IN THE SENIOR COURTS OF BELIZE

CENTRAL SESSION-BELIZE DISTRICT

IN THE HIGH COURT OF JUSTICE

INDICTMENT NO: C76/2024

BETWEEN

THE KING

and

ELISHA BULLER

Prisoner

Before:

The Honourable Mr. Justice Nigel Pilgrim

Appearances:

Ms. Portia Staine-Ferguson, Assistant Director of Public Prosecutions, for the Crown.

Mr. Sherigne Rodriguez for the Prisoner.

2025: July 2nd and 4th.

BLACKMAIL- CRIMINAL MEDIATION- PLEA AGREEMENT-SENTENCING GUIDELINES

[1] Elisha Buller ("the prisoner") is indicted for the offence of blackmail, contrary to section 170(1) of the **Criminal Code**[1] ("the Code"). The prisoner is accused of making threats to his uncle, Jason Reneau ("the victim"), and his family to kill them if he was not paid two thousand dollars ($2,000.00).

[2] The Court would have referred this matter to mediation as empowered by Rule 5(1) of the **Court Connected Criminal Mediation Rules, 2024**[2] ("the CCCRM") on 23rd April 2025. This was a matter which qualified for criminal mediation pursuant to Rule 4(f)[3] of the CCCRM, as it was not an excluded offence such as murder, sexual offences or gang offences. The Court, after considering the disjunctive criteria at Rule 6[4], found that mediation was appropriate having regard to the relationship between the parties, namely, familial connection between the victim and the prisoner. The Court also considered the interests of justice generally, namely that the Senior Courts of Belize is faced with a criminal case backlog which it cannot try its way out of and should be focusing its judicial time on disputes that cannot be resolved. The parties were also willing to talk, and they were willing to resolve the matter in a collaborative process, a hallmark of restorative and therapeutic justice. The Court also noted that criminal mediation is an endorsed process at Recommendation 37 of the **Needham's Point Declaration on Criminal Justice Reform: Achieving A Modern Criminal Justice System** by the CCJ Academy for Law.

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[1] Chapter 101 of the Substantive Laws of Belize, Revised Edition 2011.

[2] Statutory Instrument No. 155 of 2024.

[3] *"The following offences are eligible for court connected criminal mediation–…(f) any other offence that the Judicial Officer in his or her discretion determines is suitable for Court Connected Criminal Mediation, excluding–*
(i) any offence involving death;
(ii) any offence under the Firearms Act;
(iii) any gang offence; or
(iv) any sexual offence."

[4] *"In considering whether to refer a criminal matter to mediation, the judicial officer may take into account all relevant circumstances including the following–*
(a) the nature of the alleged offence;
(b) the relationship between the parties;
(c) the willingness of the parties to resolve the matter by a collaborative process;
(d) the interests of justice;
(e) opportunities for a just outcome; or
(f) any other criteria considered appropriate by the judge."

[3] The parties consented in writing to mediation on 19th February 2025 before referral as is required by Rule 5(2)[5] of the CCCRM. A notice of outcome of the mediation, pursuant to Rule 9, was filed at court on 21st May 2025 and there was happily a mediation agreement which was completed. The mediation agreement, by Rule 10(2) of the CCCRM, is then supposed to be converted into a tangible criminal justice process:

> *"(2) Upon reappearance before the court and dependent upon the terms of the Mediation Agreement, if one was reached, the following is a non-exhaustive list of outcomes that may result–*
> *(a) the defendant and the Director of Public Prosecutions or the Prosecutor, as the case may be, may enter into a plea agreement pursuant to the Criminal Procedure (Plea Discussion and Plea Agreement) Act;*
> *(b) the Director of Public Prosecutions may amend the indictment;*
> *(c) the Director of Public Prosecutions may discontinue the matter; or*
> *(d) the Defendant may plead guilty to the offence and the Court may sentence the Defendant taking into account the terms of the Mediation Agreement."*

