[2023] JMCA Crim 24

JAMAICA

IN THE COURT OF APPEAL

BEFORE: THE HON MRS JUSTICE MCDONALD-BISHOP JA
THE HON MISS JUSTICE EDWARDS JA
THE HON MRS JUSTICE FOSTER-PUSEY JA

SUPREME COURT CRIMINAL APPEAL NOS 92 & 93/2016

TIMOTHY CAMPBELL
NEIL COOPER V R

Cecil J Mitchell for Timothy Campbell

Mrs Melrose Reid for Neil Cooper

Ms Ruth Anne Robinson and Ms Sophia Rowe for the Crown

10, 13 October 2022 and 9 June 2023

Criminal Law – sentencing – murder and wounding with intent – whether trial judge erred in imposing a sentence of life imprisonment for murder– whether trial judge intended to impose a fixed sentence - whether stipulation of a parole period for the sentence of life imprisonment for murder was an error - The Offences Against the Person Act, section 3(1) and 3(1C)(b)(i)

Constitutional Law - delay – whether delay breached the appellants' constitutional right to a fair hearing within a reasonable time - whether sentence should be reduced on account of the delay - The Charter of Fundamental Rights and Freedoms, section 16(1)

EDWARDS JA

[1] Between 9 November and 6 December 2016, Timothy Campbell ('the appellant Campbell') and Neil Cooper ('the appellant Cooper') were tried jointly with others, in the Home Circuit Court, on an indictment containing one count of murder, and one count of wounding with intent. They were both convicted, on 22 November 2016, on the two counts charged on the indictment. On 6 December 2016, they were each sentenced, on

the count of murder, to imprisonment for life with a stipulation that 20 years be served before eligibility for parole, and on the count of wounding with intent, to 10 years' imprisonment. The sentences were ordered to run concurrently.

[2] The facts, briefly, were that, on 2 August 2009, at approximately 11:00 pm, both appellants, armed with firearms, went to the home of the eye witness ('CR'), where they fired shots, resulting in the death of the deceased ('DW'), and serious gunshot injuries to CR. Both men were positively identified by CR and his common law wife ('PH'), who was also on the scene when the incident took place, and who, unfortunately, had died before the trial. They both knew the appellants before. PH had identified the appellant Cooper as one of the men who participated in the shooting, and pointed him out at an identification parade. Her statement to the police was read to the jury at the appellants' trial. The main issues at the trial were identification by recognition, credibility, and common design. The appellants each gave unsworn statements from the dock, raising the defence of alibi.

[3] Both appellants applied to this court for permission to appeal their convictions and sentences, and permission, in both instances, was refused by a single judge of this court. They both renewed their applications, before this court, as they were entitled to do. We will first begin with the case of the appellant Campbell.

The appellant Campbell

[4] At the hearing of the appeal, Mr Cecil Mitchell, who appeared on behalf of the appellant Campbell, indicated that he could advance no valid ground of appeal against conviction with any reasonable prospect of the appeal being allowed and that the appellant Campbell had been so advised. We see no basis to disagree with that assessment. Although there were several inconsistencies between the statements given by CR and his evidence at trial (we identified five in all), these were adequately dealt with by the learned trial judge and were properly left to the jury for their consideration and determination. There was also a discrepancy between the evidence of CR and the statement of PH, which was also adequately dealt with by the learned trial judge.

[5] Although Mr Mitchell initially indicated that he also saw no basis on which to challenge the sentences on the ground that they were manifestly excessive, in the light of the issues of delay and failure to give credit for pre-trial remand raised by counsel for the appellant Cooper, Mrs Melrose Reid, which would also impact the appellant Campbell, Mr Mitchell was invited to make submissions on those issues. In response, he indicated he would rely on and adopt, in full, the submissions of counsel for the appellant Cooper in so far as they related to the failure of the learned trial judge to take account of time spent in pre-trial custody, as well as the delay in the trial and the hearing of the appeal. We will, however, say more about that anon.

