[2026] JMCA Crim 2

JAMAICA

IN THE COURT OF APPEAL

BEFORE: THE HON MISS JUSTICE EDWARDS JA
THE HON MRS JUSTICE DUNBAR GREEN JA
THE HON MRS JUSTICE G FRASER JA (AG)

SUPREME COURT CRIMINAL APPEAL NOS 103, 104 & 105/2019

ADRIAN CAMPBELL
RUSHANE GOLDSON
FABIAN SMITH v R

George E Clue for Adrian Campbell

Leonard Green for Rushane Goldson and Fabian Smith

Ms Alice-Ann Gabbidon and Ms Kimberly Guy-Reid for the Crown

18, 19 July 2024 and 13 March 2026

Criminal law – Murder – Two counts – Pleas of guilt after first relevant date but before trial – Appeal against sentence – Whether sentencing judge adopted the standard sentencing approach – Whether purported duress associated with appellants' involvement in murders has any mitigating value – Whether the statutory discount regime was appropriately applied – Whether the goals of sentencing sufficiently considered – Whether sentences manifestly excessive

EDWARDS JA

Introduction

[1] The judgment of Dunbar Green JA comprehensively discusses the facts surrounding the brutal slaying of Mrs Charmaine Cover-Rattray and her daughter Joeith Lynch, as well as the charge, trial, conviction and sentence of the appellants, Adrian Campbell, Rushane Goldson and Fabian Smith, for their murder.

[2] Dunbar Green JA also identified the errors made by the learned judge in certain aspects of the sentencing exercise carried out with respect to the sentencing of the appellants on the first count of murder, which resulted in this court having to intervene and conduct its own sentencing exercise. Dunbar Green JA sets out the correct methodology applied by this court and the sentence that the court arrived at after the exercise.

Discussion

[3] This discussion is limited to the law relevant to the reduction of sentences for murder following a plea of guilty in circumstances involving multiple murders. Before examining the statutory provisions relating to discounts for guilty pleas for murder, however, it is prudent to consider the provisions in the law relating to the sentences for the offence of murder to see the interplay between those provisions and the statutory provisions governing guilty pleas. For, although counsel for the appellants accepted that the statutory discount is inapplicable to a plea of guilty on the second count of murder in a case of double murder, such as in this case, counsel argued that a discount may, nevertheless, be given at common law.

[4] To support this contention, counsel relied on the case of **Javone Leslie and Jamelia Leslie v R** [2023] JMCA Crim 60. In that case, the appellants, Javone Leslie and Jamelia Leslie, pleaded guilty to three counts of murder. The sentencing judge applied statutory discounts under the Criminal Justice (Administration) (Amendment) Act, 2015 ('CJAA') to the sentences in respect of all three counts. On appeal, this court examined the impact of the statutory framework of the CJAA regarding discounts for guilty pleas in cases involving multiple murders. This court by a majority (Dunbar Green JA dissenting) held that although statutory discounts were precluded by the CJAA in such cases, and the judge had been wrong in that regard, common law principles may be applied to grant a discount for a guilty plea in the case of multiple murders, outside of the statute.

[5] Considerable doubt is cast on the correctness of that approach. In **Cameron v The Queen** (2002) HCA 6 (unreported) decided 14 February 2002, a case from the High Court of Australia, Kirby J had this to say:

> "In all States and Territories and in respect of federal offences legislation addresses in various ways the approach to be adopted, and procedures to be followed, where a person is to be sentenced who has pleaded guilty to a criminal charge. It is the first obligation of the sentencing judge to conform to such legislation. No rule of the common law, nor any judicial practice, may contradict valid legislative prescriptions."

[6] Although the court, in that case, was concerned with whether it should adopt a pragmatic utilitarian approach or a more subjective approach to sentencing, following a plea of guilty, Kirby J's statement quoted above, has much to commend it and is apt to this case. The approach in **Javone Leslie and Jamelia Leslie v R** circumvents a valid legislative prescription, and, respectfully, it ought not to be followed.

[7] The question remains, however, whether a court may otherwise acknowledge the guilty plea of an offender who pleads guilty to multiple murders and cannot benefit from the statutory regime. This, in the light of the rationale for encouraging defendants to enter pleas of guilty in a show of genuine remorse and a willingness to assist the course of justice, to save the court time and resources, thus making for a more efficient justice system. The answer to that lies in the common law but in a different procedure from that adopted in **Javone Leslie and Jamelia Leslie v R**.

The law

[8] At the heart of the classification of murder in this jurisdiction lies section 2 of the Offences Against the Person Act ('OAPA'). Section 2(1)(a) to (f) and section 3(1A) outline the offences that would amount to "capital murder" (punishable by death or life imprisonment under section 3(1)(a)). Section 2(2) outlines the "non-capital" category of murders, for which punishment is life imprisonment or a fixed term not less than a minimum of 15 years, as provided under section 3(1)(b). By virtue of section 3(1A), a person who has been previously convicted of another murder committed on a different

occasion, or another murder committed on the same occasion, is liable to suffer the punishment of death in a manner authorised by law", or to imprisonment for life.

[9] Section 2(2) of the OAPA provides:

> "Subject to subsection (3), every person convicted of murder other than a person—
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> (a) convicted of murder in the circumstances specified in subsection (1)(a) to (f); or
>
> (b) to whom section 3(1A) applies, **shall be sentenced in accordance with s**ection 3(1)(b)." (Emphasis added)

[10] Section 3 of the OAPA provides, in part:

> "3.-(1) Every person who is convicted of murder falling within-
>
> (a) section 2(1)(a) to (f) or to whom subsection (1A) applies, shall be sentenced to death or to imprisonment for life;
>
> (b) section 2(2), shall be sentenced to imprisonment for life or such other term as the court considers appropriate, not being less than fifteen years.
>
> (1A) This subsection applies to a person who is convicted of murder and who, before that conviction, has been convicted in Jamaica -
>
> (a) whether before or after the 14th October, 1992, of another murder done on a different occasion; or
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> (b) of another murder done on the same occasion."

[11] Consideration of the interplay between those provisions and the provisions in the CJAA dealing with the statutory discount regime begins and ends with sections 42C, 42D, 42E, 42F and 42H of the latter statute. These sections appear in Part 1A of the statute under the heading "*Reduction of Sentence upon Guilty Plea".*

[12] Section 42C of the CJAA provides as follows:

> "42C. The provisions of this Part shall not apply to a defendant who pleads guilty to—
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> (a) the offence of murder falling within **section 2(1)** of the *Offences Against the Person Act*;
>
> (b) the offence of murder, in circumstances where **section 3(1A)** of the *Offences Against the Person Act* applies; or
>
> (c) an offence following plea negotiations and the conclusion of a plea agreement pursuant to the provisions of the *Criminal Justice (Plea Negotiations and Agreements) Act*." (Emphasis added)

[13] Offences falling within section 2(1) of the OAPA, as mentioned before, are the capital offences. The offences of murder falling within section 3(1A) of the OAPA are murders committed by a person already convicted of another murder or who has committed a murder on the same occasion, and an offence following plea negotiations and the completion of a plea agreement are those pursuant to the Criminal Justice (Plea Negotiations and Agreements) Act.

[14] This section makes it clear that persons charged with capital murder, or persons convicted of more than one murder or who have entered a plea agreement cannot benefit from the provisions in Part 1A.

[15] Section 42D deals with the formula to be applied where the reduction of a sentence upon a guilty plea to an offence, which is not murder, is being considered. This is a general provision.

[16] Section 42E addresses the reduction of sentence upon a plea of guilty to a single murder which falls within section 2(2) of the OAPA. It provides, in part:

> "42E.-(1) Subject to subsection (3), where a defendant pleads guilty to the offence of murder, falling within section 2(2) of the *Offences Against the Person Act*, the Court may, in accordance with subsection (2), reduce the sentence that it would otherwise have imposed on the defendant had the defendant been tried and convicted of the offence.

(2) Pursuant to subsection (1), the Court may reduce the sentence in the following manner—

(a) where the defendant indicates to the court, on the **first relevant date**, that he wishes to plead guilty to the offence, the sentence may be reduced by up to **thirty-three and one third *per cent***;

(b) where the defendant indicates to the Court, after the first relevant date but **before the trial commences that he wishes to plead guilty to the offence,** the sentence may be reduced by **up to twenty-five *per cent***;

(c) where the defendant pleads guilty to the offence **after the trial has commenced**, but before the verdict is given, the sentence may be reduced by **up to fifteen *per cent***.

(3) Notwithstanding subsection (2), the Court shall not impose on the defendant a sentence that is **less than the prescribed minimum penalty** for the offence as provided for pursuant to **section 3(1)(b)** of the *Offences Against the Person Act."* (Emphasis added)

[17] Pursuant to subsection 4, the court is to have regard to the factors outlined in section 42H, when determining the percentage by which the sentence is to be reduced.

[18] The policy position taken by the legislature is made clear in the distinction drawn between the formula in section 42D and that in section 42E. For offences other than murder, the discount starts at a maximum of 50%. For murder, the discount starts at a maximum of 33 1/3 %.

[19] Section 42F is a deeming provision, in that, it deems the sentence of life imprisonment to be a fictional 30 years, in order to calculate a reduction of the sentence of life imprisonment for a discount to be applied where a guilty plea has been entered for a single count of murder. It states as follows:

"42F. Where the offence to which a defendant pleads guilty is one for which the Court may impose a sentence of life imprisonment, and the Court would have imposed that sentence had the defendant been tried and convicted for the offence, then, for the purpose of calculating a reduction of

sentence in accordance with the provisions of this Part, a term of **life imprisonment shall be deemed to be a term of thirty years**." (Emphasis added)

[20] It may be noted that, in a 2025 amendment, the legislators have sought to increase this "deemed" period to 50 years, specifically for murder, to ensure sentences for murder remain high even after a discount. That amendment is not applicable to this case.

[21] By virtue of section 42E(3), a court cannot go below the prescribed minimum in section 3(1)(b) of the OAPA. Therefore, section 42F cannot be used to impose a reduced term of years below 15 years.

[22] Section 42H sets out the factors which are to be considered by the Court in determining the reduction of the sentence. It provides:

> "42H. Pursuant to the provisions of this Part, in determining the percentage by which a sentence for an offence is to be reduced in respect of a guilty plea made by a defendant within a particular period referred to in **42D(2)** and **42E(2)**, the Court shall have regard to the following factors, namely—
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> (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 of the offences**;

(f) whether the defendant has any **previous convictions**; and

any **other factors** that the Court considers relevant." (Emphasis added)

[23] This section is only relevant in the context of the consideration of a discount for a single count of murder.

[24] Again, the policy of the legislature is clear in this section. The proportionate clause in section 42H(a) suggests that Parliament was conscious of the fact that to allow a discount in certain circumstances may "shock the public conscience" due to the gravity of the crime. In the case of a single murder, it leaves the discretion with the judge to determine whether to withhold the discount on that basis. In the case of multiple killings, Parliament withheld, outright, the power to apply a discount, as such killings would invariably "shock the public conscience".

[25] The section 42H(e) factor specifically directs the court to look at whether the defendant pleaded guilty to all the charges. In the case of a multiple murders, a plea of guilty on one count may not automatically result in a discount, if the circumstances, such as the fact that it is multiple murders, makes the application of the full discount, or any portion thereof, inappropriate in all the circumstances.

[26] The statutory regime for a discount under the CJAA cannot apply to double murders because section 42C expressly excludes offences under section 2(1)(a) to (f) and section 3(1A) from the discount regime.

<u>The problem</u>

[27] Section 42C of the CJAA acts as a "gatekeeper" provision. Based on this provision the statutory discounts provided in section 42E do not apply to any offence where there are multiple murder convictions. This is a problem for persons who wish to plead guilty to more than one count of murder, for although a discount may be applied to the first,

effecting a decreased sentence, there will be none on the second, which, in any event, would carry the greater penalty.

[28] In this case, counsel for the appellants, recognising that the appellants are barred from benefitting from a discount for a guilty plea to a second murder under the CJAA, have argued that, nevertheless, a discount can be applied pursuant to common law. Counsel for the appellants argued that, if the statute is silent or exclusionary, the court should revert to the common law principle that a guilty plea deserves credit for saving the court's time and sparing witnesses from the trauma of having to give evidence.