[4] The Court raised with the parties that having regard to the terms of the Mediation Agreement requiring sentencing outcomes, such as no contact and a written apology, which may be outside the Court's general sentencing powers but for a plea agreement. It was suggested that they consider finalizing a plea bargain where there is greater flexibility[6] to reach a mutually satisfactory outcome. The parties concurred and a plea agreement was filed under

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[5] *"(2) A judicial officer shall, before making an Order under sub-rule (1), obtain the consent of the virtual complainant, if any, the defendant and–*
(a) the Prosecutor if the matter is being heard summarily; or
(b) the Director of Public Prosecution or the Crown Counsel acting with the authorisation of the Director or Public Prosecution DPP for indictable matters.
(3) The consent required under sub-rule (2) shall be in Form 2 of Schedule I."

[6] *"2…"plea agreement" means an agreement made in the interest of justice between the prosecutor and the accused person or suspect in which the accused person or suspect agrees to–*
(a) plead guilty to an offence which is disclosed on the facts and on which the charge is based; and
*(b) fulfil **any other obligations** specified in the plea agreement, and*
the prosecutor agrees to take a particular course of action;"

the **Criminal Procedure (Plea Discussion and Plea Agreement) Act, 2024** ("the Plea Act") on 1st July 2025.

[5] The prisoner pleaded guilty after the Court deemed it in the interests of justice to do so after conducting a plea agreement hearing pursuant to section 19 of the Plea Act. At that hearing the prisoner personally indicated that the agreement was voluntarily entered into; he was told the elements of blackmail which he would be pleading guilty to and said he understood; he said he understood the terms of the agreement and the consequences; and that the Court was not bound to accept the plea agreement. The agreed facts were read and accepted by the prisoner.

[6] The plea agreement requires that in return for the prisoner entering a plea of guilty and undertaking the further obligations of (i) providing a written apology to the Court; and (ii) that he will not interact with the victim indefinitely from 30th June 2025 that the Crown would undertake to make a sentencing recommendation to the Court that compensation be paid by the prisoner in the sum of twelve thousand dollars ($12,000.00) be paid in instalments of fifty dollars ($50.00) per week.

[7] The written apology has been filed. The prisoner has undertaken to have no interaction with the victim in open court. The Crown has made the sentencing recommendation of compensation to the Court as per the plea agreement with a mutually accepted varied start date of August 4th, 2025.

Agreed facts

[8] The victim and his wife were home on the 7th of July 2023 at around 6 pm when they heard a loud banging on their front door shortly after the police had searched the lower flat of the building where they lived. The victim's wife went to the front door and noticed that the prisoner, the victim's nephew, was there. The prisoner raised his right hand, formed the image of a firearm, and pointed it in her direction. The victim's wife, fearing for her life, screamed and alerted the victim immediately. The victim came to the front door and noticed

that the prisoner was there pointing his hand in his direction, using his fingers to depict a firearm.

[9] The prisoner then uttered to them, "You, your wife and your daughter will die by Sunday if you do not give me two thousand dollars ($2,000.00) in cash for the things that the police took from me" and further stated, "You have been warned". The victim, fearing for his life and the life of his family, called the police. The police arrived at the residence and proceeded to search the area, but the prisoner was not found. The victim made a formal report and immediately a wanted notice was posted for the apprehension of the prisoner. On the 8th of July 2023, the following day, the prisoner saw the victim and repeated his threat. On the 23rd of July 2023, the prisoner was detained and later arrested and charged with the offence of blackmail.

[10] The prisoner was 18 years old at the time of the offending and has one previous conviction for theft from February 2023.

Analysis

[11] The Court in accepting the plea agreement made several considerations. It had considered the aims of sentencing generally as contained in Rule 3.1-Rule 3.7 of the **General Sentencing Guidelines of the Senior Courts of Belize**[7] and thought that having regard to the familial relationship and the prisoner's youth, rehabilitation was a factor that loomed large.

