

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

CRIMINAL APPEAL NO. 25 OF 2022

BETWEEN:

JOSE DANILE GOMEZ

APPELLANT

AND

THE KING

RESPONDENT

Heard together with

CRIMINAL APPEAL NO. 26 OF 2022

BRANDON HUGHES

APPELLANT

AND

THE KING

RESPONDENT

Before:

The Honourable Mme. Woodstock Riley KC
The Honourable Peter I Foster KC
The Honourable Mme. Michelle Arana

Justice of Appeal
Justice of Appeal
Justice of Appeal

Appearances:

David McKoy for the First Appellant Jose Gomez
Orson Elrington for the Second Appellant Brandon Hughes
Sheiniza Smith Deputy Director of Public Prosecutions and Alford Humes Crown Counsel for the Respondent

2025: October 15
2026: August 13

JUDGMENT

Introduction

[1] **Arana, J.A.:** This is an Appeal against Conviction and Sentence. On December 9th, 2022, the Appellants Jose Gomez and Brandon Hughes were found Guilty of Murder by Lamb J. sitting alone without a jury for the shooting death of Oscar Rosado Sr. in his store. The trial judge found that Brandon Hughes was the shooter and Jose Gomez was his accomplice. On January 13th, 2023, Brandon Hughes was sentenced to life imprisonment with eligibility for parole after 30 years, from which 4 years, 7 months, and 18 days of remand time were to be deducted. He was therefore ordered to spend 25 years, 4 months, and 12 days from the date of pronouncement of the sentence before he could seek parole. The Appellant, Jose Gomez, was sentenced to 12 years imprisonment with eligibility for parole after 8 years. Since he had already spent 3 years and 5 months on remand awaiting trial, he was required to serve 4 years and 7 months before he could become eligible for parole. Gomez received his sentence on January 13th, 2023. He should be eligible for parole next year. At the time of the commission of the offence, Jose Gomez was 19 years old (DOB: 16th February 1999) while Brandon Hughes was 18 years old (DOB: 25th February 2000).

Facts of the case

[2] In the court below, the prosecution called witnesses to prove that both Appellants, along with a third unidentified male, entered the business establishment of Mr. Rosado on the 23rd April, 2018, shortly after the lunch hour, with the intention to rob. Brandon Hughes was in possession of a

firearm and used same to inflict two gunshot injuries to the head of the deceased in the presence of his wife. While Jose Gomez did not do any overt act during the course of the commission of these offences, he remained on the scene. Jose Gomez gave a statement under caution in which he admitted being on the scene of the crime.

- [3] The trial judge failed to provide written reasons for her decision to convict the Appellants who have now brought this appeal claiming that the judgment should be set aside on the ground that the Judge's failure to provide written reasons for her decision is a substantial miscarriage of justice. The Respondent Crown resists this appeal.

Grounds of Appeal

- [4] Both appellants say that the judgment should be set aside on the ground that the judge's failure to provide written reasons for her decision is a substantial miscarriage of justice.
- [5] On behalf of Brandon Hughes, Mr. Elrington argues that the learned judge erred in law and/or misdirected herself in failing to give due weight to the mitigating circumstances of the case and thereby imposing an excessive and disproportionate sentence.
- [6] On behalf of Jose Gomez, Mr. Mckoy contends that the learned trial Judge erred in her Conviction and Sentencing decision to find Jose Gomez guilty of murder based on Joint Enterprise.
- [7] Since both Appellants rely on Ground 1 as the sole substantive ground of appeal challenging the safety of the conviction, while the remaining two grounds relate to the Appeal against sentence, I will first address Ground 1 before moving on to consider the second and third grounds of appeal against the sentences imposed. The issue of convicting Gomez of joint enterprise was an important point argued which I will also address.

Ground 1

- [8] The Learned Trial Judge's failure to provide written reasons for her decision is a substantial miscarriage of justice.

First Appellant's Submissions on Ground 1

- [9] Mr. Orson Elrington argued that there are Constitutional provisions that require Judges to give written reasons for decisions. The Constitution of Belize requires the giving of "decisions and reasons for decisions". This is a requirement of a Justice of the High Court (s. 98).