The appellant Cooper

[6] With respect to the appellant Cooper, Mrs Reid indicated that having perused the transcript, she too could find no grounds on which to successfully advance any argument against conviction and that he had been so advised. The grounds which were filed challenging the conviction of the appellant Cooper were, therefore, abandoned. We see no reason to disagree with this admirable stance.

[7] Counsel indicated that her approach to the appeal against sentence was not intended to challenge the sentence on the basis that it was manifestly excessive, but rather, was based on certain "legal issues" and "legal principles". In order to mount that challenge, she sought and was granted permission to modify the original ground 4, to argue instead, three supplemental grounds of appeal - grounds 4(a), 4(b) and 4(c). The grounds argued at the hearing, therefore, were that:

> "(a) The [learned sentencing judge] was confused in sentencing for murder as to whether he imposed a sentence of 20 years for murder or Life imprisonment with 20 years before being eligible for parole.
>
> (b) The [learned sentencing judge] misdirected himself that he should stipulate a parole period when the [appellant] was indicted under common law.

(c) The [learned sentencing judge] failed to grant time for the Long Delay [sic] of 7 years before the matter was tried."

[8] In order to understand counsel's contentions with regard to these supplemental grounds, its best to set out her submissions as fully as possible. We will first address grounds 4(a) and (b) together, and then ground 4(c) separately.

The propriety of the sentence for murder - grounds 4(a) and 4(b)

[9] Mrs Reid conceded that the sentences imposed on the appellant Cooper, in and of themselves, were not excessive. However, she argued that the learned trial judge was "confused in sentencing for murder as to whether he imposed a sentence of 20 years for murder or Life Imprisonment with 20 years before being eligible for parole". Counsel also argued that the learned trial judge "misdirected himself that he should stipulate a parole period when the [appellant] was indicted under common law".

[10] Counsel cited passages from the learned trial judge's summation to support her curious submissions. Firstly, she cited page 849, where the learned trial judge said:

> "Based on what the jury has accepted, it would not be unusual and would be more likely than not, that in relation to a charge of Murder, a sentence of imprisonment for life without the eligibility of parole for 30 years would be something that I think would be expected in the circumstances."

[11] She also cited page 852 where, in sentencing the appellants, the learned trial judge said:

> "Looking at all the circumstances and trying to find the balance, I think that in all the circumstances in relation to the conviction for Murder and bearing in mind the statutory provisions, I find that in relation to that count, count 1, which both of you were convicted for Murder, that the sentence be that you be imprisoned and kept at hard labour. That is for both of you and you should not be eligible for parole before 20 years have passed."

[12] Mrs Reid submitted that the words above may be interpreted to mean that the learned trial judge had given a fixed sentence of 20 years' imprisonment at hard labour, as he had not indicated that he was imposing a life sentence. She argued that the imposition of a life sentence was not mandatory and that the "tacking on" of the period of eligibility for parole without using the words "life imprisonment" made the sentence unclear and uncertain. She further argued that the "[learned trial judge] was under the misguided impression that he had to add life and stipulate a time before becoming eligible for parole. In support of this contention, she pointed to the words of the learned trial judge, at page 852 of the transcript, where he said "…in relation to the conviction for murder and bearing in mind the statutory provisions". This, she argued, showed that the learned trial judge thought he was obliged by statute to impose a life sentence.

[13] Mrs Reid also argued that the learned trial judge wrongly sentenced the appellant by virtue of a statutory provision, when he ought to have been sentenced at common law. She asserted that the appellant had been indicted under the common law, and, therefore, was subject to be sentenced by virtue of the common law and not any statutory provision. Counsel submitted that by relying on a statutory provision, "the [learned trial judge] might have been confused in his pronouncement, believing that he had to add the parole period, after he properly imposed his sentence of imprisonment of 20 years". As a result, counsel asked that this court affirms a sentence of 20 years' imprisonment, as the learned trial judge had clearly not intended to impose a sentence of life imprisonment.

