** to the current offence: and b) the **time** that has elapsed since the conviction *

- Offence committed whilst on bail*

Other Aggravating Factors:

- Failure to seek medical help (where not taken into account at step one)
- Commission of offence whilst under the influence of alcohol or drugs*
- Deliberate concealment and/or covering up of the offence*
- Blame wrongly placed on others*
- Failure to respond to interventions or warning about behaviour*
- Threats to prevent reporting of the offence*
- Failure to comply with current court orders*
- Offence committed on licence or post sentence supervision*
- Offences taken into consideration*
- Offence committed in the presence of another child*

Factors Reducing Seriousness or Reflecting Personal Mitigation.

- No previous convictions or no relevant/recent convictions*
- Remorse*
- Determination and demonstration of steps having been taken to address addiction or offending behaviour, including, co-operation with agencies working for the welfare of the victim*
- Sole or primary carer for dependent relatives (**see step five for further guidance on parental responsibilities**) *
- Good character and/or exemplary conduct (where previous good character/exemplary conduct has been used to facilitate or conceal the offence, this should not normally constitute mitigation and such conduct may constitute aggravation) *
- Serious medical condition requiring urgent, intensive, or long-term treatment*
- Mental disorder, learning disability or lack of maturity (where not taken into account at step one) *
- Co-operation with the Investigation*

STEP THREE**Consider any factors which indicate a reduction for assistance to the prosecution.**

The court should take into account section 74 of the Sentencing Code (reduction in sentence for assistance to prosecution) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

STEP FOUR**Reduction for guilty pleas**

The court should take account of any potential reduction for a guilty plea in accordance with section 73 of the Sentencing Code and the Reduction in Sentence for a Guilty Plea guideline.

STEP FIVE**Parental responsibilities of sole or primary carers**

In the majority of child cruelty cases the offender will have parental responsibility for the victim.

When considering whether to impose custody the court should step back and review whether this sentence will be in the best interests of the victim (as well as other children in the offender's care). This must be balanced with the seriousness of the offence and all sentencing options remain open to the court but careful consideration should be given to the effect that a custodial sentence could have on the family of the victim and whether this is proportionate to the seriousness of the offence. This may be of particular relevance in lower culpability cases or where the offender has otherwise been a loving and capable parent/carer.

Where custody is unavoidable consideration of the impact on the offender's children may be relevant to the length of the sentence imposed. For more serious offences where a substantial period of custody is appropriate, this consideration will carry less weight.

STEP SIX
Dangerousness

The court should consider whether having regard to the criteria contained in Chapter 6 of part 10 of the Sentencing Code it would be appropriate to impose an extended sentence (sections 266 and 279).

STEP SEVEN
Totality principle

If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the overall offending behavior in accordance with the Totality guideline.

STEP EIGHT
Ancillary orders

In all cases the court should consider whether to make ancillary orders.

STEP NINE
Reasons

Section 52 of the Sentencing Code imposes a duty to give reasons for, and explain the effect of, the sentence.

STEP TEN
Consideration for time spent on bail (tagged curfew)

The court must consider whether to give credit for time spent on bail in accordance with section 240A of the Criminal Justice Act 2003 and section 325 of the Sentencing Code.

58. The above are the matters that are reflective of what the UK Courts will take into consideration in determining what is the category of the offence and or level of culpability of the offender. It is worth reiterating that this court is merely embarking on/examining how the court sentencing guidelines operate albeit not applicable to Belize. This court is not bound by the above guidelines.
59. The level of seriousness applicable to the present case, if the UK guidelines were applicable would have been a level A harm and category one (1), with a starting point of six (6) years. The prolonged and/or multiple incidents of serious cruelty, including serious neglect, would suffice for Level A harm with Category 1. However, this court will consider this matter contextually.
60. Finally, the sentences imposed by the UK courts will be examined when the sentence for child cruelty was a maximum ten (10) years which is sentences pre- June 2022.

Part five: Sentences imposed upon plea of guilty and not Guilty (United Kingdom Courts).

Sentences under 1933 UK Act (Cruelty to Children) - Guilty pleas

61. This Court will now examine how the UK courts dealt with sentences for convictions for child cruelty or neglect in instances where the Defendants pleaded guilty and failed to summon medical assistance.

- In the pre-2008 guideline case of **Taggart [1999] 2 Cr App R (S) 68**, D's child aged three and a half suffered severe scalding while in the bath. It was accepted that the scalding had been accidental, but D pleaded guilty to cruelty on the basis of his failure to summon medical attention until more than 24 hours later. The appropriate sentence was 30 months' imprisonment.

-In **Mason [2013] EWCA Crim 1666**, D's young son (aged 22 months) had fallen from a worktop and struck his head. When the child showed signs of fitting D called an ambulance but did not tell the paramedics or the doctors what had happened. The child died, and D pleaded guilty on the basis that he might have been saved if the truth had been told at once. A sentence of 15 months' imprisonment was reduced to ten months.

-In **Tilby [2019] EWCA Crim 1623**, a sentence of two years and four months' imprisonment for child cruelty imposed (on a guilty plea) following the death of D's four-week-old baby was held to be manifestly excessive. The incident involved a single evening of drunken neglect and the baby had otherwise been well cared for. CCTV footage showed D and her sister partying drunkenly at a campsite bar while holding the baby and handling him in ways that were clearly dangerous. She then went to bed with the baby and rolled on top of him in her sleep. When discovered underneath her, the baby could not be roused. In terms of the applicable sentencing guideline, the Court of Appeal ruled that it was a category 2B offence, rather than one at the top end of category 2A, as determined by the sentencing judge. The correct sentence would ordinarily have been one of two years' imprisonment but would be reduced to take account of the strong mitigation, including the devastating impact of the child's death on D herself, and her guilty plea. The final sentence was one of 16 months, suspended for 12 months.

