

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO 90 & 91/2015

**BEFORE: THE HON MISS JUSTICE P WILLIAMS JA
THE HON MRS JUSTICE G FRASER JA
THE HON MRS JUSTICE TIE POWELL JA (AG)**

**RICHARD CHAMBERS
ANTHONY BROWN v R**

Mrs Melrose Reid for Richard Chambers

Mr Vernon Daley and Mr Germaine Smith for Anthony Brown

Mrs Nickeisha Young Shand for the Crown

10, 11 and 13 March 2026

Criminal law – Jury Trial – Summation – Directions on common design-whether misdirection as to mere presence

Criminal Law – Sentence – Life imprisonment – Whether pre-parole period excessive

Constitutional Law – Right to a hearing within a reasonable time – Post-trial delay – Whether delay amounted to a breach under section 16 of the Charter of Fundamental Rights and Freedoms – Appropriate redress to be granted

ORAL JUDGMENT

TIE POWELL JA (AG)

[1] Messrs Richard Chambers and Anthony Brown were tried for the offence of murder by a judge (‘the learned trial judge’) sitting with a jury in the Home Circuit Court holden at King Street in the parish of Kingston. They were convicted on 21 September 2015 and, on 12 November 2015, were both sentenced to life imprisonment, with the stipulation that Mr Chambers should serve a minimum of 23

years before becoming eligible for parole and Mr Brown should serve a minimum of 28 years.

[2] As it relates to Mr Chambers, he was granted leave to appeal by a single judge as it relates to the conviction. Whilst counsel on his behalf had originally sought leave to challenge the sentence imposed, this was not pursued.

[3] Counsel also abandoned the grounds of appeal filed relating to conviction and sought permission to argue one supplemental ground, being:

“The learned trial judge (LTJ) misdirected the jury on the law of common design resulting in the jury convicting him.”

[4] Further, Mr Chambers seeks redress for breach of his constitutional right to a fair hearing within a reasonable time (post trial delay).

[5] As it pertains to Mr Brown, the single judge refused leave to appeal against the conviction and sentence. As is his right, under rule 3.11(2) of the Court of Appeal Rules, 2002, Mr Brown renewed the application before this court. He, however, pursued only the application related to the sentence, as stated in supplemental grounds of appeal, filed on 6 February 2026, which read:

“Ground 1 - The learned trial judge erred in law by failing to follow the appropriate sentencing methodology in arriving at the stipulation that the appellant should serve 28 years before being eligible for parole;

Ground 2 - The delay in the appellant’s appeal occasioned by the production of the transcript nearly seven years into his sentence has breached the appellant’s constitutional right to a fair hearing within a reasonable time.”

[6] In brief, the evidence presented by the Crown through the sole eyewitness is that he was at the Naggo Head football field around 6:45 pm when he looked up and saw Mr Brown and Mr Chambers walking together, about 3 to 3 ½ feet from each other, approaching the football field. He had known them both before and referred to them as ‘Cutie’ and ‘Dandy’, respectively. From a distance of approximately 45 feet, he saw a pistol in Mr Brown’s hand, and then he heard loud explosions. He says that everyone started running toward his direction, and he ran as well. Mr Brown and Mr

Chambers ran off together in a different direction and chased another person on the football field.

[7] Both Mr Chambers and Mr Brown gave unsworn statements from the dock to the court denying any knowledge of the shooting or murder. Mr Chambers indicated that he was not at the ball field and was not in the company of anyone with a gun. Mr Brown stated that he was at home on the day in question.

The appellant Mr Richard Chambers

[8] Counsel Mrs Reid submitted, on behalf of the appellant Richard Chambers, that the learned trial judge gave faulty directions as it relates to common design. It was argued that, whilst the learned trial judge on the one hand directed the jurors that mere presence was insufficient, on the other hand, he gave the jurors the impression that the presence of Mr Chambers, with Mr Brown the shooter, was sufficient to establish common design and that he was, therefore, guilty. The assertion is that the evidence is insufficient to establish common design.

[9] Counsel also maintained that the learned trial judge failed to deal effectively with the question of whether Mr Chambers had the requisite intention for the offence of murder and instead focused on his alleged presence in the company of Mr Brown, and, in so doing, equated this to intention.