[29] The question which arose from counsel's submission, and their reliance on the majority decision in **Javone Leslie and Jamelia Leslie v R** is this: is it correct to say that in all cases where the statute prohibits a discount without expressly repealing the common law discretion, the court can resort to the common law to grant one?

[30] The solution devised by the majority in **Javone Leslie and Jamelia Leslie v R** to the restriction in section 42C cannot be supported for three reasons. The first is that the Part 1 provisions in the CJAA are a comprehensive restatement and remodification of the common law and leave no room for a return to the common law to apply the same principles and methodology. The discount for a guilty plea has, therefore, been modified from a discretionary judge led process at common law to a formal, structured formulaic application pursuant to the statutory provisions. It is a total reform of the discounting system. Secondly, section 42C reflects the approach of the courts at common law in refusing to grant a discount for guilty pleas in the case of multiple murders and other seriously heinous crimes. Thirdly, in the Sentencing Guidelines For Use By Judges of the Supreme Court and Parish Court, December 2017 ('the Sentencing Guidelines') at para. 10 under the heading "guilty plea discount", it recognises that guilty pleas are now governed by section 42D and 42E. Para. 10.8 is crucial to this discussion, and it states as follows:

> "These are longstanding principles of the common law of sentencing. **However, the process of making an**

> **allowance for a guilty plea, as well the level of the allowance for a guilty plea discount, is now governed by section 42D and 42E of the CJAA. But it is important to note that these provisions do not apply to an offender who pleads guilty to the offence of murder falling within section 2(1) of the OAPA, or in circumstances in which section 3 (1A) of the OAPA applies**." (Emphasis added)

[31] In **Meisha Clement v R** [2016] JMCA Crim 26, at para. [40], the court indicated that the "whole matter of allowing a discount for a guilty plea has now been put on a statutory footing". This is correct. The fact that the CJAA did not expressly repeal the common law discretion is, in these circumstances, of no moment. It did not need to in this case, as there may be no necessity for Parliament to state that a sentence methodology which was based purely on discretionary practice and not law is repealed. Once the practice has been promulgated into law, it is the law which must apply to all cases. In Part 1 of the CJAA, Parliament specifically carved out exceptions (by way of section 42C). Implicit in those provisions is a deliberate retreat from the discretionary common law approach. The court cannot, and ought not to, resort to the common law to circumvent a clear statutory prohibition. To grant a "common law discount" on a second count of murder would effectively neutralise the mandatory nature of section 3(1A) of the OAPA and the prohibition in section 42C of the CJAA. Neither would it be a fair nor a just approach, for one judge may exercise a discretion to grant a discount at common law in one case, whilst another may decline to do so in another case involving similar circumstances.

[32] Despite counsel's spirited contention in this regard, that approach is untenable. The CJAA structuralised and codified the common law approach to the application of discounts to sentences after a guilty plea and provides a greater level of certainty to the discount regime. The factors in section 42H are some of the same factors a court would have considered when determining whether to apply a discount, and what percentage to apply, at common law. However, the discretion in the application of the percentages at common law, was as wide and as varied as "the Chancellor's foot" and could range from

as low as no discount to a high of 50%, even in like cases. This was largely because of the confusion between the utilitarian view taken by some courts to the value of the guilty plea and the subjective moral view of the guilty plea taken by other courts.

[33] The utilitarian view was time driven and considered mostly the; time and resources saved; witnesses spared the trauma of given evidence and the utility to the judicial system. The state of mind of the offender is not a dominant factor. This is the approach taken by the statutory provisions. Discounts are granted on a sliding scale linked to the time the plea of guilty was entered. The subjective approach placed less emphasis on the utility of the plea and instead viewed it as a sign of remorse or contrition.

[34] Furthermore, the anomaly in the law that the approach, advocated for by counsel for the appellants would cause, is clear from the result in the approach taken by the majority in the case of **Javone Leslie and Jamelia Leslie v R**. In that case, the majority granted a 15% discount, at common law, for a guilty plea to a triple murder, when the appellants in this case only secured a 5% discount, under the statute, for the first murder in a case of double murders. The murders, in both cases, were heinous and neither has anything to recommend it as less so, except for the number of victims.

[35] Discounts under the CJAA, even for a single count of murder are not automatic, nor were they automatic at common law. In any event, even at common law, the court rarely if ever gave any significant discount for a guilty plea to multiple murders. This was because such cases were likely to shock the public conscience, it might have been necessary to impose a long sentence in the public interest, and any "right" to a discount may have been lost (see **Costen** (1989) 11 Cr App R (S) 182). No doubt, this was part of the thinking which guided Parliament in imposing the prohibition on a discount for a guilty plea in cases involving multiple murders.

<u>The solution - the guilty plea as a subjective mitigating factor</u>

[36] There is, however, a vital distinction between a formulaic discount suggested by the statute (for example a 1/3 reduction), and a mitigating factor which may be

considered as one of any number of factors to be considered in determining the appropriate sentence. In such a case, at common law, the guilty plea to multiple murders, where it is viewed as a sign of remorse, may be regarded as a mitigating factor, where appropriate. The weight to be given to aggravating and mitigating factors is left to the sentencing judge in what is sometimes referred to as an instinctive synthesis approach" (see a reference to that term at para. 21 of **Meisha Clement v R**) which is a term coined by the courts in Australia.

[37] The difference in approach to the treatment of the guilty plea on the one hand as a subjective personal mitigating factor, and on the other as a thing of utilitarian value, can be seen in some of the old common law cases, the Sentencing Guidelines and now in the statute. It is worth setting out parts of para. 10 of the Sentencing Guidelines here.

[38] Para. 10.5 reads as follows:

> "10.5 Once the sentencing judge has determined the sentence to be imposed, he or she is required to give consideration to a reduction in the sentence on account of a guilty plea."

[39] Para. 10.6 is in the following vein:

> "The reduction principle is employed because a guilty plea obviates the need for a trial, saves considerable costs and resources and, in the case of an early plea, saves victims and witnesses from the ordeal of giving evidence. It also serves to encourage others to plead guilty where appropriate."

[40] Para. 10.7 gives separate recognition to the subjective element as follows:

> "10.7 A guilty plea may also be regarded as an indication of remorse in an appropriate case."

[41] Para. 10.6 is a statement of the utilitarian approach, which asks what the value of the guilty plea to the justice system is and what reward should be given to the offender to acknowledge the value of the plea. This would generally be by way of a percentage discount. Para. 10.7 is a statement of the subjective value of the plea which can be considered as a mitigating feature for reducing the sentence. It is important to note that

the two approaches appear in two different paragraphs of the Sentencing Guidelines and the cases referred to in each paragraph take the two different approaches.

[42] The difference in the approach to the formulaic discount vis-à-vis the mitigating factor can be shown in the case law.

[43] In **Jason Gray v R** [2025] JMCA Crim 22, this court highlighted the step-by-step methodology for sentencing in murder cases involving a guilty plea where the statute is applicable. The first step is for the judge to determine the "appropriate" sentence they would have given if the case had gone to a full trial. If that sentence is life imprisonment, the judge must then, as the second step, "deem" that life sentence to be a term of 30 years (or the updated statutory period) for the purpose of the mathematical calculation of the discount. The third step is to apply the statutory discount, according to the stage at which the plea was given and the factors the court deems relevant to take account of, to that "deemed" 30-year period. The resulting number becomes the pre-parole period stipulated along with the sentence of life imprisonment. The discount is, therefore, a post re-calculation deduction from the sentence which would have been appropriate after a trial. That of course is for guilty pleas in the case of a single murder. For multiple murders the deeming provision would not be applicable.

[44] A mitigating factor is a qualitative element considered during the balancing exercise to determine the minimum pre-parole period. In the case of a plea of guilty to multiple murders, the court, in calculating the sentence which would be appropriate in such a case, in keeping with the Sentencing Guidelines and the **Meisha Clement v R** approach, would determine the starting point, take account of the aggravating factors which may increase the sentence above the starting point, then consider the mitigating factors which may reduce the sentence, and in that way, arrive at an appropriate pre-parole period. A guilty plea, properly viewed as a sign of contrition or remorse, can be considered, along with any other mitigating factor relevant to the offender or the offence.

[45] This was the approach taken in **Kurt Taylor v R** [2016] JMCA crim 2023. That case involved an appeal to this court challenging the sentence given to an offender for the offence of knowingly possessing identity information of persons contrary to section 10(1) of the Law Reform (Fraudulent Transactions) (Special Provisions) Act, 2013 ('the Act'). After acknowledging the learned trial judge's error in her sentencing approach, this court said this:

> "What was required, on the authorities, was a starting point of a sentence that was the most appropriate sentence in these particular circumstances; and then to make the discounts for matters related to the particular offender, such as the guilty plea and his good record - that is that he had no previous convictions. In **Regina v Delroy Scott** (1989) 26 JLR 409, Carey P (Ag, as he then was), writing on behalf of the court in reviewing sentences, stated that the court used as a starting point '...the range of sentences imposed in [the High Court Division of the Gun Court] over the last three years, where the second count is wounding with intent. The average for this period was about ten years.' (Emphasis added)
>
> The court in that case on account of a guilty plea then proceeded to discount by two years the sentence initially imposed."

[46] The court in that case went on to consider the case of **Regina v Everald Dunkley** (unreported), Court of Appeal, Jamaica, Resident Magistrates Criminal Appeal No 55/2001, judgment delivered 5 July 2002, where in that case it was said, at page 4, that:

> "If therefore the sentencer considers that the 'best possible sentence' is a term of imprisonment, he should again make a determination, as an initial step, of the length of the sentence, as a starting point, and then go on to consider any factors that will serve to influence the length of the sentence, whether in mitigation or otherwise. The factors to be considered in mitigation of a sentence of imprisonment are, whether or not the offender has:
>
> (a) pleaded guilty;
>
> (b) made restitution; or

(c) has any previous conviction. These factors must be considered by the sentencer in every case before a sentence of imprisonment is imposed."

[47] At paras. [32]-[33] the court in **Kurt Taylor v R** went on to state as follows:

> "We had a concern as well in relation to the learned judge's finding that there was no expression of remorse by the appellant. This concern arose for two reasons: (i) the authorities have observed that a plea of guilty in and of itself may very well be regarded as an indication of remorse; and (ii) issues in relation to the first social enquiry report.
>
> In relation to the effect of the guilty plea, it is expressly stated at page 4 of **Regina v Everald Dunkley**, that:
>
> > 'A plea of guilty is an indication of repentance and a resignation to the treatment of the court.'"

[48] Further at para. [35] the court said the following:

> "We consider to be appropriate for this case the application of the observation of Brooks JA in the case of **Christopher Brown v R** [2014] JMCA Crim 5 at paragraph [17] thereof where he observed:
>
> > '[17] We agree with Mr Fletcher that the learned Resident Magistrate, although she mentioned all the mitigating factors in Mr Brown's favour, did not give sufficient weight to the effect of the plea of guilt. Her stress on his lack of remorse overshadowed the impact of the guilty plea.'" (Emphasis added)

[49] Finally, at para. [37], in concluding on the sentence which the court considered most appropriate in the circumstances, the following was said:

> "However, if she was correct in her view that a custodial sentence was appropriate, then, while not attempting to lay down any guideline for matters of this nature, it seemed to us that, starting out with the best possible sentence and making the required reductions on account of the appellant's good record and guilty plea, an appropriate custodial sentence in this case would have been a period of some three years' imprisonment."

[50] A further illustration of the approach is to be found in the case of **Jerome Barnes v R** [2015] JMCA 3 at para. [11], an appeal to this court against sentence given after a guilty plea to illegal possession of firearm and robbery with aggravation. This court observed:

> "A plea of guilty, by itself, may be an indication of remorse. Sir Denys Williams CJ so stated in delivering the judgment of the Court of Appeal of Barbados in Keith Smith v R (1992) 42 WIR 33, at pages 35-36: 'It is accepted that a plea of 'Guilty' may properly be treated as a mitigating factor in sentencing as an indication that the offender feels remorse for what he has done. It is also clear that an offender with a good or relatively good record may have his sentence reduced to reflect that record.' The timing of the plea must, however, be taken into account in considering both the issue of remorse as well as the issue of the appropriate reduction, or discount, to be applied to the sentence."

