



OF APPEAL

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**NOTICE TO PARTIES OF THE COURT'S
MEMORANDUM OF REASONS FOR JUDGMENT**

SUPREME COURT CRIMINAL APPEAL NO 15/2017

RICARDO CUSHNIE v R

TAKE NOTICE that this matter was heard by the Hon Mrs Justice McDonald-Bishop P, the Hon Miss Justice Simmons JA and the Hon Mrs Justice Shelly-Williams JA (Ag) on 19 January 2026, with Leroy Equiano for the applicant and Mrs Nickeisha Young-Shand for the Crown.

TAKE FURTHER NOTICE that the court's memorandum of reasons as delivered orally in open court by the Hon Mrs Justice McDonald-Bishop P is as follows:

[2] The applicant, Ricardo Cushnie, was convicted for the offence of murder following a trial on divers days between 30 November and 8 December 2016, in the Circuit Court Division of the Gun Court before V Harris J (as she then was) sitting with a jury. On 3 February 2017, the applicant was sentenced to life imprisonment at hard labour with the stipulation that he shall not be eligible for parole before serving 25 years.

[3] The case led by the prosecution was that, on 23 November 2013, the applicant, armed with a firearm, and in the company of two other men who were also each armed with a firearm, entered residential premises at Queensborough Drive, Kingston 19, in the parish of Saint Andrew, where they shot and killed Merrick Daley, the deceased.

[4] The applicant applied for leave to appeal both his conviction and sentence. The application was refused by a single judge of this court on 11 August 2020. The applicant, being dissatisfied with that decision, applied for a rehearing of this application for leave by the full court pursuant to the rule 3.11(2) of the Court of Appeal Rules, 2002.

[5] The applicant's counsel, Mr Leroy Equiano, candidly conceded in his written skeleton arguments and oral submissions before the court that he cannot present any legal argument to support the grounds of appeal filed by the applicant. He indicated that, having perused the transcript and obtained a second opinion, he could not find any ground that could reasonably be advanced in support of the application for leave to appeal. Unfortunately, the applicant did not accept his opinion and took the view that the court should consider the merits of his application.

[6] The Crown, represented by Mrs Nickeisha Young-Shand, agreed with Mr Equiano that there is no merit in the application. Mrs Young-Shand, in her detailed written submissions as well as orally before us, stated that, having reviewed the transcript and the grounds filed, there is no basis in law for the court to disturb the conviction. She also submitted that the sentence cannot be said to be manifestly excessive and, therefore, there is no basis to interfere with the sentence imposed.

[7] The court accepts the submissions of both counsel and agrees that the application for leave to appeal is without merit and should be refused.

[8] The grounds of appeal filed by the applicant are as follows:

(1) "Misidentification" by the witnesses: the prosecution witnesses wrongfully identified him as the person or among any persons who committed the alleged crime.

(2) Lack of evidence: the prosecution failed to present to the court any "concrete" evidence (material, forensic or scientific) to link him to the alleged crime.

(3) Unfair trial: the evidence and testimonies upon which the learned judge relied “lack facts and credibility”, thus rendering the verdict unsafe, and the learned judge failed to give adequate directions to the jury regarding inconsistent and contradictory testimonies presented by the prosecution.

(4) Conflicting testimonies: the prosecution witness presented to the court conflicting and contrasting testimonies which amount to perjury, thus calling into question the soundness of the verdict.

(5) Miscarriage of justice: the prosecution and the learned judge failed to take into consideration the argument by the applicant’s attorney in the court below concerning his whereabouts on the date of the alleged murder. Therefore, he was wrongfully convicted of a crime he knew nothing about and could not have committed.

[9] No ground of appeal has been filed by the applicant regarding his sentence.

[10] The court finds that there is no merit in the grounds advanced.

[11] The learned judge gave adequate and accurate directions in law on all critical aspects of the case, especially those that touch and concern the credibility and reliability of the witnesses. She correctly approached the evidence of visual identification, particularly recognition, in accordance with the guidelines established in **R v Turnbull and others** [1976] 3 All ER 549. She gave the jury commendable guidance on how to approach the evidence relating to the recognition of the applicant. She gave comprehensive and accurate directions on discrepancies, inconsistencies, and omissions in the evidence or witness statements, as the case may be, thereby providing proper guidance to the jury on how to approach their task as judges of the facts. The summing-up was clear and balanced, and there is no basis on which it may be impeached.

[12] There was compelling evidence before the jury to support the conviction. There is nothing in the conduct of the case that could support the applicant’s contention that there

was an unfair trial or a miscarriage of justice. The verdict is reasonable, having regard to the evidence and the applicant's unsworn statement, and the trial cannot be said to be unfair in light of the legal directions the learned judge gave to the jury. The conviction is, therefore, safe, and there is no basis to disturb it.

[13] Even though the applicant has not filed any grounds in relation to his sentence, we agree with Mrs Young-Shand that the sentence is not manifestly excessive.

[14] Accordingly, we make the following orders:

1. The application for leave to appeal conviction and sentence is refused.
2. The sentence is to be reckoned as having been commenced on 3 February 2017, the date it was imposed.