[10] Finally, there was a complaint that the learned trial judge abdicated his role to the prosecution, by indicating to the jury what the prosecution was asking them to find.

[11] Having perused the summation, it is evident that the learned trial judge at the outset (at page 208 of the transcript), gave the generally accepted directions on common design. He treated with the concept itself, explaining that where two or more persons act together as part of a plan to commit an offence, despite the fact that each may play a different role, they will all be guilty of that offence. He also directed the jury that the "plan" did not have to be based on a formal agreement and could arise on the spur of the moment with a nod, wink or knowing look.

[12] Counsel for Mr Chambers took issue with the direction:

“Put simply, the questions for you is: were they in it together? Mere presence at the scene of the crime is not enough to prove guilt, but if you find that the accused in this case, Richard Chambers also called Dandy, was at the scene, and intended, by his presence alone, encouraged Anthony Brown also called Cutie, in committing the offence of Murder, and did encourage him, by his presence, then Richard Chambers would be equally guilty of murder.”

Mrs Reid argued that this direction amounted to directing the jury to say that Mr Chambers is guilty by his presence.

[13] The Privy Council authority of **R v Jogee; Ruddock v The Queen** [2016] UKSC 8; [2016] UKPC 7 (**‘Jogee’**) sets out the governing principles on joint enterprise liability. The requisite conduct that must be established, for the purposes of this case, is that Mr Chambers encouraged or assisted the commission of the offence of murder by Mr Brown (see paras. 8 and 89 of **Jogee**). It must also be shown that Mr Chambers intended to encourage or assist the commission of the crime, acting with the necessary mental element required in the commission of the offence of murder (see paras. 10 and 90 of **Jogee**). Mere presence at the scene of a crime, by itself, is insufficient to constitute the encouragement or assistance required for joint enterprise, however, depending on the surrounding circumstances, presence may constitute a relevant factor from which encouragement or assistance can be inferred (see para. 11 of **Jogee**).

[14] In the portion of the summation about which Mrs Reid now complains, the learned trial judge expressly reminded the jury that the mere presence of Mr Chambers was insufficient to prove guilt. He went on to instruct them that if they concluded that his presence demonstrated that he intended to, and in fact did encourage Anthony Brown in the commission of the murder, then he would be equally guilty of murder.

[15] We find no defect in this direction given by the learned trial judge to the jury. His directions merely conveyed that it was open to the jury to infer from the evidence that the accused was not merely present at the scene, but that his presence served to encourage Mr Brown in the commission of the offence. The learned trial judge

further made it clear that the jury had to be satisfied, beyond reasonable doubt, that the accused either committed the offence himself or, by his presence, provided encouragement to the other accused as part of a joint plan.

[16] The learned trial judge also reminded the jurors of the relevant evidence that could establish joint enterprise, if they so accepted. He stated,

“Mr. Smith said that when he looked up he saw Cutie with a handgun in his hand, and Dandy very close to him. He said the two of them approached the field, they came together and they were very close. Remember the estimation was about 3 to 3 1/2 feet and that they were about touching distance; they could touch each other... and when he looked up he saw Cutie with the handgun and Dandy beside him. So, what the Prosecution is asking you to say is that they came there together, there was this firing, and they ran off after other persons together, that Cutie had the handgun. It was opened, it was displayed, and the Prosecution is asking you to find that the reasonable and inescapable inference was that Dandy would have been aware that Cutie had this gun, that they came together to carry out this joint plan... The Prosecution is also asking you to infer that Dandy was together with him, work together, and the two of them are equally culpable of this offence, it is just that Cutie is the one who actually had the gun, but that Dandy was there supporting him in this enterprise. It is a matter for you whether you accept that or not.”

[17] A review of the directions, taken as a whole, shows that the learned trial judge properly instructed the jury to consider the purpose of Mr Chambers' presence in the context of the evidence. We find no fault with these directions.

[18] Additionally, we find no merit in Mrs Reid's submission that the learned trial judge, by outlining what the Crown invited the jury to accept, abdicated his judicial function. Throughout the summation, the judge appropriately reminded the jury of both the Crown's position and the defence's case.