[51] In that case, however, this court took the view, relying on **R v Collin Gordon** (unreported), Court of Appeal, Jamaica, Supreme Court Criminal Appeal No 211/1999, judgment delivered 3 November 2005, that no reduction could be granted for the plea of guilty because of the stage at which it was entered (just before the last witness for the prosecution was taken) and that a late plea of guilty does not entitle the offender to the traditional discount. However, the court in **R v Collin Gordon** did accept that a guilty plea could be an expression of remorse by the offender throwing himself at the mercy of the court, and that the offender could benefit from a reduced sentence based on his conduct in pleading guilty at an early stage, thus saving time and expense (at page 5).

[52] It is clear, therefore, that at common law, this court has, prior to the enactment of the CJAA, treated the guilty plea as a sign of remorse and acceptance of responsibility, which was a mitigating factor that, along with other mitigating circumstances, may cause a sentence to take a downward trajectory.

[53] At this point, it should be noted that the case of **Meisha Clement** does not provide precedent for this approach. That case involved a guilty plea to one count of

possession of an access device contrary to section 8 of The Reform (Fraudulent Transactions) (Special Provisions) Act. At para. [34] the court listed a plea of guilty as one of several in an inexhaustive list of mitigating factors. At para. [37] the court gave recognition to and adopted the views expressed in **Kurt Taylor v R** and **Everald Dunkley** that a plea of guilty can be treated as an expression of remorse. However, at para. [38] the court took the approach of applying a formulaic discount after balancing the aggravating and mitigating circumstances to arrive at the sentence which it would have imposed if the case had gone to trial. A discount of 1/3 was, therefore, applied to the sentence of eight years which had been arrived at after a starting point of seven years and a balancing of the aggravating and mitigating factors personal to the offender. It is also important to note that the court could not treat the guilty plea as a subjective element indicating remorse, because the evidence, which the court accepted, did not suggest that the offender was remorseful. Therefore, the discount on the guilty plea was made purely because of its utilitarian value, in saving the court time and expense, which was also the approach adopted by the trial judge. That approach is in keeping with the statutory position, as it now stands.

[54] Furthermore, although it was said in **Meisha Clement v R** that the offender in **Everald Dunkley** was given a 50% discount for the plea of guilty, this is not strictly correct. An examination of that case showed that the court treated the guilty plea as an expression of remorse and as a mitigating factor along with other mitigating factors such as the fact that the offender had a clean record and had made restitution. It was consideration of those mitigating factors together which caused the court to reduce the sentence from 12 months to six months. Therefore, in that case, no formulaic percentage discount was given for the guilty plea alone. That was an erroneous observation made by the court because the sentence **Everald Dunkley** had been reduced by half, after the mitigating circumstances were accounted for.

[55] It has long been the case in the English common law that a defendant who pleads guilty and shows genuine remorse, expects to benefit from a mitigation of his sentence and that his sentence will be less than the one who goes to trial and is found guilty (see **Regina v De Haan** [1968]2 QB 108 at 110). Guilty pleas are generally encouraged. There are three utilitarian bases for encouraging a plea of guilty. The first, is to save time and resources, including costs to the police, prosecuting services and the defence. The second, is to spare witnesses from the trauma of having to face the offender and his attorney(s) in court and relive what may well have been a horrific experience. The third, is that it is generally in the public interest that the guilty be punished (see the case of **Caley and Others (Guilty Pleas) v The Queen** [2012] EWCA Crim 2821, at paras. 4 to 7). There are equally reasons for acknowledging an offender's willingness to plead guilty in the scope of his sentence. It may be an acknowledgment that he is remorseful in some way and accepts his guilt. So, while remorse is not part of the rationale for a percentage discount, and does not appear in the section 42H factors, evidence of remorse, contrition, co-operation and early admissions might still be relevant to sentencing, as a mitigating factor specific to the offender under general sentencing guidelines, depending on the circumstances.

[56] A plea of guilty will always serve, at the very least, the basic purpose of acknowledging responsibility and saving time and expense. However, with the passing of the legislation which now governs the treatment of discounts for guilty pleas, the fact of a plea of guilty by itself, will not be sufficient, at common law, to be considered a mitigating factor. However, there may be circumstances where the plea of guilty was the culmination of a demonstrated posture of genuine remorse or followed upon the defendant's early admission of culpability and voluntary co-operation with the investigation. In such a case, even though a percentage discount on the appropriate sentence would shock the public conscience, or is not allowed under the statute, the plea of guilty, in such circumstances, could be treated as a mitigating factor.

[57] This approach is fully logical. When a judge determines the number of years a defendant must serve before becoming eligible for parole, they must weigh aggravating and mitigating circumstances. A guilty plea to murder, even to a second count of murder, which demonstrates an acceptance of responsibility, genuine contrition, potential for rehabilitation or follows upon early admission of culpability and co-operation with law enforcement, when treated as a mitigating factor, does not reduce the sentence by a fixed percentage, but it may lead the court to settle on a lower pre-parole period after balancing the aggravating and mitigating factors, than it otherwise would have. The weight to be given to it is entirely left to the discretion of the judge in weighing and balancing the scales, in the circumstances of the individual case.

[58] Whilst Parliament may have taken a policy decision in the interest of the public, to impose a restriction in the CJAAA on the application of a discount to a plea of guilty to multiple murders, there is no basis in law, logic or policy why a plea of guilty by a defendant to multiple murders, in the circumstances outlined above, should not be considered, subjective to the individual offender, as a mitigating factor in reducing a starting point, in an appropriate case.

[59] In this case, the appellant Fabian Smith wrote a letter to the court apologising to the family of the deceased and expressing remorse for his part in the brutal killing. The learned judge took this show of remorse into account as a mitigating factor in considering the appropriate sentence, before the discount was applied for the guilty plea on the first count. Since each count is to be treated as separate for the purpose of the trial and sentencing, there would have been nothing to prevent her from taking this show of remorse, which she clearly took to be genuine, into account on the second count of murder, instead of erroneously applying a percentage discount.

[60] Furthermore, all three appellants gave caution statements admitting their participation in the murders. Mr Campbell co-operated with the police in leading them to where the victim's head had been disposed of. All three expressed remorse in one form or the other, which the trial judge accepted. They are, therefore, entitled to have their

plea of guilty, to the second count of murder, considered as a mitigating factor, in arriving at the appropriate sentence which ought to be imposed on them.

Conclusion and disposal

[61] The statutory regime for the grant of a discount on a plea of guilty does not apply to this double murder by virtue of the interplay between section 42C of the CJAA and section 3(1A) of the OAPA. The court is not empowered to exercise common law powers to grant a discount that the statute has specifically sought to regulate and exclude.

[62] However, there is no rule of law preventing a guilty plea to a second count of murder being treated, in an appropriate case, as a mitigating factor in the court's consideration when fixing the period of imprisonment to be served before the defendant is eligible for parole. This should only be done, however, where there is evidence of genuine remorse, early admission to the commission of the crime and co-operation with the police.

[63] This approach is a completely different approach from that taken in **Javone Leslie and Jamelia Leslie v R**. The majority in that case, after balancing the aggravating and mitigating factors and arriving at a pre-parole period, then applied the discount. In the light of the comprehensive statutory regime set out in the CJAA for discounts on a plea of guilty, and the clear words of the statute prohibiting any such discount for multiple murders, using the common law to get around the statute would be an incorrect interpretation of the statute and a rejection of the policy reasons for the injection of such a prohibition into the statute.

[64] The approach taken in this case is to consider the guilty plea, where there is demonstrated indisputable evidence of remorse, to be a mitigating factor applied after the aggravating factors are applied to the starting point, and before arriving at the minimum pre-parole period.

[65] Accordingly, the sentences imposed on counts 1 and 2 for each appellant should be as stated in the judgment of Dunbar Green JA, with whose reasoning and conclusion I agree

DUNBAR GREEN JA

Introduction

[66] This is an appeal against sentence brought by Adrian Campbell, Rushane (also spelt 'Roshane') Goldson, and Fabian Smith ('the appellants'). Each appellant was convicted of two counts of murder arising from the brutal killings of Mrs Charmaine Cover-Rattray and her teenage daughter, Joeith Lynch (otherwise called 'Crystal'). The murders were committed in circumstances described by the sentencing judge as "the worst of the worst," involving forced entry into the victims' home at nighttime, the use of deadly weapons, and the beheading of both victims.

[67] The appellants were sentenced to life imprisonment on both counts, with minimum pre-parole periods ranging from 44 to 46 years. The sentences were ordered to run concurrently.

[68] The appellants now challenge the sentencing exercise, contending that the learned judge erred in principle and that the sentences imposed were, as a result, manifestly excessive.

[69] On 9 November 2021, a single judge of appeal granted them leave to appeal their sentences.

Background

[70] On 6 November 2019, the appellants pleaded guilty to two counts of murder before Harris J (as she then was) ('the learned judge'). On 11 December 2019, they were sentenced as follows: Adrian Campbell was sentenced to concurrent terms of life

imprisonment at hard labour, with a stipulation that he should serve 44 years before becoming eligible for parole; Rushane Goldson to concurrent terms of life imprisonment at hard labour, with eligibility for parole after 46 years; and Fabian Smith to concurrent terms of life imprisonment at hard labour, with eligibility for parole after 44 years.

[71] The tragic events culminating in the convictions of the appellants unfolded under the following circumstances. On the night of 19 July 2011, Mrs Cover-Rattray, aged 40, and her daughter, Crystal aged 18 ('the deceased'), retired to bed in their home located in Lauriston, Saint Catherine. Sometime before daybreak the following day, a group of eight or nine men, including the appellants, forcibly entered the premises by kicking in both the front and back doors. The intruders armed with guns, machetes, and knives, launched a brutal attack upon the occupants. Mrs Cover-Rattray was chopped multiple times and shot six times. Crystal was likewise chopped multiple times and shot once. During the killing, Mrs Cover-Rattray was heard crying out, "I didn't do nothing, I didn't do nothing" while invoking the "blood of Jesus". Crystal was heard calling for help, exclaiming "mi nuh know nutten" and screaming the name, "Rushane".

[72] Later that morning, the police discovered the headless bodies of the deceased on the floor of their home. Mrs Cover-Rattray's head was subsequently found in the Rio Cobre River, and the skull bone of Crystal's head was found in a nearby gully.

[73] The pathologist concluded that Mrs Cover-Rattray succumbed to traumatic shock resulting from multiple gunshot wounds to her abdomen and neck, together with multiple chop wounds. Crystal, he opined, died from traumatic shock occasioned by multiple chop wounds and a single gunshot wound to the head.

[74] Upon being arrested by the police, the appellants gave video-recorded caution statements admitting that they participated in the killings. Each appellant provided an account of the instructions allegedly received from co-conspirators, the planning and execution of the attack and his own role therein.

[75] Adrian Campbell admitted to being inside the house, where he witnessed Mrs Rattray being chopped repeatedly, and subsequently beheaded. He also heard Crystal crying out for help, shouting "Rushane" and the sound of a gunshot. He further admitted to discarding Crystal's head and led the police to its location where it was retrieved. Rushane Goldson admitted to chopping Crystal with a machete approximately four times, after which another assailant continued the assault. He stated that Crystal screamed his name twice, and that one of the men shot her twice. Fabian Smith stated that his participation was secured by one of the other perpetrators. He volunteered to "watch the road" during the killing. He was armed with an M16 rifle (a prohibited weapon) and observed the events as they unfolded. The appellants asserted that the killing was carried out as reprisals for the death of one "Scott," who had himself been killed and beheaded a few days earlier.

[76] The prosecution's case was that the group of men, including the appellants, aided and abetted each other, in a common design, in the killing of the deceased.

[77] For their part, the appellants asserted that their involvement was not voluntary, claiming that they participated in the killing out of fear of "the General" (the designation of a gang leader) and/or losing their lives or the lives of close family members.

[78] To appreciate the context and extent of the appellants' involvement, it is necessary to reproduce below excerpts of their caution statements as recorded in the transcript.