S98-1 (3) *A justice of the Supreme Court may be removed from office for–*

- (a) *inability to perform the functions of his office (whether arising from infirmity of body or mind or from any other cause);*
- (b) *persistently failing to give written decisions and reasons for the decision;*
- (c) *persistently failing to give written decisions and reasons for the decisions within such time as may be prescribed by the National Assembly; or*
- (d) *misbehaviour.*

S98-1 (4) *A justice of the Supreme Court may be removed from office if the question of his removal from office for inability to perform the functions of his office, for persistently not writing decisions, for failing to give decisions and reasons for the decisions within such time as may be prescribed by the National Assembly or for misbehaviour, has been referred to the Judicial*

and Legal Services Commission in writing and the Judicial and Legal Services Commission, after considering the matter, recommends in writing to the Belize Advisory Council that the question of removal ought to be investigated.

[10] After citing the Constitutional provisions on which he relies, Mr. Elrington sets out specific legislative provisions that he says bolster his argument that Judges need to provide written reasons for their decisions.

He cites the **Time Limit for Judicial Decisions Act, 2021 s.5(1)** as one of the legislative provisions that requires judges to provide written reasons for their decisions:

5.-(1) *“A Judge who presides at the trial of a civil or criminal case may give an oral decision at the conclusion of the hearing of the case and shall give a written decision and reasons for the decision as soon as possible after the conclusion of the hearing.”*

The Indictable Offences Act also imposes an obligation for reasoned judgments. The Act was first passed in 1953 and since then has been amended on several occasions, most recently in 2011 to provide for judge alone trials. S. 65 provides that where a trial is conducted without a jury, the Judge “shall”, at the conclusion of the trial, give a written judgment stating the reasons for the conviction or acquittal of the accused persons at, or as soon as reasonably practicable after, the time of conviction or acquittal (s. 65C (1)).

“65C.-(1) *Where a trial is conducted without a jury, the judge shall, at the conclusion of the trial, give a written judgment stating the reasons for the conviction*

or acquittal of the accused person (as the case may be) at, or as soon as reasonably practicable after, the time of conviction or acquittal.

- (2) *The date of the judgment referred to in subsection (1) of this Act shall be deemed to be the date of conviction or acquittal of the accused person.*
- (3) *An appeal shall lie to the Court of Appeal, at the instance of the accused person or the prosecution, from the decision of the judge given under subsection (1) of this section, convicting or acquitting the accused person.”*

The Senior Courts Act of Belize requires that a copy of the judge’s summing up be included in a copy of the record of court. Section 214 says as follows,

- (1) *“On every appeal or application for leave to appeal to the Court notice of the grounds of appeal shall be filed within twenty-one days after receipt by the intending appellant from the Chief Registrar-*
 - (a) in the case of an appeal against conviction by the High Court on indictment or information, of a copy of the record which shall include a copy of the judge’s summing up*
 - (b) ...*
 - (c)”*

Judicial Decisions Affirming Need to Give Reasons

- [11] The CCJ has wholeheartedly affirmed the necessity for the giving of reasons. (See: **Guyana Sugar Corporation v Dukhi** [2016] CCJ 17 (AJ) (esp. paras 20-28), (Civil); **Ramcharran v The Director**

of Public Prosecutions [2022] CCJ 4 (AJ) (esp. paras 77-79) (criminal); and **Salazar v The Queen** [2019] CCJ 15 (AJ) (esp. para 25-29) (criminal). In **Ramcharan**, the Court said as follows:

[79] *“It is also a judicial and ethical responsibility. In the Commentary on the Bangalore Principles of Judicial Conduct, under the ethical value of Independence, and in relation to the ‘minimum requirements for a fair trial’⁷⁹, it states that: ‘(g) The involved parties should be provided with adequate notice of, and the reasons for, the decision’.”*

Judges must state their reasons in writing for all to scrutinize

[12] The CCJ in **Hernan Manzanero v The Queen** [2020] CCJ 17 (AJ) BZ held at paragraph 25:

[25] *“The State cannot and does not promise any accused either a perfect trial or a trial judge that is not susceptible to human frailties. Nevertheless, the justice system must continually strive to promote a trial process that is transparent and fair and a judiciary that is independent, impartial, competent, efficient and effective. Already, there is a high level of accountability on the part of judges who conduct criminal trials. Trials are held in open court to allow the public to observe at first-hand how [the judge goes about the business of conducting trials. Unlike the case with juries,] judges must state their reasons in writing for all to scrutinise. If the judge errs, there is in Belize a right given to both the convicted person and the prosecution to appeal to three judges of the Court of Appeal.”*

Second Appellant's Submissions on Ground 1

- [13] In advancing his arguments on this first ground of appeal on behalf of the Appellant, Jose Gomez, Mr. McKoy submits that the Indictable Offences Act imposes a mandatory obligation on judges to provide their judgments. Section 65(1) of the Act states:

[65] *"Where a trial is conducted without a jury, the judge shall, at the conclusion of the trial, give a written judgment stating the reasons for the conviction or acquittal of the accused person (as the case may be) at, or as soon as reasonably practicable after, the time of conviction or acquittal."*

Mr. McKoy also relies on the same passage cited by Mr. Elrington from the Caribbean Court of Justice in **Herman Manzanero v The Queen** (citation). There is no judgment before this honourable court to scrutinize the Judge's Decision to accurately and fairly scrutinize her judgment, despite the fact she stated that it would have been given. The fact that there is no judgment, significantly prejudices the Appellants. It is for these reasons that the conviction done by the learned trial Judge should be quashed.

