

**IN THE SENIOR COURTS OF BELIZE**

**CENTRAL SESSION - BELIZE DISTRICT**

**IN THE HIGH COURT OF JUSTICE**

**INDICTMENT No: C2 OF 2023**

**BETWEEN:**

**THE KING**

**and**

**CASSIAN BILLARY**

Prisoner

**Before:**

The Honourable Mde. Justice Candace Nanton

**Appearances:**

Mr. Robert Lord, Crown Counsel for the King

Mr. Leeroy Banner, Counsel for the Prisoner

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2025: March 26; 27  
April 01; 14; 28; 30  
June 13  
July 17; 24  
August 25; 26  
October 30

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*Murder – Sentencing – Sentencing Guidelines*

**JUDGMENT ON SENTENCING**

## Background

- [1] **NANTON, J:** The Crown had indicted Cassian Billary (“the Prisoner”) for the offence of murder, contrary to **Section 117 read along with Section 106(1) of the Criminal Code**<sup>1</sup> (“Criminal Code”). The particulars of the offence are that on 14<sup>th</sup> December 2020, the Prisoner murdered Micah Balthazar.
- [2] On 26<sup>th</sup> March 2025 the trial by judge alone began with the re-arraignment of the Prisoner before this Court pursuant to **Section 65A(2)(a) of the Indictable Procedure Act.**<sup>2</sup>
- [3] After a full trial, this Court found the Prisoner guilty of the offence of murder.
- [4] The case for the Crown, which was accepted by this Court, was essentially that the Deceased was lured to the location under false pretences by acquaintances, whereupon he was ambushed by the Prisoner and shot 17 times. He died immediately on the scene.
- [5] The Prisoner, then 18 years old, admitted in a police interview that he killed the Deceased, but claimed that he acted under duress. The Court ruled that duress does not in law constitute a justification for murder.<sup>3</sup>
- [6] Pursuant to the guidance set out in **Calvin Ramcharran v DPP**<sup>4</sup> the Court adjourned the matter for a separate sentencing hearing and ordered the production of various reports and information to aid in sentencing. The Court has before it for its consideration the following reports:
- (i) Social Inquiry Report

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<sup>1</sup> Chapter 101 of the Substantive Laws of Belize (Revised Edition) 2020

<sup>2</sup> Cap. 96 of the Substantive Laws of Belize (Revised Edition) 2020

<sup>3</sup> See *Abbott v R* [1976] UKPC 4; *R v Howe* [1987] AC 417

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

- (ii) Antecedent Record
- (iii) Kolbe Prison Report
- (iv) Psychiatric Evaluation Report

[7] Regrettably no victim impact statement could be obtained by the Crown due to the Crown's inability to locate relatives willing to provide one.

[8] The Court further heard an oral plea in mitigation from Counsel on behalf of the Prisoner who also called one witness, and written submissions on sentencing were submitted by Counsel for the Crown.

### **Prescribed Penalty**

[9] The sentencing regime for murder is set out in **Section 106(1) of the Criminal Code**<sup>5</sup> which provides that a person convicted of the offence of murder is liable, having regard to the circumstances of the case, to be sentenced to death or to imprisonment for life.

[10] The Privy Council has opined in the Belizean case of **White v R**<sup>6</sup> that the death penalty is only appropriate in cases that were "the worst of the worst' or 'the rarest of the rare'; and that there must be no reasonable prospect of reform of the offender and that the object of punishment could not be achieved by any means other than the ultimate sentence of death." There are also procedural requirements for the imposition of the death penalty set out in **R v Reyes**.<sup>7</sup>

[11] **Section 106(3) of the Criminal Code** requires that if life imprisonment is imposed, the Court must specify a minimum term to be served before the offender becomes eligible for parole. In fixing that term, the Court must have regard to:

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<sup>5</sup> Criminal Code (Amendment) Act No. 22 of 2017

<sup>6</sup> 77 WIR 165 at para 12-14.

<sup>7</sup> [2003] 2 LRC 688

- (a) the circumstances of the offender and the offence;
- (b) any aggravating or mitigating factors of the case;
- (c) any period that the offender has spent on remand awaiting trial;
- (d) any relevant sentencing guidelines issued by the Chief Justice; and
- (e) any other factor that the court considers to be relevant.<sup>8</sup>

[12] The Caribbean Court of Justice (“CCJ”) in **Gregory August et al. v The Queen**<sup>9</sup> interpreted **Section 106 of the Criminal Code** as conferring upon the sentencing court a discretion to impose either life imprisonment with a specified minimum term or, in appropriate cases, a fixed term sentence. The Court emphasised, however, that a fixed term sentence is justified only where there exist particularly compelling mitigating circumstances that displace life imprisonment as the usual penalty for murder.

