

IN THE COURT OF APPEAL OF BELIZE A.D. 2026

CRIMINAL APPLICATION NO. 2 of 2019

BETWEEN:

THE KING

Applicant/Appellant

and

HALLET KING

Respondent

Heard together with:

CRIMINAL APPLICATION NO. 3 of 2019

BETWEEN:

THE KING

Applicant/Appellant

and

LEONARD NUNEZ

Respondent

Before:

The Hon. Mme. Louise Esther Blenman

Chief Justice

The Hon. Mme. Minnet Hafiz-Bertram

President

The Hon. Mme. Michelle Arana

Justice of Appeal

Appearances:

Ms. Cheryl-Lynn Vidal SC, Director of Public Prosecutions, for the Applicant/Appellant

Mr. Arthur Saldivar, for Mr. Hallet King

Mr. John Nembhard, for Mr. Leonard Nunez

2026: June 1;
July 16.

JUDGMENT

Introduction

- [1] **BLENMAN, C.J.:** This matter concerns the Crown’s application for leave to appeal against the sentences imposed by the trial judge, on Mr. Hallet King (“Mr. King”) and Mr. Leonard Nunez (“Mr. Nunez”), which the Caribbean Court of Justice (CCJ) has remitted to this Court for hearing and determination.
- [2] Mr. King and Mr. Nunez were both sentenced to nine (9) months’ imprisonment after a jury convicted them on 15 July 2019 for the offence of manslaughter, contrary to **section 116(1) read together with section 108(1)(b) of the Criminal Code**.¹ Mr. King and Mr. Nunez, being dissatisfied with their convictions, appealed to the Court of Appeal.
- [3] The learned Director of Public Prosecutions (“DPP”), being dissatisfied with the sentences imposed on the premise that they were unduly lenient, sought leave to appeal against the sentences before the Court of Appeal, as mandated by **section 236(2)(c) of the Senior Courts Act, 2022**.²
- [4] Mr. King and Mr. Nunez have not resisted the applications for leave to appeal against their sentences. I have therefore treated the applications for leave to appeal against sentence, being heard together, as the hearing of the Crown’s appeal against sentence.

Procedural History

- [5] Mr. King and Mr. Nunez, both police constables, were charged with the offence of manslaughter arising out of the death of Mr. Hilbert Sotz (“Mr. Sotz”) on 8 June 2015. Mr. King and Mr. Nunez were tried before a judge and jury between June and July 2019. On 15 July 2019, the jury unanimously convicted both Mr. King and Mr. Nunez of the manslaughter of Mr. Sotz.

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

² Act No. 27 of 2022.

[6] The trial judge conducted a sentencing hearing on 13 August 2019. Following that hearing, the trial judge imposed a sentence of nine (9) months' imprisonment on Mr. King and Mr. Nunez, respectively, with credit for time spent on remand. As both Mr. King and Mr. Nunez had already spent approximately ten (10) months in pre-trial detention, they were immediately released.

[7] As alluded to earlier, both Mr. King and Mr. Nunez thereafter appealed their convictions. The Crown also filed applications for leave to appeal against the sentences imposed on Mr. King and Mr. Nunez. A differently constituted panel of this Court of Appeal allowed Mr. King and Mr. Nunez's appeals and quashed the convictions. Consequently, the Crown's application for leave to appeal against sentence was overtaken.

Appeal to the Caribbean Court of Justice

[8] The Crown appealed to the CCJ against the decision of the Court of Appeal to quash Mr. King and Mr. Nunez's convictions. On 20 January 2026, the CCJ allowed the Crown's appeal, reinstated the convictions, and remitted the matter to the Court of Appeal for the hearing and determination of the Crown's application for leave to appeal against sentence. It is pursuant to that remittal that this Court now considers the Crown's application for leave to appeal against sentence.

Issues

[9] Having regard to the grounds of the application, the affidavits in support, the submissions of the parties, and the procedural posture of this matter following its remittal by the CCJ, the issues arising for determination by this Court are as follows:

- (1) Whether the sentence imposed by the trial judge was unduly lenient;
- (2) If the sentence was unduly lenient, whether this Court should re-exercise its discretion to interfere and substitute a different sentence; and
- (3) What impact, if any,

- a. the pre-trial delay in the proceedings should have on the sentence to be imposed.
- b. the post-conviction delay in the proceedings should have on the sentence to be imposed.

[10] It is important to provide additional information in order to give the proper context for the applications engaging this Court's attention.

Factual Background

[11] The evidence before the trial court, which must be taken as established by the jury's verdict, revealed the following circumstances:

- (1) On the morning of 8 June 2015, Mr. Sotz, then an 18-year-old high school student, was detained by Mr. Nunez in connection with a series of burglaries on Caye Caulker, Belize. Mr. Sotz was taken to the Caye Caulker Police Station and placed in a cell.
- (2) Later that day, Mr. Nunez removed Mr. Sotz from the cell and took him to the office of the Criminal Investigation Branch ("CIB"), where Mr. King was present. The Crown's case was that, while in that room, Mr. Sotz was subjected to physical assault by Mr. King and Mr. Nunez during an interrogation.

Evidence in the court below

- (3) The Crown's main witness, Mr. Manuel Guerra, who was also detained at the station, testified that he heard Mr. Sotz 'bawling and shouting' from the CIB room. He described hearing slapping, pounding sounds and Mr. Nunez asking where the items were. Mr. Guerra further testified that he heard Mr. Sotz 'bawling harder' and shouting '*please stop, please stop*', after which everything went silent.

(4) Shortly thereafter, Mr. Guerra said he saw Mr. King and Mr. Nunez removing Mr. Sotz, who appeared unconscious, from the room. Mr. Guerra said that Mr. Sotz was placed by Mr. King and Mr. Nunez on a golf cart and then taken to the Caye Caulker Health Centre, where he was pronounced dead on arrival by the attending doctor, Dr. Jorge Diaz.

(5) The Crown adduced medical evidence through Dr. Mario Estrada Bran, forensic examiner. Dr. Estrada Bran testified that Mr. Sotz' cause of death was head trauma which led to blood clots which ultimately interfered with the functioning of the heart.³ This trauma would have occurred no more than two (2) to three (3) hours prior to his death.⁴ The injuries could have been caused by a fall, or by direct contact with a blunt object.⁵

(6) The parents of Mr. Sotz, Mr. Saturnio Sotz ("Mr. Sotz Senior") and Mrs. Carmelina Sotz ("Mrs. Sotz") testified that he was not suffering from any illnesses prior to his death.

[12] Mr. King and Mr. Nunez's defence at trial was a denial of any assault. They contended that Mr. Sotz complained of breathing difficulties while being questioned and was taken to the Health Centre for medical attention, where the doctor pronounced him dead.⁶ This account was rejected by the jury, and they were both convicted of manslaughter.

Sentencing in the Court Below

[13] At the sentencing hearing, the trial judge heard a plea in mitigation on behalf of Mr. King and Mr. Nunez, as well as victim impact statements presented by the Crown.

³ See Record of Appeal (Revised), Volume I, pages 187 to 188.

⁴ See Record of Appeal (Revised), Volume I, page 190.

⁵ See Record of Appeal (Revised) Volume I, page 191.

⁶ See Record of Appeal, Volume II, pages 321 to 322; pages 329 to 330.

- [14] In mitigation, both Mr. King and Mr. Nunez addressed the Court. Mr. King stated that he was a Christian, worked as a police officer, was married and had two (2) children who had recently started high school. Mr. King expressed condolences to the family of Mr. Sotz. His counsel indicated that Mr. King had an unblemished record. Mrs. Hydeia King, his sister-in-law, said that he was an ordained pastor at Elijah Ministry in Hattievillle Village and described him as a caring individual who contributed positively to his community.
- [15] Mr. Nunez similarly addressed the Court, expressing regret for any pain caused to the family. His counsel indicated that he was a father of three (3) children and had been a police officer with no prior convictions. Ms. Maricela Coc, Mr. Nunez's common-law wife of eight (8) years, described him as a loving and responsible family man who was the sole provider for his household.
- [16] The Crown, for its part, tendered victim impact statements from Mr. Sotz Senior and Mrs. Sotz. Both parents spoke of their loss. Mrs. Sotz described the emotional devastation following her son's death and the lasting impact on her family as follows:

“...The death of my son has been very hard as I also have to be there for my other kids. The death of my son was hard as I had to be strong for myself and my other kids who are also devastated and became very ill. His death has affected me to a point that I fear for my other kids not to go through the same [sic]. The relationship between myself and my son was very close as he would talk to me of the daily struggles he was going through whilst away attending high school in Belmopan. My life will never be the same with the passing of my son, as he has left an empty spot in my heart that will never heal. At times I still call out his name and then I remember that he is no longer with me. I miss my son so much that at times I wish he would just walk in the house and I would be so happy.”⁷

- [17] Mr. Sotz Senior stated:

⁷ See Record of Appeal, Volume II, pages 539 to 540.