Sentences under 1933 UK Act (Cruelty to Children) - Not Guilty pleas

62. The following cases dealt with convictions for child cruelty or neglect in instances where the Defendants pleaded not guilty and proceeded to trial.

- In **R v. Khadla**¹⁴ the accused was 57 years of age and was convicted to 3 counts of child cruelty (for the period August 1998 to 2009) to his three children and was sentenced to 2 years and 6 months on each count. For the offence of assault occasioning actual bodily harm to nine and fifteen months respectively to run concurrently (for the period 2005 -2019).

- the nature of the cruelty included, throwing a chair and hitting one of the children, causing a bruise and keloid that developed after surgery. Punching and strangling one of the children for 5-10 seconds, smacking the children in the palm of their hands with a wooden spoon, threatening to splatter one of the children brains across the ceiling and kill him, he was not allowed to see friends, use the internet, have a mobile phone, who to speak to, calling one of the children; stupid, failure and rubbish and signing a text stating; "I will never let myself get fat' due to one of the children being overweight.

The court analysed the factual matrix and the sentencing guidelines and states at par.34,37 and 38 as follows:

Analysis

"34. We consider that the judge's determination that the offences of child cruelty fell between **2 and 2B was not objectively unreasonable**. Therefore, in relation to the Sentencing Council's Definitive Guidelines for Child Cruelty, the starting point was between 1 and 3 years and the range would be between a high-level community order and 6 years' imprisonment. **We note that 2 years 6 months is at the top of the range for category 2B.**

35.

36.

¹⁴ [2021] EWCA 1083

37. In our view, an appropriate starting point for sentence to reflect the overall criminality suggested by our reading of the facts would have been **in the region of three-and-a-half to 4 years after trial, prior to some reduction for personal mitigation.** However, we observe that this was a case where the judge had the advantage over this court, having observed all relevant witnesses and the offender give evidence and presiding over the trial. Given the nature of the case, it is a significant advantage.

38. What then of the reduced sentence of 2 years 6 months? We have asked ourselves whether, even bearing in mind the judge's unique advantage, that this notable difference in the length of sentence from that which we would have considered appropriate, renders it unduly lenient. We conclude that we should not so find, for the reason we give above. **We give due deference to the sentencing judge's determination of categorisation and the place in which she found this case to fall within the overall range.** Having done so, we would term this sentence as undoubtedly lenient but not established to be unduly so.

-The sentence of two years and six months for child cruelty was therefore maintained.

- In **Rex v. Leroy George**¹⁵ the accused was 28 years of age, he had 7 seven convictions, upon release from prison, the offender had a parental visit with his daughter, who was born in 2019.

-In October 2020, after the visit, the child was covered with bruises. This formed the substance of the child cruelty charge. **Upon conviction, the accused was sentenced to two years on this count.**

-Further, in November 2020, post a second visit with the accused, the child was discovered upon medical examination to have the following injuries; broken leg below the knee, broken forearm, cigarette burns behind the right knee, soft tissue swelling and subdural haemorrhages of the scalp in multiple locations, small skull fracture, soft tissue swelling at the back of the neck and spinal subdural haemorrhages in the lower back. This formed the substances of the grievous bodily

¹⁵ [2023] EWCA Crim 1492

harm with intent charge. **The accused was sentenced to nine years on this count but increased by the court of appeal to twelve years.**

-The court opined at par. 30 of the judgment as follows:

“We do not consider that the sentence of two years' imprisonment for the offence of child cruelty can itself be regarded as unduly lenient, but we have concluded that the overall sentence needs to be increased to reflect the full gravity of the offender's offending. This can properly be done by increasing the sentence for the section 18 offence to 12 years' imprisonment. We make it clear that that sentence will be deemed to have taken effect from 23rd June 2023.

63. The above sentences depict how the UK court applicable guidelines, guide their deliberations.

Part 6: Constructing the sentence, fixing the starting point (circumstances relevant to the offence and the offender).

Constructing the Sentence:

64. It has been settled law that trial courts when dealing with sentencing must examine the relevant factors namely, retribution, deterrence, prevention and rehabilitation as a precursor to imposing a sentence. These principles were aptly restated and applied by Blenman J.A as she then was in the matter of **Akim Monah v. Queen**¹⁶ at paras. 43-44 as follows:

[43]I am equally required to apply the well-known principles of sentencing that were enunciated by Lawton LJ in **R v Sergeant** namely: retribution, deterrence, prevention and rehabilitation. These principles were judicially recognised by Sir Dennis Byron, Chief Justice, as he then was, in **Desmond Baptiste v The Queen**.

¹⁶ GDAHCRAP2021/0015 (Formerly GDAHCRAP2014/0002) par. 44

[44] As I have already stated, it is the law that in all sentencing cases, the Judge should advert to the relevant principles. These include the following principles: retribution, deterrence, prevention and rehabilitation as referred to above. Sir Dennis Byron, Chief Justice, as he then was, had cause to address these principles in **Desmond Baptiste v The Queen** and it is apposite to reproduce them, as I hereby do:

Retribution

Retribution at first glance tends to reflect the Old Testament biblical concept of an eye for an eye, which is no longer tenable in law. It is rather a 16 [1970] 2 QB 711. 17 (1974) 60 Cr App R 74 at 77. 18 Criminal Appeal No. 8 of 2003 (delivered 6th December 2004, unreported). 21 reflections of society's intolerance for criminal conduct. Lawton LJ stated at page 77 that: "*Society through the courts, must show its abhorrence of particular types of crimes, and the only way the courts can show this is by the sentences they pass.*"

Deterrence

Deterrence is general as well as specific in nature. The former is intended to be a restraint against potential criminal activity by others whereas the latter is a restraint against the particular criminal relapsing into recidivist behaviour. Of what value however are sentences that are grounded in deterrence? Specific deterrence may be an ineffective tool to combat criminal behaviour that is spontaneous or spawned by circumstances such as addictions or necessity. Drug and alcohol addiction as well as need may trigger high rates of recidivism. Experience shows that general deterrence too is of limited effect. These sentences tend to lose their potency with the passage of time.

