

JAMAICA

IN THE COURT OF APPEAL

**BEFORE: THE HON MR JUSTICE BROOKS P
THE HON MR JUSTICE D FRASER JA
THE HON MR JUSTICE LAING JA (AG)**

SUPREME COURT CRIMINAL APPEAL NO 85/2018

PATRICK DALBERT v R

Obiko Gordon for the applicant

Mrs Christine Johnson-Spence and Miss Cindy-Kay Graham for the Crown

24 April 2023

ORAL JUDGMENT

BROOKS P

[1] The year 2016 did not start well for a teenaged female resident of Linstead in the parish of Saint Catherine. At about 1:00 in the morning of New Year's Day, she was walking home alone, when a man accosted her. He held on to her and eventually took her into his house nearby, raped her, performed oral sex on her and threatened to stab her. She knew him before, but not by name. Some days later she identified Mr Patrick Dalbert on an identification parade as being the perpetrator of those offences. Mr Dalbert denied having committed the offences. He relied on an alibi that, at the relevant time, he was at a New Year's ball elsewhere. He also accused the teenager of fabricating the story because he had not purchased some clothes for her, as she had requested.

[2] Mr Dalbert was tried and convicted of three offences: rape, grievous sexual assault, and assault. On 22 June 2018, he was sentenced to 18 years' imprisonment for the offence of rape, 15 years' imprisonment for the offence of grievous sexual assault and 12 months' imprisonment for the offence of assault. He was ordered to serve 12 years in respect of the offence of rape and 10 years in respect of the offence of grievous sexual assault, before being eligible for parole.

[3] Mr Dalbert has applied for leave to appeal against his sentence. A single judge of this court considered his application but refused leave. Mr Obiko Gordon, who represents Mr Dalbert in this application, has also submitted that there is no basis to complain about the sentences. Mrs Johnson-Spence for the Crown concurred.

[4] After considering the circumstances of the case and the comments of the learned sentencing judge, although she did not faithfully adopt the procedure set out in the now, well-known cases of **Meisha Clement v R** [2016] JMCA Crim 26 and **Daniel Roulston v R** [2018] JMCA Crim 20, it cannot be said that the sentences were manifestly excessive.

[5] The offences of rape and grievous sexual assault each attract a mandatory minimum sentence of 15 years' imprisonment. The learned sentencing judge, although she did not say that she used the period of 15 years as a starting point for considering those sentences, she seemed to have done so. She considered the aggravating and mitigating factors of the offences and Mr Dalbert's peculiar circumstances and found that the aggravating factors outweighed the mitigating factors. She decided to impose the mandatory minimum sentence for the offence of grievous sexual assault, as the defence counsel had requested, but considered that the aggravating factors demanded a higher sentence for the rape. Those factors included the fact that Mr Dalbert had nine previous convictions, two of which were for offences involving violence. Mr Dalbert also received a poor social enquiry report. Having taken those things into account and the high prevalence of sexual offences in that parish, the learned sentencing judge imposed the sentences mentioned above.

[6] The sentence for the offence of assault was the maximum allowable, but the 12 months sentence that was imposed does not warrant any analysis in the context of the other sentences.

Conclusion

[7] Although the learned sentencing judge was not entirely faithful to the established sentencing procedure, we agree with Mr Gordon and Mrs Johnson-Spence that the sentences that she imposed cannot be said to be excessive. She explained the basis for exceeding the statutory minimum sentence for the offence of rape. That higher sentence can be described as very reasonable in the circumstances.

[8] As a result, the sentences should not be disturbed and the application for leave to appeal should be refused.

[9] The application for leave to appeal the sentences is refused. The sentences are to be reckoned as having commenced on 22 June 2018, the date that they were imposed, and are to run concurrently.