[19] Mrs Reid also challenges the directions given regarding the requisite intention on the part of Mr Chambers. Having carefully reviewed those directions, we are satisfied that the learned trial judge properly directed the jury on the element of intent as it relates to Mr Chambers, in the context of the offence of murder. The learned

trial judge firstly invited the jurors to consider the case against Mr Brown and to determine whether he shot the deceased and, in so doing, intended to kill or cause him serious bodily harm, without lawful justification, in which case it was open to them to find Mr Brown guilty of murder. He then invited the jurors to consider the evidence against Mr Chambers, telling them that they had to be sure that Mr Chambers was in the company of Mr Brown, who was armed with a firearm. He further told them that they had to be sure that Mr Chambers was part of a common design with Mr Brown to kill the deceased and that Mr Chambers also had the intention to either kill or cause serious bodily harm to the deceased.

[20] We further find that, given Mr Chambers' unsworn statement in which he denied being present at the scene, there was no evidential basis upon which the learned trial judge could properly direct the jury on the possibility that Mr Brown had unexpectedly departed from a common design to commit one offence and had instead committed murder.

[21] We find that the directions given by the trial learned judge to the jury on the issue of common design were comprehensive and fully consistent with the accepted principles outlined in the leading authorities. While we are appreciative of the authorities relied upon by Mrs Reid, upon careful consideration, we consider them to be distinguishable on their facts and, therefore, of limited assistance in the present matter.

[22] It is our view that the learned trial judge made it clear to the jury that, whilst mere presence is insufficient, they were to determine whether Mr Chambers' presence was purposeful and intended to encourage Mr Brown in the commission of the offence. They were also appropriately guided on the issue of intent. In our view, the evidence justifies a determination that Mr Chambers did not merely happen to be at the ballfield. He positioned himself with Mr Brown, who brandished a firearm, remained during the shooting, and then joined Mr Brown in chasing others. His presence, therefore, amounted to active participation and formed part of the joint enterprise that resulted in the deceased's death.

[23] We will now turn our attention to the submission made by counsel on behalf of Mr Chambers that his right to a fair hearing within a reasonable time has been breached. Reliance was placed on sections 16(1) and 16(2) of the Charter of Fundamental Rights and Freedoms.

[24] As section 16(2) pertains to non-criminal matters, our focus will be on section 16(1) of the Charter which states,

“16(1) Whenever any person is charged with a criminal offence he shall, unless the charge is withdrawn, be afforded a fair hearing within a reasonable time by an independent and impartial court established by law.”

[25] The right to a fair hearing within a reasonable time encompasses the right to have an appeal determined within a reasonable time (see **Evon Jack v R** [2021] JMCA Crim 31 which, at para. 19, references **Tapper v Director of Public Prosecutions of Jamaica** [2012] UKPC 26; [2012] 1WLR 2712).

[26] The proper consideration of this assertion necessitates an examination of the reasons for the delay, in order to balance the Mr Chambers’ constitutional right to a fair trial within a reasonable time against the legal, economic, social, and cultural realities in Jamaica that bear upon the administration of justice (as articulated by McDonald-Bishop JA (as she then was) in **Julian Brown v R** [2020] JMCA Crim 42, at para. 89).

[27] Mr Chambers contends that he was sentenced on 12 November 2015 and filed his notice of appeal and grounds on 19 November 2015. His transcript, however, only became available on 11 August 2022, nearly seven years later. He was granted leave to appeal his conviction on 16 January 2023 and was assigned counsel on 13 February 2023. The matter was scheduled for hearing before the full court on January 29, 2024, but did not proceed through no fault of the Mr Chambers.

[28] There is no dispute that the Mr Brown bore no responsibility whatsoever for the almost seven-year delay in the production of the transcript. The Crown concedes that there was an inordinate delay in the late production of the transcript and further concedes that this has amounted to a breach of Mr Chambers’ right to a fair hearing

within a reasonable time. The State has offered neither an explanation nor any justification for this delay. There was a further delay between the time of the production of the transcript and the matter being listed before the Full Court, which likewise cannot be attributed to Mr Chambers. The Crown proposes that a declaration as to this breach is a suitable remedy.

