[2025] JMCA Crim 22

JAMAICA

IN THE COURT OF APPEAL

BEFORE: THE HON MR JUSTICE F WILLIAMS JA
THE HON MRS JUSTICE FOSTER-PUSEY JA
THE HON MR JUSTICE BROWN JA

SUPREME COURT CRIMINAL APPEAL NO COA2020CR00053

JASON GRAY v R

Leroy Equiano for the appellant

Miss Claudette Thompson, Mrs Nickeisha Young Shand, and Kemar Setal for the Crown

27 September, 22 November 2023, 31 July 2024 and 3 October 2025

Criminal law – Appeal against sentence – Two counts of murder – Guilty plea – No reduction in sentence for guilty plea – Whether sentence manifestly excessive - The Offences Against the Person Act, section 3(1A) – the Criminal Justice (Administration) Act, section 42H

F WILLIAMS JA (BROWN JA CONCURRING)

Background

[1] This appeal arises from the conviction and sentencing of Jason Gray ('the appellant') for two counts of the offence of murder. The appellant pleaded guilty to both counts on 5 March 2020 and was convicted and sentenced in the Home Circuit Court, holden at King Street in the parish of Kingston, by George J ('the learned sentencing judge'), on 26 June 2020. The appellant was sentenced to life imprisonment on both counts, with the stipulation that he serve a period of 29 years before becoming eligible for parole, and with both sentences to run concurrently. On 3 September 2020, he appealed against his sentence.

Summary of the facts

[2] The brief facts are that on 13 July 2014, at about 2:00 pm Omari Sterling, a boy of 12 years' old and Maleeka Mitchell, a girl of 10 years' old (referred to either as 'Omari', or 'Maleeka', respectively, or together as 'the deceased children') went to One Man Beach, along Gloucester Avenue in the parish of Saint James, with four other children and a male who was 19 years' old. Whilst at the beach, the deceased children were seen speaking with the appellant under an almond tree. It was later revealed that the appellant invited the deceased children to Burger King. They all left in the direction of Burger King and the children were never seen alive again. Subsequent to their leaving, the other children who were present at the beach with the deceased children started searching for them but did not find them. As a result, a missing person's report was filed in relation to the deceased children.

[3] The bodies of the deceased children were found on 15 July 2014, at about 3:15 am, in two different fishing ponds in Martha Brae, in the parish of Trelawny. The presence of the bodies was reported to the police who subsequently retrieved them. Omari's body was found with his hands tied behind his back. The bodies were in an advanced state of decomposition, and so the post-mortem examinations had to be done by the pathologist, Dr M P Sarangi, on the spot. The post-mortem revealed that Maleeka's cause of death was asphyxiation while Omari's cause of death was a stab wound to the chest.

[4] On 16 July 2014, a black Alcatel cellular phone that belonged to Omari was recovered from one Mr Randel Murdock ('Mr Murdock') in Saint Ann, and he informed the police that the appellant had sold him the phone while he was at work in Discovery Bay in that parish. Closed-Circuit Television ('CCTV') footage confirmed that it was indeed the appellant who sold the phone to Mr Murdock.

[5] On 26 July 2014, the appellant was arrested at Paddy Beach, Port Maria, in the parish of Saint Mary. The appellant then gave a caution statement on 29 July 2014, in which he implicated himself and another man by the name of Kemar, in the murder of the deceased children. In essence, the appellant said he led Omari and Maleeka into the

bushes and Kemar told Omari to take off his shirt and told Maleeka to take off her clothes. The appellant said that Kemar roughed up the deceased children, started to tie them up and threw the boy into the pond, but then he heard a noise and thought people were coming, and he threw the girl in the pond. The appellant said Kemar gave him Omari's phone, told him not to tell anyone and then he fled the scene and went home. Thereafter, on 9 August 2014, Maleeka's younger brother, Ramon Mitchell, identified the appellant at an identification parade as the man who spoke to them and took his sister and friend (the deceased children) from the beach. The appellant was formally charged with the two counts of the offence of murder and when cautioned, he did not say anything.

The application for leave to appeal

[6] The appellant, being dissatisfied with the sentence, filed Criminal Forms B1 and B2, being an application for permission to appeal and an application for extension of time within which to file an application for permission to appeal, respectively, against his sentence. Both applications, which were filed on 3 September 2020, were granted by a single judge of this court on 27 February 2021.

The ground of appeal

[7] One ground was originally outlined in the Criminal Form B1 filed by the appellant on 3 September 2020. That ground was simply: "Excessive Sentencing", and he indicated that further grounds were to be filed by his attorney-at-law. At the hearing of the appeal, his attorney sought and was granted leave to rephrase and argue the single ground of appeal, which reads as follows:

> "(a) The sentence of the Court was manifestly excessive."

[8] It is to be noted that the focus of the challenge mounted with respect to sentence in this appeal is with the duration of the pre-parole periods imposed, and not with the imposition of sentences of life imprisonment.

