

JAMAICA

IN THE COURT OF APPEAL

**BEFORE: THE HON MRS JUSTICE MCDONALD-BISHOP P
THE HON MISS JUSTICE SIMMONS JA
THE HON MRS JUSTICE V HARRIS JA**

SUPREME COURT CRIMINAL APPEAL NO 39/2015

PATRICK GREEN v R (NO 2)

George Clue for the appellant

Ms Latoya Bernard and David Bowes for the Crown

9, 13 and 27 March 2026

Criminal law – Sentencing – Rape – Whether sentences manifestly excessive – Failure of judge to clearly give discount for a guilty plea – Failure to stipulate periods to be served before eligibility for parole for rape and grievous sexual assault – Buggery – Sentence imposed higher than statutory maximum – Statutory mandatory minimum sentence – Whether judge had jurisdiction to impose sentences below statutory mandatory minimum

MCDONALD-BISHOP P

[1] This is an appeal by Patrick Green ('the appellant'), filed with the leave of a single judge of this court, against the sentences imposed by Gayle J on 12 March 2015 in the Western Regional Gun Court. The sentences relate to 23 counts of various sexual and other offences contained in three indictments, arising from incidents that occurred on 24 September 2012 ('the first indictment'), 1 January 2014 ('the second indictment'), and 18 December 2013 ('the third indictment'). The allegations underpinning each indictment will be outlined in detail later in this judgment, as necessary, when the court considers whether there is any legal basis to interfere with the sentences imposed on each.

[2] The appellant pleaded guilty to all 23 counts. The sentence imposed on each count is conveniently outlined as follows:

The first indictment (24 September 2012 offences)		
Count No.	Offence	Sentences imposed
I	Illegal possession of firearm	20 years' imprisonment at hard labour
II	Forcible abduction	15 years' imprisonment at hard labour
III, V, VI, VII and VIII	Rape	35 years' imprisonment at hard labour on each count
IV	Buggery	15 years' imprisonment
IX, X, XI and XII	Grievous sexual assault	15 years' imprisonment on each count
The second indictment (1 January 2014 offences)		
Count No.	Offence	Sentences imposed
I	Illegal possession of firearm	15 years' imprisonment
II	Forcible abduction	15 years' imprisonment
III	Rape	35 years' imprisonment
IV	Grievous sexual assault	15 years' imprisonment
V and VI	Robbery with aggravation	15 years' imprisonment on each count
The third indictment (18 December 2013 offences)		
Count No.	Offence	Sentences imposed
I	Illegal possession of firearm	5 years' imprisonment at hard labour
II	Forcible abduction	5 years' imprisonment
III	Rape	5 years' imprisonment
IV	Grievous sexual assault	5 years' imprisonment
V	Robbery with aggravation	5 years' imprisonment at hard labour

[3] The learned judge ordered the sentences on the first and second indictments to run concurrently, while the sentences on the third indictment were to run consecutively with those imposed on the first and second indictments. As a result, the aggregate term of imprisonment imposed by the learned judge was 40 years.

The grounds of appeal

[4] With the leave of a single judge of this court granted on 15 November 2022, the appeal was brought on two grounds as stated in the Form B1 dated 19 May 2015:

“(a) **Unfair trial**:- That the sentences are harsh and manifestly excessive and cannot be justified by this court.

(b) The learned Trial Judge did not temper Justice with mercy as my guilty plead [sic] was not taken into consideration.”

[5] On 13 March 2026, after considering the appeal and the submissions of counsel for the appellant and the Crown, we made the following orders with a promise that the written reasons for our decision would be provided later.

“1. The appeal against sentence is allowed, in part.

2. Concerning the indictment relating to the offences committed on 24 September 2012, (‘the first indictment’):

a. The sentences imposed on count I for the offence of illegal possession of firearm and count II for the offence of forcible abduction, are affirmed.

b. The sentences of 35 years’ imprisonment at hard labour imposed on counts III, V, VI, VII & VIII for the offence of rape are set aside; substituted therefor are the following sentences on each count:

(i) On counts III, VII & VIII, sentence of 35 years’ imprisonment with the stipulation that the appellants shall serve 32 years before eligibility for parole.