<u>The caution statements</u>

Adrian Campbell

[79] Adrian Campbell stated, among other things:

> "…How I got involved in this incident, I was at my house, sir, when Worm, otherwise called Wormy, tell me about two ladies that were involved in Scott [sic] death. As I sat there, sir, listening, when I hear he told me that some people supposed to die for Scott death. He told me that it will be two ladies,

> Crystal and her mom. The two witnesses who they said cause Scott [sic] life to be taken. They said they were going to get rid of them in the night because they talk too much.
>
> Anyway, further on that same night after 11:00 to 12:00 we went around by the ladies [sic] house… As we burst our way through I could hear the other door kick off and screams were coming from the house and someone say, I didn't do nothing. I didn't do nothing. That's when Biggs started to chop the lady, Crystal mom. He repeatedly chopped her. I hear Crystal crying out for help and shouting Rushane. Then I hear gunshot fired. Then Crystal mom head were [sic] chopped off by Biggs and taken away. As we went outside Bubba asked where is the next head and said we should go back in and get the next head. Me and the guy from Dela go back inside and he told me that I should took [sic] up the head and bring it. I took the head up… Bubba said to me that the head is bleeding too much I must throw it away. I throw the head in a gully … I got involved through I couldn't do nothing about it. Either I was involved, or I would be killed. Is not something I wishfully wanted to take part of. I know I was dealing with some serious peoples. It was either I go, or I die…" (Transcript, pages 14–16)

Rushane Goldson

[80] Rushane Goldson stated, among other things:

> "…Soh di whole a wi start goh dung the road. And then wi stop under one blackie tree. And when we stop mi ask weh wi a goh and Wormy say, a Crystal and her mother wi a goh fah, 'cause the general say dem fi dead'. Same time mi look pon mi friend C. We eye mex four. Me say to him, wi fi goh? And him sey if wi nuh go dem a guh pree wi. It better we just goh."

Fabian Smith

[81] Fabian Smith stated, among other things:

> "…Wormy seh one a wi have fi goh watch off the road and mi seh, mi will do it. Him give mi the 16, Blacks have the 380, the brown youth from Dela have the Ruger, nine, Adrian have

a cutlass, Rushane have a cutlass, Collie Man have a knife, Flats have a knife…."

The learned judge's sentencing approach

[82] Before considering the grounds of appeal, it is necessary to set out, in some detail, the sentencing approach adopted by the learned judge.

[83] The learned judge received into evidence victim impact statements from relatives of the deceased. She also had the benefit of a social enquiry and an antecedent report for each appellant.

[84] At the beginning of her summation, the learned judge acknowledged that the appellants had pleaded guilty and could, therefore, benefit from a sentence reduction of up to 25%, pursuant to section 42E, and in accordance with factors outlined in 42H of the Criminal Justice (Administration) Act ('the CJAA'). She also referenced section 42F of the CJAA, which has been judicially interpreted to equate a term of life imprisonment with 30 years for the purpose of calculating the minimum pre-parole period where a life sentence is contemplated following a guilty plea. However, as will become apparent, she did not apply this provision to the facts.

[85] In keeping with the parity principle in sentencing, the learned judge considered several cases involving multiple murders. She noted, however, that none of those cases was factually analogous to the present matter, in which both victims were beheaded. She concluded that the usual range for cases involving multiple murders was 25 to 45 years before parole eligibility, but those cases did not reflect the level of aggravation present in the instant case.

[86] The learned judge identified the following aggravating factors as common to all appellants.

"(i) A level of premeditation.

(ii) Retaliation or reprisal.

(iii) Multiple perpetrators operating in a group.

(iv) Use of deadly weapons, including a prohibited high-powered M16 rifle in at least one case.

(v) The firearms were not recovered.

(vi) Home invasion at night while the victims were in bed, effected by kicking in both the front and back doors, thereby preventing any possible escape.

(vii) The ages of the victims (40 and 18 years, respectively).

(viii) The use of extreme violence.

(ix) The nature of the injuries (chop wounds, gunshots, and beheading).

(x) Disposal of the heads.

(xi) The impact of the crime on the community, including the chilling effect and the "informer fi dead" culture, which she described as prevalent in the society and calculated to insulate criminals." (See transcript, pages 94–97)

[87] The learned judge then turned to the aggravating and mitigating factors specific to each appellant, beginning with Adrian Campbell.

Adrian Campbell

[88] In Adrian Campbell's case, the learned judge considered the following aggravating features: (a) his bloody clothing, retrieved by the police, containing the DNA of both deceased individuals; (b) he was the perpetrator who had removed Crystal's head from the house and disposed of it; and (c) although he stated, in his caution statement, that he was armed with a knife, in the social enquiry report he denied being armed. (We pause to note that the transcript does not reveal that this appellant admitted to having had a weapon. It was one of his co-accused who said he had a machete. We were not provided with copies of the caution statements.)

[89] The mitigating factors identified were: (a) Mr Campbell's early caution statement, which provided details of the crime, his role in it, and his stated reluctance; (b) his

cooperation in leading the police to the location where Crystal's head was disposed of, resulting in its recovery; (c) his lack of previous convictions; (d) his gainful employment; (e) his previous good character; and (f) his expression of remorse. The learned judge also noted his age (29 years at the time of the offence) as a mitigating factor, though she did not elaborate on its significance.

[90] The learned judge referred to his explanation that he had no choice in the matter and participated out of fear for his life and that of his family. At page 99 of the transcript, she cited the principle – that duress is not a defence to murder – and made the following statement:

> "So, the fear, whether for your own life or the lives of your family will not acquit you of the crime and the punishment that you will receive in this case. You said that you had no choice, but I believe that you do or you did because you have a choice in the company and the friends that you keep."

[91] Having considered Mr Campbell's age, counsel's plea in mitigation, aspects of the community report, the Sentencing Guidelines for Use by Judges of the Supreme Court and Parish Courts, December 2017 ('the Sentencing Guidelines'), the ultimate penalty of a sentence of life imprisonment and the requirement for a minimum pre-parole period to be set, the learned judge stated at page 102 of the transcript:

> "…the term that is to be specified before parole is at the discretion of the Court… I am to identify the appropriate starting point within the range for the particular offence and offender…"

[92] Then at page 102, line 18 and following, she outlined the steps in the sentencing process and explained the discount she considered applicable to Adrian Campbell's sentence:

> "[T]he discount that I will be giving for your guilty plea will be five percent and the reason for that is one, this matter has been before the court for a significant number of years, and you entered your plea of guilty on the morning of trial. Additionally, second reason the discount is so small is because

> [sic], given the nature of the evidence against you, your video-recorded caution statement, the bloody clothing that was found with the victim's DNA which were yours, it is my view that a conviction would have been inevitable in your case…"

[93] At pages 103–104 of the transcript, the learned judge explained her rationale for selecting a starting point of 45 years:

> "…I have chosen this starting point which is conceivably at the high end because number one, I believe that in terms of murder, this is one of the worst that we have seen in practice. I also take into account that the circumstances of this case, the burglary, the reprisal killing, the state of fear that it has created in the community and this was evidenced by persons whom the police spoke to who were tight-lipped; houses that were so close to that of the deceased. From the social enquiry report persons said family members said [sic] that they heard screams for help but they were so terrorized and afraid that they did not help nor did they call law enforcement…"

[94] She continued at page 104, lines 13 and following:

> "For the aggravating factors which I have outlined, I will add 15 years to the starting point making that 60 years. For the mitigating factors, I will award one year for previous good character, plus another three years for all the additional mitigating factors making that 56 years. Your discount for your guilty plea will be three years, which is 53 years, and I will make a full discount, you have now served eight and a half years and I am going to round it up to nine years, and nine from 13 leaves four. And… it is my view that… if I follow the sentence guidelines, the sentence that will be imposed will not be appropriate, it is so disproportionate to the crime that it will outrage and shock the public conscience."

[95] Notably, the learned judge made no distinction between the two counts of murder. She imposed concurrent sentences of life imprisonment at hard labour, with eligibility for parole after 44 years for each count. I note that the front page of the transcript erroneously states a minimum pre-parole period of 40 years for this appellant in contrast to the learned judge's determination of 44 years, at pages 104 – 105 of the transcript.

Rushane Goldson

[96] Turning to Rushane Goldson, the learned judge identified aggravating factors specific to him. She noted that he had armed himself with a machete and inflicted five chop wounds on Crystal as she screamed his name. She also observed that Mr Goldson was known to some members of his community as being affiliated with a known gang, and that he had stated in his caution statement that the instructions to kill the deceased came from "the General".

[97] At page 108 of the transcript, having earlier acknowledged that Mr Goldson claimed he was forced to participate in the killings, the learned judge remarked: "I don't know what happened, but the choice was yours...".

[98] The mitigating factors identified as peculiar to Mr Goldson included: (a) his guilty plea; (b) his age at the time of the offence (19 years); (c) his previous good character; his expression of remorse; (d) the absence of any prior convictions; (f) his good educational background; (g) his former employment as a teacher and footballer; and (h) the contents of his caution statement to the police.

[99] Using a similar starting point of 45 years, the learned judge added 15 years for the aggravating features, bringing the figure to 60 years. She then reduced that figure by four years on account of the mitigating factors. To the resulting figure of 56 years, she applied a discount of 5% (three years) (although she erroneously stated it to be 10%), and credited Mr Goldson with nine years for time spent in pre-sentence custody. That brought the figure to 44 years. She then added two years for the personal violence he inflicted on Crystal. The learned judge stated, at page 109, lines 10–16 of the transcript:

> "…[T]he specific aggravating factor where you inflicted five chop wounds to Crystal in her bedroom, I believe that 2 years is [sic] to be added to that 44 years because you inflicted personal violence and you were therefore a principal in the first degree as it relates to Crystal's death…"

[100] The concurrent sentences of life imprisonment at hard labour with parole eligibility after 46 years were ultimately imposed.

Fabian Smith

[101] In Fabian Smith's case, the learned judge adopted a similar starting point of 45 years and added 15 years for aggravating factors. These included that: (a) Mr Smith was armed with a high-powered M16 rifle and stood guard at the gate; (b) he was aware of the plan, having spoken with "the General" by phone prior to arriving at the house, and was, therefore, a principal in the second degree; (c) he enquired about Crystal's head and gave instructions for it to be thrown in the gully; (d) he was present when the details of the plan were being discussed and knew that the killings were intended as reprisals for Scott's death; and (e) he had shared meals with the deceased while they were alive and did nothing to assist them.

[102] The figure of 60 years was reduced by four years to reflect the following mitigating circumstances: (a) Mr Smith's expression of remorse in his letter of apology to the court; (b) his age (25 years at the time of the offence); (c) his gainful employment; (d) his lack of previous convictions; and (e) the contents of a mixed community report. A discount of 5% (three years) and a full credit of nine years for time spent in pre-sentence custody were applied, resulting in concurrent sentences of life imprisonment at hard labour with parole eligibility after 44 years.

The appeal

Single ground advanced on behalf of Adrian Campbell

[103] The sole ground of appeal advanced by Adrian Campbell was that the sentences were harsh and excessive and cannot be justified when all the facts are taken into consideration. However, during oral arguments, counsel appearing for Mr Campbell, Mr Clue, adopted relevant submissions made on the other appellants' behalf.

Grounds advanced by Rushane Goldson and Fabian Smith

[104] At the commencement of the hearing of this appeal, Rushane Goldson and Fabian Smith were granted leave to abandon their original grounds of appeal and to rely, instead, on supplemental grounds filed as follows.

> "Ground 1: The learned judge imposed a sentence on the [appellants] that was manifestly harsh and excessive and cannot be justified when all the facts are taken into consideration when she ruled on the question regarding the time that they would become eligible for parole [sic]. She profoundly misdirected herself when she extensively and wrongly made reference to the [appellants] not being able to rely on duress as a defence when the [appellants] did not put forward any defence to the charges of murder. The defence of duress does not arise during the sentencing exercise. The [appellants] sought instead to rely on their fear, as an explanation for action that is inconsistent with their usual and normal conduct. The Learned Judge made no analysis as to whether fear of the 'general' could have induced them to act in the manner they did.
>
> Ground 2: The leaned trial judge wrongly embarked upon the sentencing exercise without any consideration of or regard for the principle laid down in the case of **R v Pearlina Wright (1988) 25 JLR 221** as she failed to sentence the [appellants] on the basis of their account as to why they had committed the offence. To accept the guilty plea and proceed to sentence them without regard to the fear they would have had, had they not complied with the orders from the 'General' is wrong in principle.
>
> Ground 3: The learned judge failed to give any consideration to the rehabilitative aspect of the four-pronged considerations of sentencing: **retribution, deterrence, prevention, rehabilitation**, as enunciated in the case of **R v Beckford and Lewis (1980) 17 JLR 202**. There is no indication from the antecedent reports of the [appellants] that they had any previous convictions recorded against them that suggested that they should be treated as recidivists." (Emphasis as in the original)

Summary of submissions on behalf of Adrian Campbell

[105] Mr Clue submitted that the learned judge failed to apply the accepted principles of sentencing and did not adopt the correct sentencing methodology, as outlined in paras. [41] – [43] of **Meisha Clement v R** [2016] Crim 26.