Prevention

The goal here is to protect society from those who persist in high rates of criminality. For some offenders, the sound of the shutting iron cell door may have a deterrent effect. Some however never learn lessons from their incarcerations and the only way of curbing their criminality is through protracted sentences whose objective is to keep them away from society. Such sentences are more suitable for repeat offenders.

Rehabilitation

Here the objective is to engage the prisoner in activities that would assist him with reintegration into society after prison. However, the success of this aspect of sentencing is influenced by executive policy. Furthermore, rehabilitation has in the past borne mixed results. Of course, sentencing ought not to be influenced by executive policy such as the availability of structured activities to facilitate reform.”

65. In relation to the issue of retribution this court accepts the submission of the Crown that, the prisoner has still not accepted responsibility for the offence. The Social Inquiry Report, the affidavit of the prisoner submitted at the sentencing hearing and her statement from the dock spoke to the prisoner’s own trials and tribulations and a failure to speak about how she was affected by the loss of her child [Faye Lin Cannon] or even explain the dereliction of duty to Faye Lin Cannon. There was no restraint in the level of neglect in relation to the deceased, and this continued up to her death. This conduct escalates this offense to a level for which the Court must show its abhorrence by imposing a suitable sentence commensurate with its gravity. The Defence submission

has listed remorse as a mitigating factor, but failed to state where in the evidence the prisoner expressed such sentiments. The evidence is devoid of such.

66. The prisoner has no prior conviction and despite her conduct in this matter spanned an extended period of time, on this issue of deterrence the court will take same into consideration to a limited extent. The prisoner would need psychological counselling since her maternal instinct is lacking if not non-existent.

67. On the issue of prevention, the Court views the prisoner's conduct, behaviour and conviction together with the level of disregard and brutality inflicted on the deceased in her presence or at her request to be compelling evidence that the prisoner ought to be considered a danger to children and ultimately society. Thus, the Court must impose a suitable sentence in the circumstances.

Rehabilitation

68. The rehabilitation of the prisoner is paramount, despite her age. It is essential. Thus, I would order that whilst she is within the confines of a controlled environment, she must participate in all rehabilitative programs to educate and inculcate in her, an awakening of her social and maternal conscience, implanting in her an awareness that children must be cared for, loved, protected, and treated with dignity. Children are our future and the prisoner's conduct which led to this charge was inexcusable and devoid of any cogent explanation. The prisoner maintains to date that she was a loving parent and did nothing wrong.

Fixing the starting point:

69. In this jurisdiction the court is called upon to fix the starting point taking into consideration the **aggravating and mitigating circumstances relevant to the offence**. This Court

is guided by the CCJ authority of Teerath Persaud v R¹⁷ per Anderson JCCJ on the issue of the formulation of a just sentence as follows:

[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 sentence imposed.” (emphasis added)

70. Further, this Court takes cognisance of the CCJ decision in *Ramcharran*, per Barrow JCCJ, on the issue of the objective of sentencing, and solidifies paragraph 64 (*ibid*) as follows:

¹⁷ (2018) 93 WIR 132.

[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

71. The Prisoner was born in January 1961, as per the evidence of Sgt. Allan Woods.

The prisoner is now 63 years of age, and at the time of the offence in 2017, she would have been 54 years of age.

72. The Prisoner was convicted for wilfully neglecting the said Faye Lin Cannon in a manner that was likely to cause injury to her health: by failing to seek proper medical attention for her and failing to ensure her nutritional needs were met, which ultimately led to her death. This offence charged encompassed the period being the 1st day of January 2017 to the 4th day of July 2017, in San Pedro Town, in Ambergris Caye, in the Belize District, in the Central District of the Supreme Court, being over the age of 18 years, and by virtue of the Law, having had custody of Faye Lin Cannon a person under the age of eighteen years, to wit, thirteen years.

73. The evidence unfolded that the Deceased was in dire need of medical attention and same was not provided for her, her nutritional needs were also not met, having been provided the same meal being bread, sausage, Nutella and water every day for lunch and rice and canned vegetables for supper. This was provided every day. This is reprehensible in light of the prisoner receiving USD\$5,400.00 monthly for the maintenance of the children. The evidence of the pathologist was that the deceased was malnourished and underdeveloped for her age. The same day the prisoner went to Belize City for medical attention for herself, the deceased was in need of medical attention that was not provided. The prisoner witnessed her husband David Doehm (now deceased) stomped the deceased on her chest the said day. Faye Lin Cannon subsequently died from:

-Traumatic asphyxiation as a consequence of compression to the chest¹⁸.

Aggravating and Mitigating factors of the offence/starting point:

74. The Court is called upon to examine the aggravating features of the offence. These are in the court's view the following:

Aggravating Factors (Offending)

- i. The offence occurred over a period of time from, January 2017 to July 2017.
- ii. The suffering the deceased would have endured during those months leading to her death.
- iii. The ultimate death of the deceased.