Respondent's Submissions on Ground 1

- [14] The Respondent acknowledges and unreservedly accepts that the reasons for a decision, especially a conviction which deprives a person of his liberty, are an integral or immanent aspect of fundamental justice and due process. However, the absence of reasons does not inevitably mean that a conviction is unsafe or unsatisfactory. An Appellant is still required to point to some material irregularity that occurred during the course of the trial that undermines the safety of his conviction or demonstrate that the case involved such complex issues that the Judge's conclusion cannot be considered as straightforward. This disadvantageous position that the Appellate Court finds itself

in, of not knowing whether the Learned Trial Judge misdirected herself on the law or misunderstood or misapplied the evidence, is not unique or unprecedented. A similar but not identical situation occurred in the Trinidadian case of **Roberts and Roberts** [2003], where the shorthand notes of the Trial Judge's summing up were absent, but his notes of evidence were available. Lord Rodger of Earlsferry, delivering the judgment of the Judicial Committee of the Privy Council, said at para 7:

[7] “... ..., *the shorthand notes of the judge's summing up were lost The result is that it is now impossible to tell what directions the judge did in fact give on identification. That does not in itself mean that the appellants' convictions should be set aside. On the contrary, it is well established that the loss of the transcript of a summing-up is not, without more, a ground for setting aside a conviction.*

Speaking of the shorthand note of the proceedings at a trial, Channell J said in **R v Elliott** (1909) 2 Cr App R 171, 172:

‘The absence or insufficiency of a shorthand note is not of itself a ground upon which a prisoner can succeed upon appeal, nor the existence of a proper note a condition precedent to a good trial. Where, however, there is reason to suspect that there is something wrong in connection with the hearing of a case, the absence or insufficiency of a proper shorthand note may be material.

In R v Le Caer (1972) 56 Cr App R 727, 730 - 731, Lord Widgery CJ quoted this passage and continued:

‘The court would adopt those words as being entirely appropriate to the present facts and to the present case; in other words, the simple fact that

there is no shorthand note is not of itself a ground for saying that the conviction is unsafe or unsatisfactory. In order that the appellant may claim that conclusion, he must be able to show something to suggest that there was an irregularity at the trial or a misdirection in the summing-up. Unless there is something to suggest that an error of that kind took place, the absence of a shorthand note simpliciter cannot cause the court to say that the verdict of the jury was unsafe or unsatisfactory." [Emphasis mine].

- [15] Deputy Director Smith submits that these judicial statements accurately reflect the current state of the law because an appeal against a conviction constitutes a challenge to the conviction itself, rather than to the reasons underpinning it. This is why a convict is given 21 days from the date of conviction to appeal his conviction, rather than 21 days from the delivery of the written reasons for conviction: Section 213(1) of the Senior Courts Act 2022. In keeping with this principle and procedure is the fact that a Judge's statutory obligation to provide reasons only arises after the decision to convict or acquit has been pronounced: s.5(1) of the Time Limit for Judicial Decisions Act No.5 of 2021. This very case at Bar is an excellent demonstration of this point. The Appellants in this case filed their notice of appeal after they had been convicted and before any written reasons had been provided, so their appeal could not be against the reasons for the conviction but from the conviction itself. As the Privy Council said in **Cedeno v. Logan** (2000) UKPC 48 at paragraph 14, "*The absence of reasons does not vitiate the trial which has already taken place.*" The Appellant must be able to point to some material irregularity that occurred during the trial. In addressing a submission by the Appellant in **Cedeno v. Logan** that the absence of the Magistrate's reasons ought to have led to the quashing of the conviction, the Privy Council said at paras. 15 and 16:

“15. *There are two related answers to this submission. First, as a matter of fact, the appeal patently was not prejudiced by the absence of the statutory reasons. The basis of the magistrate's decision was clear. The one substantive ground of appeal could be properly evaluated and decided Secondly, the authorities, while emphasising the importance of the giving of reasons as part of due process, also make clear that whether or not the 'unreasoned' decision should without more be set aside depends upon the circumstances of the particular case. A valuable judgment summarising the effect of the previous authorities is that of the Court of Appeal in **Flannery v Halifax Estate Agencies Ltd.** (trading as Colleys Professional Services) [2000] 1 WLR 377. In **Forbes v Maharaj**, it was accepted (without deciding) that there may be cases where the absence of reasons may not lead to the quashing of the magistrate's decision. To a similar effect was the judgment of Lord Lane CJ in **Reg v Immigration Appeal Tribunal Ex parte Khan (Mahmud)** [1983] QB 790 (at 794-795):*

“A party appearing before a tribunal is entitled to know, either expressly stated by the tribunal or inferentially stated, what it is to which the tribunal is addressing its mind. In some cases it may be perfectly obvious without any express reference to it by the tribunal; in other cases it may not. Secondly, the appellant is entitled to know the basis of fact upon which the conclusion has been reached. Once again in many cases it may be quite obvious without the necessity of expressly stating it, in other cases it may not’.

16. *Cases which fall on the other side of the line are those where there is some complexity of the law or the facts which requires more than a simple statement of the conclusion (eg. Reg v Harrow Crown Court Ex parte Dave [1994] 1. WLR 98)*
- In the present case, so far as the trial itself was concerned, no complaint is made: so far as the appeal was concerned, the basis of the magistrate's decision was obvious without the provision of the statutory reasons. It would be wrong to leave this topic without pointing out that it would be quite possible that a magistrate might die or become disabled between the time that he decided a case and the time when he was required to give the statutory reasons. Would it be a rational construction of the statute to say that in such a situation all his decisions should be set aside regardless of whether or not there was any real ground of appeal merely because he was now unable to give the statutory reasons?"*

*More pointedly, McGonigal J in **R v. McLenagan**, stated at p.7 that "... while non-compliance with the Act is an irregularity it does not of itself give a right to the accused to have the verdict set aside and a new trial ordered. The failure to give a reasoned judgment is not an irregularity in the course of the trial, which in itself makes a trial a nullity or renders the verdict suspect. It is a post-verdict requirement and does not affect a trial otherwise valid up to that point. If however there are issues which might raise doubts in the mind of the trial judge which he could not resolve ... and which might influence the verdict depending on how they were resolved, the Appellant Court ought not to try to resolve them but should quash the conviction and enter an acquittal or set the verdict aside and order a new trial."*

- [16] It follows from the authorities that if there were no material irregularities during the course of the trial and the issues were straightforward and the conclusion obvious, then the impact of the

absence of articulated reasons on the safety of the conviction is de minimis. The task of an Appellate court, in the absence of written reasons for a conviction, is to examine the record to determine whether there were any material irregularities during the trial, the nature and complexity of the issues in the trial, and whether the Learned Trial Judge was entitled to reach the conclusion that she did. This approach was sanctioned by the Court of Appeal of Guyana since 1982 in the case of **Outar v. The State** (1982) 36 WIR 228 at 232. There, Crane C, speaking for the Court of Appeal of Guyana, said:

8. *“There is no dearth of authority to show that it is within the jurisdiction of a Court of Appeal to adjudicate notwithstanding the record of proceedings may be incomplete or defective; for example, when there is no written but only an oral judgment or decision. It is clear we can adjudicate in that case because an appeal is from the decision itself and not from the reasons given therefor. **An appellate court is quite competent to review the decision from an examination of the record of proceedings so as to see whether the right conclusion has been arrived at by the judge, the absence of reasons notwithstanding.**”* [Emphasis mine].

In **Cedeno v. Logan** (2000) UKPC 48, the Appellant was convicted of simple larceny, and he filed an appeal against his conviction and sentence. However, the Magistrate had retired and did not provide his reasons for the decision as required by statute. In dismissing the appeal against conviction despite the absence of the Magistrate’s reasons for decision, the Privy Council said:

“The Alexander and Forbes cases demonstrate that the significance of the absence of reasons must depend upon the issues raised in the case before the court. Here there was no complexity of issues. The basis of the Magistrate’s decision was clear. The relevant law was covered in the submissions made to the magistrate and was not in dispute. The decision of the magistrate was the decision to be expected upon the evidence.”