[106] Firstly, it was argued that the learned judge erroneously relied on the same aggravating factors both to set the starting point of 45 years and to justify an upward adjustment of 15 years. This, counsel contended, amounted to double counting.

[107] Secondly, the learned judge did not appear to have adequately considered the guilty plea as a mitigating factor.

[108] Thirdly, it was submitted that the sentences imposed did not fall within the range typically applied for comparable offences in similar circumstances and were, therefore, excessive. It was submitted that the learned judge erred in relying on the cases she did. Apart from **Lincoln Hall v R** [2018] JMCA Crim 17, counsel argued, those authorities involved sentences imposed following trials, whereas the instant case involved a guilty plea. Counsel contended that reliance on post-trial sentencing precedents was inappropriate and failed to account for the mitigating effect of the plea in the instant case.

[109] Fourthly, the learned judge was said to have mischaracterised the appellant's reference to duress and/or fear of harm. It was submitted that duress was raised not as a defence, but as a mitigating factor. It was argued that Adrian Campbell had been an unwilling participant who acted out of fear for his life and that of his family.

[110] Mr Clue recommended concurrent sentences of life imprisonment with parole eligibility after 31 years, calculated as follows: a starting point of 35 years, increased by 15 years for additional aggravating factors, reduced by eight years for mitigating factors, followed by a 5% discount (equivalent to two years), and a credit of nine years for time spent in pre-sentence custody.

Summary of submissions on behalf of Rushane Goldson and Fabian Smith

[111] Given the overlap in the grounds advanced, the submissions on behalf of Rushane Goldson and Fabian Smith were presented together.

[112] Citing **R v Pearlina Wright** 25 JLR 221 and **Gaynair Hanson v R** [2014] JMCA Crim 1, Mr Green submitted that the learned judge failed to sentence the appellants on the set of facts most favourable to them, namely their own accounts of why they committed the offences. Counsel further argued that the learned judge did not demonstrate that she gave adequate consideration to the factors outlined in section 42H of the CJAA when assessing the effect of the guilty pleas, particularly (a) the circumstances surrounding the pleas, (b) whether the appellants were charged with other offences to which they pleaded guilty, and (c) whether they had any previous convictions. In support, counsel relied on **Keith Smith v R** (1992) 42 WIR 33, at pages 35–36, emphasising that a guilty plea "may properly be treated as a mitigating factor in sentencing".

[113] Although the appellants admitted their participation, counsel argued, they acted under fear of death if they refused to carry out instructions from "the General". This, counsel contended, was a mitigating factor which the learned judge failed to properly consider. Accordingly, she erred in rejecting this aspect of the appellants' plea in mitigation, relying instead on the principle stated in **Abbott v The Queen** [1976] 3 All ER 140, that "duress is no defence to murder". Counsel argued that this was an irrelevant consideration, as duress and/or fear was not raised as a defence but solely as mitigation. In other words, counsel argued, the issue of fear was introduced to explain the appellants' conduct, not to absolve them. Incorrectly, counsel posited, the learned judge's apparent overriding consideration was that the appellants made a deliberate choice, and that resulted in an imbalance in her sentencing approach. Additionally, Mr Green submitted that the learned judge did not adhere to the correct sentencing methodology.

[114] But for these errors, counsel argued, the appellants could have received substantially reduced sentences.

Submissions on behalf of the Crown

[115] Counsel for the Crown, Ms Gabbidon, submitted that different legal considerations apply to counts one and two of the indictment. In relation to count one, she argued that the learned judge's sentencing methodology was inconsistent with section 42F of the CJAA, which governs the setting of the minimum pre-parole period where there is a guilty plea and a life sentence is being contemplated by a sentencing judge, and with authorities from this court, including **Quacie Hart v R** [2022] JMCA Crim 70. Counsel, therefore, took issue with the learned judge's starting point of 45 years and ultimate sentences for count one.

[116] Instead, relying on **Quacie Hart v R**, Ms Gabbidon recommended a starting point of 29 years, highlighting the heinous nature of the offence. She contended that, in circumstances where life imprisonment is contemplated following a guilty plea, the starting point for the minimum pre-parole period cannot exceed 30 years.

[117] Counsel further submitted that the starting point of 29 years should be adjusted to reflect the aggravating and mitigating factors identified by the learned judge, as well as the level of discount applied. After such balancing, she argued that an appropriate sentence on count one, before the application of the credit for pre-sentence remand, would be life imprisonment with parole eligibility after 29 years for each appellant.

[118] As regards count two, Ms Gabbidon submitted that the learned judge's approach was sound in law. She noted that this count fell outside the scope of section 42C of the CJAA but, relying on **Javone Leslie and Jamelia Leslie v R** [2023] JMCA Crim 60, she submitted that although the statutory discounts were not permissible the learned judge was entitled to apply the discounts, she did, based on common law principles.

[119] Counsel also submitted that the judge's methodology was consistent with the principles set out in **Meisha Clement v R** and the Sentencing Guidelines. Also, it was appropriate, she argued, for the appellants to serve a higher sentence on count two, relying on **Jowayne Alexander v R** [2022] JMCA Crim 64.

[120] In all the circumstances, counsel submitted that the respective life sentences for the three appellants, with parole eligibility after 44 years, 46 years and 44 years, for count two, are not manifestly excessive and ought not to be disturbed.

The issues on appeal

[121] This appeal raises four principal issues: (i) whether the learned judge double counted the aggravating factors; (ii) whether the learned judge correctly applied section 42 of the CJAA, particularly section 42C (as regards the applicability of a discount for the second count of murder) and section 42F (the deeming provision of 30 years for calculating the minimum pre-parole period when life imprisonment is being contemplated upon a plea of guilt); (iii) whether the learned judge misapprehended the appellants' reliance on an explanation of duress and/or fear; (iv) whether the learned judge erred in applying the settled principles of sentences; and (v) whether for any of the above reasons, the sentences imposed were manifestly excessive.

Discussion and disposal of issues

[122] The general rule is that this court will not interfere with the sentence imposed by a judge at first instance unless the sentence is excessive or inadequate, such that there must have been a failure to apply the right principles (see **R v Ball** (1951) 35 Cr App Rep 164, 165.

[123] In para. [43] of **Meisha Clement v R**, Morrison JA (as he then was) set out the guiding principles in the following terms:

> "[43] [T]his court's concern is to determine whether the sentence imposed by the judge (i) was arrived at by applying the usual, known and accepted principles of sentencing; and (ii) falls within the range of sentences which (a) the court is empowered to give for the particular offence, and (b) is usually given for like offences in like circumstances. Once this court determines that the sentence satisfies these criteria, it will be loath to interfere with the sentencing judge's exercise of his or her discretion."

[124] In addressing the issues, this court is guided by the statutory framework governing sentencing for murder falling within section 2 of the Offences Against the Person Act ('OAPA'). It is also concerned with the discount regime established by section 42 of the CJAA. I am also mindful of the principles articulated in relevant appellate decisions, including **Meisha Clement v R**, **Quacie Hart v R**, **Lincoln Hall v R**, **Jowayne Alexander v R**, and **Paul Brown v R** [2019] JMCA Crim 3 as well as the Sentencing Guidelines.

[125] For the reasons that follow, I find that the learned judge erred in certain aspects of the sentencing exercise. While the imposition of life sentences has not been appealed, the minimum periods to be served before eligibility for parole are, and these warrant appellate intervention.

Issue (i): Whether the learned judge double counted the aggravating factors

[126] The appellant, Adrian Campbell, contended that the learned judge erred in her sentencing methodology by double counting certain aggravating features of the offence. I agree.

[127] The sentencing framework is outlined in the Sentencing Guidelines, judicially affirmed in **Meisha Clement v R**, and later refined in **Daniel Roulston v R** [2018] JMCA Crim 20.

[128] In **Daniel Roulston v R**, the court outlined the following steps to be followed by a sentencing judge:

i) Identify the sentence range;

ii) Identify the appropriate starting point for the particular case; taking into account the relevant range;

iii) Consider the relevant aggravating factors;

iv) Consider the relevant mitigating factors (including personal mitigation);

v) Consider, where appropriate, any reduction for a guilty plea;

vi) Decide on the appropriate sentence, giving reasons; and

vii) Give credit for time spent in custody awaiting trial (where applicable).

[129] The learned judge imposed a sentence of life imprisonment and, relying on authorities from this court including **Paul Brown v R**, identified a minimum pre-parole range of 25 – 45 years for multiple murders committed on the same occasion. In setting the starting point for the minimum pre-parole period, she considered the level of pre-meditation, the forced entry into the victims' home at night, the reprisal motive, the involvement of multiple perpetrators, the use of deadly weapons, the fact that the firearms were not recovered, the ages of the victims, the use of extreme violence, the disposal of the heads of the victims and the impact of the killings on the community.

[130] The learned judge was at liberty to take account of these aggravating features in setting a higher than usual starting point. However, in making the upward adjustment of the starting point, as regards Adrian Campbell, the learned judge again relied on some of the same factors, specifically, the forced entry, the reprisal motive, the multiplicity of perpetrators, the types of weapons and the community impact. This constituted double counting and was, therefore, an error in principle.

[131] In the case of Rushane Goldson, after exhausting the steps in **Meisha Clement v R**, culminating with the credit for time spent on pre-sentence remand, the learned judge added a further two years to the minimum pre-parole period on account of the five chop wounds inflicted on Crystal. This was not only double counting, but that approach was also contrary to the guidance given in the authorities (see, for example, **Meisha Clement v R**, which pre-dated the sentencing). That aggravating factor had already

been considered in the adjustment from 45 to 60 years and should not have been used to further increase the minimum pre-parole period. The result was double counting, unsupported by the sentencing framework.

[132] Accordingly, this court is entitled to intervene in the sentencing process.

Issue (ii): Whether the learned judge correctly applied the principles set out in section 42 of the CJAA.

Issue (iv): Whether the learned judge erred in not applying the settled principles in sentencing

[133] Issues (ii) and (iv) overlap, so they will be treated together.

Section 42 of the CJAA

[134] The principle that a guilty plea could attract a discount in sentence is well established at common law. However, as Morrison P (as he then was) explained in **Lincoln Hall v R**, the CJAA marked a departure from a purely discretionary practice by introducing, for the first time, a structured regime with fixed ranges of permissible discounts. This court, in **Meisha Clement v R**, acknowledged, at para. [38], that "[t]he extent of the allowable discount for a guilty plea [had] never been fixed," thereby underscoring the significance of the legislative shift toward codification and consistency in sentencing. That framework is now embodied in section 42 of the CJAA.

[135] For section 2(2) murders, a plea entered on the first relevant date may attract a reduction of up to one-third (section 42E(2)(a)) of the sentence. Where, as here, the pleas were entered after that date but before trial, the applicable provision is section 42E(2)(b), which limits the discount to a maximum of 25% on the sentence (in the instant case, on the minimum pre-parole period).

[136] Section 42H outlines the factors which should guide the court in determining the level of discount, including the seriousness of the offence, impact on the victim, circumstances of the plea, and the defendant's antecedents. The sentencing judge must

also consider whether the resulting minimum pre-parole period would shock the public conscience.

[137] The learned judge correctly identified section 42E(2)(b) of the CJAA as the applicable provision, given the timing of the pleas. However, she erred in treating the duration of the proceedings and the timing of the plea as additional aggravating considerations in her determination of the level of discount. Those factors were already contemplated by section 42E in categorising the benefit and should not have further influenced the level of discount. Nevertheless, contrary to counsel's submission, she did give a discount in each case, supported by reasons.

[138] Beyond the statutory cap, the scope of the discount is further constrained by section 42C, which limits its application to a single count of murder. It expressly excludes any reduction in sentence for "another murder done on the same occasion". This exclusion is reinforced by section 3(1A) of the OAPA, which applies where a person is convicted of murder and had previously committed another murder.