"The death of my son has been very hard as he is my first-born son. I always believed that my son would have graduated from high school as I have worked hard to send him to school. His death has affected me very much because I have no parents because they have both pass away and I was pushing hard for my son to finish high school so that he would be able to help his other siblings. My son and I was [sic.] very close as he use [sic.] to go with me to work every day and we would share the work. I miss him a lot. With the passing of my son, I lost all my hopes in life. My life will never be the same. I miss my son dearly. Many days I wish he would be right by my side."⁸

- [18] The Crown identified, as aggravating factors of the offence, the youth of Mr. Sotz; the fact that he was in police custody at the time of his death; and the breach of public trust inherent in the conduct of the officers. As a mitigating factor, the Crown noted that Mr. King and Mr. Nunez transported Mr. Sotz to the Health Centre after the incident.

Judgment in the Court below on Sentencing

- [19] In his sentencing judgment, the trial judge acknowledged that he was bound by the jury's verdict and was required to sentence on the basis that Mr. King and Mr. Nunez were responsible for the death of Mr. Sotz. He stated that:

"I cannot go behind the jury's verdict. As pointed out in the case of *Sherwood Wade* by the Court of Appeal, where someone is convicted by the jury, the sentencer, that is me in this case, I must adopt the factual implications of that verdict as the basis of the sentence. I therefore have to proceed and accept the jury's verdict for what it is and sentence accordingly and I cannot substitute my view, or my impression of the evidence for what the jury has determined. And by their verdict, the jury is saying that the defendants are responsible for Hilbert Sotz's death."⁹
[Emphasis added]

⁸ See Record of Appeal, Volume II, page 540.

⁹ See Record of Appeal, Volume II, page 567.

[20] However, the trial judge expressed uncertainty as to the precise basis of the jury's decision, indicating that he could not determine whether the case fell within the category of voluntary or involuntary manslaughter. The trial judge expressed himself, thus:

“What one cannot say with any degree of certainty however is the basis of the jury's decision with regard to whether or not this was a case of voluntary manslaughter or a case of involuntary manslaughter. The entire scenario was placed before the jury but I **am unable to say if in their deliberations the jury found it at the higher end, in terms of voluntary manslaughter or at the lower end in terms of involuntary manslaughter.**”¹⁰

[21] In purporting to apply the established principles of sentencing; namely: retribution, deterrence, prevention, and rehabilitation, the trial judge concluded that prevention and rehabilitation were of limited relevance, given Mr. King and Mr. Nunez's prior good character and lack of criminal history. The trial judge considered that specific deterrence was unnecessary, but that general deterrence and retribution were the primary considerations.

[22] The trial judge identified the principal aggravating factor as the death of a person in police custody. In mitigation, the trial judge considered that Mr. King and Mr. Nunez were serving police officers of previously good character, had expressed sympathy for the family of Mr. Sotz, and that there was no clear evidence of the use of a weapon in the commission of the offence.

[23] The trial judge further reasoned that the absence of identifiable external injuries and the uncertainty as to the mechanism of death made it difficult to categorise the offence at the higher end of the spectrum. The trial judge therefore considered that the case might be more analogous to instances of manslaughter involving negligence or less direct forms of harm.

[24] In light of the approach that the trial judge adopted, the trial judge placed reliance on the decision in **DPP v Sherwood Wade**,¹¹ where a custodial sentence at the lower end of the

¹⁰ *ibid.*

¹¹ Criminal Appeal No. 24 of 2005.

scale was imposed. He concluded that a custodial sentence was required but that it should be relatively short. He stated:

"I therefore apply what I have seen in the case of *Sherwood Wade* since I consider that this is a matter where the jury could well have found that this was manslaughter, a manslaughter which was caused by some kind of conduct, although not specific without the use of a firearm or knife and so on and in following it, I will note that what His Lordship said in that decision, they said,

"in our judgment, this offence justify a custodial sentence in line with *The Queen v Mervin Vernon* and police officers should hereafter realize that the custodial sentence is the appropriate sentence in cases of this nature".

Yes, His Lordship said, as I was saying, that the custodial sentence in line with the *Queen v Mervin Vernon* is appropriate and police officers should hereafter realize that the custodial sentence is the appropriate sentence in cases of this nature. This case is being used to serve notice of this punishment which we recommend. That is what I have just read from in the case of *Sherwood Wade*. It is clear that a verdict of guilty was a clear indication that the Prosecution's case was accepted. I cannot go behind that verdict and seek to do anything else other than to say to Mr. Nunez, Mr. King, for the offence which you have been convicted, in keeping with the decision and following the line of cases as said in *Sherwood Wade*. I impose a sentence of nine (9) months imprisonment, time spent to be subtracted from it." ¹²

[25] The above sentence is the subject of challenge before this Court.

The Application

[26] The Crown seeks leave to appeal against the sentence imposed by the trial judge pursuant to **sections 236(1)(c) and 2(c) of the Senior Courts Act**.

[27] The Crown seeks leave to appeal on the ground that the sentence of nine (9) months' imprisonment imposed by the trial judge was unduly lenient and invites this Court, if it is

¹² See Record of Appeal, Volume II, pages 575 to 576.

satisfied that the sentence falls outside the permissible range, to exercise its statutory power to quash the sentence and substitute a sentence that ought properly to have been imposed.

- [28] The Crown's application is supported by the affidavits of Mrs. Portia Staine-Ferguson, Senior Crown Counsel who prosecuted the trial, and Ms. Shanice Lovell ("Ms. Lovell"), former Senior Crown Counsel, who appeared at the sentencing hearing. Ms. Lovell deposed that Mr. King and Mr. Nunez were convicted of manslaughter, carrying liability to life imprisonment. Ms. Lovell stated that she drew the trial judge's attention to the distinction between manslaughter and manslaughter by negligence and addressed the Court on the applicable sentencing range for manslaughter. Ms. Lovell further stated that the trial judge nonetheless focused on whether the offence could be characterised as involuntary manslaughter and ultimately imposed a sentence based on that approach.
- [29] The Crown also relied on the affidavit of Ms. Maria Nembhard-Santana ("Ms. Nembhard-Santana"), Crown Counsel, which provided a detailed chronology of the proceedings from conviction to the present. That chronology reveals that, following the filing of the Notice of Application for leave to appeal on 22 October 2019, the matter was first listed on 4 February 2020. At that hearing, both Mr. King and Mr. Nunez appeared in person and sought time to retain counsel. The chronology further indicates that between October 2020 and 2022, significant time elapsed as Mr. King and Mr. Nunez repeatedly sought further time to secure legal representation. Even after counsel was retained in October 2022, Mr. King and Mr. Nunez failed on multiple occasions to comply with directions for the filing of submissions, necessitating further adjournments throughout 2022 and 2023. The affidavit disclosed that the matter was delayed again when the scheduled hearing in March 2024 had to be adjourned at the request of counsel for Mr. King due to technical difficulties. The affidavit also revealed that certain periods of delay were attributable to systemic factors, including interruptions caused by the COVID-19 pandemic and the time taken for preparation of the record of appeal and delivery of judgment by the Court of Appeal.

- [30] Mr. King filed no affidavit in the matter. Mr. Nunez filed an affidavit in response.¹³ However, most of the matters raised in Mr. Nunez's affidavit do not relate to the matter of sentencing. It must be emphasised that these proceedings are confined to the hearing of the Crown's appeal against sentence. The convictions of Mr. King and Mr. Nunez have been reinstated by the CCJ. Those convictions are binding on this Court. Any challenge to the safety of the convictions would more appropriately have been ventilated through the established avenues of appeal. It is not open to this Court, in the context of an appeal against sentence, to conduct an inquiry into the factual basis of the conviction. The affidavit of Mr. Nunez is therefore considered only insofar as it may bear upon the exercise of the Court's sentencing discretion.
- [31] Having set out the relevant background, I now turn to consider the issues in the present appeal.

Issue 1: Whether the sentence imposed by the trial judge was unduly lenient.