[13] This interpretation was affirmed by the Court of Appeal in **Michael Faux et al. v The King**<sup>10</sup> which held that fixed term sentences represent an exception and must be underpinned by sufficiently strong mitigating factors.

[14] The exercise of the Court’s discretion under **Section 106 of the Criminal Code** must be principled, transparent, and guided by relevant sentencing principles.

### **Sentencing Principles**

[15] The Court, while sentencing, engages in a balancing act of a number of different factors and interests, including but not limited to the interests of the victim; the rights of the offender; and the interest of society in ensuring that crimes are appropriately punished. In having regard to society’s interests, the Court must take care to ensure that the eventual sentence adequately reflects society’s abhorrence of the crime

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<sup>8</sup> Section 106(4) of the Criminal Code

<sup>9</sup> [2018] CCJ 7 (AJ)

<sup>10</sup> Criminal Appeal Nos. 24, 25 and 26 of 2019

which the Offender has committed. Now, sentencing as part of its deterrent function also applies to would be offenders, and the Court must always send a message that crimes of a similar nature will not be tolerated or given inordinately lenient punishments.<sup>11</sup>

- [16] This Court, however, reiterates that each case must be sentenced on its own facts and each offender sentenced in accordance with the level of criminality evinced on the facts before the particular sentencing court.
- [17] These principles are reflected in the **General Sentencing Guidelines of the Senior Courts of Belize**,<sup>12</sup> which underscore that a just sentence is one that promotes respect for the law by proportionately balancing all relevant considerations, including retribution, deterrence, rehabilitation, and prevention.

### **Sentencing Guidelines**

- [18] In determining the appropriate sentence in this case, the Court is guided by the **Sentencing Guidelines of the Senior Courts of Belize for Homicide and Murder**<sup>13</sup> (“the Sentencing Guidelines”). These Guidelines are binding on the Court and must be applied unless, in the particular circumstances of the case, to do so would not serve the interests of justice. Departure is permissible only in exceptional circumstances.
- [19] The Guidelines set out a structured approach. In the first step, the Court must assess the seriousness of the offence and select the appropriate sentencing route: death, life imprisonment with a specified minimum term, or a fixed-term sentence.

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<sup>11</sup> Calvin Ramcharran v DPP [2022] CCJ 4 (AJ) GY

<sup>12</sup> Practice Direction No. 4 of 2025

<sup>13</sup> Practice Direction No. 12 of 2025

[20] A sentence of death is reserved for the “rarest of the rare” cases, those in which the offence is of such extraordinary gravity that no reasonable prospect of reform exists. Nothing in the present case engages those exceptional circumstances. The Court therefore proceeds on the basis that the appropriate sentence lies between imprisonment for life with a specified minimum term and a fixed term sentence.

[21] Once the proper sentencing route has been identified, the Court must then fix a starting point within the applicable range. The Sentencing Guidelines prescribe two distinct ranges: For life imprisonment, the usual starting point for the minimum term is 25 years, within a range of 20 to 40 years, and for a fixed term sentence, the starting point is also 25 years but within a narrower range of 20 to 35 years. It follows that before selecting the appropriate starting point, the Court must make a threshold determination as to which range applies. This requires a careful assessment of whether the circumstances are sufficiently exceptional to displace life imprisonment as the usual sentence for murder.

### **Life Imprisonment vs. Fixed Term Sentence**

[22] In assessing the seriousness of the offence, the Court refers to the following aggravating factors of the offence:

#### **Aggravating factors:**

- (i) The offence involved the use of a firearm.
- (ii) The manner of killing demonstrated a moderate degree of planning or premeditation, in that the Deceased was deliberately lured to the location under false pretences.
- (iii) The manner of killing was consistent with organised or gang-related violence and there was evidence that this was a reprisal killing.
- (iv) The Deceased sustained seventeen (17) gunshot wounds, indicating extreme and excessive violence.
- (v) The killing took place on a public road.