[29] It is clear that Mr Chambers' right to a fair hearing within a reasonable time has been breached by the State. The usual remedies provided for such a breach are either a public acknowledgement of the breach or a reduction in sentence, and, in exceptional circumstances, the quashing of the conviction. Given the circumstances of this case, we believe that a reduction in sentence is appropriate. In determining the appropriate reduction, in addition to the extent of the delay, we have noted that the appeal as regards the conviction has been found to lack merit. Balancing the public interest in enforcing lawful sentences with the need to protect constitutional rights, we will reduce the Mr Chambers' sentence by two years as redress for the breach of his constitutional right to a fair hearing within a reasonable time.

The applicant Mr Anthony Brown

[30] As it relates to ground 1, the complaint concerns the time ordered to be served before the Mr Brown is eligible for parole.

[31] On behalf of Mr Brown, it was submitted in writing that an appropriate sentencing range would be 20 to 45 years, with a starting point of 25 years. Further, it was submitted that a reduction of three years should be given for the mitigating factors. When the court observed that the submissions failed to take account of the aggravating factors, Mr Daley, acknowledging this omission, orally submitted that the proposed starting point should be lowered. When asked to identify the basis for reducing the starting point, counsel candidly indicated that it was driven by his desire to arrive at a particular sentencing outcome, based on the authority of **Kevin Young v R** [2015] JMCA Crim 12, in which a sentence of life imprisonment with a stipulation that the convict serve a minimum of 30 years before becoming eligible for parole was overturned, and a period of 20 years substituted.

[32] In considering the matter of the sentence imposed, we are mindful that this matter predated **Meisha Clement v R** [2016] JMCA Crim 26 and, therefore, the learned trial judge did not have the benefit of that guidance. Nonetheless, he analysed the aggravating and mitigating factors and considered the time spent in custody when determining the pre-parole period.

[33] Given the complaint, we have conducted our own sentencing exercise, in keeping with the methodology laid down in **Meisha Clement**. In so doing, we are mindful that this court ought not to interfere with the sentence imposed on the Mr Brown unless “the sentence is excessive or inadequate to such an extent as to satisfy this court that when it was passed there was a failure to apply the right principles” (see **R v Ball** (1951) 35 Cr App Rep 164).

[34] For convenience, we have set out the approach to be adopted below:

- (a) identify the pre parole range;
- (b) identify the appropriate starting point within the range;
- (c) consider any relevant aggravating factors;
- (d) consider any relevant mitigating features (including personal mitigation);
- (e) decide on the appropriate pre-parole period; and
- (f) take into account time spent in custody.

[35] Since section 3(1c)(b) of the Offences Against The Person Act (OAPA) provides that, for a murder falling within section 2(2), where the court imposes a life sentence, it is to specify a pre-parole period of not less than 15 years, we consider this to be an appropriate guide for determining the lower end of the sentencing range.

[36] We have considered the pre-parole range proposed by counsel for Mr Brown of 20-45 years, but given the nuances of this case, we are of the view that a range of 20 to 35 years is appropriate. We find that the starting point originally suggested of 25 years is appropriate, given the intrinsic seriousness of the offence in the context of the prevalence of firearm offences in Jamaica, and the prevalence with which such offences are being committed in public spaces.

[37] We will now move on to consider the aggravating factors. We have identified numerous aggravating features, many consistent with those identified by the learned trial judge:

- i. the nature and seriousness of the offence;
- ii. the location and timing of this murder. The murder was committed on a ball field at around 6.45pm when a football game was in progress. This incident occurred in a public space, causing spectators to flee. This was surely frightening and terribly traumatising for them;
- iii. the manner in which this offence was committed is indicative of a disturbing level of boldness and temerity on the part of Mr Brown;
- iv. the age of the deceased, who was a mere 16 years at the time of his murder, and the unintended victim;
- v. the vulnerability of the deceased, he being unarmed and at a football game, where one ought to have an expectation of safety;
- vi. the use of a firearm;
- vii. there was a significant degree of premeditation, Mr Brown having borrowed the firearm; and
- viii. Mr Brown committed this offence with another, but was the principal, being the person who fired the fatal shot.

These are all blatant aggravating features that warrant a significant upward shift. We are of the view that an increase to 35 years is appropriate.

[38] We will now consider the mitigating features. Mr Brown:

- i. was 24 years old at the time of sentencing in 2015, and would therefore have been around 21 years old at the time of the incident, which occurred in 2011;
- ii. had a good social enquiry report wherein he admitted to shooting the deceased, which was regarded by the trial judge as an indication of remorse. In the same vein, however, it cannot be ignored that he nonetheless proceeded to a trial.
- iii. was gainfully employed
- iv. had no previous convictions.