[12] The Court considered the **Sentencing Guidelines of the Senior Courts of Belize for Offences of Dishonesty and Money Laundering**[8] ("the Belize Dishonesty Sentencing Guidelines or BDSG"). Blackmail, which on the facts of this case being the making of an unwarranted demand by menaces for the benefit of the prisoner, is a serious offence with a mandatory minimum sentence of 5 years imprisonment in the normal case unless the Court thinks it unjust to do so under section 160(1) of the **Indictable Procedure Act**.

[7] Practice Direction No. 4 of 2025.
[8] Practice Direction No. 6 of 2025.

[13] The harm on the BDSG scale was medium owing to the significant psychological trauma caused by the offending to the victim and his family. The victim had to move out of fear and his daughter was diagnosed with Post Traumatic Stress Disorder Syndrome for fear that the prisoner would one day make good on his threat to harm them. His culpability would be regarded as Level B lesser due to the absence of the usual more serious aggravating factors like possession of weapons or the use of actual physical harm. However, the starting point suggested by the BDSG, would be a custodial sentence of 10 years imprisonment. There is no mitigating factor relevant to the offending.

[14] There is the aggravating factor of the offender that he has a previous conviction for dishonesty from 2023. However, there is, by way of mitigation relative to the offender, the expression of genuine remorse by his written apology; his young age at the time of the offending; and his offer of compensation through the plea agreement to make right the significant losses incurred by the victim due to his relocation forced by the prisoner's threat.

[15] The Court notes that under section 34(1)[9] of the Plea Act it is not bound to accept a sentencing recommendation even after the plea agreement is accepted. However, that is a discretion to be sparingly exercised in the context of a joint sentencing recommendation.

[19] The sentencing of convicted persons pursuant to sentencing recommendations in plea agreements has been considered regionally by the Bahamian Court of Appeal, which has very similar provisions to the Plea Act. That Court, after consideration of Canadian precedent, issued this helpful guidance on sentencing recommendations in **Wilson Balvin Taborda v R**[10], per Sir Michael Barnett, JA, as he then was:

> *"14. **Plea bargains are essential ingredients of the criminal justice system. Indeed, they have been given statutory recognition by***

[9] *"34(1) The court may **accept or reject** a recommendation on sentence from the prosecutor, the accused person or the attorney-at-law of the accused person **before or after the acceptance of a plea agreement**.*
…
(3) Where the court rejects a recommendation on sentence, the prosecutor, accused person or the attorney at- law of the accused person, may withdraw from a plea agreement."

[10] SCCrApp. No. 171 of 2017.

Parliament in the Criminal Procedure (Plea Discussion and Plea Agreement) Act. Although not binding on the court they are more often than not given effect by a trial judge.

15. We adopt, with appropriate respect, the views as expressed by the Supreme Court of Canada in R v Anthony-Cook [2016] 2 S.C.R. 204. In that case the court said:

"[1] Resolution discussions between Crown and defence counsel are not only commonplace in the criminal justice system, ***they are essential****. Properly conducted, they permit the system to function smoothly and efficiently.*

[2] ***Joint submissions on sentence — that is, when Crown and defence counsel agree to recommend a particular sentence to the judge, in exchange for the accused entering a plea of guilty — are a subset of resolution discussions. They are both an accepted and acceptable means of plea resolution.*** *They occur every day in courtrooms across this country and they are vital to the efficient operation of the criminal justice system. As this Court said in R. v. Nixon, 2011 SCC 34, [2011] 2 S.C.R. 566, not only do joint submissions 'help to resolve the vast majority of criminal cases in Canada', but 'in doing so, [they] contribute to a fair and efficient criminal justice system'."*

And later

"[25] It is an accepted and entirely desirable practice for Crown and defence counsel to agree to a joint submission on sentence in exchange for a plea of guilty. Agreements of this nature are commonplace and vitally important to the well-being of our criminal justice system, as well as our justice system at large. Generally, such agreements are unexceptional and they are readily approved by trial judges without any difficulty. Occasionally, however, a joint submission may appear to be unduly lenient, or perhaps unduly harsh, and trial judges are not obliged to go along with them (Criminal Code, R.S.C. 1985, c. C-46, s. 606(1.1) (b)(iii)). In such cases,

trial judges need a test against which to measure the acceptability of the joint submission. The question is: What test?"