(vi) The prevalence of the offence of murders in Belize

[23] These aggravating factors place the offence at the highest level of seriousness and in line with the following cases:

- **Faux** - Murder with firearm; multiple shots (4 to 5); premeditation; public setting – a fixed term sentence of 30 years;
- **Giovanni Villanueva V The King**<sup>14</sup> - Murder for hire of a family member; the Deceased was an amputee shot in the privacy of his bathroom - Life imprisonment minimum term 25 years;

[24] Mitigating factors:

- The Prisoner's assertion that he acted under duress.
- The Prisoner cooperated with the police

[25] The mitigating factors have been accorded significant weight in the Court's consideration.

[26] The Court of Appeal in **Diaz et al v R**<sup>15</sup> referring to the decision of the House of Lords in **R v Howe** affirmed that the defence of duress not available to a person charged with murder. Nevertheless, the Sentencing Guidelines permit the Court to consider duress as a mitigating factor at the sentencing stage.

[27] Weighing the matter in the round, the Court finds that the aggravating features cumulatively substantially outweigh the mitigating factors such that the Court is not yet convinced that the mitigation is sufficiently exceptional to warrant a sentence other than the usual life sentence.

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<sup>14</sup> BZ 2024 CA 008.

<sup>15</sup> Criminal Appeal Nos. 8 and 9 of 1987

[28] The Court now refers to the following aggravating and mitigating factors of the offender to determine whether its disposition can be softened:

**Aggravating factors:**

- (i) The Prisoner's prison record includes four disciplinary breaches, three minor resulting in verbal warnings, and one more serious, a positive marijuana test in October 2024, resulting in a one-month full sanction.

**Mitigating factors:**

- (i) The Prisoner was 18 years old at the time of the offence and the Court is satisfied that his youth played a significant role in the commission of the offence
- (ii) The Prisoner has no previous convictions.
- (iii) The Prisoner is of previous exceptional character as evidenced by the Social Enquiry Report
- (iv) The Prisoner has close familial ties
- (v) The Prisoner has completed four rehabilitative programmes on gang education, preventative therapy, cognitive development, alcohol prevention, showing willingness to reform.

[29] In **August** and **Faux**, the age of the offender was a relevant consideration in the imposition of a fixed-term sentence. August was 19, and Faux just over 18. Similarly, the Prisoner in this case had just embarked on adulthood – being 18 years old at the material time.

[30] The Court notes the decision of the Court of Appeal in **Chadwick Debride et al v The King**,<sup>16</sup> which cautioned against treating youth as determinative. Debride, who was 23 years old at the time of the offence was sentenced to life imprisonment with a minimum term of 30 years. Counsel for Debride argued that the sentence was

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<sup>16</sup> Criminal Appeal Nos. 11 and 19 of 2019

excessive and the trial judge did not consider if a fixed term sentence was appropriate under the circumstances of the case. This ground was dismissed as the Court of Appeal found that the sentence imposed by the trial judge was commensurate with Debride's criminal conduct and consistent with the range of sentences imposed for a conviction of murder post **August**. In dismissing the ground of appeal, the Court considered the gravity of the offence particularly, that the manner of killing showed a degree of premeditation and planning as the deceased, a policeman, was murdered using a firearm in broad daylight in a crowded street, in execution style. The facts of this particular case although similarly egregious may be distinguished on the ground that the Prisoner's youth played a significant role in him feeling pressured to kill and that cumulatively there are other strong mitigating factors as already outlined.

[31] The Court acknowledges that in many cases the mitigating factor of young age alone may not be enough to displace the aggravating factors of the case:

"In *Deon Cadle v The Queen*, this Court did not find the sentence imposed as manifestly excessive notwithstanding the young age of the Appellant, 21 years at the time of his trial and his previously almost unblemished record. The Court noted that there was a marked element of cold bloodedness in the shooting of the deceased. The Court added, at page 5:

'The continued frequency of such cases may well have moved trial judges to take the view that an increase in the existing maximum was needed to emphasise the intention of the courts to do all in their power to protect society from young offenders armed with guns ...'