[14] In answer to the submissions made by Mrs Reid, counsel appearing on behalf of the Crown, Ms Robinson, asserted that the sentence imposed by the learned trial judge for murder was clear, unambiguous and was, most certainly, not confusing. Counsel pointed to page 851 of the transcript, where the learned trial judge said that "a sentence of life imprisonment without eligibility for parole for thirty years" was indicative. This, counsel contended, showed that the learned trial judge was contemplating a sentence of life imprisonment, and that there was nothing to show, unequivocally, that he had departed from this intention.

Disposal of grounds 4(a) and 4(b)

[15] Section 3 of the Offences Against the Person Act, which is the statutory provision to which Mrs Reid referred, touches and concerns the sentences to be imposed on persons convicted of murder. Section 3 provides as follows:

> "3.-(1) Every person who is convicted of murder falling within-
>
> (a) …
>
> (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.
>
> …
>
> (1C) In the case of a person convicted of murder, the following provisions shall have effect with regard to that person's eligibility for parole, as if those provisions had been substituted for section 6(1) to (4) of the Parole Act-
>
> (a)…
>
> (b) where, pursuant to subsection (1)(b), a court imposes -
>
> (i) a sentence of imprisonment for life, the court shall specify a period, being not less than fifteen years; or
>
> (ii) any other sentence of imprisonment, the court shall specify a period, being not less than ten years,
>
> which that person should serve before becoming eligible for parole."

[16] We agree with the Crown and find that Mrs Reid is not on good ground in her submission that the learned trial judge imposed a fixed term of 20 years on the appellant Cooper. Indeed, the submissions and arguments made by Mrs Reid on this point were difficult to comprehend. The learned trial judge showed his intention, at page 851 of the transcript, where he said:

> "As I indicated, it would not be unreasonable in light of all the circumstances for a sentence of imprisonment at hard labour for life, without the eligibility of parole for 30 years to be passed. However, having looked at that aspect of it, I have to look at any mitigating circumstances that are in your favour."

The learned trial judge had, therefore, given a sentence indication of life imprisonment with a stipulation that 30 years' imprisonment be served before eligibility for parole. He then reduced the period for parole to 20 years, as a result of the mitigating circumstances.

[17] In keeping with section 3(1C)(b)(i), the learned trial judge specified a period to be served before the appellant could become eligible for parole. There is no room for any other interpretation of the learned trial judge's words at the sentencing hearing. Grounds 4(a) and 4(b) are, therefore, without merit.

Breach of constitutional right to a fair hearing within reasonable time due to delay - Ground 4(c)

(i) The appellant Campbell's submissions

[18] Mr Mitchell, although invited to do so, made no submissions on this point but adopted the submissions of Ms Reid, made on behalf of the appellant Cooper.

(ii) The appellant Cooper's submissions

[19] Counsel for the appellant Cooper submitted that although he was on bail, his trial was unreasonably delayed which breached his reasonable time guarantee under section 16(1) of the Constitution. Counsel also pointed to the fact that the appellant was not obliged to show that he had suffered any particular prejudice resulting from the delay, as the delay itself, being seven years, was unjust. Counsel further argued that the failure of the appellant to raise the issue at his trial was not a deterrent to it being argued on appeal. She maintained that, in keeping with this court's approach in cases involving similar circumstances of delay, the appellant was entitled to a remedy, which she suggested ought to be a reduction of his sentence by two years.

[20] Following Mrs Reid's submissions, and as a result of the approach taken by the relevant authorities where there is a dispute as to the cause of delay in the determination of criminal proceedings, we asked Mr Mitchell and Mrs Reid to furnish this court with affidavits from the appellants regarding the claim for breach of their constitutional rights. The Crown was also asked to provide a chronology of events regarding the matter in the courts below. The hearing was adjourned to give counsel time to comply with those requests. Mrs Reid and the Crown complied. Mr Mitchell was content to adopt the position of the appellant Cooper.