Summary of submissions

For the appellant

[9] Mr Equiano, counsel for the appellant, filed submissions on 1 October 2021, 1 November 2023, and 19 January 2024.

[10] In his submissions, filed on 1 October 2021, he emphasised that the appellant pleaded guilty on the first relevant date. Counsel also submitted that, despite the heinous circumstances of the children's killing, the appellant's punishment should have been measured in light of the penalties imposed by the court on offenders for similar offences. He also argued that the appellant's express regret for his actions should have been considered by the learned sentencing judge in handing down the sentence. Mr Equiano referred to sections 42E (1) and (2) of the Criminal Justice (Administration) Act ('CJAA'), to submit that the use of the term "may" in 42E(2) gave the learned sentencing judge the discretion to offer a discount and outlined what percentage should have been applied in the event that such a discount was offered. He also submitted that section 42F provides that, on a guilty plea, a term of life imprisonment is deemed to be 30 years.

[11] Mr Equiano contended that a starting point of 27 years for a first-time offender, in addition to 13 years being added for aggravating factors by the learned sentencing judge, was manifestly excessive. He argued that the factors that the learned sentencing judge considered when deciding on the starting point of 27 years were not clearly stated. He also argued that the aggravating features, having already been considered in arriving at the starting point, were restated as further aggravating features, thus, there was a double counting. It was also argued that the learned sentencing judge erred in not granting a discount for the appellant's early guilty plea. Counsel emphasised that a guilty plea eliminates the need for a trial, saves costs and resources and saves the witnesses and loved ones of the deceased from the ordeal of giving evidence at trial.

[12] In counsel's submission, the CJAA has set the maximum discount, which will vary depending on the factors outlined in section 42H(a) to (g). Therefore, he argued, a

departure from the process of granting a discount requires careful analysis of the factors in section 42H as against the objective of the legislation. He also argued that, prior to entering a guilty plea, the appellant would have been told he could benefit from a discounted sentence, and he relied on that expectation; thus, the learned sentencing judge's decision not to grant the discount was unwarranted.

[13] Mr Equiano submitted that for murder, the starting point of 30 years for the pre-parole period should have been regarded as a high point which is applicable only to worst case scenarios, into which category this case did not fall. He cited the cases of: **Lincoln Hall v R** [2018] JMCA Crim 17, **Anthony Russel v R** [2018] JMCA Crim 9, **Nario Allen v R** [2018] JMCA Crim 37, **Troy Jarrett & Jermaine Mitchell v R** [2017] JMCA Crim 38, and **Trevor White et al v R** [2017] JMCA Crim 13, to submit that an appropriate starting point in the sentence in the instant appeal would be 20 years on count one and 25 years on count two before being eligible for parole.

[14] Counsel also submitted what he believed to be an appropriate sentence for both counts. In relation to count one, he submitted that the starting point should have been 20 years with an addition of 10 years for the difference between the aggravating and mitigating factors which would amount to a total of 30 years. Thereafter, a 25% discount should have been given for the guilty plea, which would amount to seven and a half years, resulting in the sentence being reduced to 22½ years with a credit for the six years spent on remand; thus resulting in the appellant serving a period of 16½ years for count one before being eligible for parole.

[15] In relation to count two, he submitted that the starting point should have been 25 years with an addition of 10 years for the difference between the aggravating and mitigating factors, which would result in a total of 35 years. Thereafter, a 25% discount should have been applied for the guilty plea which would amount to seven and a half years, resulting in the sentence being reduced to 27½ years with a credit for the six years on remand; thus resulting in the appellant serving a period of 21½ years before being eligible for parole. Mr Equiano concluded these written submissions by arguing that the

appeal against the sentence should be allowed and that the sentences should be set aside with the substitution of the sentences he submitted for each count.

[16] In his submissions, filed on 1 November 2023, Mr Equiano addressed the court's question of whether sections 42A and 42J of the CJAAA are applicable in cases that fall within the boundaries of section 3(1)(a) of the Offences Against the Person Act ('OAPA'). Counsel quoted section 3(1)(a) of the OAPA, and argued that, in that section, the legislators put a restriction on the imposition of the death sentence. He submitted that if the death sentence was not applicable, the only alternative would be life imprisonment subject to parole as per section 3(1C).

[17] Counsel contended that the legislators were aware that there are instances where the death sentence is not applicable and that it cannot be discounted, and so the OAPA made provisions for a minimum pre-parole period in instances where there is a sentence of life imprisonment. He quoted section 3(1C) of the OAPA, and argued that the legislators used this section to provide for situations where the death sentence was not applicable. He then listed a number of cases including: **R v Sargeant** (1975) 60 Cr App Rep 74, **R v Evrald Dunkley** (unreported), Court of Appeal, Jamaica, Resident Magistrate's Criminal Appeal No 55/2001, judgment delivered 5 July 2002, **Callachand & Anor v The State** 2008 UKPC 49, and **Meisha Clement v R** [2016] JMCA Crim 26, which he submitted facilitated a regime for a discount for guilty pleas and assisted the court in deciding the appropriate number of years to be served before a convict becomes eligible for parole. He argued that the effect of the CJAA was to codify the common law sentencing practices and stated that the Sentencing Guidelines for Use by Judges of the Supreme Court of Jamaica and the Parish Courts, December 2017, ('Sentencing Guidelines') also promoted a more uniform approach to sentencing.