16. After considering a number of tests that a court could use in deciding whether to accept a plea agreement of joint submission as it is known in Canada, the Supreme Court of Canada held that the proper test was "the public interest test". It said:

*[31] Having considered the various options, **I believe that the public interest test, as amplified in these reasons, is the proper test**. It is more stringent than the other tests proposed and it best reflects the many benefits that joint submissions bring to the criminal justice system and the corresponding need for a high degree of certainty in them…*

*[32] **Under the public interest test, a trial judge should not depart from a joint submission on sentence unless the proposed sentence would bring the administration of justice into disrepute or is otherwise contrary to the public interest.** But, what does this threshold mean? Two decisions from the Newfoundland and Labrador Court of Appeal are helpful in this regard.*

*[33] In Druken, at para. 29, the court held that **a joint submission will bring the administration of justice into disrepute or be contrary to the public interest if, despite the public interest considerations that support imposing it, it is so 'markedly out of line with the expectations of reasonable persons aware of the circumstances of the case that they would view it as a break down in the proper functioning of the criminal justice system'**. And, as stated by the same court in R. v. B.O.2, 2010 NLCA 19, at para. 56 (CanLII), when assessing a joint submission, **trial judges should 'avoid rendering a decision that causes an informed and reasonable public to lose confidence in the institution of the courts'**.*

[34] In my view, these powerful statements capture the essence of the public interest test developed by the Martin Committee.

They emphasize that a joint submission should not be rejected lightly, a conclusion with which I agree. Rejection denotes a submission so unhinged from the circumstances of the offence and the offender that its acceptance would lead reasonable and informed persons, aware of all the relevant circumstances, including the importance of promoting certainty in resolution discussions, to believe that the proper functioning of the justice system had broken down*..."*

17. That court then provided some guidelines for trial judges when considering joint submissions on sentences after a guilty plea. We consider those guidelines to be useful in our jurisdiction as well. It said:

"[51] ***First, trial judges should approach the joint submission on an "as-is" basis. That is to say, the public interest test applies whether the judge is considering varying the proposed sentence or adding something to it that the parties have not mentioned****…*

[52] Second, ***trial judges should apply the public interest test when they are considering "jumping" or "undercutting" a joint submission****…*

[53] Third, when faced with a ***contentious joint submission****, trial judges will undoubtedly want to know about* ***the circumstances leading to the joint submission*** *— and in particular, any benefits obtained by the Crown or concessions made by the accused.* ***The greater the benefits obtained by the Crown, and the more concessions made by the accused, the more likely it is that the trial judge should accept the joint submission, even though it may appear to be unduly lenient****…*

…

[58] Fourth, if the trial judge ***is not satisfied with the sentence proposed by counsel, 'fundamental fairness dictates that an opportunity be afforded to counsel to make further submissions in an attempt to address the . . . judge's concerns before the sentence is imposed****.' The judge should notify counsel that he or she has concerns, and invite further*

submissions on those concerns, including the possibility of allowing the accused to withdraw his or her guilty plea…

[59] Fifth, if the trial judge's concerns about the joint submission are not alleviated, ***the judge may allow the accused to apply to withdraw his or her guilty plea****…*

[60] Finally, trial judges who remain unsatisfied by counsel's submissions should provide ***clear and cogent reasons for departing from the joint submission****. These reasons will help explain to the parties why the proposed sentence was unacceptable, and may assist them in the resolution of future cases…"*