Similarly, it is our respectful submission that there was no complexity of issues in the case at Bar. The central issue in the case was one of identification, that is, whether it was the two Appellants who were present at the deceased’s business place and killed him. On the record of proceedings,

which this Court has available for its perusal, the Learned Trial Judge had the combined eye-witness evidence of Mrs. Elena Rosado and Mr. Oscar Rosado Jr (the former identifying both appellants while the latter only identifying Brandon Hughes); the identification and circumstantial evidence contained in the deposition of Jevon Arnold, and the caution and dock statements of Jose Gomez. On the record, the Learned Trial Judge had more than ample evidence as to the identification and participation of the two Appellants in the killing of the deceased. The Appellants did not call any evidence, so there were no conflicts in evidence or conflicting versions to resolve. The Respondent is inviting this Court to apply the proviso contained in s.216 (1) of the Senior Courts Act on the basis that the lack of express reasons for convicting the Appellants has not led to any substantial miscarriage of justice.

Analysis

- [17] The main issue in this appeal is whether the absence of written reasons vitiates the validity of the verdict. The Appellants contend that the failure of the trial judge to provide written reasons constitutes a substantial miscarriage of justice and on that basis ask that the verdicts be set aside. The Respondent submits that while a trial judge should provide written reasons for his decision, there must be material irregularities in the trial before a Court of Appeal will set aside a verdict; the absence of written reasons simpliciter is not enough for an appellate court to set aside a *properly constituted verdict*. As the Deputy Director cites McGonigal J in **R v. McLenagan**, stated at p.7 that *“... while non-compliance with the Act is an irregularity it does not of itself give a right to the accused to have the verdict set aside and a new trial ordered. The failure to give a reasoned judgment is not an irregularity in the course of the trial, which in itself makes a trial a nullity or renders the verdict suspect. It is a post-verdict requirement and does not affect a trial otherwise valid up to that point If however, there are issues which might raise doubts in the mind of*

the trial judge which he could not resolve ... and which might influence the verdict depending on how they were resolved, the Appellant Court ought not to try to resolve them but should quash the conviction and enter an acquittal or set the verdict aside and order a new trial.”

- [18] Looking at the transcript of the proceedings in this case, this appears to have been a clear case of Murder, where the trial judge had ample evidence of identification of both Appellants as the persons who walked into the store of the deceased where one shot him to death in front of his wife, while the other lingered in support until the shooting was complete. The Privy Council decision of **Roberts and Roberts v The Queen** [2003] cited by the Learned Deputy Director is particularly instructive in providing guidance to this court. It was an appeal from the Court of Appeal of Trinidad and Tobago where both Appellants had been convicted of Murder. The facts of the case as stated were that on 6 November 1985 the Green Star, a vessel that plied between Grenada and Trinidad, anchored at Queen’s Wharf, Port of Spain. On board were a Mr George Charles and a Mr Joseph Nash, who was from Grenada. Nash was to be the principal witness for the prosecution at the appellants’ trial. The narrative that follows comes from his evidence. Sometime after 8.00 pm the two men left the boat together. Nash was going to visit a friend and had a bottle of whisky with him in a bag to give to her. Charles had 4 bottles of whisky in a bag. The two men made their way in the direction of Sea Lots. They walked along the pavement. According to Nash, when they were in the vicinity of the lighthouse, they were stopped by two men whom he identified as the appellants. They asked what Charles and Nash had in their bags and Nash indicated that it was whisky. The two men, who appear to have pretended to be police officers, said that they should all go up to the police station. According to Nash, Bertrand Roberts held him by the back of his trousers, while Roland Roberts held Charles. Nash said that he was able to see their faces as they walked towards Sea Lots. When they came to a track on the sea side, the two men told Charles and Nash

to walk down it. All four went down. One of the men took Nash's bag and one took Charles's bag. The men told them to put their hands in the air. According to Nash, Roland Roberts took a gun from his side and then searched Nash and Charles. The men told Nash to take everything out of his pockets and to put it in the bag. Charles did the same. When one of the men searched him he found a letter in his pocket. The man then said to Charles, "Did I not tell you to take out everything from your pocket?" Charles was told to take his hat off and, after he did so, one of the men said to him that he was a Rasta. Then Bertrand Roberts said to Roland Roberts "Shoot them". Roland Roberts shot Charles. Nash began to cry and begged them to let him go. One of the men told him to run. He then ran back to the boat and told the captain what had happened. He and the captain set off for the police station to make a report but on the way they stopped a police car and spoke to the officer in it. Eventually in the presence of Nash the police found Charles lying dead on the pavement a little way from where the incident had occurred.

[19] On 16 November 1985 Nash attended an identification parade at police headquarters in Port of Spain. He identified Bertrand Roberts as one of the men who had been involved in the incident. Three days later, on 19 November, he attended another identification parade at police headquarters and this time he picked out Roland Roberts.