[18] Mr Equiano also cited para. [12] of **Lincoln Hall v R** [2018] JMCA Crim 17, and section 42C of the CJAA, and argued that a literal interpretation of section 42C(a) and (b) gives the impression that all murder convictions under sections 2(1) and 3(1A) of the OAPA, were exempted from this sentencing regime. He also referred to section 42F and

argued that the legislators envisioned instances where an offender pleaded guilty and the court has a choice between a sentence of death and life imprisonment. He stated that according to part 1A of the CJAA and sections 2(1) and (1A) of the OAPA, once a death sentence is not given, the only other option open to the court would be life imprisonment with a pre-parole period.

[19] The case of **Nario Allen v R** was again cited, and counsel submitted that Morrison P seemed to have been suggesting that once the death penalty is not applied, then the murder ought to be treated as a subsection (1)(b) offence and the offender sentenced accordingly. Mr Equiano contended that once a sentence of life imprisonment is accepted as appropriate then Part 1A of the CJAA cannot be ignored. He also stated that where the CJAA is not applicable, then the court will have to resort to the common law, which could lead to discrepancies in the sentences for the different categories of murder and this could not have been what the legislators intended. On this basis, Mr Equiano submitted that the purposive rule of interpretation ought to be applied in the interpretation of the CJAA.

[20] Subsequent to the filing of these written submissions and the hearing of oral submissions, this court brought section 3(1A) of the OAPA, and section 42C of CJAA, to counsel's attention and asked them to make submissions on the impact of those sections on the instant appeal. The case of **Javone Leslie and Jamelia Leslie v R** [2023] JMCA Crim 60, was also brought to counsel's attention with an invitation to both sides to comment on the applicability, if any, of that case to the instant appeal. On reflection, however, it appears to us that a discussion of **Leslie and Leslie v R** is unnecessary, having regard to the issue that arises for determination in this case, and the decision to which we have ultimately come. As a result, we will not reproduce the summary of counsel's submissions on **Leslie and Leslie v R**.

[21] In his final written submissions filed on 19 January 2024, Mr Equiano, in relation to count one, referred to his submissions filed on 1 October 2021 and submitted that his

suggested sentence of 16 ½ years should remain the same. He also emphasised that the pre-parole period of 16 ½ years is greater than the statutory minimum of 15 years.

[22] In concluding, Mr Equiano submitted that for the first count of murder, the appellant should have received a sentence of life imprisonment with the stipulation that he serve a period of 16 years and six months before becoming eligible for parole. In relation to the second count, counsel submitted a sentence of life imprisonment with the stipulation that the appellant serve a period of 21 years before becoming eligible for parole.

For the Crown

[23] In the written submissions filed on 11 November 2021, the Crown disagreed with the appellant's argument that the sentences were manifestly excessive. The Crown relied on **David Gray v R** [2021] JMCA Crim 4, and **R v Lao** (1973) 12 JLR 1238 at 1240 G-I, to submit that this court should not alter the sentences unless satisfied that a sentencing judge erred in principle when arriving at a sentence or was obviously and palpably wrong.

[24] According to the Crown, the learned sentencing judge acknowledged that, while a guilty plea often warrants a reduced sentence, she would not apply the discount in this case due to the severity of the crimes, the ages and vulnerability of the victims, and the violent and premeditated nature of the acts. The learned sentencing judge reasoned that a discount would offend public conscience. In addition, she also considered both aggravating and mitigating factors, gave credit for time spent on remand, and used 27 years as a starting point.

[25] The Crown argued that the learned sentencing judge did in fact consider section 42H of the CJAAA, and submitted that it gave the learned sentencing judge the discretion to apply a discount and the extent of such discount if she decided to grant it to the appellant. It was also contended that a discount was not guaranteed at common law and could be lost in certain circumstances such as where the protection of the public

warranted a longer sentence, the offender delayed until the final moment to plead guilty, or the offender was caught red handed and a guilty plea would have been certain.

[26] Crown Counsel also contended that in arriving at the sentences, the learned sentencing judge applied the right principles. She considered, retribution, deterrence, rehabilitation, and public protection. She also considered the aggravating factors such as premeditation, the age and vulnerability of the victims, the violence to the victims, the effect on the victims' families, and public impact. The mitigating factors such as the appellant's good character, his remorse and industriousness were also considered and used to adjust the starting point to 27 years. Credit was also given for the time spent on remand. The learned sentencing judge also considered the effect of the guilty pleas and the appropriateness of applying a discount.

[27] In closing, the Crown submitted that in arriving at the sentence, the learned sentencing judge applied the known and accepted principles. It was also submitted that the sentence fell within the normal range for murder and the learned sentencing judge properly exercised her discretion when she decided not to grant the appellant a discount for his guilty plea. On that basis, the Crown contended that this court should not disturb the sentence.