(iii) The Crown's submissions

[21] Ms Robinson pointed out that, although the matter was first placed before the circuit court on 18 December 2009, it had been mentioned 48 times before the trial commenced on 9 November 2016. She maintained that the time it took for the first trial date to be set in September 2010 was not the fault of the Crown, and that 18 trial dates had been set before the case was finally heard. Counsel noted that the Crown was ready on eight of those dates, and that the appellant's legal representative was absent for seven. On one trial date, both sides were ready, but the matter could not be accommodated on the court's list.

[22] Counsel for the Crown maintained that on any assessment of the chronology of events, the State was not wholly responsible for the delay in the trial of the matter. Counsel submitted that, in the light of the history of the matter, the State was not in breach of the appellants' constitutional right to a fair trial. In any event, counsel argued, the matter having not been raised before the learned trial judge, he was not obliged to give credit for the delay awaiting trial.

Disposal of ground 4(c)

[23] The pillar of the appellants' complaint is section 16 of the Constitution of Jamaica which is part of the Charter of Fundamental Rights and Freedoms ('the Charter of Rights'), and more specifically, section 16(1), which provides the right to a fair hearing within a

reasonable time by an independent and impartial court. Section 16(7) provides that an accused is entitled, if he requires it, to a copy of the record of the proceedings for his own use, within a reasonable time. Section 16(8) provides for the right of any person to have their conviction reviewed. As pointed out by Brooks P in **Evon Jack v R** [2021] JMCA Crim 31, at para. [21], even though section 16(8) makes no reference to time, the entire section must be read together, so that it becomes clear that the element of "reasonable time" is incorporated into that subsection as well.

[24] In **Germaine Smith and Others v R** [2021] JMCA Crim 1, this court, at para [124] found that four years' delay in the context of our environment, should not be considered a breach of the section 16 right. It said:

> "[124] Unfortunately, the level of crime over the past two decades has provided more cases than the criminal courts in this jurisdiction, are able to accommodate in short order. As a result, a lapse of almost four years before a case comes on for trial is not considered so unreasonable, as to constitute a breach of section 16(1) of the Constitution, which guarantees that right. In the event that the lapse was found to be unreasonable and unconstitutional, the court would have been able to grant a remedy by a reduction in the sentence (see paragraphs 24-28 of **Tapper v DPP**). That remedy is not available in this case."

In **Melanie Tapper v Director of Public Prosecutions** [2012] UKPC 26 the Privy Council has said that it is for the courts in the jurisdiction to determine what is unreasonable delay in its circumstances. It said, in part, at para. 19:

> "…In particular, the domestic court is much better placed to judge the significance of delay having regard to local conditions and pressures on the courts (see Bell v Director of Public Prosecutions [1985] AC 937, 953E-G)…"

[25] It has already been established that the right to a fair hearing within a reasonable time also includes the right to have the appeal heard within a reasonable time (see

Melanie Tapper v Director of Public Prosecutions at para. 9; **Carlos Hamilton and Jason Lewis v The Queen** [2012] UKPC 31 at para. 15; **Evon Jack v R** at para. [19]; and **Omar Anderson v R** [2023] JMCA Crim 11 at para. [247] (judgment delivered after this case was heard).

[26] Brooks P, in **Jahvid Absolam, Winston Harris, Garnett Linton v R** [2022] JMCA Crim 50, at para. [82], again discussed the effect of section 16(1) of the Constitution and, in doing so, accepted the approach taken in **Taito v R; Bennett and others v R** [2002] UKPC 15 and **Tussan Whyne v R** [2022] JMCA Crim 42, in giving a remedy for the breach of that Charter right, where the breach of that right is wholly or substantially the fault of the State. However, before any breach of the reasonable time guarantee can be attributed to the State, the reason for the delay must be established (see this court's judgment in **Julian Brown v R** [2020] JMCA Crim 42, at para. [89], where McDonald-Bishop JA said that the reason for the delay should be investigated and that it should involve a "balancing exercise".) This "balancing exercise", she said, is necessary "because the constitutional right of the applicant to a fair trial within a reasonable time is to be balanced against 'the public interest in the attainment of justice in the context of the prevailing system of legal administration and the prevailing economic, social and cultural conditions to be found in Jamaica'" (see para. [89]). This position was also adopted by this court in **Timothy Smith v R** [2022] JMCA Crim 40.

