

**IN THE SENIOR COURTS OF BELIZE**

**CENTRAL SESSION-BELIZE DISTRICT**

**IN THE HIGH COURT OF JUSTICE**

**INDICTMENT NO: C 91/2019**

**BETWEEN**

**THE KING**

**and**

**ALBERT JONES SR.**

Prisoner

**Before:**

The Honourable Mr. Justice Nigel Pilgrim

**Appearances:**

Ms. Cheryl-Lynn Vidal S.C., Director of Public Prosecutions, with her  
Mr. Dercene Staine for the Crown.

Mr. Marcel Cardona Cervantes for the Prisoner.

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2023: December 1<sup>st</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup> and 30<sup>th</sup>;

2024: January 26<sup>th</sup>;

February 5<sup>th</sup>, 7<sup>th</sup>, and 12<sup>th</sup>;

March 1<sup>st</sup> and 15<sup>th</sup>;

April 12<sup>th</sup> and 30<sup>th</sup>;

May 13<sup>th</sup> and 17<sup>th</sup>.  
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**MANSLAUGHTER-SENTENCING**

[1] Albert Jones Sr. (“the prisoner”) was indicted on 30<sup>th</sup> September 2019 for the February 2018 murder of Alaine Garcia (“the deceased”). A trial began before this Court by judge alone on 1<sup>st</sup> December 2023 and on the conclusion of the voir dire a request for a sentencing indication was made. It was made, with the concurrence of the Crown, on the basis of manslaughter on the ground of diminished responsibility. The Court would have given a maximum sentence indication of 8 years imprisonment. The prisoner entered a plea of guilty to manslaughter contrary to section 116(1) read along with section 108(1)(b) of the **Criminal Code**<sup>1</sup> (“the Code”).

### **The Legal Framework**

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

*“116(1) Every person who causes the death of another person by any unlawful harm is guilty of manslaughter.*

...

*108(1) Every person who commits manslaughter–*

...

*(b) by any other cause shall be liable to imprisonment for life.”*

[3] The ingredients of the offence in the Court’s view are: (i) the prisoner caused the death of the deceased; and (ii) the prisoner used unlawful harm to cause that death..

[4] In determining the propriety or otherwise of a custodial sentence on these facts the Court must have regard to the provisions of the **Penal System Reform (Alternative Sentences) Act**<sup>2</sup>, (the “PSRASA”) which read, where relevant:

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

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<sup>1</sup> Chapter 101 of the Substantive Laws of Belize, Revised Edition 2020.

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

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

...

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

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

1. **The rehabilitation of the offender is one of the aims of sentencing...**

2. **The gravity of a punishment must be commensurate with the gravity of the offence....**” (emphasis added)

[5] The law on diminished responsibility in the Code is stated as follows:

“118(1) Where a person kills or is a party to the killing of another, he shall not be convicted of murder if he was suffering from such abnormality of mind (whether arising from a condition of arrested or retarded development of mind or any inherent causes or induced by disease or injury) as substantially impaired his mental responsibility for his acts and omission in doing or being a party to the killing.

(2) On a charge of murder, it shall be for the defence to prove that the person charged is by virtue of this section not liable to be convicted of murder.

(3) A person who but for this section would be liable whether as principal or as accessory, to be convicted of murder shall be liable instead to be convicted of manslaughter.”

[6] The Crown has conceded that the prisoner has a history of mental illness. He was diagnosed in 2023 by Dr. Alejandro Matus Torres with “Mental and Behavioral Disorder due to psychoactive substance use (Alcohol), withdrawal state which is a mental health disorder in which the patient presents a group of symptoms of variable clustering and severity occurring on absolute or relative withdrawal of alcohol after persistent use of that substance.” The

prisoner also has a history of depression, hallucinations and suicidal ideations. There is evidence that he has attempted suicide on several occasions.