[28] In the written submissions filed on 22 November 2023, the Crown submitted that the issue before the court surrounds the applicability of section 42C of the CJAA *vis-à-vis* section 3(1A) of the OAPA, and their impact, if any, on the approach to sentencing. Crown Counsel submitted that the purpose of the CJAAA is to allow for a reduction in sentences where there is a guilty plea and to allow the Court of Appeal, in limited circumstances, to review sentences fixed by law. It was emphasised that this section only applied to sentences of life imprisonment, given that a death sentence could not be discounted. It was argued that section 42C allowed for exceptions which covered guilty pleas that fell under section 3(1A) of the OAPA. However, Crown Counsel submitted that Part 1A of the CJAAA does not apply and the facilitation of a reduction in a sentence for a guilty plea is not applicable in the instant case or cases that fall under section 3(1A) of the OAPA. It

was also submitted that Part 1A of the CJAA does not apply in the instant case because its purpose is to facilitate reductions in sentences where there is a guilty plea but not situations that fall under the ambit of section 3(1A) of OAPA.

[29] Crown Counsel cited **Black-Clawson International Ltd v Papierwerke Waldhof-Aschaffenburg AG** [1975] AC 591, and **Sussex Peerage Case** [1843-60] All ER Rep 55, to explore the literal rule of interpretation. The case of **Magor and St Mellons Rural District Council v Newport Corporation** [1950] 2 All ER 1226, was used to explore the purposive approach to statutory interpretation. Crown Counsel submitted that using the purposive rule of interpretation made it clear that section 42C generally allows for a defendant who pleads guilty to benefit from a discount, but parliament did not intend for a defendant who has committed more than one murder to benefit from the discount. He also argued that based on the heinous nature of the appellant's actions, he should not be seen as remorseful and should be made to feel the full weight of the law. Crown Counsel also emphasised that while the guilty plea might have saved the families of the deceased children from having to give evidence in court, it does not diminish the fact of death and thus, the appellant should not enjoy the benefit that a guilty plea might ordinarily avail a convict.

[30] In submissions filed on 13 February 2024, Crown Counsel stated that the main issue remained the same as in the previous submissions, which surrounds the applicability of sections 42C of the CJAA, and section 3(1A) of the OAPA, and their impact, if any on sentencing.

[31] The Crown also referred to the case of **Jowayne Alexander v R** [2022] JMCA Crim 64, and submitted that in this appeal the pre-parole period could not be the same for both counts of murder. For count one, Crown Counsel submitted that the range of the pre-parole period should be 20-40 years, using a starting point of 35 years (and making adjustments for the aggravating and mitigating factors). It was also submitted that six years be subtracted for the time spent on remand and a 15% discount be applied for the guilty plea, which amounts to a total of four years and five months. This would result in

the sentence for count one being that of life imprisonment with a pre-parole period of 24 years and seven months.

[32] In relation to count two, in submissions filed on 13 February 2024, in which the Crown had adjusted its original position, Crown Counsel submitted that a more substantial punishment be imposed. Crown Counsel submitted that a similar range of 20-40 years for the pre-parole period be arrived at with a starting point of 39 years after considering the aggravating and mitigating factors. It was also submitted that six years be subtracted for the time spent on remand and a further four years and ten months be subtracted to account for a 15% discount for the guilty plea. This would result in the sentence for count two being that of life imprisonment with a pre-parole period of 28 years and two months.

Issue

[33] The main issue to be determined is whether the appellant's sentence of life imprisonment with the stipulation that he serve 29 years before being eligible for parole was manifestly excessive. To resolve this issue, the following sub-issue ought to be addressed:

> Whether the learned sentencing judge considered and applied the relevant sections of the Offences Against the Person Act, and the Criminal Justice (Administration) Act, when sentencing the appellant to life imprisonment with the stipulation that he serve 29 years before being eligible for parole.

Discussion

[34] The case of **Meisha Clement v R** clearly outlines what the appeal court's primary focus ought to be when assessing whether a sentence imposed by a lower court was excessive. Morrison P, at para. [42] of **Meisha Clement v R**, opined that:

> "[42] Finally, in considering whether the sentence imposed by the judge in this case is manifestly excessive, as Mr Mitchell contended that it is, we remind ourselves, as we must, of the

> general approach which this court usually adopts on appeals against sentence. In this regard, Mrs Ebanks-Miller very helpfully referred us to **Alpha Green v R**, in which the court adopted the following statement of principle by Hilbery J in **R v Ball**:
>
> > 'In the first place, this Court does not alter a sentence which is the subject of an appeal merely because the members of the Court might have passed a different sentence. The trial Judge has seen the prisoner and heard his history and any witnesses to character he may have chosen to call. It is only when a sentence appears to err in principle that this Court will alter it. If a 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 then this Court will intervene.'"