[27] The affidavit of the appellant Cooper made allegations of delays having to do with persistent adjournments, as far as he could recall, none of which, he said, was his fault. He also claimed that there was a two-year delay awaiting a preliminary enquiry. We wish it to be noted, however, that there was no preliminary enquiry conducted in this case, it having been brought before the Home Circuit Court on a voluntary bill of indictment after a *nolle prosequi* had been entered by the Director of Public Prosecutions, on 18 December 2009. The appellant Cooper was arrested and charged on 17 August 2009. The appellant Campbell was arrested 8 March 2011.

[28] There is no dispute that the appellant Cooper's case took seven years to come on for trial. He was on bail for most of that pre-trial period. Although the appellant Cooper's case first came before the Home Circuit Court on 18 December 2009, the appellant Campbell did not join him until June of 2011. The case was mentioned 48 times before the trial commenced. Of those 48 dates, 18 trial dates were set, eight times out of which the Crown was ready to proceed but for seven of those dates counsel for the appellant Cooper was absent. There were 10 dates when the matter did not proceed for trial, despite being on the trial lists, resulting from systematic failures inclusive of part-heard matters taking precedence and the case not being reached, an intervening election day, insufficiency of jurors, and the appellants not being brought to court. There were three joint applications for adjournments within those 18 dates. There was a period between July 2015 and October 2016 when the matter was taken off the trial list because one of the Crown's witnesses had died and statements to that effect had to be procured. The trial commenced 9 November 2016.

[29] In the case of the appellant Campbell, after he joined the matter in 2011, his counsel was absent seven times whilst the matter was on the trial list.

[30] An examination of the chronology of events provided by the Crown, which was not contested by the appellants, revealed that both appellants contributed in equal measure to the delay in their trial, with some adjournments being caused by their legal representatives. The fault was, therefore, not substantially that of the State.

[31] In **Flowers v The Queen (Jamaica)** [2000] UKPC 41, the Privy Council outlined the relevant factors to be considered when assessing whether rights have been breached as a result of delay. These include the reason for and the length of the delay, whether the rights were asserted, and any prejudice to the appellant as a result of the delay. Neither of the appellants in this case asserted their constitutional right to a trial within a reasonable time, at their trial in the court below. This does not in, anyway, prevent this court from considering the matter but it does affect the issue of whether it was fair to try the appellants at all (see **Attorney General's Reference (No 2 of 2001)** [2004] 2 AC

72 and **Melanie Tapper v Director of Public Prosecutions** as discussed in **Tussan Whyne v R,** at paras. [68], [71] and [72]). Neither appellant has made any such contention and relies solely on the issue of the bare delay. There is no evidence that the fairness of the trial was affected by the delays or that there was any miscarriage of justice as a result of a trial after such a delay.

[32] This was a trial involving several defendants. On any given day, the legal representative of one or the other of the accused was absent and the trial could not proceed. There was no application for separate trials on behalf of any of the defendants, including these two appellants now before this court. The delay in the trial was not wholly or substantially attributable to the State, and was contributed to equally by the prosecution and the defence. The State cannot be completely absolved of its responsibility to be proactive and to ensure that matters are tried within a reasonable time, even when the accused himself is guilty of procrastination. However, taking into consideration the fact that the appellants were both on bail, that their respective counsel's attendance at court was sporadic over the period, that there were several defendants and that they did not assert their constitutional right or request separate trials, it cannot be fairly said that the State was in breach. The appellants having been on bail for most of the period of the delay, suffered no practical effects as a result. Even if the appellants' Charter rights were breached by the State due to the delay in the trial commencing, in our view, the only appropriate remedy would be an acknowledgment that there was such a breach.

