JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO: 43/06

BEFORE: THE HON. MR. JUSTICE PANTON, P.
THE HON. MR. JUSTICE SMITH, J.A.
THE HON. MR. JUSTICE MORRISON, J.A.

DAVID EBANKS v R

Glen Cruickshank, Q. C., for the appellant

Ms. Deneve Barnett, for the Crown

11th November 2008

ORAL JUDGMENT

PANTON, P.

1. The appellant Mr. David Ebanks was convicted on the 3rd March, 2000, in the Home Circuit Court, Kingston, before Mr. Justice Karl Harrison and a jury, of capital murder committed on February 4, 1998. The victim was Mr. Joel Russell. The appellant was sentenced to death. His appeals to the Court of Appeal and to the Judicial Committee of the Privy Council were both dismissed. However, in keeping with the Privy Council decision of ***The Queen v Lambert Watson*** [2005] 1 AC 472 the sentence of death was set aside and the matter was returned to the Supreme Court for re-sentencing.

2. This re-sentencing exercise took place before Mr. Justice Brooks who, on the 21st March 2006 sentenced the appellant to imprisonment for life with the specification that he should serve 40 years before becoming eligible for parole.

3. The circumstances indicate that Mr. Joel Russell was, at the time of his death, a witness in a case of murder against another man and the appellant sought, in the words of Mr. Justice Brooks, to prevent Mr. Russell's future attendance at the Court or to punish him for having so attended.

4. Mr. Cruickshank, Q.C. has submitted to us that the specification of 40 years before being eligible for parole renders the appellant invaluable to society by the time he would have served that sentence, and he has sought to have that sentence reduced. He has submitted that the court should not regard itself as sending the wrong signal if it were to say that the sentence is manifestly excessive and indeed he has submitted that the court may well consider reducing the sentence by at least 1/8. To be fair to Mr. Cruickshank, he has conceded that the circumstances of the offence are really reprehensible and he would not seek to detract from that fact.

5. We have considered the submissions and we have advised ourselves in respect of the recent cases, particularly in this matter, not only cases that spring from our jurisdiction but also from as far as New Zealand. We have examined closely the comments of the learned judge when he passed this sentence and we

think it appropriate to quote from his reasons at page 44 of the record that has been prepared for us. This is what the learned judge said, and I quote:

> "In light of the length of time that this country has struggled with the scourge of illegal firearms, especially since the establishment of the Gun Court, I respectfully adopt the learned judge's view in the context of the facts in this case." (He was referring there to the case of **The Queen v Ian Gordon** which was presided over by Mr. Justice Campbell.)

Mr. Justice Brooks continues:)

> "Mr. Joel Russell was pounced upon, pursued and slain in an unprovoked, premeditated manner. The attack on him was more than significant than the ordinary assault on an individual citizen. I do not seek to elevate the value of his life above that of any other human being, but, the motivation of this attack carries with it other consequences. It is also an attack on our system of justice and the rule of law.
>
> Our courts are established to enable all those who live under the protection of this State, accuser, as well as accused, to approach them in the anticipation that justice will be dispensed according to the established principles of law.
>
> Neither accused nor accuser should be placed in fear of approaching the Court. Witnesses must feel free to tell what they know to the police and to give evidence in court concerning those things. If it were otherwise, our courts would become redundant, persons would seek to impose their own ideas of justice and the rule of law would become extinct.
>
> In every incident where the witness is threatened or intimidated with a view to preventing that witness giving truthful evidence, the ability of our courts to dispense justice is undermined.
>
> Those persons who are inclined to intimidate or threaten witnesses are therefore to be alerted that,

> that behaviour is abhorred by our legislature and our society."

6. We cannot say that the sentence is manifestly excessive. We think that a sentence of this nature is appropriate to deal with a murderous act that strikes at the very heart of the system of justice and the fundamentals of our democracy. We do not think that a Court of Appeal should tinker or fiddle with a sentence of this nature when viewing the question of whether it is manifestly excessive or not. Given the circumstances, we are of the view that the sentence here is condign.

7. In the circumstances, the appeal is dismissed and the sentence is to run from June 3, 2000.