Applicant's Submissions

- [32] Before this Court, the learned DPP, Ms. Cheryl-Lynn Vidal SC ("Ms. Vidal SC") was adamant that an appropriate sentence for manslaughter should be imposed. The gravamen of Ms. Vidal SC's submissions is that the sentence imposed by the trial judge was unduly lenient, in that it fell outside the range of sentences that could reasonably have been imposed for the offence of manslaughter.
- [33] Ms. Vidal SC contended that the trial judge erred in principle in three fundamental respects. First, the trial judge, Ms. Vidal SC submitted, sentenced on an incorrect basis. Mr. King and

¹³ In that affidavit, Mr. Nunez deposed that on 30 May 2026, he was informed by his counsel that an email had been received from the Executive Director of the National Forensic Science Services ("NFSS"). According to Mr. Nunez, the email indicated that a recent review of the autopsy documentation and photographs had raised technical questions as to whether the original findings supported the stated cause of death of Mr. Sotz. He expressed the belief that, as the cause of death was a central issue at trial, any uncertainty in that regard raises the possibility of a miscarriage of justice. Mr. Nunez therefore urged the Court to take into account this development, even at this stage of the proceedings.

Mr. Nunez were indicted and convicted of manslaughter contrary to **Section 116(1) read together with Section 108(1)(b) of the Criminal Code**, that is, manslaughter by unlawful harm, which carries a maximum sentence of life imprisonment. However, the trial judge treated the case as if it were one of manslaughter by negligence or careless conduct, thereby significantly reducing the perceived culpability of Mr. King and Mr. Nunez.

[34] Second, the trial judge placed reliance on inapplicable authorities, in particular **Sherwood Wade** and **The Queen v Mervin Vernon**, the latter of which is referred to in the **Sherwood Wade** judgment; although prosecuting counsel in the court below had pointed out that the jury's verdict was not one of manslaughter by negligence. Ms. Vidal SC contended that the cases concerned materially different offences, that is, manslaughter by negligence and causing death by careless conduct, and therefore attracted significantly lower sentencing ranges. Nevertheless, the trial judge went on to rely on the authorities in respect of manslaughter by negligence.¹⁴ Ms. Vidal SC averred that reliance on such authorities led the trial judge to adopt an inappropriately low benchmark.

[35] Third, Ms. Vidal SC asserted that the trial judge failed to give sufficient weight to the aggravating features of the case. These include that: Mr. Sotz was an 18-year-old young man; he died while in police custody, where he was owed a heightened duty of care; Mr. King and Mr. Nunez were serving police officers acting in the execution of their duties; and the offence involved the infliction of violence during interrogation.

[36] Ms. Vidal SC also contended that the sentence imposed is wholly inconsistent with established sentencing ranges for manslaughter involving violence and head injuries. She relied on authorities from this Court including **DPP v Clifford Hyde**,¹⁵ **Kirk Gordon v The Queen**, **Shane Juarez v The Queen**,¹⁶ **John Williams v The Queen**,¹⁷ **The Queen v Cardenas and Pott** and **The Queen v Cardenas**, to demonstrate that sentences in such cases typically range from ten (10) to fifteen (15) years' imprisonment, depending on the

¹⁴ See Record of Appeal, Volume II, pages 567 and 573 of the Record.

¹⁵ Criminal Appeal No 2 of 2006.

¹⁶ Criminal Appeal No 5 of 2010.

¹⁷ Criminal Appeal No 11 of 2008.

circumstances. Ms. Vidal SC submitted that even without formal sentencing guidelines at the time, the trial judge ought to have been guided by these precedents. The sentence of nine (9) months therefore represents an unjustifiable departure from accepted sentencing norms.

- [37] Accordingly, Ms. Vidal SC submitted that the sentence was unduly lenient, thereby engaging the jurisdiction of this Court to intervene and substitute an appropriate sentence.

Respondent's Submissions

- [38] Learned counsel Mr. Arthur Saldivar ("Mr. Saldivar") and learned counsel Mr. John Nembhard ("Mr. Nembhard") for Mr. King and Mr. Nunez, respectively, do not materially oppose the Crown's contention that the sentence imposed by the trial judge was lenient. Indeed, both counsel expressly concede that the sentence was unduly lenient and that the trial judge erred in principle, particularly in his reliance on authorities relating to lesser forms of manslaughter. Counsel therefore do not contest that this Court has jurisdiction to intervene.

- [39] However, both counsel contended that, notwithstanding the acknowledged error of the trial judge below, this Court should exercise its discretion to decline to impose a custodial sentence at this stage, having regard to the exceptional circumstances of the case, in particular the delay in the proceedings. They asked that the court consider a non-custodial sentence in accordance with the provisions of the **Penal System Reform (Alternative Sentences) Act**.¹⁸

Analysis and Discussion

¹⁸ Chapter 102:01 of the Substantive Laws of Belize, Revised Edition 2020.

[40] It is apposite that I now address whether the sentence of nine (9) months' imprisonment falls outside the range of sentences which a judge, properly directing himself to all relevant principles and factors, could reasonably have imposed for the offence of manslaughter contrary to **section 116(1) read together with section 108(1)(b) of the Criminal Code**.

[41] It is necessary, at the outset, to outline the relevant statutory provisions which govern the offence of manslaughter and inform the applicable sentencing range.

[42] **Section 116(1) of the Criminal Code** provides:

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

[43] The penalty for manslaughter is prescribed by **Section 108(1)(b)** which states:

“108.-(1) Every person who commits manslaughter–
...
(b) by any other cause shall be liable to imprisonment for life.”

[44] The concept of ‘unlawful harm,’ central to the offence of manslaughter, is in turn defined in **Section 97 of the Criminal Code** as follows:

“Harm is unlawful which is intentionally or negligently caused without any of the justifications mentioned in Title VI.”

[45] Harm itself is defined in **Section 96 of the Criminal Code** as:

“...any bodily hurt, disease or disorder, whether permanent or temporary;”

[46] Against this statutory framework, I turn to resolve whether the sentence of nine (9) months was unduly lenient. In resolving this, the Court has had regard to the following itemised considerations:

- (i) whether the trial judge erred in principle, including by sentencing on an incorrect factual or legal basis;

- (ii) whether the trial judge improperly relied on inapplicable authorities;
- (iii) whether the trial judge failed to adequately consider the aggravating and mitigating circumstances of the offence and the offenders; and
- (iv) whether the sentence imposed is consistent with established sentencing ranges for similar offences.

[47] I acknowledge that **section 236 of the Senior Courts Act** confers on the DPP the right to appeal against a sentence on the ground that it is unduly lenient:

“236.— (1) Without prejudice to any right of appeal granted to the prosecution by any other provision of this Act, the Indictable Procedure Act or any other enactment, an appeal shall lie to the Court at the instance of the Director of Public Prosecutions in the following cases-

...

(c) against the sentence passed on conviction on a trial on indictment

(2) An appeal under sub-section (1) may be made on the following grounds-

...

(c) with the leave of the Court, against the sentence passed on conviction on the ground that it is unduly lenient or unduly harsh, unless the sentence is one fixed by law.”

[48] Similarly, **section 236(4) of the Senior Courts Act** sets out the power of the Court to review and interfere with an unduly lenient sentence:

“On an appeal against sentence, the Court may, if it thinks that the sentence passed by the trial court was unduly lenient, pass such other sentence in substitution therefore as it thinks ought to have been passed.”

[49] The authority on what amounts to an “unduly lenient” sentence is the English Court of Appeal case of **Attorney-General's Reference (No 4 of 1989)**.¹⁹ There, Lord Lane CJ stated that:

“A sentence is unduly lenient, we would hold, where it falls outside the range of sentences which the judge, applying his mind to all the relevant factors, could reasonably consider appropriate.”

¹⁹ (1990) 90 Cr App R(S) 366 at 371.

[50] In the decision of the English Court of Appeal in the case of **Regina v Akeel Aurangzab**,²⁰ Lord Justice Singh treated this approach as being well-established and referred to the meaning of “unduly lenient” as previously stated by Lord Lane CJ. His Lordship said, at paragraph 16:

“The approach to be taken by this Court on an application such as this under section 36 of the 1988 Act is well established. It was set out in the judgment of this Court in Attorney-General's Reference (No 4 of 1989) (1990) 90 Cr App R(S) 366 at 371, by Lord Lane CJ. He said:

“A sentence is unduly lenient... where it falls outside the range of sentences which the judge, applying his mind to all the relevant factors, could reasonably consider appropriate.”

[51] The foregoing principle posits that a sentence is unduly lenient where it falls outside the range of sentences which a judge, properly directing their mind to all relevant factors, could reasonably have imposed. It is not enough that this Court might have imposed a different sentence; rather, the sentence must be shown to represent a clear departure from accepted sentencing standards.