¹⁸ Post mortem examination report of Patgologist Dr. Loyden E. Ken [Tendered in evidence see. Page 8]

Mitigating Factors (Offending)

- i. The Court found one factor that it will treat as a mitigating feature of the offending, that is the delay of seven[7] years to bring this matter to trial.

75. The above delay would no doubt have had a dire effect on the prisoner having to wait so long to have her day in court. Her life would have been placed on hold, as she awaited her fate, vacillating between hope and despair.

76. The court finds that the aggravating factors outweigh the mitigating factors, and an appropriate starting point is necessary.

Starting Point.

77. The maximum penalty for this offence under the law is ten years. The court will therefore impose a starting point of four (4) years, after examining the aggravating and mitigating factors relevant to the offence.

78. The Court will now individualize the sentence considering the mitigating and aggravating factors relevant to **the offender**.

Aggravating Factors (Offender)

79. The aggravating factors relevant to the offender, in the Court's view, are as follows:

- The show of no remorse by the prisoner, to the present day.
- The prisoner was the mother of Faye Lin Cannon, she was placed in a position of trust, having adopted the deceased from China as a baby.

- The ultimate neglect of the deceased, by the prisoner's refusal to provide proper nutritional meals for the deceased, instead fed her the same food every day, namely bread, sausage and water, on other occasions rice and beans.
- The medical evidence confirmed the deceased was suffering from malnutrition and underdevelopment. Further, the medical evidence revealed the scalp/head of the deceased was infected with abscesses.
- -The prisoner while seeking professional medical assistance for herself failed to seek medical assistance for the deceased. The prisoner provided medical assistance in the form of 'Reiki' on the deceased yet sought a medical doctor for herself.
- The prisoner was not impecunious, she was provided with US\$5,400.00 as monthly maintenance for the four children which included the deceased, from the father David Cannon, which was confirmed by the prisoner.
- The prisoner was aware that health insurance was available for the deceased through her father David Cannon, and he also offered to pay 50% of the cost of medical care in Belize. (This evidence was not refuted).
- The prisoner self-medicated the said deceased with Valium and Benadryl.

- During the period January to July 2017, despite there was a need for the provision of medical care for the deceased, none was provided.
- The prisoner on occasions administered or allowed to be administered physical beatings on the deceased on occasions by David Doehm and Zoe Cannon (Sister of the deceased).
- The number of injuries including fresh injuries that was seen by the pathologist some recent and others were weeks old, while in the prisoner's care.
- The prisoner instructing Zoe Lin Cannon to ensure the injuries inflicted were not visible.
- The impact this offence has on the father and sister of the deceased as per the Victim Impact Statements.

80. The Victim Impact Statements of David Cannon and Zoe Lin Cannon, speak to the difficulty, pain and the journey of trying to deal with and accept the loss of their daughter and sister respectively. The statements of the victims for completeness are regurgitated hereunder in full as follows:

Victim Impact Statement (David Cannon)

1. My name is David Cannon, and I am the father of Faye Lin Cannon.
2. My daughter, Faye's life was taken away senselessly, just after she entered her teenage years. It left me traumatized and this trauma will last for the rest of my life.

3. I was deprived of the opportunity to see Faye in the years leading up to the end of her life. I lost those years and with her death, I have lost so much more. I will not be able to see her finish Middle School. There will be no High School dances for me to hear about, no prom, no High School Graduation. I will not be able to see her go off to university or fall in love or get married.
4. Even now, so many years after her death, I am still trying to understand what happened and why. The Faye I knew was a sweet, funny, and intelligent girl. The Faye I knew was not ill and she didn't die of natural causes. She died from cruelty – from neglect.
5. There has been no consistent explanation for this, only shifting stories. There has been no rationale given, no acceptance of responsibility, no expression of remorse. The stark reality is that there can be no real explanation for her death.
6. Part of my job as a father is to explain the world to my children, to help them understand it and navigate it. Since I am still unable to understand and cope with what happened to Faye. I struggle with thoughts that I cannot perform my duty, effectively, to my surviving daughters, to help them heal.
7. My surviving daughters were robbed of the opportunity to grow up with Faye into adulthood and to share all the experiences that would have brought. They too are still traumatized and are trying to make sense of what they were all put through. They will carry the burden of her death and those painful memories, with them for the rest of their lives.
8. A part of us died with Faye. There will not be a day in our lives that we will not miss her.

Victim Impact Statement (Zoe Lin Cannon)

1. My name is Zoe Lin Cannon and Faye Lin Cannon was my sister. The neglect, mistreatment and eventual death of my sister Faye changed my life forever.
2. I suffer with depression and anxiety, and I have had to receive counselling and therapy to assist me to process her death and to move past my feelings of guilt for having been powerless to prevent her ill-treatment by our mother Anke Doehm. I have been plagued with thoughts that it was my fault, even though I was only 16 at the time. Each day I live in hope that Faye has forgiven me for being helpless in our situation.
3. Every time that I see a girl with features like Faye's, I wonder what she would have looked like if she had survived. Then my mind goes back to July 3rd, 2017. I see her face and her tiny body. Whenever I am in pain, I remember the life that she was living, and I know that my pain is only a fraction of what she experienced.
4. I live every day wondering what it would have been like if she were still here if she had been rescued from that life like the rest of us. She would have turned 20 years in December of 2023. Would she have been in college? Would she have fallen in love? Would she follow her goal and dreams?
5. But then reality hits me. If Faye had not died, we would still have been with my mother. If we were with my mother, the answer to all those questions would be "no". My mother would still be malnourishing Faye and neglecting

and abusing her. Faye would never have found love because my mother never taught us what true love was.

6. So, every day I still mourn the loss of my sister. I mourn the loss of her future and the loss of experiencing it with her. But the same time, I know that death was more peaceful for her than the life that she was living.