- [7] The Crown also concedes that his mental illness caused an abnormality of mind which substantially impaired his mental responsibility for his act of killing the deceased.
- [8] The Court of Appeal considered sentencing for manslaughter in the context of diminished responsibility in the case of Longsworth v R<sup>3</sup>, per Hafiz Bertram JA, as she then was:

*“[69]...Section 108 of the Criminal Code (Cap 101) stipulates that any person who is convicted of manslaughter is liable to imprisonment for life. However, the sentence of imprisonment for life is the upper limit and a sentencing judge may depart from the sentence fixed by statute depending on the gravity of the case. The court normally follow guidelines set by the upper courts. It is trite law that: ‘When sentencing, the court must have regard to the four classical principles of sentencing which could be summed-up in four words, “retribution, deterrence, prevention and rehabilitation.” ’ ...*

*Diminished responsibility—sentencing*

*[70] In cases of diminished responsibility there are also various options open to a judge. Mr Smith referred the court to R v Sebastien (Case No 4 of 2006), where Hariprashad-Charles J sought guidance for sentencing in a diminished responsibility case from the UK sentencing guidelines. She said (at [34]):*

*‘The UK sentencing guidelines*

*34. The maximum penalty is life imprisonment. The case of Chambers (Case No. 4 of 2005 (High Court Civil) British Virgin Islands [unreported]—judgment delivered on 21 February 2006) outlines the current UK practice. Leonard J. at pp. 103–104 states: “In diminished responsibility cases there are various courses open to a judge. His choice of the right course will*

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<sup>3</sup> [2015] 3 LRC 580.

*depend on the state of the evidence and the material before him. If the psychiatric reports recommend and justify it, and there are no contrary indications, he will make a hospital order. Where a hospital order is not recommended, or is not appropriate, and the defendant constitutes a danger to the public for an unpredictable period of time, the right sentence will, in all probabilities, be one of life imprisonment. In cases where the evidence indicates that the accused's responsibility for his acts was so grossly impaired that his degree of responsibility for them was minimal, then a lenient course will be open to the judge. Provided there is no danger of repetition of violence, it will usually be possible to make such an order as will give the accused his freedom, possibly with some supervision. There will however be cases in which there is no proper basis for a hospital order, but in which the accused's degree of responsibility is not minimal. In such cases, the judge should pass a determinate sentence of imprisonment, the length of which will depend on two factors: his assessment of the degree of the accused's responsibility and his view as to the period of time, if any, for which the accused will continue to be a danger to the public."*

[9] In that matter the Court of Appeal sentenced that appellant to 8 years imprisonment.

[10] The Court now looks to the guidance of the apex court, the Caribbean Court of Justice (the "CCJ") in the Barbadian case of Teerath Persaud v R<sup>4</sup> on the issue or the formulation of a just sentence, per Anderson JCCJ:

**"[46] Fixing the starting point is not a mathematical exercise; it is rather an exercise aimed at seeking consistency in sentencing and avoidance of the imposition of arbitrary sentences. Arbitrary sentences undermine the integrity of the justice system. In striving for consistency, there is much merit in determining the starting point with reference to the particular offence which is under consideration,**

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<sup>4</sup> (2018) 93 WIR 132.

**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)

[11] The Court is also guided by the decision of the CCJ in **Calvin Ramcharran v DPP**<sup>5</sup> on this issue, per Barrow JCCJ:

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

[16] Jamadar JCCJ noted that in 2014 this Court explained the multiple ideological aims of sentencing. **These objectives may be summarised as being: (i) the public interest, in not only punishing, but also in**

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<sup>5</sup> [2022] CCJ 4 (AJ) GY.

**preventing crime ('as first and foremost' and as overarching), (ii) the retributive or denunciatory (punitive), (iii) the deterrent, in relation to both potential offenders and the particular offender being sentenced, (iv) the preventative, aimed at the particular offender, and (v) the rehabilitative, aimed at rehabilitation of the particular offender with a view to re-integration as a law abiding member of society.**

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

*(emphasis added)*

### **The Facts**

**[12]** The prisoner was fishing at the back of Hector Creek, in Hattievillge Village, on the morning of the 20th of February 2018 when the deceased emerged from the bushes. The deceased had physically assaulted the son of the prisoner, Albert Jones Jr, 2 ½ months before. The deceased told the prisoner that someone was trying to kill him and sent him to buy him some marijuana. The prisoner also bought himself a bottle of alcohol and drank it on his way back. As he was returning, he thought to himself that this was the man who had taken advantage of his son and now he had come into his hands. With these thoughts on his mind, he approached the deceased on his return, struck him twice, to the back of the head and to his neck and then he chopped his hand. The deceased's body ended up in the water. The prisoner left him there.