[20] Nash's evidence did not stand alone. In particular, in the case of Bertrand Roberts there was evidence, which the judge admitted after a voir dire, of a written statement that he was said to have given to the police on 15 November. According to that statement, the two appellants had heard that there was whisky on the wharf and had set off to rob the men of the whisky. During a struggle Roland Roberts had pulled out the gun which he was carrying and had shot the taller of the two men. Bertrand Roberts gave evidence in which he said that he had not dictated the statement attributed to him and had only signed it in order to be able to go to court. He also said that Nash

had lied when he told the court that Bertrand Roberts had held his trousers. In the case of Roland Roberts there was evidence that the police had found him hiding under a bed and that, on being cautioned after his arrest, he had said that he and his brother had heard that there was whisky on the wharf. They had gone down the road by the lighthouse and he and another man had had a struggle. He had heard an explosion and had then left. In evidence Roland Roberts said that the police witnesses had lied about him being found under the bed and that Nash had lied about him being the man with the gun.

[21] The Court of Appeal in **Roberts** found that even though the trial judge's written directions to the jury had been lost and there were concerns that the judge had not directed the jury to consider the evidence of identification in accordance with the Turnbull guidelines, the Court of Appeal upon reviewing the transcript of proceedings in the lower court found that there was strong evidence separate and apart from the identification evidence on which the jury must have relied. The Court of Appeal therefore applied the proviso and upheld the convictions of both Roberts brothers, who then appealed to the Privy Council.

[22] Upon appeal to the Privy Council, the convictions in **Roberts** were set aside and the Appellants were released. The Privy Council held that, upon reviewing the evidence before the trial judge, they were not comfortable applying the proviso. In their view, the quality of the evidence against the Appellants was strong, but was not overwhelmingly strong enough to rise to the level that would allow them to apply the proviso. In reaching their decision, their Lordships considered *Freemantle v The Queen* which in their minds exemplified the high quality of identification evidence that enabled them to apply the proviso and uphold the conviction in that case. In **Freemantle v The Queen**, there were two eyewitnesses: one who had known the accused for 15 years and the other who had known him for 9 years prior to the incident. By contrast, the eyewitness Nash in the **Roberts** case

(who had identified the Appellants at an Identification Parade) had come from Grenada and had never seen the Appellants before the evening of the Murder. In those circumstances, the Privy Council indicated they could not apply the proviso and quashed the convictions.

[23] In relation to the question of a retrial in Roberts, the Privy Council held that since 17 years had already passed since the convictions and the Appellants had been in prison for that duration, this was not a case suitable for a retrial to be ordered.

[24] In the case at bar, the evidence from the Prosecution was that two eyewitnesses identified the Appellants as the assailants. Mrs. Elena Rosado identified Brandon Hughes as the shooter who shot and killed Oscar Rosado Sr, in their shop. Looking at the transcript, Mrs. Rosado stated at page 232 of the transcript that she had stared at the face of the shooter for two minutes from the time he first entered the shop until he bought the nails, the lighting conditions were very bright because they had three doors and three fluorescent lights inside the shop, she was standing six feet away from them, she described the colour of their clothing, length of time she had them under observation was one minute, nothing obstructed her view. The three attackers left the store and returned two to three minutes later dressed in the same clothing. At page 235 of the record, Mrs. Rosado said she stared at the gunman for two minutes in his face and there was nothing obstructing her view. She could see halfway up his body from behind the counter. On this second occasion she had the gunman in her line of vision for three to four minutes. The witness gave the police a description of the assailants on the same day of the incident April 23, 2018. She had never seen any of the young men before that day. One month later, Mrs. Rosado was invited to Racoon Street Police Station here she was shown a series of photos from a Rogues Gallery by Cpl. Melendez. She picked out the shooter from the group of photos, On May 24, 2018, Mrs, Rosado

attended an identification parade at the police station where she was able to once again identify the shooter, this time from a distance of 15 feet away.