81. The Victim Impact Statements are important so that the court can examine the circumstances of the offence and the effect on the victims in the round including its impact. Thus, in the authority of Nunn [1996] 2 Cr.App.R (S) 136, Kennedy LJ, Judge and Clarke JJ (as they then were) considered the impact of victim statements made by the mother and sister of the deceased, whose death had been caused by the dangerous driving of his best friend. In their view the appellant had already suffered great punishment. They recognised his remorse and despair. Delivering the judgment of the court, Judge J said at page 140:

"We are, of course, moved by the sentiments expressed by the mother and sister of a young man whose life has been wasted in an unnecessary road traffic accident. It is an elementary principle that the damaging and distressing effects of a crime on the victim represent a principal factor in the sentencing decision, and those distressing consequences may include the anguish and emotional suffering of the victim, or where there has been a death, as here, his surviving close family.

We mean no disrespect to the mother and sister of the deceased, but the opinions of the victim, or the surviving members of the family, about the appropriate level of sentence do not provide any sound basis for re-assessing a sentence. If the victim feels utterly merciful towards the criminal, and some do, the crime has still been committed and must be punished as it deserves. If the victim is obsessed with vengeance, which can in reality only be assuaged by a very long sentence, as also happens, the punishment cannot be made longer by the court than would otherwise be appropriate. Otherwise, cases with identical feature would be dealt with

in widely differing ways leading to improper and unfair disparity, and even in this particular case, as the short judgment has already indicated, the views of the members of the family of the deceased are not absolutely identical.

If carried to its logical conclusion the process would end up by imposing unfair pressures on the victims of crime or the survivors of a crime resulting in death, to play a part in the sentencing process which many of them would find painful and distasteful. This is very far removed from the court being kept properly informed of the anguish and suffering inflicted on the victims by the crime."

The Court in that Appeal took the wholly exceptional course of reducing the sentence by one year, not because the deceased's relatives had expressed a view about the appropriate sentence, but because they insisted that their own sense of grief, their anxiety and their suffering, was being increased by the appellant's continuing sentence of imprisonment.

82. In **Perkins and others [2013] EWCA Crim. 323, [2013] 2 Cr.App.R (S) 72**, the Chief Justice, cited the judgment in *Nunn* with approval. The principles have since been embraced by the Consolidated Practice Direction which at Part 3 paragraph 28(c) reads:

"(c) The court must pass what it judges to be the appropriate sentence having regard to the circumstances of the offence and of the offender, taking into account, so far as the court considers it appropriate, the impact on the victim. The opinions of the victim or the victim's close relatives as to what the sentence should be are therefore not relevant, unlike the consequences of the offence on them. Victims should be advised of this. If, despite the advice, opinions as to sentence are included in the statement, the court should pay no attention to them."

83. The prisoner wilfully neglected the said Faye Lin Cannon even in the face of clear and present medical need and this continued unabated until her death. This was coupled with physical abuse witnessed and, in some instances, requested by the prisoner. This

shows the prisoner had wanton disregard for the care and welfare of the deceased in whose care and custody she was placed.

84. When examining the five factors that the court should take into consideration in sentencing including the public interest, which is a factor the court must take into consideration, it is indeed an overarching consideration as per Barrow JCCJ highlighted in *Ramcharran*. However, this court has a duty to protect children from cruelty which is the *raison d'etre* of the cruelty to children legislation.

85. This would cause the Court to uplift the minimum term by three (3) years to seven (7) years imprisonment.

Mitigating Factors (Offender)

86. The mitigating factors relevant to the offender are as follows:

- i. The prisoner is of prior Good Character having no prior convictions.
- ii. The age and health condition of the prisoner.

Social Inquiry Report

87. This Court is aware that the prisoner has indicated both in her unsworn statement and Social Inquiry Report that she was diagnosed with cancer. Four (4) doctors provided letters that were attached to the submissions of the prisoner. They shall be addressed later in this judgment. Further, no oncological medical evidence was presented to this court as to the nature character, stage or effect of the cancer on the prisoner. The prisoner spoke of weekly visits to the doctor, however the court notes since her remand

the prison report is devoid of any such visit. The prisoner was remanded more than one month since 4th March 2024.

Remorse

88. Further, the prisoner has failed, refused and or neglected to show any form of remorse or regret for the death of the deceased. The prisoner focused solely on herself, this shows a high level of disregard for the young life that was lost and the impact it had on the other family members.

89. The words of the prisoner, wherein to date she cannot accept any level of responsibility or remorse, as depicted in the Social Inquiry Report are startling. The prisoner maintained she poured out her heart and soul into nurturing the children. The third (3rd) paragraph of the Social Inquiry Report, will be reproduced hereunder as follows:

Social Inquiry Report (Anke Doehm)

Ms. Doehm, further stated that her profound desire to make a difference in the lives of children, influenced her to embark on a heartfelt journey to adopt four female children from China. With unwavering determination, she navigated the complexities of the adoption process, guided by her belief in providing these girls with the opportunities they deserved. Upon welcoming them into her loving embrace, she poured her heart and soul into nurturing them, ensuring they felt cherished and supported every step of the way.

Together with her husband at the time, Ms. Doehm stated that they embarked on a new chapter of their lives, venturing to Belize in pursuit of a life filled with promise and possibility. Settling in San Pedro, Belize, Ms.

Doehm and her family found comfort in the tranquil beauty of their surroundings. Drawing upon her entrepreneurial spirit and passion for fashion, she established her own boutique, where locals and tourists alike could indulge in the latest trends and timeless classics. Through her business endeavors, she expressed to not only found fulfilment but also contributed to San Pedro's thriving economy.