Whether the Trial Judge Erred in Principle

[52] By way of emphasis, Mr. King and Mr. Nunez were indicted and convicted of manslaughter. **Section 108(1)(b) of the Criminal Code** provides that manslaughter committed “*by any other cause*” than negligence carries a maximum penalty of life imprisonment. The conviction necessarily reflected the jury’s acceptance that Mr. King and Mr. Nunez caused the death of Mr. Sotz by unlawful harm.

[53] It is manifest that, notwithstanding the trial judge’s express acknowledgement that he was bound by the jury’s verdict, he proceeded under the misapprehension that there remained uncertainty as to the category of the offence which Mr. King and Mr. Nunez were convicted

²⁰ [2021] EWCA Crim 1132.

viz., whether the offence amounted to voluntary or involuntary manslaughter. The trial judge further reasoned that the absence of identifiable external injuries, the uncertainty as to the precise mechanism of injury, and the lack of evidence of a weapon suggested that the case might properly be characterised as one of recklessness or conduct akin to negligence.²¹

[54] The operative effect of the trial judge's approach was to downgrade the level of culpability inherent in the jury's verdict. That course proved erroneous and fell outside of the strictures of the trial judge's sentencing remit. It remains settled law that a trial judge is not entitled, in such circumstances, to go behind the verdict of the jury, nor are they entitled to speculate upon a lesser factual basis that is inconsistent with the verdict returned in arriving at an appropriate sentence. The permissible parameters within which the trial judge was required to operate had to be siloed in the factual foundation of the conviction. The jury made a clear finding that Mr. King and Mr. Nunez were culpable for the unlawful killing of Mr. Sotz, not in circumstances amounting to negligence, but under **section 108 (1)(b) of the Criminal Code**, that finding had to be taken as the factual foundation of the sentence and there was no basis for departure.

[55] By treating the case as potentially falling within a lower category of manslaughter, the trial judge departed from the proper sentencing principles and thereby erred in principle.

Reliance on Inapplicable Authorities

[56] The above error was compounded by the trial judge's reliance on authorities that were plainly inapposite to determining a sentencing range. The trial judge placed much reliance on the decisions of **Sherwood Wade** and **Mervin Vernon**, despite the Crown's insistence that those cases were inapplicable in arriving at the sentencing resolution.

[57] The similarity between those cases and the case before the trial judge, begins and ends with the fact that **Sherwood Wade** and **Mervin Vernon**, both involved police officers whose

²¹ See Record of Appeal, Volume II, page 574.

actions resulted in the death of another person. An attentive reading of those authorities makes the distinction with this appeal manifest. Both cases concerned categories of offences dissimilar to the offence for which Mr. King and Mr. Nunez were convicted.

[58] In **Sherwood Wade**, the police officer was convicted of manslaughter by negligence arising out of shooting of a civilian, to which the DPP successfully sought leave to appeal the imposition of a \$4,000.00 sentencing fine by the trial judge. While in **Mervin Vernon**, the police officer was convicted of causing death by careless conduct when he was found to have discharged his firearm which resulted in the death of a civilian. [Emphasis mine]

[59] Those offences to which the police officers were convicted viz., manslaughter by negligence and causing death by careless conduct, are offences which carry with them, a significantly lower maximum penalty and reflect a markedly lower degree of culpability than the offence of manslaughter through the infliction of unlawful harm for which Mr. King and Mr. Nunez were convicted. By adopting **Sherwood Wade** and **Marvin Vernon** as guiding precedents, the trial judge identified and applied an inappropriate sentencing range which accorded to a fundamentally different and lesser offence. This resulted in the selection of a sentencing starting point that was wholly inconsistent with the offence for which Mr. King and Mr. Nunez were convicted.

[60] In contrast, the authorities relied on by the Crown before the trial judge, such as **Kirk Gordon**, **Shane Juarez**, and **John Williams** demonstrate that manslaughter involving the infliction of head injuries typically attracts sentences in the region of ten (10) to fifteen (15) years' imprisonment, even in the presence of weighty mitigating circumstances. The failure of the trial judge to engage with or apply these authorities represents a further error in principle.

Failure to Properly Weigh Aggravating Features

[61] The egregious nature of the error is made worse by the fact that there were several significant aggravating features that were not given proper weight by the trial judge. Mr. Sotz

was only eighteen (18) years old, a young person with his life ahead of him. His vulnerability is a relevant consideration in assessing the seriousness of the offence. Importantly, Mr. Sotz died while in police custody. Mr. King and Mr. Nunez were serving police officers acting in the course of their duties. The infliction of unlawful harm in such circumstances constitutes a breach of public trust.

- [62] The evidence accepted by the jury, including the testimony of Mr. Guerra that Mr. Sotz was heard pleading “*please stop, please stop*”, points to the infliction of force in circumstances that involved not only physical harm but also significant distress. While the trial judge acknowledged the fact that the death occurred in police custody, there is no indication that he afforded that factor the weight it demanded in his assessment of sentence.

Inconsistency with Accepted Sentencing Ranges

- [63] Perhaps the clearest indication that the sentence imposed was unduly lenient lies in its inconsistency with established sentencing ranges. In Belize, even allowing for variations in factual circumstances, sentences for manslaughter involving violence and fatal head injuries have consistently fallen within a range measured in years, not months. A sentence of nine (9) months’ imprisonment is therefore not merely at the lower end of the scale; it is wholly outside the permissible range. The disparity between the sentence imposed and the accepted range is so marked it proves incapable of rational justification. It reflects, in my judgment, a plainly erroneous approach to sentencing.
- [64] In these circumstances, the ineluctable conclusion is that the sentence of nine (9) months’ imprisonment was unduly lenient. This amounts to an error of principle and an improper exercise of the Court’s discretion in sentencing.

Issue 2: Whether this Court should exercise its discretion to interfere and substitute a different sentence.

[65] The exercise of this Court's discretion to interfere with a sentence, and the principles that should guide the Court when doing so have been considered and rehearsed both by the CCJ and by this Court. As the Honourable Mr. Justice Saunders, PCCJ (as he then was), stated in the CCJ's majority judgment in **Linton Pompey v The Director of Public Prosecutions**:²²

"[2] Appellate courts reviewing sentences must steer a steady course between two extremes. On the one hand, courts of appeal must permit trial judges adequate flexibility to individualise their sentences. The trial judge is in the best position to fit the sentence to the criminal as well as to the crime and its impact on the victim. But a reviewing court must step in to correct discrepancies, reverse excesses or aberrations, secure consistency and promote observance of the rule of law."

[66] On the Crown's application for leave to appeal against sentence in **The King v Zita Shol**,²³ Honourable Mr. Justice of Appeal Bulkan (as he then was), writing on behalf of the Court of Appeal said, at paragraph 23:

"[23] Against this background, the first question to be resolved is whether this court can interfere with the sentence imposed, and if so, how should such a discretion be exercised. There is little difficulty in answering this, as s. 30(3) of the Court of Appeal Act²⁴ explicitly empowers this court, if it thinks it fit on an appeal against sentence, to quash the sentence passed at trial and substitute in its place another sentence, whether more or less severe. Case law has helpfully expanded on the nature of this discretion. The starting point acknowledges that trial judges are best placed to sentence offenders, having presided over the trial leading to conviction and observed all parties in the course thereof. That said, appellate courts are obliged to step in where necessary, "to correct discrepancies, reverse excesses or aberrations, secure consistency and promote observance of the rule of law." There is longstanding authority for this principle, which has been repeatedly endorsed, including most recently by the CCJ in *Ramcharran v the DPP* [2022] CCJ 4 (AJ) where they elaborated upon the role of

²² [2020] CCJ 7 (AJ) GY at para. 2.

²³ Criminal Application No 2 of 2018. See also, *Tyron Reid v The King* Criminal Appeal No 3 of 2022., at paragraphs 4 to 9.

²⁴ Section 236(4) of the Senior Courts Act is a reproduction of Section 30(3) of the now repealed Court of Appeal Act.

appellate courts as including the following: (i) to ensure that principles of sentencing are properly applied; (ii) to ensure that sentences are not demonstrably unfit or unjust; (iii) to provide clarity and guidance to lower courts; and (iv) to develop the law, including in directions that appropriately respond to evolving notions of justice and changing realities. These guidelines have proven to be immensely helpful to this court in the instant appeal.”