[25] Oscar Rosado Jr. At page 22 of the Supplemental Record of Appeal, Mr. Rosado Jr, son of the deceased, stated: "The retail section is a very small section. It's always bright. It does not need light, but we keep the extra fluorescent light on. One door coming from Cemetery Rd. on the highway (that is the main entrance). We don't open it anymore and the other door you have to come into the premises and park and come in from the side that's for loading. These two doors were open on the day of the incident. They are always open. I had the dark complexion male person under my observation for about 2 mins. from the time I saw him to the time he put the gun to my forehead. I cannot tell you what colour clothes he had on because it was just his face that I looked at. He had cornrow in his head, slim built, dark complexion. He appeared to be close to 20 or early 20's. Nothing was obstructing my view from seeing this person's face. I had not seen this person before. I had given this description to the police in a statement. I gave the statement to the police the same day of the murder. I recall 22.05.2018. I was working. It was a regular day. I was visited by Cpl. Melendez. He told me he had some photos on a computer at the station. He wanted me to go with him to the police station to see the photos he had." This witness later identified Brandon Hughes out of the Rogues Gallery at the police station and identified him again at an identification parade held by the police.

[26] Jevon Arnold. At page 267 line 11 of the transcript, the Crown made an application to have the witness statement of this witness read into the record. This was done pursuant to Section 123 of the Indictable Procedure Act on the basis that this witness was deceased at the time of the trial. The Defence counsel did not object to the application, which was granted by the Court. After describing himself as a delivery man at Rosado's Construction Supplies located at # 130 Cemetery

Road, Belize City and a resident of #50 Neals Penn Road, Belize City. I have worked at Rosado's Construction Supplies for the past six years. My duty is mainly to move supplies sold by the company which includes cement etc. within the company and to customers within Belize City. I work from Monday to Saturday between the hours of 7:30am-5:00 pm. Further down in his statement Mr. Arnold describes his encounter with the assailants at the Rosado hardware store on April 23rd, 2022 when his employer Mr. Rosado was shot and killed. "I was looking outside but my attention was soon drawn to three male persons that entered the store. I turned and looked at them as they were customers and I wanted to see what they wanted. One is of dark skin complexion, ... bout 5' 6" in height, clean face with curly looking plots on his head and appears to be in his late teens." Later on in his statement, the witness said ""Tall, about 5' 6" in height, clean face with curly looking plots on his head and appears to be in his late teens. He was dressed in a white t-shirt and a red three-quarter pants with plaid design on it. At the time he was standing about five feet away from me and was facing at me. I made eye contact with" him "with the male person. The store has a double fluorescent light right above the counter and it illuminates the entire store and its surrounding properly. Nothing was obstructing my view from seeing this male person. He had nothing covering his face at the time. I saw his face and entire body and if I see him again I will be able to recognize him. I would like to mention that I have seen this male person before this incident I have seen him in the Antelope Street Extension Area by a store namely 'Nayomi' Shop. I have never spoken to this male person but I have seen him at least three times for this year in that same area of the shop. On the last occasion I saw him was in April 2018 by 'Nayomi' shop. He was standing 15 feet away from me. The day was bright as the sun was still out. Nothing was obstructing my view from seeing his entire face at the time. He was in my view for about 8 minutes." The witness went on to give general descriptions of the other two assailants in his

statement which confirmed evidence given by Mrs. Rosado. At no point does he name any of the attackers.

[27] ASP Jesus Palma This witness is a police officer who testified that he was in the vicinity of the Rosado Hardware Store at the material time and he saw the three assailants running away from the store after shots were fired:

“Q. And you were standing in front of Oscar Rosado’s hardware store on Cemetery Road facing Partridge Street, how far were you in relation to the entrance for that building? That business place. I was right in front of the hardware. It would be like from here to the wall.

MS. SMITH: Your Honour, if we can have an estimation of the distance?

THE WITNESS: I would say about 20 feet. Yes, you said whilst standing there you saw a tall - - I saw three male persons like I said. wearing a whither T-shirt, a $\frac{3}{4}$ pants, a black cap on his head, and at the time he had a short firearm on his hand.

THE COURT: Had a what, sorry?

THE WITNESS: A firearm. A short firearm. Resembled to be a 9mm. A. Were you able to observe the complexion of this tall male person? He’s a dark-complexion person. The two other persons were of - - were shorter and slim in build. Were you able to observe the clothing worn by the other two male persons? I cannot recall because I mostly focused on the person that had the firearm who was a threat to us. Then the corporal shouted “Police. Stop.”

[28] Jose Gomez After holding a voir dire, the trial judge admitted a caution statement made by Jose Gomez into evidence. That caution statement places Jose Gomez at the scene of the crime at the time of the shooting starting at line 21 on pages 34 and 35 of the transcript : *“So now Aaron told the guys to go buy two pound of nail Kendale who is the main known figure told me to go and buy nails with them so now three of us walk through the burial ground we reach to Mr. Rosado establishment so Fitzroy Myles was the person who order the nail and the gunman paid the cashier so we went out of the establishment to the burial ground so now I heard Fitzroy Myles say these are the wrong nail lets go back so we went back and the gunman is the first person ...”* who “enter the establishment. I followed him but I was a distance away like 10 meters. I look behind Fitzroy Myles” was “coming slowly behind me as we reach the establishment before entering I heard two shots fired while running I saw Fitzroy Myles running ahead of me and the gunman running and firing shots then speed left me a distance away into the burial ground ahead of me I saw Fitzroy Myles entering a taxi then the gun man and the taxi was speeding off but they saw me running coming towards them so the taxi stop.”