(ii) On counts V & VI, a sentence of 35 years’ imprisonment with the stipulation that the appellant shall serve 30 years’ before eligibility for parole.

c. The sentences of 15 years’ imprisonment imposed on counts IX, X, XI & XII for the offence of grievous sexual assault are set aside, substituted therefor are the following sentences on each count:

(i) On counts IX & X, the sentence of 15 years' imprisonment with the stipulation that the appellant shall serve 11 years' imprisonment before eligibility for parole.

(ii) On counts XI & XII, the sentence of 15 years' imprisonment with the stipulation that the appellant shall serve 13 years' imprisonment before eligibility for parole.

d. The sentence of 15 years' imprisonment for the offence of buggery is set aside, substituted therefor is a sentence of 10 years' imprisonment at hard labour.

3. Concerning the indictment relating to the offences committed on 1 January 2014 ('the second indictment'):

a. The sentences on count I for the offence of illegal possession of firearm, count II for the offence of forcible abduction and counts V & VI for the offence of robbery with aggravation, are affirmed.

b. The sentence of 35 years' imprisonment imposed on count III for the offence of rape is set aside, substituted therefor is a sentence of 35 years' imprisonment with the stipulation the appellant shall serve 32 years before eligibility for parole.

c. The sentence of 15 years' imprisonment imposed on count IV for the offence of grievous sexual assault is set aside, substituted therefor is a sentence of 15 years' imprisonment with the stipulation that the appellant shall serve 13 years before eligibility for parole.

4. The sentences imposed on all counts of the indictment relating to the offences committed on 18 December 2013 ('the third indictment') are affirmed.

5. The sentences imposed for the offences on the first and second indictments shall run concurrently as ordered by the learned judge and are to be reckoned as having commenced on 12 March 2015, the date on which they were imposed.

6. The sentences imposed for the offences on the third indictment shall run consecutively to the sentences imposed on the first and second indictments as ordered by the learned judge."

In fulfilment of our promise, these are the reasons for the orders made.

The parties' contentions

[6] Counsel for the appellant, Mr George Clue, focused his challenge on the 35-year sentences imposed for the counts of rape on the first and second indictments, notwithstanding that the grounds of appeal were framed in general terms and were not so limited. In summary, Mr Clue argued that:

- i) The learned judge did not adhere to the prescribed methodology in sentencing the appellant established in **Meisha Clement v R** [2016] JMCA Crim 26 (**Meisha Clement**) and **Daniel Roulston v R** [2018] JMCA Crim 20 (**Daniel Roulston**), by failing to properly sentence the appellant on each count of the indictment and merely indicated a sentence of 35 years' imprisonment for all counts of rape.
- ii) The sentences for the counts of rape on the first and second indictments are excessive, having regard to the circumstances of the offences and the appellant's guilty pleas.
- iii) The learned judge did not give the appellant credit for the 11 months he spent in custody prior to being sentenced.

[7] In response, counsel for the Crown, Ms Latoya Bernard, assisted by Mr David Bowes, contended, in summary:

- i) The learned judge's sentencing remarks do not reflect the sentencing methodology outlined in **Meisha Clement** and **Daniel Roulston**. However, though the letter of the law was not followed, the sentences imposed by the learned judge were not manifestly excessive.
- ii) The offences committed by the appellant are among the worst examples of the offences in our jurisdiction. The sentences imposed are appropriately high given the egregious circumstances of the offences.

- iii) The learned judge balanced the appellant's guilty pleas against the appellant's previous convictions, his propensity to reoffend, his known personality disorder and the gruesome nature of the offences.
- iv) From the length of the sentences imposed, it can be inferred that the appellant's sentences were reduced due to his guilty pleas. Any further reduction would be disproportionate to the severity of the crimes and would shock the public conscience, thereby constituting a serious misadministration of justice.
- v) The learned judge failed to give credit for the time the appellant spent in custody prior to being sentenced, thereby deviating from settled law. That failure by the judge should be corrected. However, any credit given should be applied only to the first indictment. No credit should be given on the second or third indictments. There is otherwise no basis to interfere with the sentences imposed on the first and second indictments.
- vi) Regarding the third indictment, the sentences of 5 years' imprisonment for rape and grievous sexual assault are unduly lenient as they are below the statutory mandatory minimum sentences set by the Sexual Offences Act ('SOA'), and should be adjusted by the court.