[35] Upon the authority of **Meisha Clement v R**, this court is to consider whether the sentence:

i. was based on the established, recognised, and accepted principles of sentencing; and

ii. falls within the permissible range of sentences, in terms of:

(a) what the law allows for the specific offence, and

(b) what is typically imposed for similar offences in similar circumstances.

If this court finds that these standards have been met, we could not interfere with the learned sentencing judge's discretionary decision.

[36] To determine whether the sentence handed down by the learned sentencing judge was excessive, this court will explore the relevant statutory provisions and common law authorities on sentencing against the backdrop of the learned sentencing judge's exercise in arriving at the sentence.

Statutory provisions governing discounts for a guilty plea

[37] Section 42C of the CJAA provides:

> "42C. **The provisions of this Part shall not apply** to a defendant who pleads guilty to-
>
> (a) the offence of murder falling within section 2(1) of the Offences Against the Person Act;
>
> (b) **the offence of murder, in circumstances where section 3(1A) of the Offences Against the Person Act applies**; or
>
> (c) an offence following plea negotiations and the conclusion of a plea agreement pursuant to the provisions of the Criminal Justice (Plea Negotiations and Agreements) Act." (Emphasis added)

[38] Section 42D of CJAA is also relevant and it states:

> "42D.-(1) Subject to the provisions of this Part, where a defendant pleads guilty to an offence with which he has been charged, the Court may, in accordance with subsection (2), reduce the sentence that it would otherwise have imposed on the defendant, had the defendant been tried and convicted of the offence."

[39] In addition, section 3(1A) of OAPA (which is referenced in section 42C of the CJAA) states:

> "(1A) This subsection applies to a person who is convicted of murder and who, before that conviction, has been convicted in Jamaica-
>
> (a) whether before or after the 14th October, 1992, of another murder done on a different occasion; or
>
> (b) **of another murder done on the same occasion**." (Emphasis added)

[40] Sections 42C and 42D of CJAA, and section 3(1A) of the OAPA, when read together, make it clear that where a defendant pleads guilty to multiple counts of murder

whether committed on a different or (as is the case in this appeal), the same occasion, the court can only reduce the sentence in relation to the first count.

[41] Section 42E of the CJAA is also relevant and it provides:

> "42E.-(1) Subject to subsection (3), where a defendant pleads guilty to the offence of murder, falling within section 2(2) of the Offences Against the Person Act, the Court **may**, in accordance with subsection (2), reduce the sentence that it would otherwise have imposed on the defendant had the defendant been tried and convicted of the offence.
>
> (2) Pursuant to subsection (1), the Court **may** reduce the sentence in the following manner-
>
> > (a) where the defendant indicates to the Court, on the first relevant date, that he wishes to plead guilty to the offence, the sentence **may** be reduced by **up to** thirty-three and one third percent;
> >
> > (b) where the defendant indicates to the Court, after the first relevant date but before the trial commences, that he wishes to plead guilty to the offence, the sentence **may** be reduced by up to twenty-five per cent;
> >
> > (c) where the defendant pleads guilty to the offence after the trial has commenced, but before the verdict is given, the sentence **may** be reduced by up to fifteen per cent;
>
> (3) Notwithstanding subsection (2), the Court shall not impose on the defendant a sentence that is less than the prescribed minimum penalty for the offence as provided for pursuant to section 3(1)(b) of the Offences Against the Person Act.
>
> (4) In determining the percentage by which the sentence for an offence is to be reduced pursuant to subsection (2), the Court shall have regard to the factors outlined under section 42H, as may be relevant." (Emphasis added)

[42] It is important to highlight that the repeated use of the word 'may' in section 42E, makes it clear that the learned sentencing judge (and, indeed, any sentencing judge) is

not mandated to grant a discount. In essence, the learned sentencing judge has a discretion whether or not to grant a discount for a guilty plea. Similarly, the repeated use of the phrase 'up to' with reference to the quantum of the discount, makes it clear that the discount ultimately chosen is also left to the discretion of a sentencing judge, the quantum varying according to the circumstances of each case. Another important consideration that should be emphasized is the principle that, if a sentencing judge is minded to grant a discount, that discount granted cannot bring the sentence below the minimum threshold for the offence. In the instant case, the learned sentencing judge did not apply a discount, and, based on section 42E, this was well within her right. See page 30 (lines 19-25) to page 31 (lines 1-9) of the transcript, which is reproduced below:

> "I have to consider the circumstances of the offence, and I take into account, for instance, that these children were tied up, they were found in a pond, one of them died from stab wounds, that's the little boy, the other one from drowning it would seem. The little boy [was] found with hands tied behind his back, these are the things I have taken into account, sir. And having taken these things into account, although you have pleaded guilty, and normally you will be entitled to a discount in your sentence, on this occasion, you will not be getting a discount. You will not get a discount for a plea of guilty, for the simple reason that it is not deserved. It would shock the public conscience."