The case of *The Queen v Hilberto Hernandez* also discussed the displacement of age. At paragraph 38, several other authorities were discussed which showed that the mitigating factor of young age was not enough to displace the aggravating features of the case. In *Renaldo Alleyne v The Queen* the issue of mitigating circumstances being outweighed by aggravating factors was addressed by President Saunders in the concurring judgment at paragraphs 79 and 80:

"Sentencing where life imprisonment is a possibility

[79] Life sentences fall into a unique category of sentences. If, after considering all of the aggravating and mitigating circumstances of

the offence (as distinct from those of the offender), a trial judge is initially disposed to impose a life sentence, that disposition can be softened, in appropriate cases, upon a consideration of the mitigating circumstances that relate to the offender. That would be because matters such as the offender's early guilty plea or his age or level of remorse or social or economic circumstances, cause the trial judge to moderate his or her original disposition in favour of a lesser sentence measured in terms of years or months.

[80] Alternatively, however, a) the circumstances relating to the offence may be so ghastly that the trial judge is inclined to regard life imprisonment as being eminently appropriate and therefore commensurate notwithstanding the mitigating circumstances the offender put forward. In other words, the trial judge may consider that a particular offence and its consequences are so serious that neither an early guilty plea nor any other mitigating factor can, in that particular case, serve to reduce the life sentence. Or, having found that the circumstances of the offence initially suggest that life imprisonment might be appropriate, in considering next the aggravating and mitigating factors relating to the offender, the trial judge may b) conclude that the mitigating factors put forward are outweighed by aggravating ones. In this regard, the trial judge may find that, despite the existence of some mitigating factors, the offender has, for example, such an appalling record that it cancels out the mitigating circumstances. In either of these two situations that is a) or b), the sentence of life imprisonment is "commensurate".

[32] As Saunders P noted in Alleyne, at paras 79–80, life imprisonment remains appropriate where either the offence is of such gravity that no mitigating factor can reduce it, or where the offender's personal circumstances are outweighed by aggravating features.

[33] Notwithstanding the Court reminds itself that under August and Faux, the imposition of a fixed term sentence is justified if there are mitigating factors warranting it. This Court has examined the aggravating and mitigating factors in the round, both as it relates to the offence and the Offender. In this case, I find that the cumulative effect of the mitigating factors relative to the offence i.e. duress and the Prisoner's cooperation with the police which was the sole basis for his conviction (even though he challenged same at trial) coupled with the Offender's youth, his

character, familial ties, strong rehabilitative efforts and genuinely positive prospects for reform warrant the application of a fixed term as opposed to a sentence of life imprisonment.

### **The Starting point**

[34] The Sentencing Guidelines prescribe a starting point of 25 years for a fixed term sentence within a range of 20 to 35 years depending on the seriousness of the offence.

[35] Given the significant aggravating factors - the use of a firearm, the premeditated luring of the Deceased, the excessive number of shots and that the offence was committed in a public setting against the mitigating factors of duress and cooperation, the circumstances of the offending warrants a starting point of 30 years.

[36] Balancing the aggravating and mitigating factors of the Offender, including the Prisoner's youth, previous good character, absence of previous convictions and rehabilitative efforts the Court considers that a downward adjustment of five years is warranted. That results in a net figure of 25 years.

### **Time Spent in Custody**

[37] The Prisoner has been remanded in custody from 15<sup>th</sup> December 2020 to today's date which is a couple months shy of 5 years.

[38] In accordance with the Sentencing Guidelines and the principle affirmed by the CCJ in **Romeo da Costa Hall v The Queen**<sup>17</sup>, full credit must be given for the time spent in pre-trial custody. The Prisoner is thus entitled to full credit for the time he has spent on remand, and this shall be reflected in the Court's final sentence.

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<sup>17</sup> [2011] CCJ 6 (AJ)

[39] Pursuant to the Court's powers under **Section 162 of the Indictable Procedure Act**<sup>18</sup> as considered in **R v Pedro Moran**<sup>19</sup> the Court would make the sentence effective from the date of his first remand.

### **Disposition**

[40] The Court sentences the Prisoner, Cassian Billary, for the murder of Micah Balthazar to a fixed term of 25 years. His time spent in custody is reflected in the imposition of this sentence as the Court orders that the sentence imposed is effective from the 15<sup>th</sup> day of December 2020, which is his first date of remand.

**Candace Nanton**

High Court Judge

Senior Courts Belize

Dated 30<sup>th</sup> October 2025

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<sup>18</sup> Chapter 96 of the Substantive Laws of Belize (Revised Edition) 2020

<sup>19</sup> Criminal Application No. 1 of 2017