[139] Section 42C, as far as is relevant, states:

> "The Provisions of this Part [Reduction of Sentence upon Guilty Plea] shall not apply to a defendant who pleads guilty to –
>
> (a) the offence of murder falling within section 2(1) of the *Offences Against the Person Act;*
>
> (b) the offence of murder, in circumstances where section 3(1A) of the *Offences Against the Person Act* applies; or
>
> (c) an offence following plea negotiations and the conclusion of a plea agreement pursuant to the provisions of the *Criminal Justice (Plea Negotiations and Amendments) Act.*"

[140] Section 3 of the OAPA provides, in part:

> "3(1) - Every person who is convicted of murder falling within -

> (a) section 2(1)(a) to (f) or to whom subsection (1A) applies, shall be sentenced to death or to imprisonment for life;
>
> (b) section 2(2), shall be sentenced to imprisonment for life or such other term as the court considers appropriate, not being less than fifteen years."

(1A) This subsection applies to a person who is convicted of murder and who, before that conviction, has been convicted in Jamaica -

> "(a) whether before or after the 14th October, 1992, of another murder done on a different occasion; or
>
> (b) of another murder done on the same occasion."

[141] The statutory effect is unambiguous: a discount may be applied to the first count of murder falling within section 2(2) of the OAPA, but not to any subsequent counts arising from the same factual matrix or otherwise. The appellants were, therefore, ineligible for a discount on the second count of murder.

[142] The learned judge made no distinction between the two counts of murder as required by law, and instead, applied a discount to both counts of murder. In Adrian Campbell's case, a 5% reduction was applied, with reference to section 42H factors including the strength of the evidence, his caution statement, the presence of the victims' DNA on his clothing, and his expressions of remorse. In the cases of Rushane Goldson and Fabian Smith, although the learned judge initially indicated a ten per cent discount, she ultimately applied 5%. The learned judge having treated the two counts the same, it resulted in each appellant being ordered to serve the same sentence on both counts.

Would common law apply where section 42C of the CJAA does not?

[143] The learned judge's similarity in treatment of the two counts of murder, followed by counsel's submissions before us, raises the question of whether, at common law, discounts may properly be applied to multiple counts of murder occurring on the same occasion.

[144] That question was addressed in **Javone Leslie and Jamelia Leslie v R**, where the majority of the Court of Appeal (Dunbar Green JA dissenting) took the view that, in circumstances where the statutory regime does not apply, the court may properly revert to common law principles. At para. [57], Foster-Pusey JA stated:

> "While it is clear that the provisions of Part 1A of the CJAA do not apply to guilty pleas to second and third counts of murder, the legislation does not prohibit the giving of discounts in circumstances when its provisions do not apply. All that would occur, is that the statutory regime would be inapplicable and the common law principles that recognise the value of guilty pleas would come into play."

[145] This interpretation does not align with the approach, I believe, is the more correct and which I will adopt in the instant case. Nor is it in keeping with the approach articulated by Morrison P in **Meisha Clement v R**. There, Morrison P noted that the discretion exercised in that case arose prior to the enactment of the statutory regime and that a statutory framework now governs the exercise of judicial discretion in this area. At para. [40] Morrison P stated:

> "[40] We should add for completeness that the whole matter of allowing a discount for a guilty plea has now been put on statutory footing by the recent enactment of the Criminal Justice (Administration) (Amendment) Act, 2015. By virtue of section 2 of that Act, which came into force on 27 November 2015, the Criminal Justice (Administration) Act (CJAA) has been amended to include a new Part 1A, under the rubric 'Reduction of Sentence upon Guilty Plea'. However, these amendments have no relevance to the instant case, in which the judge's sentencing exercise was completed well before they came into effect. So, for present purposes, it is not necessary to indicate more than that sections 42D and 42E of the CJAA, as amended, now provide for reductions in sentence on account of guilty pleas in specified cases. The level of reduction ranges from as high as 50% to 15%, depending on the stage of the proceedings at which the plea is offered and the nature of the offence with which the defendant is charged. Section 42H goes on to list a number of factors which must be considered by the court in determining the percentage by which the sentence is to be reduced in particular cases."

[146] While the CJAA preserves a measure of discretion, it does so within clearly defined boundaries. As Morrison P observed at para. [36], a guilty plea may reflect remorse and conserve judicial resources in time, however, Parliament has expressly excluded certain categories of murder from the discount regime. These are murders generally referred to as capital murders, multiple murders committed on the same occasion, and offences resolved through plea agreements.

[147] Moreover, the structure of the CJAA reflects a coherent and deliberate legislative design. Section 42F establishes a notional 30-year term for life imprisonment solely for the purpose of calculating discounts where life imprisonment is being contemplated (we will get back to this section later). Section 42D provides for a tiered reduction of up to 50 per cent for general offences, while section 42E allows up to a one-third discount for section 2(2) murders. Section 42C sets out, in categorical terms, the circumstances in which a discount is impermissible.

[148] The exclusions are not incidental; they reflect a considered policy choice. Further, I believe, that where there is no ambiguity in the regime there can be no lacuna to be filled by resorting to the common law. This conclusion is reinforced by the principle articulated by Lord Wilberforce in **Farrell v Alexander** [1976] 2 All ER 721, at 726:

> "…statutes…should be interpreted, if reasonably possible, without recourse to antecedents, and…the recourse should only be had when there is a real and substantial difficulty or ambiguity which classical methods of construction cannot resolve."

[149] It is, therefore, my view that to apply a discount to multiple murders committed on the same occasion would be inconsistent with the structure established under the CJAA, undermine the seriousness with which such offences are to be treated, and run counter to established sentencing principles that recognise the heightened culpability associated with multiple murders.

[150] It would further be incongruous for judicial discretion to operate in circumstances where the statutory regime is designed expressly to withhold its application. This would

be to reintroduce the very absence of structure that the CJAA was designed to eliminate. There is nothing to suggest that this was the intention of Parliament. The CJAA marked a deliberate departure from the state of uncertainty where the extent of the allowable discount for a guilty plea had never been fixed. It would further be incongruous for Parliament to regulate with precision the sentencing discounts applicable to lesser offences, such as theft, yet leave the treatment of multiple murders to the vagaries of judicial discretion.

[151] A few months after the hearing in this appeal, this court delivered its decision in **Jason Gray v R** [2025] JMCA Crim 22. Writing for the majority, F Williams JA clarified that where a defendant pleads guilty to multiple counts of murder committed on the same or different occasions, the statutory framework permits a discount only in relation to the first count (see para. [40]). This interpretation, from which Foster-Pusey JA dissented, reflects a strict construction of the statutory language and reinforces the limits of judicial discretion under section 42C of the CJAA.

[152] The court in **Jason Gray v R** did not engage substantively with **Javone Leslie and Jamelia Leslie v R**, noting only that it was not material to the issue for determination. That limited engagement appears to have been influenced by the fact that the sentencing judge in **Jason Gray v R** applied no discount at all, whereas in **Javone Leslie and Jamelia Leslie v R**, discounts were granted in respect of both counts of murder. Nonetheless, the reasoning adopted, particularly the interpretation of the statutory exclusions, marks a departure from the more expansive approach taken in **Javone Leslie and Jamelia Leslie v R**. Although not expressly reconsidered in **Jason Gray v R, Javone Leslie and Jamelia Leslie v R**, I believe, is doubtful authority, as it seeks to bypass the statutory provisions, by invoking a common law discretion contrary to the statute's express terms, and will, therefore, not be followed.

[153] I agree with the reasoning of the majority in **Jason Gray v R** that the statutory regime is to be applied in accordance with its express provisions, guided by both the literal meaning and the purpose of the legislative scheme. Section 42E preserves

discretion in determining whether and to what extent a discount may be granted, for a first count of murder, but that discretion is bounded by statutory limits and guided by the factors set out in section 42H. **Jason Gray** reaffirmed that the CJAA marked a deliberate departure from the uncertainty of the common law, where no fixed range of discounts had previously existed. As F Williams JA observed, the CJAA introduced a structured regime with defined parameters, replacing the open-ended discretion that had previously governed sentencing for guilty pleas.

[154] That case further illustrates that even where discretion is preserved, it must be exercised within the confines of the statutory framework and in accordance with the principle of proportionality. In instances of heinous double or multiple murders, it may be entirely appropriate for no discount to be granted at all. The facts of **Jason Gray**, involving the luring and murder of two children, underscore the seriousness of the offences and the appropriateness of the sentencing judge's refusal to grant a discount. The judge declined to apply any discount, citing the gravity and premeditated nature of the offences, the vulnerability of the victims, and the principle that a discount in such circumstances would offend the public conscience. This was upheld as a proper exercise of discretion within the statutory scheme.

[155] Returning to the matter before us, and having considered the relevant authorities, I find that the appellants could have benefitted from a discount of up to 25% on the first count of murder, calculated in accordance with section 42H, as the learned judge remarked. With that in mind and having applied her mind to the relevant factors, she gave a discount of 5%, which I believe, is proportionate. However, contrary to counsel's submissions, no legal basis existed for applying a discount to the second count. I, therefore, conclude that the learned judge's application of a discount to count two was an error in law.

Effect of section 42F of the CJAA

[156] Returning to count one, the learned judge erred in principle in how she calculated the minimum pre-parole period. This raises the issue of the effect of the deeming provision set out in section 42F of the CJAA.

[157] The Crown submitted, and I agree, that the learned judge erred in how she arrived at the minimum pre-parole periods for count one. Section 42F of the CJAA creates a statutory fiction, whereby, for the purpose of calculating a reduction in sentence following a guilty plea, life imprisonment is deemed to be a term of 30 years. Accordingly, the starting point for a first count of murder cannot exceed 30 years where life imprisonment and a discount for a guilty plea are being contemplated by a sentencing judge.

[158] This approach was endorsed in **Quacie Hart v R**, citing **Lincoln Hall v R**, where McDonald Bishop JA (as she then was) explained that although sections 42E and 42F of the CJAA do not expressly govern the calculation of pre-parole periods, it is rational and just to apply the statutory fiction where the court retains life imprisonment but grants a discount for a guilty plea. She said, at paras. [41] – [43]:

> "[41] The learned sentencing judge chose to retain life imprisonment as the sentence to be imposed but decided to take the applicant's guilty plea into account in setting the minimum pre-parole period. Nothing is wrong with this exercise of the learned sentencing judge's discretion, as this court has historically embraced this approach in the interests of justice, so that persons who have pleaded guilty and are still sentenced to life imprisonment may, nevertheless, derive some tangible benefit for the guilty plea…
>
> [42] … The specification of a minimum pre-parole period is a mandatory part of the sentence for murder falling within section 2(2) of the OAPA. Therefore, whilst sections 42E and 42F of the CJAA do not expressly state that the provisions are directly applicable to the calculation of the minimum pre-parole period, it seems rational and just for the court to apply these provisions in circumstances where it decides not to grant a reduction of the life imprisonment but to apply the discount to the pre-parole stipulation.

> [43] Therefore, the wording of section 42F that 'for the purpose of calculating a reduction in sentence', on account of a guilty plea, life imprisonment must be deemed to be 30 years should extend to the determination of the pre-parole period when life imprisonment is imposed, and the discount for a guilty plea is contemplated…"

[159] The effect of this reasoning is that neither the starting point nor the minimum pre-parole period for count one could properly exceed 30 years. The learned judge ought, therefore, to have considered counts one and two discretely. The statutory framework and case law make clear that distinct sentencing considerations apply. The respective minimum pre-parole periods of 44, 46, and 44 years imposed on the appellants, for count one must, therefore, be set aside and considered afresh.

[160] While the learned judge cannot be faulted for exceeding the 30-year threshold on count two, it remains to be determined whether the minimum pre-parole periods imposed are manifestly excessive. This requires an examination of, among other factors, the parity principle, which I will undertake later in this judgment, as well as the previous conviction of count one and whether the sentences for both counts needed to be similar. There is, in fact, precedent for imposing a higher minimum parole period where a second murder is committed on the same occasion. In **Jowayne Alexander v R**, this court imposed concurrent life sentences with pre-parole periods of 22 years for count one and 32 years for count two, using the statutory minimum as a guide but recognising the enhanced gravity of the second offence.

[161] **Pasmore Millings and Another Ennis v R** [2021] JMCA Crim 6 also reaffirms the principle that different considerations apply when sentencing for multiple counts of murder.

Issue (iii): Whether the learned judge misapprehended the appellants' explanation of duress and/or fear of harm

[162] This issue is tied to Mr Green's submission that the learned judge failed to consider "any other factors" favourable to the appellants, as contemplated by section 42H of the

CJAA, and to sentence them on the more favourable account. Specifically, counsel pointed to the purported duress or fear which, the appellants claimed, influenced their participation in the murders. This version of the facts, counsel contended, would have warranted a more lenient assessment because of its mitigating effect.