[29] Applying the reasoning of the Privy Council in the **Roberts** case to the case before us, we find that the absence of the judges’ notes does not vitiate the validity of the trial. Having examined the evidence led before the learned trial judge, we find that the quality of the identification evidence was strong enough to convince us to apply the proviso. Neither Mrs. Rosado nor her son Oscar Rosado Jr. knew the assailants before this incident, but both witnesses had the Appellants in their sight for two minutes or more as required by the Turnbull Guidelines. They later picked out the Appellants at separate identification parades. The deceased witness Jevon Arnold, a former employee of the deceased and his wife, whose statement was read into evidence at the trial said that he was present in the store working at the time of the shooting. He

had seen the Appellants at various times at least three or four times before the shooting incident, one of whom he had seen hanging around “Nayomi Shop” in the Antelope Street Extension Area and he had looked at him for about 8 minutes While he did not know their names, he gave general descriptions of the Assailants which were confirmed by Mrs. Rosado. The Appellant Jose Gomez placed himself at the scene of the crime in his caution statement which was admitted into evidence.

[30] In relation to the issue of joint enterprise, we initially had concerns as to whether the prosecution’s evidence that Appellant Jose Gomez leaned against the counter during the shooting by the Appellant Brandon Hughes rose to a level sufficient to constitute joint enterprise. However, upon reviewing the transcript of the evidence, we see that Gomez places himself on the scene of the crime through the caution statement that was admitted into evidence. The statement is exculpatory in that he places all the blame on the other assailants and seeks to distance himself from the shooting. In her written sentencing judgment, the trial judge specifically referred to Jose Gomez and said that while he did not do anything in furtherance of the crime, he remained on the scene lending support to Brandon Hughes. The Deputy Director submits that the trial judge was correct in finding that Jose Gomez was an accomplice who lent support to Brandon Hughes as Jose Gomez did nothing to distance himself from the crime and only ran away from the scene after the deceased had been shot and killed. We agree with the submission of the learned Deputy Director and we confirm the trial judge’s finding in her Sentencing Judgment that Gomez was part of the joint enterprise.

[31] The Appellants are correct in their submission that in Belize the requirement that judges provide written decisions are an integral part of the trial process. The Deputy Director readily conceded that the reasons for the conviction should be in writing especially where the sentence deprives the person of his liberty. Both Mr. Elrington for the Appellant, Brandon Hughes and Mr. Mckoy for the

Appellant Jose Gomez rely on the Indictable Offences Act imposes a mandatory obligation on judges to provide their judgments. Section 65(1) of the Act states:

“Where a trial is conducted without a jury, the judge shall, at the conclusion of the trial, give a written judgment stating the reasons for the conviction or acquittal of the accused person (as the case may be) at, or as soon as reasonably practicable after, the time of conviction or acquittal.”

Mr. Elrington correctly cites s. 98 (3) and (4) of the Constitution of Belize which refer to a judge’s failure to provide written reasons as a ground for removal of a judge from office. There is no similar provision in the Trinidad Constitution. The **Roberts** case was concerned with the repeated failure of judges in Trinidad at that time to give proper **Turnbull** directions on identification evidence to the juries. In the case at Bar, this was a trial by judge alone and we agree with the submission of Deputy Director Smith that in the absence of proof of a substantial misdirection or material irregularity, the absence of the judges’ notes of evidence does not automatically vitiate the verdict. These provisions regulate judicial conduct as between the Judge and the Judicial and Legal Services Commission in the execution of his duties. Breach of these provisions can ground disciplinary proceedings being brought against the judge but will not result in rendering a verdict invalid in the absence of a material irregularity or substantial misdirection.

[32] While we accept the importance of giving reasons, we have reviewed the transcript and we find that the evidence was strong enough for us to uphold the conviction. Having reviewed the evidence, we find no issue with the judgment. The Appeals against conviction and sentence are dismissed.

Michelle Arana
Justice of Appeal

[33] I concur.

Woodstock Riley, KC
Justice of Appeal

[34] I concur.

Peter I Foster KC
Justice of Appeal