90. The above-mentioned final assessment of the Social Inquiry Report regarding the prisoner, she maintained that she was loving, nurturing and supported the children in every way. This statement is a clear denial and non-acceptance of the prisoner's understanding of her wilful neglect and unexplainable behaviour towards Faye Lin Cannon. In the report of the prisoner there was no focus on any of the affected parties, instead the prisoner chose to focus mostly on herself. In the two paragraphs, dealing with 'final assessment' the prisoner's personal circumstances were paramount and nothing else. She was referred to either by the pronoun, 'she', 'her' or herself approximately fourteen (14) times.

91. The Social Inquiry Report submitted by Ms Nyoshi Caballero, Community Rehabilitation Officer and certified by Ms. Zelaya Courteney, Human Development Coordinator, in their final assessment of the report of the prisoner, states as follows:

Assessment:

Based on the interviews conducted, Ms. Doehm's journey highlights the transformative power of faith, and resilience. After the tragic loss of her daughter, Ms. Doehm faced a series of devastating events. In the same year she went to prison, she endured the passing of her mother in July.

Subsequently, her husband at the time took his own life at the Princess Ramanda Hotel. Furthermore, amidst these hardships, she was diagnosed with blood cancer, compounding the immense emotional and physical burdens she was already carrying.

In moments of quiet reflection, she confessed the difficulties of her journey and the burden of navigating health crises and legal tribulations without the unwavering support of her spouse. Yet, amidst the darkness, Ms. Doehm remains hopeful and clings to her faith to help guide her through such predicaments. She is hopeful that she will be able to redeem herself and be given a second chance at reintegrating herself back into her community.

92. The Social Inquiry Report including the persons interviewed on behalf of the prisoner, failed to address a cogent issue, that of the effect the death of Fay Lin Cannon has on the prisoner. However, the court observed that there is a common thread running through the reports of the interviewees, being her generosity, selflessness, love for her children, remarkable manners, and her unwavering commitment for her loved ones inter alia. None of the witnesses interviewed on behalf of the prisoner stated how the loss of the prisoner's child affected her. This in the court's view is as glaring, as apples of gold in plates of silver.

93. The statements of the persons interviewed and documented in the Social Inquiry Report on behalf of the prisoner are, Adolph Lucas (Common Law – Husband), Ms. Petra Hall – (Family Friend), Antonio Gutierrez (Pastor) and Shaila Islam (Neighbour) whose statements are reproduced hereunder in full as follows:

Interview with Mr. Adolph Lucas (Common Law – Husband)

Mr. Adolph and Ms. Doehm have been partners in a common-law marriage for the past five years. He describes their relationship to be remarkable, consisting of companionship, mutual respect, and the profound depth of their shared experiences. He expressed meeting her in July 2017 at her boutique. He expressed profound gratitude for the opportunity to meet her, emphasizing that it wasn't just chance but destiny. Anke, he described, possessed a remarkable blend of protectiveness and kindness. Her natural generosity and selflessness were qualities he deeply admired. He further expressed the resonance they found on a spiritual level, a connection that transcended. Their shared perspectives and spirituality formed a strong bond between them, fostering a profound understanding and appreciation for one another.

Mr. Lucas shared that it was evident that their connection ran deeper than surface-level interactions. Moreover, he fondly mentioned her profession as a yoga instructor. Reflecting on their journey together, Mr. Lucas confessed that it hadn't been an easy road to reach the point of cohabitation. Their journey from acquaintances to partners sharing an apartment was marked by patience, understanding, and willingness together. Mr. Lucas added that he visits her every Sunday and, in the week, if he has time. Mr. Lucas shared this is the longest they have ever been apart besides when she would go to Cancun for treatment, he still will go to see her when she goes. In essence, he conveyed his deep appreciation

for Anke, not just for who she was as an individual, but also for the profound impact she had on his life.

Interview with Ms. Petra Hall – (Family Friend)

Ms. Petra opened about her longstanding friendship with Ms. Doehm, dating all the way back to 1983 when they both commenced their employment at the same company. Initially, their friendship blossomed over shared lunch breaks, gradually extending to occasional post-work outings for drinks. Ms. Petra reminisced on these moments, emphasizing their similar senses of humour despite their inherent differences. Reflecting on a particular incident, Ms. Petra expressed her initial shock upon learning of accusations levelled against Ms. Doehm. She added that she had always presumed any mishaps to be mere accidents. Even up until this instance, she faithfully maintained her belief in Ms. Doehm innocence. Discussing the frequency of their interactions over the years, Ms. Petra revealed their communication was sometimes sparse, occurring only a couple of times annually, while at other times, they would engage in weekly exchanges. Sharing personal life, Ms. Petra painted a heart-warming picture of her friend's affection for children, recounting instances of warmth towards her own daughter during her years in Germany. Even during Ms. Petra's visits to America and Ms. Doehm stayed in Germany with her own children. Such observations further solidified Ms. Petra's admiration for Ms. Doehm maternal instincts and genuine affection for children.

Interview with Pastor Antonio Gutierrez

During my interview with Pastor Antonio, he provided insight into his acquaintance with Ms. Doehm, describing her simply as a neighbour. Both residing in the Blake building, their paths frequently intersected. Pastor described her as a person of remarkable manners. He recounted instances where she would greet his wife with utmost respect, a testament to her character. However, when news reached him of her remand on March 4, 2024, Pastor Antonio's concern heightened. He expressed genuine worry for her well-being, recognizing the gravity of the situation. This surprise was unexpected to him, prompting him to reflect on the instability of her circumstances and the potential implications for her health and safety.