[33] Unfortunately, as it turns out, there have been two periods of delay in this matter. The first period was pre-trial, as discussed above, and the second period was post-conviction and sentence, where the appellants have been in custody awaiting their appeal. Rules 3.7, 3.8 and 3.9 of the Court of Appeal Rules indicate the documents which are to be provided to the court for the appeal to be heard. These documents include notes of evidence, summing up or directions of the judge, short hand notes of the trial or typed transcripts of the proceedings, a written report by the judge of his opinion of the case and/or a certified copy of the judges' own notes of the trial.

[34] In the instant case, the application for permission to appeal in respect of the appellant Cooper was filed on 21 December 2016. The application in respect of the appellant Campbell was filed 19 December 2016. The transcript in the case was not produced to this court's registry until 6 November 2020, approximately four years after the applications were filed. The applications for leave to appeal were heard by a single judge on 19 January 2021. There has, therefore, been a delay of four years to produce the transcript, and a further delay of two months and two weeks for the application to the single judge. Following the refusal by the single judge, the appellant Cooper gave notice of renewal of his application to the full court on 3 June 2021 but did not file an application for legal aid until 29 April 2022. The matter was put on the cause list for a week in June 2022, but was removed as legal aid for the appellant Cooper had not yet been settled. Legal aid having been granted and an assignment made, the matter was re-listed on the hearing list for the week commencing 10 October 2022, along with the application of the appellant Campbell.

[35] There can be no dispute as to the fact that the appellants were not substantial contributors to the delay in the hearing of their applications for permission to appeal. That delay lay substantially at the feet of the State. This is so because the major portion of the delay was caused by the failure of the State to produce the record of the proceedings against them, which was required for their applications to be properly heard.

[36] Counsel for the appellant Cooper is correct in her submission that the usual remedy provided by this court for such a breach is a public acknowledgment of the breach or a reduction in the penalty which had been imposed (see **Techla Simpson v R** [2019] JMCA Crim 37). As already stated, there is no distinction between trials and appeals where such a breach is asserted (see **Absolam and others v R)** nor is any such distinction made when fashioning a remedy. However, each case has to be determined on its own facts and the remedy granted in one case will not necessarily determine the remedy to be granted in another case. In determining the appropriate remedy for such a breach, the court has a duty to balance the interest of the public in ensuring that a convict serves

the full sentence imposed by law, against the constitutional rights of the convicted person to having his case reviewed within a reasonable time (see **Omar Anderson v R** at para. [260], citing **Solomon Marin Jr v The Queen** [2021] CCJ 6 (AJ) BZ). In **Absolam and others v R**, the sentences of the appellants for various offences were reduced by two years on account of a delay in the hearing of the appeal of eight years, which was not attributable to the appellants. In **Alistair McDonald v R** [2022] JMCA Crim 38, the appellant's sentences of 18 months for several offences, which were to run concurrently, were reduced by six months on account of post-conviction delay of almost six years.

[37] In this case the appellants have demonstrated that their reasonable time guarantee has been breached. There has been a delay in the review of their convictions and sentence caused by one apparatus of the State failing to fulfil the obligation of providing the records necessary for the appeals to be swiftly and fairly conducted. Both the appellant Campbell and the appellant Cooper are entitled to constitutional redress for the breach of their respective Charter rights. Mrs Reid suggested that a reduction in sentence was the appropriate remedy. We agree.

[38] In considering the appropriate reduction, however, we must take account of the fact that the appeal was heard as soon as the transcript was received and that it was possible for the appeal to be determined on its merits, despite the delay. The applications for leave to appeal against conviction were abandoned and no submission was made with regard to the sentence being manifestly excessive. In the circumstances of the case, and balancing the public interest in ensuring that the appellants serve their full sentences imposed by law against the interest of the public in ensuring that constitutional rights are safeguarded, we would reduce the appellants' sentences by one year as redress for the breach of their Charter right to a fair hearing within a reasonable time.