[43] The learned sentencing judge's reference to the concern that any discount "would shock the public conscience" requires us to review section 42H of the CJAA. That section is also of importance because, in the event the learned sentencing judge was minded to grant a discount for the guilty plea, it outlines the factors to be considered when determining the sentence reduction. It states:

> "42H. Pursuant to the provisions of this Part, in determining the percentage by which a sentence for an offence is to be reduced in respect of a guilty plea made by a defendant within a particular period referred to in 42D(2) and 42E(2), the Court shall have regard to the following factors namely-

> (a) whether the reduction of the sentence of the defendant would be so disproportionate to the seriousness of the offence, or so inappropriate in the case of the defendant, that it would shock the public conscience;
>
> (b) the circumstances of the offence, including its impact on the victims;
>
> (c) any factors that are relevant to the defendant;
>
> (d) the circumstances surrounding the plea;
>
> (e) where the defendant has been charged with more than one offence, whether the defendant pleaded guilty to all of the offences;
>
> (f) whether the defendant has any previous convictions;
>
> (g) any other factors or principles the Court considers relevant."

[44] Based on the range of factors outlined therein, the learned sentencing judge was well within her right to consider the possibility that any discount would shock the public conscience, having regard to the facts, among others, that the appellant was charged with two counts of murder and the fact that the victims were children, who had been deliberately and premeditatedly lured away for the commission of a criminal act or acts. This will be discussed in greater detail later on in this judgment (see para. [50]).

Common law guidelines governing discounts for a guilty plea

[45] While the CJAA has outlined the sentencing principles from a statutory standpoint, guidelines for a methodical approach to sentencing were already previously given in the common law, both locally and in other jurisdictions. Indeed, there are several local cases which provide guidance to a court on how to approach the sentencing exercise when there is a guilty.

[46] In **Stephen Blake v R** [2023] JMCA Crim 45, Brooks P opined, at para. [11], that:

> "[11] In circumstances such as in the present case, where a defendant pleads guilty to the offence of murder, charged pursuant to section 2(2) of the Offences against the Person Act ('OAPA'), there is an option to apply a statutory procedure. Generally speaking, sections 42E, 42F and 42H of the Criminal Justice (Administration) Act ('CJAA') govern the statutory approach to sentencing in those circumstances. As Morrison P indicated in **Lincoln Hall v R**, one of the principal benefits of the CJAA is 'that it introduced for the first time a fixed range of allowable discounts [to sentences] for the guidance of trial judges' (para. [12])."

[47] At para. [12] of **Lincoln Hall v R**, Morrison P said:

> "[12] The CJAA, as is now well known, effected significant amendments to the Criminal Justice (Administration) Act ('the CJA'), for the purpose of making special provision for the reduction of sentence upon a guilty plea. The principle of giving a discount for a plea of guilty is, of course, hardly novel. It has long been a principle of the common law that, as P Harrison JA (as he then was) said in **R v Collin Gordon** (unreported), Court of Appeal, Jamaica, Supreme Court Criminal Appeal No 211/1999, judgment delivered 3 November 2005, at page 4, such a plea must 'attract a specific consideration by a court'. However, as this court pointed out in **Meisha Clement v R** [2016] JMCA Crim 26, paragraph [38]), 'the extent of the allowable discount for a guilty plea has never been fixed'. So, the great virtue of the CJAA was that it introduced for the first time a fixed range of allowable discounts for the guidance of trial judges."

[48] The cases of **Stephen Blake v R**, and **Lincoln Hall v R** make it clear that even though there was no fixed percentage of any discount prior to the enactment of the CJAA, the common law nevertheless allowed for discounts of some sort to be granted where defendants pleaded guilty. The CJAA merely outlined the considerations to use as guidelines and a fixed range of discounts where none existed before.

[49] The case of **Meisha Clement v R** makes it clear that, in arriving at a sentence, a sentencing judge ought always to explore some general considerations. These considerations are explicitly stated at para. [41] of **Meisha Clement v R**, which reads:

> "[41] As far as we are aware, there is no decision of this court explicitly prescribing the order in which the various considerations identified in the foregoing paragraphs of this judgment should be addressed by sentencing judges. However, it seems to us that the following sequence of decisions to be taken in each case, which we have adapted from the SGC's definitive guidelines, derives clear support from the authorities to which we have referred:
>
> (i) identify the appropriate starting point;
>
> (ii) consider any relevant aggravating features;
>
> (iii) consider any relevant mitigating features (including personal mitigation);
>
> (iv) consider, where appropriate, any reduction for a guilty plea; and
>
> (v) decide on the appropriate sentence (giving reasons)"

[50] **Meisha Clement v R** was instrumental because, among other things, it outlined a logical order of dealing with the various considerations which has made the sentencing process easier to follow. The case also makes it clear that once sentencing judges explore all the outlined considerations in the circumstances of the case before them, regardless of the order in which it is done, this court will be hesitant to fault them for the sentence that was handed down. Also important is the later case of **Daniel Roulston v R** [2018] JMCA Crim 20 in which, at para. [17], McDonald-Bishop JA (as she then was) added, as a first step in the sentencing process, the identification of a sentencing range, summarising the methodology that should be adopted as follows:

> "[17] Based on the governing principles, as elicited from the authorities, the correct approach and methodology that ought properly to have been employed is as follows:
>
> a. identify the sentence 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. consider, where appropriate, any reduction for a guilty plea;
>
> f. decide on the appropriate sentence (giving reasons); and
>
> g. give credit for time spent in custody, awaiting trial for the offence (where applicable)."