- [67] The foregoing decisions, and others with similar effect, establish that the power of an appellate court on an appeal against sentence is well established. Where a sentence is found to be unduly lenient, this Court is empowered to quash the sentence and substitute such sentence as is warranted in law by the verdict.
- [68] This discretion must, however, be exercised with restraint. It is recognised that the trial judge is ordinarily best placed to sentence, having presided over the trial and observed the witnesses. Nevertheless, where there has been a clear error in principle, or where the sentence falls outside the permissible range, the appellate court is not only entitled but obliged to intervene in order to correct the error.
- [69] In the present case, the errors identified are neither minor nor peripheral. They go to the root of the sentencing exercise.
- [70] Given the egregious errors of principle, I would set aside the sentence and consequently conduct the sentencing exercise afresh. I have no doubt that this Court must intervene.
- [71] The consequence of that intervention is that the sentence imposed below must be set aside and the Court must determine afresh the sentence that ought to have been imposed, subject to any legitimate moderation required by other factors, including delay.

Issue 3: What impact, if any,

- a. the pre-trial delay in the proceedings below should have on the sentence to be imposed.**

b. the post-conviction delay in the proceedings should have on the sentence to be imposed.

Applicant's Submissions

- [72] Ms. Vidal SC conceded that the present view of the law on pre-trial delay of four (4) years was unacceptable. She pellucidly pointed out that delays of that nature no longer obtain in Belize given the extensive criminal justice reforms over the past two (2) years. Prior to this, Ms. Vidal SC opined, a pre-trial delay of four (4) years was not considered unreasonable.
- [73] Ms. Vidal SC submitted that Mr. King and Mr. Nunez's reliance on delay as a basis to avoid re-incarceration is without merit. Ms. Vidal SC contended that the Crown has not breached Mr. King and Mr. Nunez's constitutional rights to a hearing within a reasonable time or to the protection of the law, and that the delay in the resolution of this matter is largely attributable to Mr. King and Mr. Nunez themselves.
- [74] Ms. Vidal SC argued that, as established by the jurisprudence of the CCJ and this Court, delay in criminal proceedings does not automatically constitute a breach of constitutional rights. Rather, the Court must examine all the surrounding circumstances, including the length of the delay, the reasons for it, and the conduct of the parties. Ms. Vidal SC further submitted that there is no automatic entitlement to a stay of proceedings or to the avoidance of punishment, even where delay is established.
- [75] Ms. Vidal SC relied on authorities such as **Frank Errol Gibson v The Attorney General**,²⁵ **Vishnu Bridgelall v Hardatt Hariprashad**,²⁶ and **Zita Shol**, to emphasise that the appropriate remedy for delay depends on the circumstances of each case. She highlighted that the grant of a permanent stay or the avoidance of a custodial sentence is an exceptional measure, reserved for cases of extreme delay and clear prejudice. The ordinary remedy,

²⁵ [2017] CCJ 8 (AJ).

²⁶ [2010] CCJ 3 (AJ).

particularly where delay occurs post-conviction, is a reduction in sentence rather than the elimination of custody.

- [76] Ms. Vidal SC further submitted that the chronology of proceedings, as set out in the affidavit of Ms. Nembhard-Santana, demonstrates that the Crown acted with diligence throughout. She argued that the most significant post-conviction delays in the appeals were caused by Mr. King and Mr. Nunez, including repeated requests for adjournments to secure legal representation and multiple failures to comply with directions for filing submissions. Ms. Vidal SC therefore contended that Mr. King and Mr. Nunez cannot rely on post-conviction delay which they substantially occasioned as a basis for relief. In those circumstances, the assertion that their constitutional rights have been breached is said to be untenable.
- [77] Ms. Vidal SC submitted that the seriousness of the offence requires the imposition of a custodial sentence. There is, Ms. Vidal SC argued, no impediment arising from delay to this Court correcting the manifestly lenient sentence imposed below. Alternatively, if the Court considers that delay warrants some relief, the appropriate course would be a modest reduction in sentence, as in **Zita Shol**, rather than the imposition of a non-custodial or suspended sentence. When questioned, Ms. Vidal SC stated that a sentence of fifteen (15) years' imprisonment was appropriate.

Respondent's Submissions

- [78] Mr. Saldivar and Mr. Nembhard's principal submission is that, notwithstanding the trial judge's error in sentencing, it would be unjust to now impose a custodial sentence in light of the exceptional delay in the proceedings.
- [79] Mr. Saldivar and Mr. Nembhard submitted that there has been inordinate delay spanning approximately twelve (12) years from the date of the offence to the present hearing, including several years post-conviction during which the matter remained unresolved. They argue that this delay has caused significant prejudice, including prolonged uncertainty and

the ongoing prospect of re-incarceration after having already served a period of imprisonment.

[80] Mr. Saldivar and Mr. Nembhard relied on authorities such as **Solomon Marin v The Queen**,²⁷ **Gibson**, and **Bridgelall**, to contend that delay of this magnitude may constitute a breach of Mr. King and Mr. Nunez's constitutional rights to a hearing within a reasonable time and to the protection of the law. Mr. Saldivar and Mr. Nembhard emphasised that the Court must assess the entire timeline of the proceedings, from charge through appeal, when determining whether such a breach has occurred.

[81] While Mr. Saldivar and Mr. Nembhard acknowledged that some post-conviction delay may be attributed to Mr. King and Mr. Nunez, including difficulties in securing legal representation, they submitted that much of the delay arose from circumstances beyond their control, including systemic issues and the COVID-19 pandemic. They further argue that the Crown bears ultimate responsibility for ensuring that criminal proceedings are conducted with due expedition.

[82] Mr. Saldivar and Mr. Nembhard also submitted that the post-conviction delay must be viewed in the context of Mr. King and Mr. Nunez's changed personal circumstances. They assert that this Court should pay particular regard to both Mr. King and Mr. Nunez's previous good character, the absence of any further offending, their reintegration into society, and the fact that they have already served time in custody. Mr. Saldivar and Mr. Nembhard contend that the punitive purpose of sentencing has already been substantially met.

[83] In those circumstances, Mr. Saldivar and Mr. Nembhard argued that the Court should exercise its discretion to fashion a remedy that avoids re-incarceration, as to do otherwise would be unfair and disproportionate. They submit that re-imposing a custodial sentence after such delay would not serve the interests of justice and would operate as a retrospective punishment.

²⁷ [2021] CCJ 6(AJ).

[84] Mr. Saldivar and Mr. Nembhard urged the Court to consider non-custodial or alternative sentencing options, including community service orders, fines, or combination orders under the **Penal System Reform (Alternative Sentences) Act**. Mr. Saldivar and Mr. Nembhard submitted that such orders would appropriately balance the seriousness of the offence with the delay and their personal circumstances, while also promoting their continued rehabilitation. When pressed by the Court, Mr. Saldivar indicated that, if the Court does not agree that a non-custodial sentence is appropriate, the appropriate custodial sentence would be eighteen (18) years with a reduction of three (3) years. For his part, Mr. Nembhard indicated that fifteen (15) years with considerable deduction for delay would be an appropriate sentence.

Analysis and Discussion

[85] It is clear that this case brings into sharp focus what is the appropriate sentence in all of the circumstances. In answering that question, I must interrogate the significance of the prolonged delay in the proceedings, as disclosed in the chronology before the Court, including:

- (i) whether the pre-trial and post-conviction delay amounts to a breach of Mr. King and Mr. Nunez's constitutional rights, and if so, what is the appropriate remedy;
- (ii) the extent to which the pre-trial and post-conviction delay is attributable to Mr. King and Mr. Nunez, the Crown, or systemic factors; and
- (iii) what, if any, mitigation of sentence is warranted by reason of that delay.

[86] In particular, the Court must determine whether the pre-trial and post-conviction delay justify:

- (i) a reduction in the length of any custodial sentence; or
- (ii) in the alternative, the imposition of a non-custodial or alternative sentence.

[87] **Section 6(2) of the Constitution**²⁸ of Belize provides as follows:

²⁸ Chapter 4 of the Substantive Laws of Belize, Revised Edition 2020.

“6(2) If any person is charged with a criminal offence, then, unless the charge is withdrawn, the case shall be afforded a fair hearing within a reasonable time by an independent and impartial court established by law.”

Pre-trial Delay

[88] The right to a fair hearing within a reasonable time was considered by our apex court, in **Frank Errol Gibson v The Attorney General**. In interpreting the right under Section 18(1) of the Constitution of Barbados, Saunders JCCJ and Wit JCCJ, stated:

“[48] The public have a profound interest in criminal trials being heard within a reasonable time. Delay creates and increases the backlog of cases clogging and tarnishing the image of the criminal justice system....

[49] Even more telling than the societal interests at stake are the consequences to an accused of a breach of the reasonable time guarantee. This is evident in the case of a defendant who is not guilty. That person is deprived of an early opportunity to have his name cleared and is confronted with the stigma, loss of privacy, anxiety and stress that accompany exposure to criminal proceedings. But a defendant facing conviction and punishment may also suffer, albeit to a lesser extent, as he is obliged to undergo the additional trauma of protracted delay with all the implications it may have for his health and family life...By deliberately elevating to the status of a constitutional imperative the right to a trial within a reasonable time, a right which already existed at common law, the framers of the Constitution ascribed a significance to this right that too often is under appreciated, if not misunderstood. ...