Interview with Shaila Islam (Neighbour)

Ms. Shaila reminisced about her time living next to Ms. Doehm, recounting fond memories of their neighbourly interactions. In the shared space of their neighbourhood, Miss Shaila often found herself catching glimpses of Ms. Doehm and her family. These encounters would often blossom into heartfelt conversations. Ms. Shaila fondly recalls the moments when she would make a deliberate stop at Ms. Doehm store and seeing the dedication and diligence Ms. Doehm poured into her family's well-being. Ms. Doehm unwavering commitment to her loved ones left an indelible impression on Ms. Shaila. She admired Anke's conscientious nature and tireless work ethic, recognizing her as a pillar of strength within the community Ms. Shaila recounted how Ms. Doehm would provide academic books for the girls in

the neighbourhood, fostering a thirst for knowledge and empowering them with the tools to succeed. It was common for Ms. Shaila to seek Ms. Doehm's counsel on matters of parenting and child safety. Ms. Shaila shared that Ms. Doehm love for her family was profound in every aspect of her life, even extending to her unique fashion choices tailored with her daughters in mind. Ms. Shaila could not help but praise the creativity and thoughtfulness that went into each ensemble, a reflection of Ms. Doehm deep affection for her children. Ms. Shaila reflected on their shared experiences; she adamantly expressed her disbelief at any notion that Ms. Doehm could be capable of harming her children. To her, such a suggestion was not only unfounded but also heart-wrenching. She reiterated her conviction that Ms. Doehm loves for her family knew no bounds, a sentiment shared by all who knew her.

Prisoner's Health:

94. The Submissions on behalf of the Prisoner, alluded to the fact that the prisoner's medical condition is a mitigating factor, and cumulatively the mitigating factors outweigh the aggravating factors. The Court agrees that the prisoner's health condition is indeed a mitigating factor. However respectfully differs with Learned Counsel that the mitigating factors outweigh the aggravating factors for the following reasons:

a) The prisoner asserted through four (4) medical reports that she was diagnosed with cancer. However, no report was submitted from an oncologist. The reports were from:

- Dr. Julitta Bradley (Dermatologist)

- Dr. Jose Luos Vargas Segura, (Pulmonologist)

- Dr. Jorge Hidalgo (Internist/Intensivist)

- Dr. Ana Yuritzen Garcia Marin (Haematologist)

95. Dr. Julitta Bradley (Dermatologist) states, in her signed letter that the prisoner was under her care since 28th February 2018, and has been periodically evaluated since. She has been treated for precancerous and cancerous lesions on her skin, with her last clinical visit being on the 19th February 2024. Further, the prisoner suffers from Polycythemia Vera [PCV] which is a chronic myeloproliferative neoplasm (MPN) with a known risk of developing second non-hematologic cancers compared to matched controls, and the prisoner was receiving treatment namely, hydroxyurea for PCV since 2017.

96. In furtherance, of the signed letter, on the 15th April 2024, Dr. Bradley gave *viva voce* evidence, amplifying her written statement, and was cross examined. In sum, she confirmed that the prisoner was diagnosed with blood cancer, she has been her patient since February 2018, she saw her last in February 2024. She saw her multiple times within that period. PCV is a chronic disease so for the rest of the prisoner's life she needs to be monitored. The bone marrow produces an abnormal amount of red blood cells which can lead to blood clots, strokes, heart attacks, among other complications. The specialist who is best trained to deal with this disorder is a hematologist. She states there are no practicing hematologist in Belize. She further stated that many years ago she was the physician who saw the patients at the prison, because at that time there

was no permanent physician at the compound. Dr. Bradley further explained in detail the medical issues the prisoner has, and the court will take all of it into consideration. In sum, Dr. Bradley alluded to the fact that the prison neither has the facilities nor the medical personnel to care for the prisoner.

97. The court on its own motion summoned **Mr. Virjilio Murillo** the CEO of Kolbe Foundation, Belize's lone prison. He stated under oath that he held the position of CEO for the last nine years. He manages all aspects of the prison including food security and rehabilitation. He knows the prisoner as she has been an inmate in excess of one month. He stated, there is a doctor stationed at the prison, his name is Dr Javier Novelo. The prison facilitates medical treatment for prisoners if needed. If the prisoner needs to see Dr Bradley it can be arranged. In an emergency it can be handled differently. If the prisoner needs treatment in Mexico, he does not know whether he has the authority to enable it. He has never facilitated that for a convicted inmate. But taking the prisoner to see a doctor within the confines of Belize can be arranged. The prisoner must make a request and it will be facilitated.

98. **Dr. Jose Luos Vargas Segura**, (Pulmonologist) states the prisoner is a pulmonology patient since 2023, with a diagnosis of polycythemia vera [hereinafter PCV] which is a pulmonary module under investigation, an adrenal lesion under study and resolved community-acquired pneumonia. Her consultation in August 2023, following an endoscopic intervention (bronchoscopy) malignancy was ruled out. However, management of the pulmonary module remains pending. It is recommended that the prisoner return to Cancun to continue and complete her diagnostic assessment.

99. The report failed to state whether a pet/Ct scan was done to show whether the pulmonary module was metabolically active. The court restates the fact that no report was presented from an oncologist in whose area of speciality this medical issue lies. The Doctors who provided reports, despite stating the medical issue the prisoner has, could not go further as to the 'oncological' long-term prognosis/diagnosis or definitive treatment needed. Dr. Bradley sworn testimony was the only evidence that assisted in a limited way.

100. Dr. Jorge Hidalgo (Internist/Intensivist) confirms that the prisoner was diagnosed with PCV in 2017 and has been under the care of a Haematologist and Pulmonologist in Cancun since August 2023, and further it is essential that she sees her doctor regularly. The paucity of this report does not assist the court except to restate the diagnosis previously mentioned.