**[13]** The deceased had been living with his wife and 3 children in Hattievillge Village. Before going to Hector Creek, he had walked his wife Kellyn Neal to the bus stop to wait for her bus to go to work and thereafter walked his children to the bus stop to take their bus to go to school. When they returned home after school, he was not at home. They never saw him.

**[14]** The prisoner was tormented by what he had done and sometimes re-visited the scene to see whether he could have seen the deceased. The memories caused him to drink

excessively. On the 8th of May 2018 he went into police custody. On the 9th of May 2018, he gave a statement, under caution, to Cpl. 1255 Doni Buddan in which he admitted that he had killed the deceased.

[15] The prisoner is 51 years old, currently mentally stable and HIV+.

### Analysis

[16] The Court, following *Persaud*, will try to arrive at a starting point by looking at the aggravating and mitigating factors of the offending:

- i. There was use of a weapon.
- ii. The body of the deceased was never found.
- iii. This is a serious and prevalent offence. The victim impact statements of the wife of the deceased and his daughter, Allegra Garcia speak to their life being devastated by the loss of their protector, provider and nurturer. It is a wound that can never be healed.

[17] The mitigating factors in relation to this offending are as follows:

- i. The prisoner self-reported the offending. He literally found the closest police officer he could find to admit his guilt in killing the deceased. The Crown has conceded that had the prisoner not admitted his guilt this crime would never have been solved.
- ii. Though there was not provocation in the sense of a defence to the charge, there was a history which involved an assault by the deceased on the son of the prisoner.

[18] The Court in selecting the starting point considers *Longworth*. A hospital order is not appropriate as the evidence is that he is now mentally stable and shows no signs of psychosis. Life imprisonment is also not appropriate as there is no evidence that he is a danger to the public, and again he is not psychotic. A determinate sentence is then an



appropriate starting point. The Court of Appeal in Edwin Hernan Castillo v R<sup>6</sup> observed that the sentencing range for manslaughter for bladed weapon violence was a term of imprisonment between 15-25 years. This was a brutal killing, but it was followed by immediate remorse and a mental breakdown. The Court would choose a starting point of 15 years imprisonment.

**[19]** The Court would individualize the sentence by considering the aggravating and mitigating features of the offender.

**[20]** The aggravating factor is a previous conviction for wounding in 2011 for which he would have received a fine. The minimal nature of the punishment and its age would cause the Court not to adjust the sentence upwards.

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

- i. The medical condition of the prisoner- The prisoner has been previously diagnosed as mentally ill, an alcoholic, and HIV+ and fears dying in prison. These are factors which the Court must apportion appropriate weight.
- ii. The prisoner is genuinely remorseful- The prisoner has indicated remorse for his actions from the dock and the Court accepts it as genuine.
- iii. Positive activities in the prison- The prisoner was awarded a certificate for his involvement in the Rachel Program of which he is understandably proud.
- iv. Testimonials- The Court heard from the prisoner's brother, Cecil Jones, and niece, Lilymay Jones. Cecil painted a picture of abandonment by their parents when they were children as they pursued a life for themselves in the United States. The prisoner took care of his brother and found money to send him to school. The prisoner fell prey to drugs but still ensured his brother went to school. Lilymay said that the prisoner raised her and cared for her. They both pleaded for leniency.

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<sup>6</sup> Criminal Appeal No 11 of 2017 at para 30.

[22] These mitigating factors would cause the Court to reduce the sentence by 6 years to 9 years imprisonment reminding itself of the guidance in the PSRASA that rehabilitation is a core principle of sentencing. The Court does not believe that the prisoner is a danger to society and has changed.

[23] The Court would, in its discretion, award the prisoner the full one-third discount for his guilty plea on the mix of the particular factors in this case and the option of a plea to manslaughter coming onto the table late in the day.

[24] In that regard the final sentence of the Court is 6 years imprisonment. The prisoner has been remanded since 10<sup>th</sup> May 2018. That must be deducted from the sentence on the authority of R v Da Costa Hall<sup>7</sup>.

### **Disposition**

[25] The Court sentences Albert Jones Sr. to a sentence of 6 years imprisonment for the manslaughter of Alaine Garcia with effect from 10<sup>th</sup> May 2018. That sentence has already been served so the Court orders the immediate release of the prisoner. The prisoner is discharged.

**Nigel Pilgrim**

High Court Judge

Dated 17<sup>th</sup> May 2024

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<sup>7</sup> (2011) 77 WIR 66.