[59]...The question therefore is what should the appropriate remedy be when there is a breach of the reasonable time guarantee?

[60] In answering this question a court must weigh the competing interests of the public and those of the accused and apply principles of proportionality. One starts with the premise that the executive branch of government has a constitutional responsibility to allocate sufficient resources to ensure that the reasonable time guarantee has real and not just symbolic meaning. A governmental failure to allocate adequate resources, or for that matter inefficiencies within

the justice sector, could not excuse clear breaches of the guarantee ...”

[89] At paragraph 58 of **Gibson**, the Court said:

“[58] A finding that there has indeed been unreasonable delay in bringing the accused to trial must be made on a case by case basis. It cannot be reached by applying a mathematical formula although the mere lapse of an inordinate time will raise a presumption, rebuttable by the State, that there has been undue delay. **Before making such a finding the court must consider, in addition to the length of the delay, such factors as the complexity of the case, the reasons for the delay and specifically the conduct of both the accused and of the State. An accused who is the cause and not the victim of delay will understandably have some difficulty in establishing that his trial is not being heard within a reasonable time. One must not lose sight of the fact, however, that it is the responsibility of the State to bring an accused person to trial and to ensure that the justice system is not manipulated by the accused person for his own ends.** Even where an accused person causes or contributes to the delay, a time could eventually be reached where a court may be obliged to conclude that notwithstanding the conduct of the accused the overall delay has been too great to resist a finding that there has been a breach of the guarantee.”
[Emphasis added]

[90] Further, where a breach is established, the remedy is not predetermined. The court must fashion a response that is proportionate and just. It may consider a reduction of sentence in light of the delay or may even award damages for vindication of the right to a fair hearing within a reasonable time or, in appropriate circumstances, the Court can grant a stay of the proceedings.

[91] In paragraph 61 of **Gibson** the Court went on to say that:

“When devising an appropriate remedy a court must consider all the circumstances of the particular case, especially the stage of the proceedings.”

[92] In **Gibson**, the CCJ also indicated the following with respect to fashioning a remedy for a breach of the right to trial within a reasonable time:

“[63]...As previously indicated at para [42] above, s 24(1) of the Constitution affords the court flexibility, power and a wide discretion in fashioning a remedy that is just and effective taking into account the public interest and the rights and freedoms of others. No conceivable remedy, including a permanent stay or dismissal, ought to be removed from the range of measures at the disposal of the court if the relief in question will prove to be appropriate...”

[93] In **R v Henry**²⁹ the CCJ, in a judgment delivered by Anderson JCCJ, also affirmed that Belizean Courts in giving effect to the Constitution and remedying a breach of the right to trial in a reasonable time also have a wide breadth of options:

“[41]...Remedies for breach may be a declaration, an award of damages, stay of prosecution, quashing of conviction, or a combination of these or some other or others. Everything depends upon the circumstances...”
[Emphasis mine]

[94] In **Gibson** the Court accepted that a reduction in sentence is an appropriate remedy, given the facts of the underlying case.

[95] Turning to the appeal at bar, both Mr. King and Mr. Nunez point to the four (4) year period from the commission of the offence in June 2015 to their trial in 2019 as delay that rests entirely on the shoulders of the state. Mrs. Vidal SC acknowledged this delay but highlighted that, at the time of the trial, periods of four (4) years between charges and conviction, was the norm for trial in the High Court of Belize. Thankfully, this is no longer so.

[96] It is unfortunate that, in years prior, systemic issues plaguing the judiciary of Belize resulted in undue delay including, as it did in the instant case, a lapse of four (4) years between charges being laid and conviction. This type of undue delay was not acceptable then, and certainly cannot be accepted now, nor can it be excused on the basis that four (4) years was

²⁹ [2018] CCJ 21 (AJ).

the norm in Belize at the time. The responsibility for this delay lies largely at the doors of the criminal justice system in Belize.

[97] The State has an obligation to bring an accused person to trial within a reasonable time. That obligation is not diminished by institutional shortcomings or systemic difficulties. Delays caused by case backlogs, staff shortages and other administrative challenges remain attributable to the State. The State has the responsibility of organising its resources to ensure that the justice system is efficient and that there is timely administration of justice.

[98] As Jamadar JCCJ stated in the CCJ's decision in **Harewood v The State**:³⁰

“[92]...Accepting that the investigation and preparation of a case may take varying times depending on various factors, does not absolve the State from taking the initiative to ensure that criminal proceedings are dealt with expeditiously having regard to the constitutional right to a fair trial within a reasonable time, and to provide a reasonable explanation for circumstances contributing to any unwarranted or undue delay. It is the State's responsibility to ensure procedural efficacy.”

[99] In the circumstances of this case where the pre-trial delay was largely on the part of the State, such a delay amounts to a breach of the right to a fair trial within a reasonable time under **Section 6(2) of the Constitution**. If a custodial sentence is ultimately determined, it is appropriate for the Court to make an appropriate adjustment to the sentence as a remedy for the pre-trial delay.

[100] Of note, Belize has adopted the **Needham's Point Declaration on Criminal Justice Reform: Achieving a Modern Criminal Justice System** and has taken steps to reduce case backlogs and systemic delays in the hearing of criminal trials. Thankfully, cases are no longer taking as long as four years before trial. Cases are now being tried within one to two years of the date of charge. This reform has been achieved through co-operation from all justice-sector stakeholders including the prosecution and defence counsel. By addressing

³⁰ [2024] CCJ 19 (AJ) BB at para 92.

systemic inefficiencies, strengthening case management, promoting early case resolution, and improving coordination among justice-sector stakeholder, such judiciary-driven reform improves public confidence in the justice system and ensures that the rights of accused persons, victims, and the wider community are respected.

- [101] I am of the considered opinion that in relation to the pre-trial delay that was caused by the State both Mr. King and Mr. Nunez are entitled to a reduction of their respective sentences by four (4) years.

Post-Conviction Delay

- [102] The decision of the CCJ in **Bridgelall** is particularly useful as it dealt with delay at the appellate stage. Saunders JCCJ, as he then was, delivering the judgment of the Court, said in paragraph 384,

“We agree with the view that in considering whether there has been a breach of the reasonable time guarantee it is appropriate first to consider the overall period of time that has elapsed. If, on its face, the period appears to be overly lengthy, then it would be appropriate for the court to interrogate all the relevant facts and circumstances with a view to determining whether the State has provided a satisfactory explanation or justification for any lapse of time which appears to be excessive.”

- [103] Ultimately, the Court found that the delay was “inordinate, excessive and unreasonable” and that the State had breached Bridgelall’s constitutional right to a fair hearing within a reasonable time. There had been a delay of some ten (10) years between his arrest and his final appeal, including a six (6) year wait for the determination of the appeal before the Court of Appeal.

- [104] In **Solomon Marin v. The Queen**, a decision of the CCJ, Barrow JCCJ reviewed the relevant principles that apply to the right to a fair hearing within reasonable time and the remedy for its breach and stated at paragraph 112 as follows:

“112 It is clear, therefore, that it is not the normal course that a convicted person whose constitutional right to a fair hearing has been breached will have their sentence reduced or suspended. When that happens, it is done on a principled basis of vindicating the right that has been breached. It is done to uphold the rule of law; to mark the value of the constitutional right; to meaningfully affirm that the administration of the legal and judicial system is as much subject to the law as everyone else. It is done for the good of the community and the public interest.”

[105] In **Akim Monah v R**,³¹ the Court of Appeal of the Eastern Caribbean Supreme Court stated, in relation to delay in the hearing of an appeal due to lack of transcript, that a delay in excess of seven (7) years in the prosecution of an appeal occasioned by the State's failure to provide the transcript of proceedings was an infringement of the constitutional right to a fair hearing within a reasonable time. The court emphasised that the reasonable time guarantee necessarily includes the appellate process and that, in doing justice, the extent and nature of delay on the part of public officials ought always to be of concern to an appellate court. It further observed that, in some cases, the consequence of such delay may result in a reduction of sentence.