Failure to give credit for pre-trial remand - ground 4(d)

[39] During the hearing of arguments on the supplemental grounds which had been filed, we allowed Mrs Reid to add the failure of the learned trial judge to give credit for time served as supplemental ground 4(d), and to make oral submissions on it. Mrs Reid

submitted that the learned trial judge, having failed to give credit for time served, this court ought to adjust the sentence to reflect that credit. This issue also merits consideration in the case of the appellant Campbell.

[40] We agree that the appellants are entitled to be credited for the time spent on pre-trial remand, and if the learned trial judge failed to do so, then this court is obliged to give it. The authorities on this point are well known and need not be rehearsed here.

[41] The incident occurred on 2 August 2009. The appellant Cooper was arrested 12 August 2009. Bail was granted to him on 17 June 2011. The appellant Cooper was, therefore, on pre-trial remand for one year, 10 months and five days. The appellant Campbell was taken into custody 8 March 2011 and brought before the Home Circuit Court on 10 June 2011. He was granted bail on 24 June 2011. He was, therefore, on pre-trial remand for three months, two weeks and two days. There was no mention of their time spent in custody at the sentencing hearing and it was clearly not considered by the learned trial judge in arriving at the sentence to be imposed. This court must, therefore, give effect to it, in considering whether the application for leave to appeal sentence should be granted.

[42] We conclude that the application for leave to appeal the sentences should be granted for both appellants, given the failure of the learned trial judge to allow the appropriate credit for time spent in pre-trial custody.

Disposal of the appeal

[43] Having heard the submissions of counsel, we conclude that the applications for leave to appeal convictions brought by both appellants ought to be refused. However, the applications for leave to appeal sentences ought to succeed and the applications treated as the hearing of the appeals against sentence. The appeals against sentences will be allowed, in part.

[44] The sentences of life imprisonment are affirmed but the period which the appellants will serve before parole is considered, is set aside. In substitution therefor,

new sentences ought to be imposed reflecting the credit given for time spent in pre-trial custody and the reduction in sentence granted for breach of each appellants' constitutional right to a fair hearing within reasonable time.

Accordingly, the court orders as follows:

1. *Timothy Campbell*

(1) The application for leave to appeal conviction is refused.

(2) The application for leave to appeal sentence is granted.

(3) The hearing of the application for leave to appeal sentence is treated as the hearing of the appeal, and the appeal against sentence is allowed in part.

(4) For the offence of murder, the sentence of life imprisonment is affirmed. The stipulation that 20 years be served before eligibility for parole is set aside and a stipulation that 18 years and eight months be served before eligibility for parole is substituted therefor - credit having been given for time spent in pre-trial custody and a reduction of one year having been granted for the breach of the appellant's constitutional right to a fair hearing within a reasonable time.

(5) The sentence of 10 years' imprisonment for wounding with intent, is set aside. A sentence of eight years and eight months' imprisonment is substituted therefor - credit having been given for time spent in pre-trial custody and a reduction of one year having been granted for the breach of the appellant's constitutional right to a fair hearing within reasonable time.

2. *Neil Cooper*

(1) The application for leave to appeal conviction is refused.

(2) The application for leave to appeal sentence is granted.

(3) The hearing of the application for leave to appeal sentence is treated as the hearing of the appeal, and the appeal against sentence is allowed in part.

(4) For the offence of murder, the sentence of life imprisonment is affirmed. The stipulation that 20 years be served before eligibility for parole is set aside and a stipulation that 17 years, one month and three weeks be served before eligibility for parole is substituted therefor - credit having been given for time spent in pre-trial custody, and a reduction of one year having been granted for the breach of the appellant's constitutional right to a fair hearing within a reasonable time.

(5) The sentence of 10 years' imprisonment for wounding with intent, is set aside. A sentence of seven years, one month and three weeks' imprisonment is substituted therefor - credit having been given for time spent in pre-trial custody, and a reduction of one year having been granted for the breach of the appellant's constitutional right to a fair hearing within a reasonable time.

3.The sentences imposed on both appellants are to be reckoned as having commenced on 6 December 2016, the date that they were imposed, and are to run concurrently as ordered by the learned trial judge.