18. ***In our judgment this approach preserves the ultimate responsibility for sentencing in the judge, it would encourage the resolution of criminal matters, it avoids the uncertainty, stress and costs associated with full trials in circumstances where an accused gives up his right to require the Crown to prove his guilt and his right to defend himself in exchange for a more lenient sentence and it saves our courts and our country valuable time, resources and expenses****."*

(emphasis added)

[20] The Court accepts the guidance in *Taborda* as helpful, pragmatic and the best way to achieve the full potential of the Plea Act to break the criminal justice backlog. It is also consistent with what the apex court, the Caribbean Court of Justice ("the CCJ") has said about the role of the prosecution in the sentencing process, and that the Court must give appropriate deference to their position as the voice of the victim/survivor. That court observed in **Roy Jacobs v The State**[11], per Anderson JCCJ:

"[40] An appointment in the Office of the Director of Public Prosecutions is not mere employment. It is a vocation and a calling. The DPP's Office is as responsible as any other agency of the State to ensure that justice prevails in criminal cases. In this sense the representatives of the Office are

[11] [2024] CCJ 9 (AJ) GY.

'ministers of justice' assisting in the administration of justice. This is especially so in relation to serious crimes where ***the State stands in the shoes of the victim for the purpose of righting the criminal wrong, and, as far as the law can and permits, making good the criminal injury perpetrated****.*

…

[42] That responsibility does not come to an end in the event of a conviction. The guilt phase is properly followed by the penalty phase of the trial, usually involving a sentencing hearing. The ultimate objective of the penalty phase is to determine the appropriate sentence. Here the DPP's Office retains the critical function of ensuring that the sentencing tribunal is appraised of all factors relevant to the imposition of the appropriate sentence. This usually involves a victim impact statement, information on aggravating and mitigating factors of the offence and the offender. It may also include legal submissions targeting the nature or range but not necessarily the specific sentence that the Office considers appropriate. Indications from the Legislature as to the appropriate sentence even when enacted as 'mandatory' in relation to categories of offences are clearly relevant and helpful.

…

[44] The Office of the DPP has no control over the ultimate sentencing decisions of the courts. The imposing of sentences is and must always remain a judicial function. ***Nonetheless, it is the duty and responsibility of that Office, independently, fearlessly, and impartially, to advocate for the type or range of sentence that it considers just in the circumstances of the case and in the interests of the society it serves****. If the Office of the DPP genuinely and for good cause considers that a sentence is too lenient, it must say so.* ***Justice for those for whom it speaks, especially those who cannot now speak for themselves, demands no less****." (emphasis added)*

[21] The Court is also empowered by the Plea Act, namely section 34(5) and (6)[12], to approve a sentence outside the mandatory minimum and the sentencing guidelines once detailed reasons, which this judgment represents, have been provided. These provisions found their way in the Plea Act to provide appropriate elasticity for the Court to break the backlog in a structured way and with due regard to the principles of restorative justice.

[22] The Court will accept the Crown's sentencing recommendation of compensation in the sum and manner suggested in the plea agreement because, for the reasons given above, the Court views it as in the interests of justice to do so.

[23] The Court by way of postscript is happy to see two bits of recent legislation, the subsidiary CCCRM and the Plea Act, working together to bring true justice, consonant with the victim and the prisoner's understanding of it. Belize seems clearly to be on the right path, and it is hoped that these two bits of legislation are used with greater frequency.

Disposition

[24] The Court orders Elisha Buller to compensate Jason Reneau in the sum of twelve thousand dollars ($12,000.00) be paid in instalments of fifty dollars ($50.00) per week with effect from 4th August 2025.

Nigel Pilgrim
High Court Judge
Central District
Dated 4th July 2025

[12] *"(5) Where the court imposes a sentence without regard to the prescribed minimum penalty under sub-section (4), the judge shall provide detailed reasons why the particular sentence is imposed.*
(6) Where a particular sentence is outside of the sentence or sentencing range set out in any sentencing guidelines issued by the Chief Justice, if any, the judge shall provide detailed reasons why the particular sentence is imposed."