[163] As previously indicated, all the appellants gave caution statements. Adrian Campbell spoke directly to fear, contending that the choice was either to participate in the killings or risk death to himself and his family. He said:

> "I got involved in it through [sic] I couldn't do nothing about it. Either I was involved, or I would be killed. Is not something I wishfully wanted to take part of. I know I was dealing with some serious peoples. It was either I go or I die." (Page 16 of the transcript)

However, no actual physical threat was identified, nor were there circumstances from which such a threat could reasonably be inferred. In essence, he invited the court to accept his assertion of duress or fear without corroborating evidence.

[164] Rushane Goldson stated at page 22, lines 4–11 of his caution statement:

> "And when wi stop mi ask weh wi a goh and Worm seh, a Crystal and her mother wi a goh fah, 'cause the general say dem fi dead. Same time mi look pon mi friend Coolie Man. Wi eye mek four. Mi seh to him, wi fi goh? And him seh if wi nuh goh dem a pree wi. It better wi just go."

Rushane Goldson's question to his friend "Coolie" suggests that a choice existed, and it was Coolie's response, not any immediate threat, that prompted his decision to proceed.

[165] Fabian Smith did not mention fear in his account. He stated, among other things, that he was at home when Worm came and asked him to "watch the road". Upon asking why, he was told by Worm that "[h]im a goh kill some people: Kill Crystal and her mom" because they knew about Scott's killing. Fabian Smith then called his friend, on the phone,

and informed him about what he was told. The participants then met up, spoke together and with others, and he agreed to watch the road (page 19, lines 12-13 of the transcript).

[166] All three appellants, however, mentioned the fear factor in their social enquiry reports. Rushane Goldson and Fabian Smith also suggested that refusal to participate would have endangered their lives and those of their family members. However, their accounts did not point to any immediate or compelling threat.

[167] The appellants did not challenge the settled principle of law, adopted in this jurisdiction, that duress is not a defence to murder (see **R v Trevor Bennett** (unreported), Court of Appeal, Jamaica, Supreme Court Criminal Appeal No 64/1989, judgment delivered 15 July 1991). Their complaint was that the learned judge failed to appreciate that they were not seeking to rely on duress as a defence but rather as a mitigating factor in sentencing. It was intended to explain their conduct, not to exculpate it.

[168] It appeared, initially, that the learned judge may have misapprehended the appellants' purpose in raising the issue. This was evident from her extended discussion on the unavailability of duress as a defence to murder. At page 98, line 15 et seq of the transcript, she referred to the year, 1736, and cited **Stanley Abbott and Howe v The Queen**. However, at page 99, lines 16–19, her remarks reflected a more nuanced understanding, as she addressed the matter of fear both in relation to acquittal and to punishment (a goal of sentencing):

> "So, the fear, whether for your own life or the lives of your family will not acquit you of the crime and the punishment that you will receive in this case. You said that you had no choice but I believe that you do or you did, because you have a choice in the company and friends that you keep."

[169] Specifically in relation to Adrian Smith, the learned judge stated that his complaint about fear would not avail him in the "punishment [he would] receive in this case" (page 99 of the transcript).

[170] I am satisfied that the learned judge was aware that he had raised the issue of duress and/or fear as a mitigating circumstance. However, the effect of her reasoning was that, because duress is not recognised as a defence to murder, it could not be considered in mitigation of sentence. That conclusion was incorrect.

[171] The Sentencing Guidelines, at para. 9.2, list the "the pressures under which the offence was committed (such as provocation, diminished responsibility, emotional stress or other partial excuse)" as a mitigating factor. Similarly, in the Eastern Caribbean Supreme Court (Sentencing Guidelines) Rules 2019, which came into effect on 1 September 2020 and were last republished on 6 January 2025, it is stated, at para. 12, that "where the offender was acting under duress" it can be considered as a mitigating factor in the sentence for murder.

[172] While the Sentencing Guidelines do not expressly list duress as a mitigating factor like the Eastern Caribbean Supreme Court Sentencing Guidelines, it nonetheless provides that a sentencing judge may consider the pressures under which an offence was committed, which to our minds, could include evidence of duress. In a similar vein, in the Bahamian Privy Council case of **Caryn Moss v The King** [2023] UKPC 28, which concerned not murder but conspiracy to murder, whilst the appeal on conviction was dismissed, the Privy Council stated that coercion could properly be treated as an extenuating circumstance or mitigating factor. On that basis, the Privy Council ordered that the appellant be re-sentenced (see paras. 84 – 88).

[173] On that score, Mr Green was, therefore, on firm footing in inviting this court to consider afresh, and in the appellants' favour, the impact of the purported duress and/or fear factor on the circumstances of the offence. He submitted that each of the appellants was influenced by fear of personal harm or reprisal from "the General".

[174] In law, duress refers to the use of unlawful threats, coercion, or compulsion to force a person to act against their will or better judgment. It ordinarily arises where one person engages in conduct that overbears the free will of another, causing them to

commit acts they would not have freely chosen. Halsbury's Laws of England, Criminal Law, Vol 25 (2025) paras. 1–554; Vol 26 (2025) paras. 555–1008, 1 Principles of Criminal Liability, (3) Defences to Crime, (v) Duress, Necessity and Compulsion, states that:

> "…The defence is concerned with the case where the defendant … is induced to act by a threat made by another person (or a reasonable belief in such a threat) to the effect that, unless the defendant commits the offence charged, death or serious injury will be inflicted on them or a third person. The defence involves both a subjective and an objective test."

[175] The appellants have all said that they felt persuaded to act out of fear. However, the loss of free will is the critical element in establishing duress. Mere apprehension or perceived consequences does not suffice unless the threat is imminent and the individual's capacity for autonomous decision-making has been overborne. A mere complaint about a threat would not be sufficient to qualify. None of the appellants admitted gang membership, but community reports and familial testimony suggested associations with criminal elements including a criminal gang. Fabian Smith's mother acknowledged his involvement with unsavoury characters and advised him to disassociate, which he failed to do, citing fear of dangerous repercussions. His mother's account implies that he had a choice and could have relocated, as his sister reportedly did when threatened by gang members.

[176] While duress may, in appropriate circumstances, have some mitigative value in sentencing, the facts of this case do not support such consideration. The way the appellants were mobilised to participate in the murders reflected a "business as usual" approach. There was no evidence of hesitation, resistance, or any form of coercion. The killings were executed in a heinous and barbaric manner (deliberate and purposeful even), and at no point before, during, or after was there any demonstrable absence of free will. The appellants described no imminent threat or compelling pressure that deprived them of choice. They exposed themselves to the perceived risk, made no effort to seek help or withdraw, and offered no evidence of threats or overt compulsion.

[177] Adrian Campbell threw away Crystal's decapitated head in a gully, Rushane Goldson participated in chopping Crystal, and Fabian Smith volunteered to act as lookout. The contents of their caution statements suggest that these roles were assumed voluntarily. There is no indication that the appellants were compelled to perform them and in the manner they did. Though, in the aftermath, they may have asserted that they were in fear of the consequences of non-compliance, such bare assertion does not, in my view, warrant the application of any reduction in their minimum pre-parole periods.

[178] For these reasons, I believe, there was no basis for the learned judge to have treated the purported duress or fear as a mitigating circumstance.

[179] Mr Green's complaint that the learned judge failed to sentence the appellants on the version of the case most favourable to them is without merit. The decision in **Pearlina Wright v R** does not assist the appellants. That case turned on conflicting versions of the facts, and the Court of Appeal held that the sentencing judge ought to have adopted the account most favourable to the accused. The headnote indicates that gross provocation by the complainant's impertinent assault led to unlawful wounding. Here, by contrast, there was no evidential basis for duress, and no competing narrative that could justify a more lenient view of the appellants' conduct.

Issue (iv): Whether, as a result of any error in principle, the sentences are manifestly excessive

The parity principle

[180] Like cases should be treated in like manner (see **Jowayne Alexander v R**). As regards count one, I considered the cases that follow.

[181] In **Glenroy Mitchell v R** [2016] JMCA Crim 27, the offender pleaded guilty to one count of murder and was sentenced to 25 years' imprisonment at hard labour. The sentence was upheld on appeal. **Lincoln Hall v R** [2018] JMCA Crim 17 involved a guilty plea to one count of murder. The offender received a sentence of life imprisonment with

parole eligibility after 29 years. In **Quacie Hart v R**, the appellant, who pleaded guilty to stabbing a schoolboy aboard a bus, received a reduced minimum pre-parole period of 20 years on appeal. The term of life was not disturbed. Although the court affirmed a range of 15–25 years, it imposed a sentence slightly above that range (26 years) before applying the discount.

[182] As regards count two, in the instant case, in addition to **Jowayne Alexander v R**, I considered the following cases. Importantly, those sentences were imposed after trials, but were nevertheless, considered by the learned judge as guides in the absence of comparable precedent. **Peter Dougal v R** [2011] JMCA Crim 13 concerned burglary and two counts of murder by shooting. The sentence of life imprisonment with parole eligibility after 45 years was substituted on appeal. **Ian Gordon v R** [2012] JMCA Crim 11 involved two counts of murder by shooting. The commuted sentence of life imprisonment with parole eligibility after 30 years was upheld on appeal. In **Roderick Fisher v R** (unreported), Court of Appeal, Jamaica, Supreme Court Criminal Appeal No 49/2006, judgment delivered 21 November 2008, the offender was convicted of three counts of murder and re- sentenced to life imprisonment with parole eligibility after 40 years. This sentence was upheld on appeal. In **Alton Heath and others v R** [2012] JMCA Crim 61, three of the offenders were convicted for two counts of murder committed during abduction, rape and indecent assault. Their sentences of life imprisonment with parole eligibility after 35 years were upheld on appeal. In **David Russell v R** [2013] JMCA Crim 42, the offender was convicted of two counts of murder. On the first count he received a determinate sentence of 30 years and on the second count, he was sentenced to life imprisonment with parole eligibility after 40 years. The sentences were affirmed on appeal.

[183] The sentencing range established by the cases of multiple murders is consistent with **Paul Brown v R**, where F Williams JA, reviewing a compendium of trial cases concluded, at para. [8], that they "show a range of sentencing of between 45 years and 25 years' imprisonment before eligibility for parole, with the higher figures in the range being stipulated in cases involving multiple counts of murder".

[184] The learned judge acknowledged the difficulty in finding precedents involving the beheading of two victims. At page 94, lines 10–16 of the transcript, she accepted that the cases referenced were of limited assistance, and I agree. She stated that to follow those precedents and the Sentencing Guidelines would result in a sentence "so disproportionate to the crime that it [would] outrage and shock the public's conscience".

[185] Given the exceptional brutality of the instant case, it is not unsurprising that no directly comparable precedent was found. The sheer savagery of the acts committed placed it outside the bounds of ordinary sentencing guidance in this jurisdiction. At page 105, lines 6–8 of the transcript, the learned judge explained that she imposed minimum pre-parole periods at the upper end of the range due to the seriousness and exceptional nature of the case. Her instinct to impose stern punishment is understandable.

[186] In these circumstances, a judge is entitled to depart from the established range. However, sentencing must be conducted within the bounds of statutory authority and established principles. There is merit, therefore, in counsel's submission that both the starting point of 45 years and the respective minimum pre-parole periods of 44 and 46 years are outside the statutory range for count one and are, therefore, manifestly excessive.

[187] Additionally, I have found merit in counsel's submissions that the learned judge double-counted in some instances and misapplied the law regarding the discount regime under section 42 of the CJAA.

[188] This makes it necessary for this court to embark on its own consideration of an appropriate minimum pre-parole period for each appellant in respect of counts one and two.

Re-calculation of minimum pre-parole periods - count one

[189] Having reviewed the sentencing exercise in its entirety, I am satisfied that the life sentences are appropriate given that the murders fell within the category of the "worst of the worst" murders (see **Ronald Bronstorph v R** [2024] JMCA Crim 29).