The issues for determination and the standard of review

[8] The issues arising from the grounds of appeal and the arguments advanced in support of, and opposition to them were:

- a. Whether the learned judge failed to apply the correct methodology in sentencing the appellant.
- b. Whether the sentences imposed for rape on the first and second indictments are manifestly excessive.

- c. Whether the learned judge erred by failing to give appropriate discounts for the guilty pleas.
- d. Whether the learned judge erred in failing to give credit for the time the appellant spent on pre-sentence remand.
- e. Whether the sentences imposed on the third indictment are wrong in law, unduly lenient and should be disturbed by an upward adjustment.

[9] In evaluating these issues, *seriatim*, we were guided by the standard of review established in **R v Ball** (1951) 35 Cr App R 164, **Alpha Green v R** (1969) 11 JLR 283, and **Meisha Clement**. These cases establish that, as a matter of principle, this court will not interfere with the sentence of a lower court simply because its members might have imposed a different sentence. The court will only alter a sentence if it is convinced that the sentence appears to be erroneous in principle, or is so excessive or inadequate to satisfy the court that, when it was imposed, there was a failure to apply the correct principles. The court will be hesitant to interfere with the sentence imposed by a lower court if it was arrived at by applying the usual, recognised and accepted principles of sentencing, and falls within the range of sentences the court is empowered to impose for the particular offence, and which are typically given for offences committed under similar circumstances.

[10] With this standard of review in mind, the court analysed the issues raised within the context of the learned judge's sentencing remarks and the sentences he imposed to determine whether there is any justifiable basis to interfere with them.

Issue a: whether the learned judge failed to apply the correct methodology in sentencing the appellant

[11] The court considered the appellant's general complaint concerning the sentencing exercise conducted by the learned judge, whilst bearing in mind that the appellant's sentences were imposed in March 2015, before the decisions of **Meisha Clement** and **Daniel Roulston** as well as the Sentencing Guidelines for use by Judges of the Supreme

Court of Jamaica and the Parish Courts ('the Sentencing Guidelines'), published in December 2017. Therefore, the learned judge did not have the benefit of that guidance. So, it cannot be said that he erred in failing to follow the prescribed methodology established by the authorities cited by the appellant, **Meisha Clement** and **Daniel Roulston**.

[12] That notwithstanding, the fact that the sentences were imposed prior to **Meisha Clement, Daniel Roulston**, and the Sentencing Guidelines does not mean that the learned judge lacked any direction and binding authority concerning sentencing after a guilty plea. At the time of sentencing, the decision of this court in **Regina v Everaldo Dunkley** (unreported), Court of Appeal, Jamaica, Resident Magistrates' Criminal Appeal No 55/2001, judgment delivered 5 July 2002 ('**Everaldo Dunkley**'), for example, provided relevant guidance on the established principles of sentencing and the relevant methodology to be employed in sentencing the appellant. Those principles also significantly informed the methodology established in the later authorities and the Sentencing Guidelines. Consequently, the learned judge's sentencing remarks are analysed against those established principles.

[13] From the sentencing remarks, it is apparent that the learned judge identified the following matters, which formed part of his deliberations in imposing the sentences on the first and second indictments:

- i) The report of a consultant forensic psychiatrist, which indicated that there is a greater risk of repetitive behaviour associated with the appellant's "deep" psychiatric problem. From this evidence, the learned judge surmised that "due to his sickness, it is likely that he will repeat these offences".
- ii) The nature and seriousness of the offences committed.
- iii) The appellant's guilty pleas, which were not entered at the first opportunity.
- iv) The fact that the offences involved women.

- v) The principles involved in sentencing (retribution, deterrence, reformation and protection of society or the public).
- vi) The appellant had 23 previous convictions for similar offences, and so “the protection of society becomes a very important role [of the sentence]”.
- vii) The appellant is a father of five children.

[14] Having mentioned those factors, the learned judge observed that the “maximum sentence for rape and illegal possession of a firearm carried life imprisonment”. He, however, stated that he “will not go there”, and proceeded to impose the sentences he did.

[15] Consistent with the settled principles discussed in **Evrald Dunkley, Meisha Clement** and **Daniel Roulston**, the learned judge demonstrably identified and considered - (i) the aims of sentencing; (ii) the relevant statutory maximum sentences for the offences of illegal possession of firearm and rape; (iii) some relevant aggravating and mitigating factors; and (iv) the appellant’s guilty pleas.