[51] Having perused the transcript, we are of the view that the learned sentencing judge explored all the relevant considerations outlined in **Meisha Clement v R** and **Daniel Roulstone v R**. It is clear that she considered a starting point and the aggravating and mitigating circumstances in the instant case. See page 20 (lines 15-25) to page 21 (lines 1-9), where she said:

> "Life imprisonment, sir, is deemed to be 30 years [sic] imprisonment, and what I have to do is take into account any aggravating features of you the offender, any aggravating features of the offence, as well as any mitigating features in relation to the offence, and any mitigating features in relation to -- any aggravating features in relation to the offence.
>
> I have to take those things into account, sir, to decide whether to top it up from 30 years or whether to go down from 30 years, you understand me, sir, what to do. I have to take those factors into account."

[52] On page 27 (lines 15- 25) to page 28 (lines 1-8 and 17-23) of the transcript the learned sentencing judge also said:

> "You worked and you were industrious, and it said that you worked selling CDs with movies and music from a handcart in Montego Bay just after dropping out of school, and after that you got involved in body piercing and worked as a tattoo artist, and that at the time of your arrest you were gainfully employed and that you were working around $10,000 per week.

> Now, these are factors, sir, that I have to take into account to your credit, and I have done that, sir. I also take into account, sir, that it is your first --or appears to be your first conviction.
>
> You have expressed regret, remorse, and have accepted some responsibility for what has happened, and those things, sir, I have taken into account.
>
> I have also taken into account, sir, your plea in mitigation.
>
> …
>
> Now, I have taken all of those things into account, sir. I have taken into account the aggravating and mitigating features as advanced in the outline facts, your plea in mitigation and Social Enquiry Report, including the distress you have caused to the families of these children that you killed, and their age."

[53] Although the starting point of 27 years used by the learned sentencing judge was near to the top of the possible range of sentences to be imposed, it seems to us that having regard to the egregious nature of the offending in this case, the starting point used cannot fairly be said to be too high. In **Meisha Clement v R** [2016] JMCA Crim 26, Morrison P gave an indication of what should inform the setting of the starting point in any given case, when he opined at para. [29] as follows:

> "[29] But, in arriving at the appropriate starting point in each case, the sentencing judge must take into account and seek to reflect the intrinsic seriousness of the particular offence. Although not a part of our law, the considerations mentioned in section 143(1) of the United Kingdom Criminal Justice Act 2003 are, in our view, an apt summary of the factors which will ordinarily inform the assessment of the seriousness of an offence. These are the offender's culpability in committing the offence and any harm which the offence has caused, was intended to cause, or might foreseeably have caused."

[54] Considering these factors against the background of the facts and circumstances of this case, there can be no doubt that a starting point of 27 years, especially on the

second count, was justified, although we acknowledge that the learned sentencing judge could have outlined in more detail her reason for using that starting point.

Was the sentence manifestly excessive?

[55] On our review of the transcript, we find that the learned sentencing judge substantially followed the guidelines when arriving at the sentence. Admittedly, she did not give an explanation as to why she opted for the imposition of a life sentence (as opposed to a determinate sentence) for each count, as is the now-recognized requirement. Additionally, the learned judge erred by utilising the 30-year deeming provision in this case, where she was not giving a reduction. The 30-year deeming provision is properly used solely for the purpose of a reduction in sentence. Once she decided against a reduction, that provision would have no applicability. However, looking at the sentencing remarks in their entirety, these errors by themselves, do not warrant a quashing of the pre-parole periods imposed. We see where she explored the possibility of a reduction (which she refused to grant), and we were able to follow her clear and methodical outline of how she decided on the appropriate pre-parole period. Page 29 (lines 11-25) to page 33 (line 1) of the transcript state:

> "I have, sir, therefore, considered the goals of sentencing against the background of the nature and seriousness of the offence, the circumstances surrounding this commission, and the personal circumstances of the offender.
>
> So, sir, you pleaded guilty to the offence, and I also have to take that into account. Offences of Murder falling under the section I have told you about, Section 2(2) of the Offences Against the Person Act, I have dealt with Section 42(b) of the Criminal Justice Administration Act, which provides that where a defendant pleads guilty, the Court can reduce the sentence that it would otherwise have imposed had he been tried and convicted of these offences. So the Court can reduce this.
>
> But, sir, by Section 42(e), I can reduce the sentence by 33 1/3%, whereas in this case, this is a case where it is the first relevant date…the Section gives me a number of different

percentages that can be reduced depending on the time when it is that he pleaded guilty.