[190] As previously established, the minimum pre-parole period for count one cannot fall below the statutory threshold of 15 years (section 3(1)(b) of the OAPA), nor exceed the statutory fiction of the maximum of 30 years imprisonment for the purpose of a discount (section 42F of the CJAA). I note that the aggravating features in the present case far exceed those in **Quacie Hart v R**, **Lincoln Hall v R** and **Glenroy Mitchell v R**. Nonetheless, there is no justification in law for the learned judge's use of a range of 25–45 years and a starting point of 45 years once she decided that a discount should be given for the guilty plea. The applicable range, as affirmed in those cases, is 15–29 years. In **Quacie Hart v R**, this court said, at para. [36], "the starting point for a minimum pre-parole period should not have exceeded 25 years" in the circumstances of that case.

[191] In the instant case, having regard to the level of pre-meditation; the motive of reprisal; multiple perpetrators operating in a group; use of deadly weapons; the non-recovery of the firearms; the home invasion at night; and the impact on the community, I accept that the pre-parole period should fall in the top of the range between 27 to 29 years given the statutory constraint of 30 years for the purpose of calculating the discount. In the circumstances, a starting point of 28 years is reasonable.

[192] Next, the starting point is to be increased by any other aggravating factor. Such factors would necessarily exclude those which were already considered in setting the starting point. The gruesome nature of the killing (the deceased was shot, chopped and beheaded) when considered would increase the figure. Although each appellant played a different role, they acted in concert, and, therefore, these aggravating factors are applicable to all.

[193] The mitigating factors peculiar to each appellant are then considered. As noted by the learned judge, Adrian Campbell was 37 years old at the time of sentencing and 29 at the commission of the offence. He expressed remorse and co-operated with the authorities. He had no previous convictions and was previously gainfully employed. These mitigating factors, when balanced with the aggravating factors, are far outweighed by the aggravating factors and so, would justify the application of a modest downward adjustment. Given the statutory constraint imposed by section 42F, this would be adjusted to a pre-parole period at the top of the range of 29 years.

[194] Rushane Goldson was 28 years old at the time of sentencing and 19 at the commission of the offences. He was previously gainfully employed, had no previous conviction and was of previous good character. He also expressed remorse. These mitigating factors, when balanced with the aggravating factors, are far outweighed by the aggravating factors and so, would justify a modest downward adjustment. Given the statutory restriction of 30 years (section 42F), the pre-parole period is modified to 28 years.

[195] Fabian Smith was 33 years old at the time of sentencing and 24 at the time the offence was committed. He was described by his mother as vulnerable to negative influences. He expressed emotional distress and remorse. He, too, had no previous conviction and was previously gainfully employed. When these factors are balanced with the aggravating factors, they are outweighed by the aggravating factors. A downward adjustment would take the figure to 29 years in keeping with section 42F.

[196] Next, I consider the level of discount to be applied on account of the guilty plea. In **Quacie Hart v R**, it was stated that "the consideration of the guilty plea would have warranted a separate and distinct consideration from a balancing of the aggravating and mitigating factors". Having considered the eligibility provision under section 42E (a maximum of 25% discount in this case), the guiding factors under 42H of the CJAA, the sentencing guidelines and principles, the statutory minimum pre-parole period, the

features of the killing, the personal circumstances of the appellants, I believe that a 5% discount (one years and six months) is appropriate.

[197] As regards Adrian Campbell; after applying the discount for the guilty plea, the minimum pre-parole period is 27 years and six months.

[198] Consistent with the numerous authorities, including **Callachand & Anor v The State of Mauritius** [2008] UKPC 49, I also apply a credit of eight years and five months, for time spent on pre-sentence remand, to the discounted figure. The result is a minimum pre-parole period of 19 years and one month.

[199] For Rushane Goldson, after the application of a 5% discount, the figure is 26 years and seven months. After applying a credit of eight years and five months, the minimum pre-parole period is 18 years and two months.

[200] As regards Fabian Smith; after applying the 5% discount, the figure is 27 years and six months. The credit of eight years and five months, for time spent on pre-sentence remand, takes the minimum pre-parole period to 19 years and one month.

[201] In my view, a proportionate and reasonable minimum pre-parole for each appellant, on count one, is therefore, as follows:

> Count one
>
> *Adrian Campbell*
>
> Life imprisonment is affirmed. The minimum pre-parole period of 44 years is set aside and substituted therefor is a period of 19 years and one month before eligibility for parole.
>
> *Rushane Goldson*
>
> Life imprisonment is affirmed. The minimum pre-parole period of 46 years is set aside and substituted therefor, is a period of 18 years and two months before eligibility for parole.

Fabian Smith

Life imprisonment is affirmed. The minimum pre-parole period of 44 years is set aside and substituted therefor, is a period of 19 years and one month before eligibility for parole.

Re-calculation of sentence- count two

[202] As regards count two, the learned judge misapplied the law as regards the discount regime under section 42 of the CJAA, in addition to other errors identified with double counting. These errors require us to consider afresh the minimum pre-parole periods pertaining to count two.

[203] This court recognised, in **Jowayne Alexander v R,** that a second count of murder committed on the same occasion warrants a higher sentence. In that case**,** this court adopted a starting point of 25 years and imposed a minimum pre-parole period of 38 years for the second of two counts of murder, after trial, where the victims were elderly, and their bodies were dumped in bushes. McDonald-Bishop JA, delivering the judgment, stated at para. 31:

> "…We cannot lose sight of the fact that this was a double murder… We, therefore, reject the argument that the same pre-parole period should be given on both counts. The court must ensure that the punishment is proportionate to the overall criminality, having regard to similar cases in similar circumstances and the personal characteristics of the offender."

[204] As horrific as that murder was, and the cases referred to earlier, the present case falls within the category of "the worst of the worst". It bears repeating that the second count of murder, in the instant case, involved a teenage victim who was chopped repeatedly, shot, and beheaded, mirroring the fate of her mother. These facts place the offence among the most egregious in this jurisdiction.

[205] Given the exceptional nature of the instant case and the absence of comparable precedent, I do not find that the learned judge erred in principle in using a starting point

of 45 years for count two. I take the view that, all things considered including a higher starting point, the previous conviction for murder committed in similar circumstances (count one), the aggravating and mitigating features, the application of the sentencing principles and the inapplicability of the discount regime, the appropriate minimum pre-parole period for each appellant should be calculated as follows.

Adrian Campbell

[206] The second count of murder pertains to Crystal. Adrian Campbell's participation in the offence was deliberate and sustained. He acted in a joint enterprise with the other appellants, so, although his role was different, he was equally culpable. Having regard to the killing of a second victim on the same occasion and, therefore, the enhanced gravity of the offence, the age of Crystal (18 years old), the level of pre-meditation, the motive of reprisal, the multiple participants, the use of deadly weapons, the non-recovery of the firearms, the home invasion and the impact on the community, I accept that a starting point of 45 years is appropriate.

[207] A significant upward adjustment is warranted for the gruesome and heinous nature of the killing (the deceased was shot, chopped, beheaded and her head disposed of). Adrian Campbell took the deceased's head from the house and disposed of it. His bloody clothing with the victim's DNA found at his house bore testimony to the stark circumstances of the killing. In his case a conviction seemed inevitable as the learned judge remarked. The result would be in the region of 55 years.

[208] A reduction in the figure is warranted to reflect the mitigating circumstances including his expression of remorse evidenced by the guilty plea and co-operation with the authorities in locating Crystal's head. His previous gainful employment is considered, but his previous clean criminal record would no longer apply since he was convicted on count one. The law does not permit a discount for a guilty plea on a second count of murder occurring on the same occasion, so no discount is applicable. Also, the credit for time served on pre-sentence remand would be inapplicable to the second count. See **Callachand v The State** where their Lordships opined, at para. 10, that "a defendant

who is in custody for more than one offence should not expect to be able to take advantage of time spent in custody more than once". The adjusted figure would be in the region of 52 years.

[209] In the circumstances, it cannot be said that 44 years before eligibility for parole is manifestly excessive.

Rushane Goldson

[210] I use a similar starting point of 45 years based on the aggravating factors identified, at para. [205] above, in setting the starting point. I make an upward adjustment to the starting point based on the gruesome and heinous nature of the killing. The deceased was chopped, shot, beheaded and her head disposed of. Rushane Goldson was armed with a machete and repeatedly chopped Crystal as she screamed out his name.

[211] A downward adjustment to the figure is warranted to reflect the mitigating circumstances, including Rushane Goldson's expression of remorse evidenced by his guilty plea and co-operation with the authorities. His previous gainful employment is considered, but his previous clean criminal record would not avail him. Also, his age would carry less weight for the second count. No discount for the guilty plea or credit for time served on remand would be applicable. The adjusted figure would be in the region of 52 years.

[212] In the circumstances, it cannot be said that a minimum pre-parole period of 46 years is manifestly excessive.

Fabian Smith

[213] As regards Fabian Smith, I use the same starting point of 45 years based on the aggravating factors identified, above, in setting the starting point. The starting point is increased on account of the brutal manner of the killing and the betrayal of trust. This

appellant stood guard outside the house, armed with an M16 rifle while the co-appellants actively participated inside the house. Fabian Smith's niece was related to the deceased, and he had previously shared meals with the family, reflecting a close relationship. After the increase, the result is in the region of 55 years.

[214] A reduction of that figure is warranted to reflect the mitigating circumstances, including his co-operation with the police and expressions of remorse, evidenced by his guilty plea. Like the other appellants, his previous gainful employment is considered, but his previous clean criminal record would not apply. Neither would a discount for his guilty plea or a credit for time served on pre-sentence remand. The adjusted figure is in the region of 52 years.

[215] In the circumstances, it is demonstrably clear that the minimum pre-parole period imposed by the learned judge is not manifestly excessive.

[216] I note that the learned judge's approach to concurrent sentencing, while not challenged on appeal, reflects the principle that the overall sentence must be commensurate with the totality of the criminality. The concurrent structure is appropriate in this case, given the indivisible nature of the criminal enterprise and the fact that both murders occurred in a single incident.

[217] Accordingly, in the case of each appellant, the sentences on count two should be as follows:

> Count two
>
> *Adrian Campbell*
>
> Life imprisonment with parole eligibility after 44 years is affirmed.
> The sentence is to run concurrently with the sentence on count one.
>
> *Rushane Goldson*

Life imprisonment with parole eligibility after 46 years is affirmed. The sentence is to run concurrently with the sentence on count one.

Fabian Smith

Life imprisonment with parole eligibility after 44 years is affirmed. The sentence is to run concurrently with the sentence on count one.

G FRASER JA (AG)

[218] I have read the draft judgments of Edwards and Dunbar Green JJA and agree with the reasoning and conclusion of Dunbar Green JA. There is nothing that I wish to add.

EDWARDS JA

ORDER

Adrian Campbell

1) The appeal against sentence is allowed, in part.

2) The sentences of life imprisonment with the stipulation that the appellant serve 44 years on both counts, concurrently, before eligibility for parole, are set aside and substituted therefor are the following sentences:

    a) On count one, life imprisonment at hard labour with a stipulation that the appellant serves 19 years and one month before being eligible for parole.

    b) On count two, the sentence of life imprisonment at hard labour with a stipulation that the appellant serves 44 years before being eligible for parole is affirmed.

c) The sentences are to be served concurrently and are reckoned as having commenced on 11 December 2019, the date on which they were imposed.

Rushane Goldson

1) The appeal against sentence is allowed, part.

2) The sentences of life imprisonment with the stipulation that the appellant serve 46 years, on both counts, concurrently, before eligibility for parole, are set aside and substituted therefor are the following sentences:

    a) On count one, life imprisonment at hard labour with a stipulation that the appellant serves 18 years and two months before being eligible for parole.

    b) On count two, the sentence of life imprisonment at hard labour with a stipulation that the appellant serves 46 years before being eligible for parole is affirmed.

    c) The sentences are to be served concurrently and are reckoned as having commenced on 11 December 2019, the date on which they were imposed.

Fabian Smith

1) The appeal against sentence is allowed, in part.

2) The sentences of life imprisonment with the stipulation that the appellant serve 44 years on both counts, concurrently, before eligibility for parole, are set aside and substituted therefor are the following sentences:

a) On count one, life imprisonment at hard labour with a stipulation that the appellant serves 19 years and one month before being eligible for parole.

b) On count two, the sentence of life imprisonment at hard labour with a stipulation that the appellant serves 44 years before being eligible for parole is affirmed.

c) The sentences are to be served concurrently and are reckoned as having commenced on 11 December 2019, the date on which they were imposed.