

JAMAICA

IN THE COURT OF APPEAL

**BEFORE: THE HON MISS JUSTICE P WILLIAMS JA
THE HON MR JUSTICE BROWN JA
THE HON MRS JUSTICE G FRASER JA**

SUPREME COURT CRIMINAL APPEAL NO COA2020CR00034

DAVION BROWN v R

Shamar O Hanson for the appellant

Ms Debra Bryan and Ms Andrene Hutchinson for the Crown

30 June and 3 July 2026

Criminal law – Leave to appeal – stipulation for incarceration before parole eligibility – Whether the appellant’s guilty plea was taken into consideration based on established principles – Whether the minimum sentence was erroneously stated as 33 years – Treatment of sentence on each indictment – The Offences Against the Person Act, sections 3(1)(b), 3(1A)(a) and 3(1C)(b)(i) – The Criminal Justice (Administration) Act, sections 42C, 42E(2) and 42H

ORAL JUDGMENT

BROWN JA

[1] On 4 March 2020, 26-year-old Davion Brown (the appellant’), was sentenced by a judge of the Supreme Court (‘the learned judge’) in the Westmoreland Circuit Court to concurrent terms of imprisonment for life with a stipulated parole ineligibility period of 30 years’ imprisonment, in relation to two murders committed on separate dates. The sentences were imposed consequent on and subsequent to the appellant’s plea of guilty on separate indictments on 24 February 2020. At the date of those sentences, the appellant was serving two concurrent terms of three years’ imprisonment for breaches of the Firearms Act, imposed on 21 August 2019. Consequently, the sentences of

imprisonment for life were ordered to run consecutively to the appellant's term of incarceration for the firearm offences.

[2] The appellant applied for leave to appeal against the sentences of imprisonment for life, together with their pre-parole indications. His application was granted by a single judge of this court. Pursuant to the grant of leave to appeal, his counsel, Mr Shamar Hanson, filed one ground of appeal, namely, "... the learned trial judge erred in failing to impose the sentence as prescribed by [s]ection 3 (1) (A) & 3 (1) (B) of the Offences Against the Person Act, thereby rendering the sentence manifestly excessive".

[3] The murders for which the appellant was sentenced arose in the following circumstances. On 16 August 2017 at about 10:57 am, the appellant walked into a supermarket and haberdashery in Savanna-la-mar where Ocielle Hall ('Mr Hall') was employed. The appellant shot at Mr Hall in one of the aisles, much to the terrorisation of shoppers. That set Mr Hall to flight, with the appellant in pursuit. Mr Hall fell as he fled. The appellant then stood over Mr Hall and shot him seven times, concentrated mainly in his face and chest.

[4] In the second incident, on 14 November 2017, the appellant shot Gerald Denton three times in the head in the vicinity of a pharmacy, again in Savanna-la-mar, in full view of a member of the Jamaica Constabulary Force. The appellant eluded capture by that member of the Constabulary.

[5] No issue was taken with the sentences of imprisonment for life. The challenge was levelled at the stipulation for incarceration before parole eligibility. In fixing the pre-parole term of imprisonment, the learned judge paid scant regard to the well-established methodological approach to sentencing articulated in the seminal case of **Meisha Clement v R** [2016] JMCA Crim 26, reinforced in **Daniel Roulston v R** [2018] JMCA Crim 20 ('the **Clement-Roulston** methodology') and the Sentencing Guidelines for use by Judges of the Supreme Court of Jamaica and the Parish Courts, December 2017. Firstly, although remarking that he had to take the appellant's guilty

plea into consideration, the learned judge was inscrutably silent as to how he did so in the sentence he imposed. Secondly, the learned judge erroneously stated 33 years as the minimum sentence. Thirdly, the learned judge adopted a composite approach, as opposed to giving separate treatment, to imposing sentence on each indictment.

[6] Those were errors in principle which warrant appellate intervention: **R v Ball** (1951) 35 Cr App Rep 164, applied by this court on numerous occasions, most notably in **R v Alpha Green** (1969), 11 JLR 283. We will, therefore, re-sentence the appellant, where necessary, taking the indictments chronologically.