[16] Absent from the learned judge’s sentencing remarks, however, was any analysis demonstrating his reasons for choosing determinate sentences instead of life imprisonment, the identification of a sentencing range and a starting point within the range, a demonstration of the impact of the aggravating and mitigating factors relative to the offence and the offender on the starting point, or how any of the factors he considered led him to impose the sentences he did.

[17] Furthermore, while the learned judge was clearly of the mind to give the appellant a discount on his sentences for his guilty pleas, he said:

“All involve sexual offences, Robbery, Grievous Assault, Illegal Possession of Firearm, and the law has made it clear over the years, and continue to make it clear, that when a person pleads guilty, the Court, automatically, is placed in a position of reduction. But although the Court is placed in an automatic reduction, the

circumstances under which the offences took place and the seriousness of the offence must be considered.”

Despite this recognition of the potential effect of the guilty pleas on the sentences, the learned judge did not clearly demonstrate whether he applied a discount for the appellant’s guilty pleas, nor, if he did, the extent of that discount.

[18] The learned judge also did not demonstrate that he gave any consideration to the time the appellant spent in custody prior to sentencing, which was said to be 11 months. This is so, notwithstanding the fact that counsel for the appellant in the court below, in making his plea in mitigation on the appellant’s behalf, pointed to the fact that “[r]ecent authorities also indicate that your Lordship is entitled, in the circumstances, to take into account time already spent in custody” (see page 58 of the transcript).

[19] The law required the learned judge to take all the steps mentioned above in relation to each count in each of the three indictments (see **Evrald Dunkley** at pages 4 – 6, and generally, **Meisha Clement** and **Daniel Roulston**). This approach would have involved considering the evidence in relation to each count in each indictment, to demonstrate how the evidence, along with aggravating and mitigating factors for each count, led to the sentence for each offence. The learned judge’s sentencing remarks do not demonstrate any such differentiation in the treatment of the evidence in relation to each count to arrive at the sentences imposed.

[20] Consequently, we accepted Mr Clue’s core argument that the sentencing process was conducted without clear and demonstrable adherence to the established sentencing principles that would have existed for the guidance of the learned judge at the time, even though they would not have been within the refined framework prescribed by **Meisha Clement** and **Daniel Roulston**.

[21] This court has established, in several cases, that a sentencing judge’s failure to utilise the appropriate methodology does not automatically render the sentence manifestly excessive. Furthermore, the failure to utilise the correct methodology does not automatically place the court in a position to hold that the sentences imposed

were erroneous in principle. The crucial question is whether, had the proper methodology been employed, the sentences imposed would be manifestly excessive in all the circumstances of the case (see, for example, **Lincoln McKoy v R** [2019] JMCA Crim 35 at paras. [43] and [54]). It is for the court to make that determination by reference to the applicable principles of law.

[22] With all the foregoing in mind, we proceeded to resolve the appellant's contention that the sentences for rape in the first and second indictments were manifestly excessive, given the circumstances of the offences and the learned judge's failure to demonstrate that he gave an appropriate discount for the appellant's guilty pleas.

Issue b: whether the sentences imposed for rape on the first and second indictments are manifestly excessive

A. The first indictment

[23] We commence our analysis relating to the sentences for rape on the first indictment by providing a brief overview of the circumstances surrounding the commission of the offences.

The circumstances of the offences

[24] The offences charged in the first indictment arose out of an incident that took place on 24 September 2012, involving five complainants – two women (aged 23 and 28) and three girls (aged 8, 14 and 16).

[25] The Crown's case was that these complainants were at their home in the parish of Saint James at around 10:00 pm with two young children. They heard a man's voice outside the window of a bedroom in which the 16 and 23-year-olds were. The voice said, "the whole a unnu give me unnu phone". The 16-year-old looked outside the window and noticed that there were two men, with masks on their faces, and one was armed with a gun. One of the men ('the first gunman') demanded their cell phones, and they complied. He grabbed the 16-year-old's hair through the grill of the window and held a gun to her head. The 23-year-old was told to open the grill to the veranda, and she complied.

[26] The men ordered the complainants to exit the house. They were taken some distance into nearby bushes until they could no longer see their house. The first gunman took the 14-year-old to the house to look for money. On his return, he took the 8-year-old to the house, then to a wall where he felt her vagina and breast. He then proceeded to have sexual intercourse with her. She said that she felt like crying, but did not cry out of fear that the man would shoot her. He then inserted his penis into her anus. Afterwards, he ordered her to go into the house to look for money. She was allowed to rejoin the others. Her vagina was bleeding.