[106] In the judgment of this Court in **Zita Shol**, Honourable Justice of Appeal Bulkan, as he then was, writing on behalf of the Court, said at paragraphs 41 and 42:

“[41] Where a breach of this right is established, there is no automatic result and the remedy granted is invariably tailored to suit the circumstances, particularly the stage at which the delay occurs. Courts have made different orders depending on the circumstances, most particularly the stage at which the delay occurs, so that remedies have included an order for the trial to commence, or even or the defendant to be admitted to bail on a charge of murder, the court declining to stay further proceedings, or for a reduction in sentence where the delay comes about during the appellate process. Ultimately, what has been repeatedly stressed is that there is no automatic entitlement to a permanent stay of all further proceedings or far less the quashing of a conviction for a breach of this right, given the public interest in the punishment and prevention of crime. As such, a permanent stay is regarded as a wholly exceptional remedy. In cases where such an exceptional course has been ordered, it has been for periods of

³¹ [2022] ECSC J0223-1.

delay in excess of a decade, and even for such periods a permanent stay is not automatic. Thus, for example, in *Aubeeluck v the State*, despite a delay of more than 11 years, the Privy Council did not consider a custodial sentence off the table and remitted the matter to the Supreme Court to determine the sentence.

[42] In this case, the time it has taken to complete the trial or for the appeal to be heard cannot be described as inordinately delayed, and the total period of 7 years which has elapsed since the crime was committed is considerably less than what has occurred in other cases where a breach of this right has been found. Even if on its own this period may be seen as somewhat lengthy, it is certainly not inordinate given that the State has diligently prosecuted the matter at every stage and any delays have been due to factors wholly outside its control. As the Director submitted, a once-in-a-lifetime pandemic prevented any hearing for most of 2020, and when sittings of this court resumed it was the respondent herself who delayed by almost one year in filing her submissions. At earlier stages, the prosecution did not rush to trial purely because it sought to accommodate the efforts of the accused persons to secure counsel. Given these circumstances, there is no justification for finding a violation of the guarantee of a speedy trial under s. 6(2), and in fact it would be perverse to do so when the respondent herself contributed to part of that delay by her unexplained failure in filing documents in time. Accordingly, the respondent's submission that to sentence her at this stage would be a violation of s. 6(2)'s guarantee of trial within a reasonable time is rejected."

[107] The authorities make clear that in determining whether delay is legally significant, the Court must consider:

- (i) the length of the delay;
- (ii) the reasons for the delay;
- (iii) the conduct of the parties; and
- (iv) the stage of proceedings at which the delay occurred.

[108] From the foregoing, it is evident that, in the context of post-conviction delay, the ordinary remedy, where appropriate, is a reduction in sentence, rather than a complete bar to punishment.

[109] There has unquestionably been significant delay in this matter. From the date of conviction in July 2019 to the present determination, several years have elapsed. Such a period, viewed in isolation, is lengthy and calls for careful scrutiny. However, length alone is not determinative. It remains necessary to analyse how and why that delay occurred.

Causes of Post-Conviction Delay: The Chronology

[110] The chronology before this Court, primarily derived from the affidavit of Ms. Nembhard-Santana, is highly instructive. It reveals that, although some delays arose from systemic factors, including interruptions caused by the COVID-19 pandemic and the ordinary timelines of appellate litigation, the greater part of the delay in the appellate phase is attributable to Mr. King and Mr. Nunez. In particular:

- (1) At the earliest stages, Mr. King and Mr. Nunez sought time to secure legal representation;
- (2) Over an extended period, they repeatedly requested adjournments for that purpose;
- (3) Even after securing counsel, they failed on several occasions to comply with directions for the filing of submissions;
- (4) Multiple extensions of time were granted, often without compliance;
- (5) Further delay resulted from adjournments requested by Mr. King and Mr. Nunez or their counsel at scheduled hearings.

[111] The cumulative effect of these factors was to significantly prolong the proceedings. While the Court does not minimize the practical and financial difficulties that may affect an accused person's ability to retain counsel, it must be emphasised that delay substantially occasioned by a party, including their failure to meet deadlines set by the Court, cannot be relied upon by that same party as a basis for obtaining relief.

[112] I therefore agree with Mrs. Vidal SC that the chronology demonstrates that Mr. King and Mr. Nunez bear primary responsibility for the delay in the progression of this matter on appeal, that is, the post-conviction delay.

[113] It is, however, also necessary to acknowledge that some portion of the delay is attributable to external or systemic factors. One crucial external factor is the disruption of Court of Appeal sittings in March 2020 and June 2020 due to the COVID-19 pandemic. However, as the CCJ ruled in **Harewood v The State**, “uncontrollable external circumstances such as the COVID-19 pandemic negate any assessment of inappropriate or unreasonably avoidable delay.”³² Other systemic factors include the time taken for preparation of the record of appeal; and the period during which judgment was reserved and delivered by the appellate courts. Such delays are not unusual in complex appellate proceedings and do not, in themselves, establish a breach of constitutional rights particularly when considered within the context of the entire proceedings.

Impact of Post-Conviction Delay in this case

[114] The offence for which Mr. King and Mr. Nunez stand convicted is of the utmost seriousness. It involves the unlawful killing of a young man who was in police custody, at the hands of those charged with his protection. The public interest in ensuring that such conduct is met with appropriate punishment is compelling.

[115] The jurisprudence consistently emphasises that a permanent or effective stay of punishment, or the avoidance of a custodial sentence, is an exceptional relief granted at the instance of a Court, reserved for the most egregious cases warranting such intervention. This is not such a case.

[116] Importantly, Mr. King and Mr. Nunez cannot properly rely on delay that they have largely contributed to as a basis for avoiding punishment. To allow such an argument to succeed

³² [2024] CCJ 19 (AJ) BB at para. 95.

would risk undermining the administration of justice by permitting litigants to benefit from delay of their own making.

- [117] That is not to say that delay is irrelevant. The Court must still consider the overall passage of time and its effect on Mr. King and Mr. Nunez. It is accepted that Mr. King and Mr. Nunez have lived for several years under the uncertainty of these proceedings. They have already served a period of custody. Their personal circumstances may have also evolved during this time. These factors are appropriately reflected by way of moderation of the sentence, rather than its elimination. In my judgment, this approach achieves the necessary balance between the rights of Mr. King and Mr. Nunez and the public interest in the proper punishment of serious crime.

Alternative Sentence

- [118] Both Mr. Saldivar and Mr. Nembhard have asked this Court to consider imposing a non-custodial sentence under **The Penal System Reform (Alternative Sentences) Act**. That legislation has been repealed and replaced by the **Alternative Sentencing Act 2024** which provides for several alternatives to a custodial sentence under appropriate circumstances. Even assuming, without deciding, that the alternative sentencing options contained in the **Alternative Sentencing Act** are available in respect of the offence of manslaughter, **Section 74(2)(a)** of the Act, requires the Court to be satisfied that only a custodial sentence can be justified before imposing imprisonment. In the circumstances of the present case, that threshold is plainly met. Mr. King and Mr. Nunez stand convicted of the unlawful killing of an 18-year-old who died whilst in police custody. The offence involved a grave abuse of public trust by police officers acting in the purported execution of their duties and requires a sentence that adequately reflects the objectives of denunciation, deterrence and punishment. In all of the circumstances, and notwithstanding the mitigating factors identified on behalf of Mr. King and Mr. Nunez, I am satisfied that the seriousness of the offence is such that a custodial sentence is required.

Re-sentencing

- [119] At the time of sentencing by the trial judge, there were no uniform written sentencing guidelines in Belize. The Court is now happily guided by the promulgation of the first ever comprehensive **Sentencing Guidelines of the Senior Courts of Belize** (“Sentencing Guidelines”)³³ of 2025 in the exercise of its sentencing discretion. These Sentencing Guidelines include the **General Sentencing Guidelines of the Senior Courts of Belize** (“General Sentencing Guidelines”),³⁴ as well as the **Sentencing Guidelines of the Senior Courts of Belize for Homicide and Murder**³⁵ (“Sentencing Guidelines for Homicide and Murder”). These written guidelines enable the Court to utilise the sentencing guidelines in circumstances where the matter before the Court was committed prior to the promulgation of the sentencing guidelines
- [120] These written sentencing guidelines acknowledge and reflect the four (4) principles of sentencing. Namely, rehabilitation, prevention, deterrence and retribution. In the application of these principles while sentencing, the Court 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 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.
- [121] 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.

³³ Statutory Instrument No. 1 of 2025, gazetted on 8th January 2025.

³⁴ Practice Direction No. 4 of 2025.

³⁵ Practice Direction 12 of 2025.

[122] These principles are reflected in the CCJ decision **Lashley v Singh**³⁶ as well as the General Sentencing Guidelines,³⁷ which state:

“ 3.1. In every case, it is the duty of the sentencing judge to strive to arrive at a just sentence. A just sentence is one which promotes respect for the law and its processes by reflecting adequately – and proportionately – an appropriate mix of all the relevant factors. Such a sentence is expected to fit the crime as well as the offender.