101. Dr. Ana Yuritzen Garcia Marin (Haematologist) states that the prisoner is treated with 500 mg hydroxyurea every 24 hours and occasionally the dose has to be increased by two (2), due to elevated hematocrit, which must be maintained at less than 50%. She must attend monthly appointment with blood biometry, to assess the response to treatment. Additionally, she should be evaluated by bone marrow aspirate, biopsy, oncohematologic karyotype, and erythropoietin levels. It was recommended that a doppler ultrasound of the abdomen should be performed, with special emphasis on the liver, spleen and bile ducts.

102. The above recommendation of the Haematologist does not indicate whether the prisoner's condition is chronic, cannot be controlled or treated while at prison and the severity of the condition on the prisoner's life.

103. The above medical condition of the prisoner, and her health condition as borne out in the reports/letters submitted on behalf of the prisoner, including the sworn testimony of Dr. Bradley shall all be taken into consideration as a mitigating factor.

104. In relation to the prisoner's contention that the mitigating factors outweigh the aggravating factors, this court repeats paragraphs 79 and 86 above.

105. The court's research led it to the decision of **Regina v. DM [2021] EWCA Crim 203**, this is an authority wherein the accused was convicted of sexual crimes against his daughter. He was 75 years of age at the time of the offence and diagnosed with prostate cancer twelve [12] years prior to his conviction. The Court of Appeal was not inclined to decrease the sentence of five (5) years imprisonment. Mr. Justice Spencer in the Court of Appeal adumbrated at paras. 28-30 that the prisoner's health condition cannot be a passport to the absence of punishment, inter alia, and stated as follows:

28. We have considered carefully all the material before us and the submissions which have been made. The proper approach in a case such as this was definitively considered by this court in R v Stephenson [2018] EWCA Crim 318, [2018] 2 Cr.App.R (S) 6. Following and applying the principles set out in R v Bernard [1997] 1 Cr.App.R (S) 135, it was held that a medical condition which might at some unidentified future date affect either life expectancy, or the prison authority's ability to treat a prisoner satisfactorily, might call into operation the Home Secretary's powers of release by reference to the Royal Prerogative of mercy or otherwise, but was not a reason for the Court of Appeal to interfere with an otherwise appropriate sentence. The fact that an offender had a reduced life

expectancy was not generally a reason that should affect sentence. A serious medical condition, even when this was difficult to treat in prison, would not automatically entitle an offender to a lesser sentence than would otherwise be appropriate. An offender's serious medical condition might enable a court as an act of mercy, and in the exceptional circumstances of a particular case, rather than by virtue of any general principle, to impose a lesser sentence than would otherwise be appropriate. It was also held, applying established authority, that the sentencing court is fully entitled to take account of a medical condition by way of mitigation as a reason for reducing the length of the sentence, either on the ground of the greater impact which imprisonment will have on the appellant or as a matter of generally expressed mercy in the individual circumstances of the case. Those who are gravely ill or severely disabled, or both, may well have to be imprisoned if they commit serious offences. **Their condition cannot be a passport to absence of punishment.**

29. The court in Stephenson referred to the case mentioned by the judge in her sentencing remarks, R v Clarke and Cooper [2017] EWCA Crim 393, [2017] 2 Cr.App.R (S) 18, where it was said, at [25]:

i. "Whilst we consider that an offender's diminished life expectancy, his age, health and the prospect of dying in prison are factors legitimately to be taken into account in passing sentence, they have to be balanced against the gravity of the offending, (including the harm done to victims), and the public interest in setting

appropriate punishment for very serious crimes. Whilst courts should make allowance for the factors of extreme old age and health, and whilst courts should give the most anxious scrutiny to those factors ... we consider that the approach of taking them into account in a limited way is the correct one.

" 30. In Stephenson the court acknowledged that in the event of significant deterioration in a known medical condition, a more flexible approach may properly be taken. The Court of Appeal may have regard to a significant deterioration in a medical condition known at the date of sentencing, but the cases in which it will be appropriate to do so will be rare. The case will have to be one where the appellant could bring himself within the Bernard principles. Moreover, the medical evidence establishing deterioration will have to be received by the court as fresh evidence pursuant to section 23 of the Criminal Appeal Act 1968.

106. This court will take into consideration, the fact that the prisoner has no prior conviction, the prisoner's age and medical condition as mitigating factors when computing the sentence.

107. This personal mitigation would lead the Court to reduce the minimum term by two (2) years to lead to a final sentence of five (5) years imprisonment, less the time spent on remand prior to conviction.

108. The Court orders that the sentence should take effect from the date of remand after conviction being 4th March 2024.

Part 7: Disposition:

109. The sentence of the Court is as follows:

- The Prisoner is to serve a term of five [5] years imprisonment less eight (8) days being the time spent on remand [13th July 2017 to 21st July 2017¹⁹], prior to her release on bail.

- The sentence is to take effect from the date of conviction being 4th March 2024. The prisoner shall be eligible for parole after serving half of her sentence in accordance with the Parole Act²⁰, section 5 (1) (c).

-The prisoner is to enrol in all rehabilitative programmes at the prisons dealing with care and welfare of children their psychological development and any other programmes available that speaks to rehabilitation.

**Derick F. Sylvester
High Court Judge
Dated 17th April 2024**

¹⁹ As per letter from Kolbe Foundation Belize Central Prison dated 3rd April 2024 [Mr. Virgillo Murillo-CEO]

²⁰ Parole Act # 25 of 2017 section 5 (1) (c) and 2 (c)