However, sir, in determining the sentence by which, if any, I should reduce the sentence, I would otherwise imposed [sic], I am required to have regard to any relevant factors outlined in Section 42(h). Section 42(h), sir, provides that I should consider among other things whether the reduction of your sentence would be so disproportionate to the seriousness of the offence, or so inappropriate that it would shock the public conscience.

I have to consider the circumstances of the offence, and I take into account, for instance, that these children were tied up, they were found in a pond, one of them died from stab wounds, that's the little boy, the other one from drowning it would seem. The little boy [was] found with hands tied behind his back, these are the things I have taken into account, sir. And having taken these things into account, although you have pleaded guilty, and normally you will be entitled to a discount in your sentence, on this occasion, you will not be getting a discount. You will not get a discount for a plea of guilty, for the simple reason that it is not deserved. It would shock the public conscience.

So these are two children, sir. The actions were egregious and there is significant outrage by this Court. The starting point, sir, as I said, life imprisonment is considered to be a period of 30 years. The starting point is not usually at the maximum point, sir, and I have taken into account all the circumstances of the offence, and your starting point is 27 years. But when I considered the further aggravating features of the case, the fact that their hands were tied behind their backs, the fact that there [sic] was [sic] two children, when I take those things into account, sir, that 27 years has been increased by 13 years. That gives you, sir, 40 years [sic] imprisonment, then I have to take into account, sir, the mitigating circumstances. And having taken into account the mitigating circumstances put forward by your lawyer, and the Social Inquiry Report, sir, I make it a discount of five years, and I reduce that 40 year[sic], sir, by five years. So the period that you should spend in prison is 35 years. However, I am also required to take into account, sir, the time that you have already spent in remand, and your lawyer indicated that this was six years.

> In the circumstances, sir, the remainder of your term will be 29 years in prison. Life imprisonment, with 29 years before being eligible for parole…
>
> MS. S. JAMES: For each count, My Lady?
>
> HER LADYSHIP: Yes, for two counts, for Count One and Count Two…
>
> MS. S. JAMES: And to run concurrently or consecutively?
>
> HER LADYSHIP: Concurrent.
>
> 29 years, sir. Life imprisonment, 29 years before parole"

[56] In the case of **Lloyd Forrester v R** [2023] JMCA Crim 20, Straw JA at para. [43] opined:

> "[43] In the case of **Paul Brown v R** [2019] JMCA Crim 3, on a review of several decisions cited by counsel before this court, it was noted that there was a range of 25 years to 45 years before eligibility for parole in respect of murder. Sentences at the higher end of the range are typically stipulated in cases involving multiple counts of murder. Brown himself was sentenced to life imprisonment with a stipulation to serve 35 years' imprisonment before becoming eligible for parole in circumstances where he gunned down the deceased, who ran in an attempt to escape. The pre-parole period was reduced by this court to 29 years and then to 23 ½ years to account for the time spent in pre-trial custody."

[57] Upon the authority of **Lloyd Forrester v R** and other decisions of this court, and based on our review of the transcript, the sentence of life imprisonment with a stipulation that the appellant serve 29 years before being eligible for parole falls within the range of other sentences handed down locally where there were two counts of murder. In coming to this view, we are not unmindful of the fact that the cases of **Paul Brown v R** and **Lloyd Forrester v R** reflect sentences that were imposed after trials, whereas guilty pleas were entered in this case. However, we also considered the fact that, unlike this

case that deals with a double murder, those cases involved single murders. In the case of **Paul Brown v R** a sentence of 29 years before parole was only reduced to one of 23½ years to give credit for the five years and six months that that applicant had spent on pre-trial remand. Similarly, in the case of **Lloyd Forrester v R** the stipulation that the appellant serve 25 years before eligibility for parole was only adjusted by this court to 24 years, the appellant having received a one-year reduction in his sentence arising from the breach of his right to be afforded a hearing within a reasonable time, under section 16(1) of the Constitution.

Conclusion

[58] We are of the view that the learned sentencing judge largely applied the relevant statutory provisions and common law principles in sentencing the appellant on the two counts of murder. Therefore, we cannot say that the learned sentencing judge erred when deciding not to grant a discount notwithstanding the appellant's guilty plea. The learned sentencing judge's refusal to grant a discount was well within her discretion based on the facts before her. According to the appellant's caution statement and the facts unearthed through the investigation of the case, he and Kemar, acting in common design, lured away from their group at the beach, the two unsuspecting children and took them into bushes in another parish, with the clear premeditated intention of committing criminal acts against them (and, in particular, Maleeka). The bodies of the deceased children were later found in an advanced state of decomposition in fishing ponds. Based on the heinous nature of the murders of the two children, and having regard to the proportionality, totality and parity principles, we are unable to find the pre-parole periods imposed to be manifestly excessive.

[59] It is for the foregoing reasons that, by a majority (F Williams JA and Brown JA), Foster-Pusey JA dissenting, we make the following orders:

1. The appeal is dismissed.

2. The sentences are affirmed.

3. The sentences are to be reckoned as having commenced on 26 June 2020, the date on which they were imposed.