[7] Imprisonment for life was one of two sentencing options available to the learned judge under section 3(1)(b) of the Offences Against the Person Act for the murder of Mr Hall. Following on that, the learned judge was required to specify a period of not less than 15 years for the appellant to serve before becoming eligible for parole (see section 3(1C)(b)(i) of the Offences Against the Person Act). The learned judge, therefore, erred in saying the minimum sentence was 33 years.

[8] Moving on from there, and applying the **Clement-Roulston** methodology, the next step is to identify the range for this type of offence. In **Quacie Hart v R** [2022] JMCA Crim 70, at para. [33], a minimum range of between 15 and 25 years for a young offender with previously unblemished record who had committed a single murder was identified. The appellant, although similarly a young man at the time, dissimilarly had a criminal history. Accordingly, a range of between 15 and 30 years, as submitted by Mr Hanson and accepted by the Crown, is appropriate. A starting point of 23 years is reasonable, in the language of the trial judge, in the “dreadful” circumstances in which Mr Hall was killed.

[9] That notional sentence of 23 years will be increased by six, to 29 years, when account is taken of the aggravating factors. The notable aggravating factors are: (i) two previous convictions for firearm offences, (ii) the brazen and public circumstances of the shooting, (iii) an element of premeditation, (iv) the use of gratuitous violence, (v)

the prevalence of firearm offences generally and in the commission of murders in particular and (vi) a mostly negative social enquiry report in which members of his community perceived him as a threat. One year is subtracted from the 29 years for the sole mitigating factor of the appellant's youth at the time, making the notional sentence 28 years.

[10] We next turn to the percentage discount for the appellant's plea of guilty. It is not discernible from the record at what stage in the trial process the appellant pleaded guilty. The percentage reductions range between a maximum of 33% through a median 25% to a low of 15%, depending on whether the plea was tendered on the first relevant date, post the relevant date but before the commencement of the trial or after the start of the trial but before the verdict is returned: section 42E(2) of the Criminal Justice (Administration) Act ('CJAA').

[11] Mr Hanson submitted that a 27% (6% shy of the maximum allowable) discount should be given. In other words, reducing the sentence imposed from 28 years to 20 years and six months. Ms Hutchinson, who made oral submission for the Crown, argued for an award of 20%. Ms Hutchinson contended that the appellant would not have been entitled to a full discount in these circumstances, implicitly invoking consideration of the provisions of section 42H of the CJAA.

[12] The sentencing judge is mandated by section 42H of the CJAA to have regard to factors or principles (collectively, 'the section 42H factors') considered relevant generally, and in particular:

- "(a) whether the reduction of the sentence of the defendant would be so disproportionate to the seriousness of the offence, or so inappropriate in the case of the defendant, that it would shock the public conscience;
- (b) the circumstances of the offence, including its impact on the victims;
- (c) any factors that are relevant to the defendant;

- (d) the circumstances surrounding the plea;
- (e) where the defendant has been charged with more than one offence, whether the defendant pleaded guilty to all the offences;
- (f) whether the defendant has any previous convictions...”

[13] The section 42H factors constitute the legislative toolkit to engage in a balancing exercise to arrive at an appropriate percentage discount in sentence in the circumstances of each case. This balancing exercise ought to bear a relationship with the range of sentences usually imposed for this offence, if effect is to be given to section 42H of the CJAA. Taking up the section 42H factors in the round, a discount of 20% results in a sentence that reflects the seriousness of the offence and is appropriate according to the appellant’s profile and circumstances. Therefore, the appellant should serve a term of 22 years and five months’ imprisonment before becoming eligible for parole, for the murder of Mr Hall.

[14] Turning to the pre-parole period of incarceration for the second murder (committed in November 2017), it must first be acknowledged that the appellant became a person who had been convicted of another murder on a different occasion: section 3 (1A)(a) of the Offences Against the Person Act. In that event, as the single judge observed, his period of incarceration before parole eligibility fell to be considered under section 3(1C)(a) of the Offences Against the Person Act. That is, the period of parole ineligibility is “not less than twenty years”. So, once again, the learned judge erred when he declared the legal minimum to be 33 years.