3.2. In order to arrive at a just sentence, the court is expected to apply the generally accepted principles of sentencing against the background of the nature and seriousness of the offence, the circumstances surrounding its commission and the personal circumstances of the offender.

3.3. The classic and primary objectives of sentencing which require consideration in conducting the sentencing process are–

- (a) the retribution (otherwise referred to as “denunciation”);
- (b) deterrence (vis-à-vis both potential offenders and the particular offender then being sentenced);
- (c) prevention; and
- (d) rehabilitation.

3.4 The ‘first and foremost’ principle of sentencing is the public interest in punishing and preventing crime. The public interest provides an overarching framework in which the specific aims operate.

3.5. Ultimately, the sentencing process will require balancing both the public interest and the interests of the individual offender.”

[123] As the Sentencing Guidelines themselves note,³⁸ the CCJ has opined in **Burton v R; Nurse v R**³⁹ that the Sentencing Guidelines are not a straitjacket, but their ranges should not be departed from without sufficient justification. The Sentencing Guidelines do not seek to make

³⁶ [2014] CCJ 11 (AJ) GY.

³⁷ Practice Direction No. 4 of 2025.

³⁸ General Sentencing Guidelines of the Senior Courts of Belize at PD 1.4.: “Importantly, however, these Sentencing Guidelines are not intended to– (a) achieve exact uniformity in sentences; or (b) restrict the courts’ discretion to determine the appropriate sentence to be passed in individual cases.”

³⁹ (2014) 84 WIR 84 at para 13.

new law but reflect extant legislative and judicial guidance⁴⁰ on sentencing and recommends various ranges of sentence and sentencing procedures.

- [124] The offence of manslaughter, contrary to **Section 116(1) of the Criminal Code**, attracts a maximum sentence of life imprisonment as prescribed by **Section 108(1)(b)**. In accordance with the guidance contained in our General Sentencing Guidelines a maximum sentence ought properly to be reserved for cases that fall into the category of the “*worst of the worst*”. Where life imprisonment is set as the maximum punishment, it is the duty of the sentencing judge in each case to determine where in the extended range of sentencing possibilities to place the offender bearing in mind the general principles of sentencing, the individualized circumstances of the offender and any other relevant considerations.⁴¹
- [125] In this case, the Court is also guided by our Sentencing Guidelines for Homicide and Murder, in particular, under the rubric “Manslaughter Unlawful Act”.⁴²
- [126] The sentencing approach under our Sentencing Guidelines, reflects the CCJ guidance in **Teerath Persaud v R**⁴³ and **Calvin Ramcharan v DPP**.⁴⁴ This Court must begin by assessing the starting point for the offence firstly, by a consideration of the consequences of the harm flowing from the offence, and the culpability of the offender. An appropriate range is then identified. Thereafter, the aggravating and mitigating factors are considered, and an appropriate starting point is determined within that identified range. Factors relative to the offender are identified, which may result in an upward or downward adjustment to the starting point or in some cases no adjustment at all. Once that figure is determined the Court will then go on to consider the totality principle and the usual credits for guilty plea (both do not apply in this case), and deductions for any time spent in pre-trial custody. Finally, the Court considers what if any ancillary orders are applicable or necessary.

⁴⁰ PD4 at PD2.4: “These Sentencing Guidelines codify longstanding sentencing practices and legal principles applicable to sentencing which are evidenced in decided cases.”

⁴¹ Practice Direction no. 4 of 2025 – paras 3.11 and 3.12.

⁴² Ibid at ps 19-23.

⁴³ [2018] 93 WIR 132.

⁴⁴ [2022] CCJ 4 (AJ) GY.

Starting Point

- [127] In the extant appeal, in ascertaining the starting point for this offence, I am guided by the general principles outlined above and the Sentencing Guidelines for Homicide and Murder. I first consider the harm caused. The harm caused by this offence would be the death of Mr. Sotz.
- [128] I consider that the seriousness *i.e.* culpability of Mr. King and Mr. Nunez falls into Seriousness Level B – High having regard to the fact that the death was caused in the course of an unlawful act which carried a high risk of death or really serious harm, which was or ought to have been obvious to Mr. King and Mr. Nunez. For such a categorisation, the Guidelines suggests a starting point of fifteen (15) years, within the range fourteen (14) to eighteen (18) years. It is noteworthy that this range is not dissimilar from the range referred to in **Hyde and (other cases cited by the DPP)**. I see no need to depart from the suggested starting point indicated in the Guidelines.
- [129] Having established the appropriate range, the next step is to look at the aggravating features of the offence to see if there ought to be any upward adjustment of the notional starting point. I find the following to be aggravating features that warrant an upward adjustment of the starting point:
- (1) Prevalence of the offence;
 - (2) Mr. Sotz's youth and vulnerability;
 - (3) the fact that Mr. Sotz was in police custody, where he was entitled to protection;
 - (4) the breach of public trust inherent in the abuse of authority.
- [130] Considering the aggravating features of the offence highlighted above, I will adjust the starting point upward by three (3) years leaving a starting point of eighteen (18) years.
- [131] On the record there is no evidence which indicates that Mr. King or Mr. Nunez expressed any remorse. I note that the fact that the offence appears to have lacked premeditation is a

mitigating feature however this sole mitigating feature is significantly outweighed by the preponderance of aggravating features of this offence and accordingly I will not make a downward adjustment of the starting point for this mitigating feature.

Factors affecting the offenders

[132] Sentences must be individualised to the offence and the particular offender. To this end, the second recommended step in sentencing dictates that the Court looks at the mitigating and aggravating factors affecting the offender.

[133] Here, the mitigating and aggravating factors affecting the offender are not dissimilar for Mr. King and Mr. Nunez. I have identified and considered that Mr. King and Mr. Nunez abused their position of trust as police officers acting in the course of duty as an aggravating factor in this case.

[134] I have also identified and considered the following mitigating factors of Mr. King and Mr. Nunez as relevant under this rubric.

(i) Their good character prior to the incident and after, which the Court gleaned from the evidence submitted on their behalf at the mitigation hearing. Both Mr. King and Mr. Nunez appear to be hardworking, family oriented and disciplined. This offence appears to be out of the ordinary for them.

(ii) No previous convictions.

[135] The Court considers that a downward adjustment of three (3) years is appropriate after taking into consideration the cumulative effect of the mitigating factors relative to Mr. King and Mr. Nunez. The result is an adjusted figure of fifteen (15) years.

Delay

I have addressed the issue of delay and found that a significant portion of post-conviction delay is attributable to Mr. King and Mr. Nunez.

[136] In keeping with principle, the pre-trial delay justifies a further reduction, but not the elimination of custody. I therefore allow a further reduction of four (4) years to reflect the vindicate the pre-trial delay that was caused by the State.

[137] This brings the sentence to eleven (11) years' imprisonment.

Time Spent in Custody

[138] Prior to their convictions, Mr. King and Mr. Nunez spent time in custody on remand. The total time spent on remand is calculated as ten (10) months.

[139] In accordance with the Sentencing Guidelines and the principle affirmed by the CCJ in **Romeo da Costa Hall v The Queen**,⁴⁵ full credit must be given for the time spent in pre-trial custody. Mr. King and Mr. Nunez are thus entitled to full credit for the time they spent on remand, and this shall be discounted in the computation of their sentences.

[140] This leaves a net figure of ten (10) years and two (2) months.

Conclusion

[141] In the exercise of the Court's discretion afresh, in accordance with **Section 236(4) of the Senior Courts Act**, I would impose on Mr. King and Mr. Nunez respectively, a sentence of ten (10) years and two (2) months for the manslaughter of Hilbert Solz by unlawful harm.

⁴⁵ [2011] CCJ 6 (AJ).

[142] Accordingly, I allow the Crown's appeal against sentence. The sentence of nine (9) months' imprisonment imposed on Mr. King and Mr. Nunez is quashed and, in its place, they are sentenced to ten (10) years and two (2) months imprisonment.

[143] Further, I order that Mr. King and Mr. Nunez present themselves to the Police at the Queen Street Police Station in Belize City by 10:00 am on 29 July 2026 for transportation to the Belize Central Prison in Hattieville. The sentence will commence running from the date they present themselves or is otherwise taken into custody by the Police.

[144] I gratefully acknowledge the assistance of learned counsel.

Louise Esther Blenman
Chief Justice

[145] I concur.

Minnet Hafiz Bertram
President

[146] I concur.

Michelle Arana
Justice of Appeal