[39] We are of the view that the aggravating features significantly outweigh the mitigating ones. There is nothing sufficiently compelling to justify a reduction beyond three years, which results in a sentence of 32 years. Mr Brown, having spent approximately one year and nine months in custody, reduces the effective period to just over 30 years. In these circumstances, we are unable to conclude that the pre-parole period imposed by the trial judge was excessive.

[40] We have considered the case of **Kevin Young**, as cited by Mr Daley in support of a reduction in the pre-parole period, but are not persuaded to depart from our above-stated conclusion. That judgment does not set out in detail the weighing of the aggravating and mitigating features considered, and we are, therefore, unable to fully discern the underlying reasoning, which would have been informed by the nuances of that matter. Notably, that case involved a significant distinguishing feature, namely, a troubled history between the accused and the deceased, which may well have been a relevant consideration. No comparable circumstance arises in the present case.

[41] As it relates to ground 2, counsel for Mr Brown contends that his right to a fair hearing within a reasonable time, pursuant to section 16(1) of the Constitution of Jamaica, has been breached.

[42] Mr Brown was sentenced on 12 November 2015. He filed his notice and grounds of appeal on 19 November 2015. His transcript, however, became available on 11

August 2022, almost seven years later, which he asserts via affidavit evidence was unreasonable and caused him serious and unnecessary stress and anxiety. His matter was initially scheduled for hearing before the Full Court on 29 January 2024, but was adjourned at the request of counsel, who was ill. Any delay arising from this adjournment is negligible when viewed against the substantial delay occasioned by the State.

[43] As the Crown conceded, the delay in hearing Mr Brown's application, occasioned by the unavailability of the trial transcript, falls squarely at the feet of the State.

[44] The delay in the hearing of Mr Brown's application, arising primarily from the protracted period required to produce the trial transcript and continuing through to the eventual hearing, has resulted in a breach of his constitutional rights. We believe that a reduction in sentence is appropriate in this case. In deciding on the appropriate reduction, in addition to the length of the delay, we also considered that leave to appeal was refused by the single judge and that Mr Brown abandoned his grounds of appeal regarding conviction, focusing only on the ground relating to sentence, which has been found to lack merit.

[45] Consistent with the reasons set out at paras. [25]-[29] herein, we consider it appropriate to reduce his sentence by two years as a remedy for that breach.

Orders:

Re: Mr Richard Chambers

- (i) The appeal against conviction is dismissed and the conviction is affirmed.
- (ii) The application for leave to appeal against sentence is granted and the hearing of the application for leave to appeal sentence is treated as the hearing of the appeal.
- (iii)** The appeal against sentence is allowed in part. It is hereby declared that the constitutional right of the appellant to have his appeal and application for leave

to appeal heard within a reasonable time, pursuant to section 16 of the Constitution, has been breached.

- (iv) As a remedy for the appellant's constitutional right, the period to be served before eligibility for parole is reduced by two years and the period of 23 years is set aside and substituted therefor is 21 years. Accordingly, the appellant is sentenced to life imprisonment with the stipulation that he serves 21 years' imprisonment at hard labour before being eligible for parole.
- (v) The sentence is to be reckoned as having commenced on 12 November 2015, the date on which it was imposed.

Re: Mr Anthony Brown

- (i) The application for leave to appeal against conviction is refused.
- (ii) The application for leave to appeal against sentence is granted.
- (iii) The hearing of the application for leave to appeal sentence is treated as the hearing of the appeal.
- (iv) The appeal against sentence is allowed in part. It is declared that the constitutional right of the applicant to have his application for leave to appeal heard within a reasonable time, pursuant to section 16 of the Constitution, has been breached.
- (v) As a remedy for the breach of the applicant's constitutional right, the period to be served before eligibility for parole is reduced by two years and the period of 28 years is set aside and substituted therefor is 26 years. Accordingly, the applicant is sentenced to life imprisonment with the stipulation that he serves 26 years' imprisonment at hard labour before being eligible for parole.
- (vi) The sentence is to be reckoned as having commenced on 12 November 2015, the date on which it was imposed.