[15] Other nuances are now pertinent. First, for a multiple murder, the range of sentence is 25-45 years’ imprisonment: **Paul Brown v R** [2019] JMCA Crim 3. Second, in the application of the **Clement-Roulston** methodology, a percentage discount is statutorily excluded. Section 42C(b) reads, so far as is relevant:

“42C. The provisions of this Part [Part IA. Reduction of Sentence upon Guilty Plea] shall not apply to a defendant who pleads guilty to –

(a)

(b) the offence of murder, in circumstances where section 3 (1A) of the Offences Against the Person Act applies;
or

(c)"

[16] The heresy which crept into the law that sought to make common law principles applicable to accord a discount in circumstances such as the present, in the face of the statutory prohibition has been exorcised by recent decisions of this court: **Adrian Campbell, Rushane Goldson and Fabian Smith v R** [2026] JMCA Crim 2; **Jason Gray v R** [2025] JMCA Crim 22.

[17] These nuances lead to another consideration. Where there is a complaint that a sentence is manifestly excessive, this court looks for three indicia. Firstly, whether the sentence was arrived at by applying conventional principles of sentencing. Secondly, does the sentence fall within the competence of the sentencing court and is the sentence one that is ordinarily imposed for the class of offence in similar circumstances. According to Morrison P, "[o]nce the ... the sentence satisfies these criteria, [this court] will be loath to interfere with the sentencing judge's exercise of his or her discretion" (see **Meisha Clement v R**, at para. [43]).

[18] So, although the learned judge did not explicitly refer to any of the classical principles of sentencing, it does not require any power of divination to see that he had the relevant principles in mind. The learned judge was clearly thinking of the appellant's capacity for rehabilitation when, bearing his youthfulness in mind, he declined to make the sentences for the murders run consecutively. Furthermore, the length of the sentences implicitly contains an element of deterrence for the protection of the public, the most important purpose of the criminal law. Lastly, the learned judge addressed his mind to the question of reduction of sentence for time spent on remand, ultimately concluding that was not a relevant consideration since the appellant was then serving a sentence of imprisonment.

[19] Not only do the learned judge's remarks reflect the application of accepted principles of sentencing, he also undoubtedly had the competence to impose sentences of imprisonment for life, together with recommended periods or incarceration before eligibility for parole. Lastly, and critically, the sentence the learned judge imposed for the murder of Gerald Denton, not only falls within the range of sentences for murder but is comparable to sentences usually imposed for a murder committed with a firearm (see, for example, **David Russell v R** [2013] JMCA Crim 42).

[20] The conclusion of the preceding discussion is this. Even though the learned judge did not resort to the **Clement-Roulston** methodology in fixing the period to be served before becoming eligible for parole in relation to the murder of Gerald Denton, the 30 years he fixed cannot fairly be classified as manifestly excessive. That is to say, the fixed period of incarceration before parole eligibility satisfies the criteria set out in **Meisha Clement v R**, summarised above (see para. [17]). Consequently, we are loath to disturb it.

Disposal

[21] The sentences imposed by the learned judge went without challenge and accordingly should be affirmed. However, the learned judge made errors of principle in fixing the periods the appellant should serve before becoming eligible for parole. In relation to the murder of Mr Hall, the learned judge's indication of a pre-parole period was in sharp conflict with the law, having proceeded from a mistaken higher minimum period than contemplated by the Offences Against the Person Act. That period, consequently, must be set aside and substituted by one arrived at employing the **Clement-Roulston** methodology. In respect of the murder of Gerald Denton, the period set is reflective of the principles of sentencing and is one that not only falls within the jurisdiction of the learned judge, but also the usual range of sentences for the peculiar type of murder and should be affirmed.

[22] Hence, we make the following orders:

1. The appeal is allowed in part.
2. The sentence of life imprisonment, imposed for each murder, is affirmed.
3. The period of 30 years to be served before becoming eligible for parole for the murder of Ocielle Hall is set aside. Substituted therefor is a pre-parole incarceration of 22 years and five months.
4. The period of 30 years to be served before becoming eligible for parole for the murder of Gerald Denton is affirmed.
5. The sentences are to run concurrent but consecutive to the sentence imposed on 21 August 2019, as ordered by the learned judge.