[27] The 14-year-old was raped by both the first gunman and the other man ('the second gunman'). He put his penis in her vagina and mouth, and did not use a condom. When the first man returned from the house, he cut up extension cords. He tied up the 23-year-old, poked her with the knife, punched her in the mouth, put the knife to her lip and hit her with the gun in her face as she refused to converse with him. The 23-year-old witnessed the fondling of the 16-year-old's vagina, and witnessed the 16-year-old being taken further into the bushes for about five minutes.

[28] The 23-year-old was then summoned into the bushes. She went and observed the 28-year-old being raped. She was then raped by the first gunman while the second gunman put his penis in her mouth.

[29] The 28-year-old was put to lie on her stomach, and her hands were tied. One of the men walked on her back and said, "mi over you now, mi can do anything". The 14 and 16-year-olds were taken further into the bushes. When one of the men came back, he inserted his hands or fingers into the 28-year-old's vagina and pulled her hair. The 28-year-old was ordered to stoop down and open her mouth. He pushed his penis in her mouth. After about two minutes, she was made to stand up and bend over, and he put his penis in her vagina. She was afraid. The other man came and put his penis in her mouth. This man then sent for the 23-year-old, and the 28-year-old observed the man put his penis into the 23-year-old's mouth and have sexual intercourse with her. During all this, the 14-year-old was lying naked on the ground close by.

[30] The 16-year-old was tied up. The first gunman loosened her feet and took off her underwear, used a gun to hit her in the face, and then raped her. After raping her, he called the 28-year-old and raped her in the view of the 16-year-old. The second gunman instructed the 16-year-old to kneel before him and perform oral sex on him.

[31] The men then went away and left the complainants to loosen themselves. When the men were gone, the complainants went back to their house.

[32] The appellant was apprehended on 7 January 2014 in relation to the theft of goats. When cautioned, he said, "Offisa, a some goat wi come tief round yah soh and tru wi a stranger di people dem hold wi up and beat wi up". Subsequently, DNA testing implicated the appellant in the commission of these and other offences on the two other indictments.

Analysis

[33] As foreshadowed, Mr Clue confined his arguments to the sentences imposed for the offences of rape, albeit that he did not abandon the ground of appeal, complaining that the sentences were harsh and manifestly excessive. He only argued that the sentences of 35 years for rape were manifestly excessive, given the circumstances of the offences, and because the learned judge did not expressly take the appellant's guilty pleas into account. Counsel suggested that a starting point of 30 years be adopted; that the aggravating and mitigating factors would increase the sentence to 42 years; and that a discount of 40% was appropriate for the appellant's guilty pleas. Mr Clue, therefore, proposed that a sentence of 24 years' imprisonment was appropriate for each count of rape on the first indictment.

[34] In advancing the appellant's position, Mr Clue relied on the cases of **R v Lynden Levy and others** (unreported), Court of Appeal, Jamaica, Supreme Court Criminal Appeal Nos 152, 155, 156, 157 and 158/1999, judgment delivered 16 May 2002, **Sheldon Brown v R** [2010] JMCA Crim 38, **Paul Allen v R** [2010] JMCA Crim 79, **Oneil Murray v R** [2014] JMCA Crim 25, **Carl Campbell v R** [2019] JMCA Crim 22, **Patrick Green v R** [2020] JMCA Crim 17 (an appeal brought by this appellant involving 23 counts of similar

offences), **David Gray v R** [2021] JMCA Crim 4, **Paul Maitland v R** [2023] JMCA Crim 7, **Kevin Taylor v R** [2023] JMCA Crim 50 and **Chevon Bailey v R** [2025] JMCA Crim 9.

The appropriate sentences for the counts of rape

[35] In considering the appropriate sentence to be passed in this case, we noted firstly that section 6 of the SOA prescribes the range of sentences for the offence of rape. The section provides:

“6. — (1) A person who —

(a) commits the offence of rape (whether against section 3 or 5) is liable on conviction in a Circuit Court to **imprisonment for life or such other term as the court considers appropriate, not being less than fifteen years....”**

[36] Therefore, for the offence of rape, the court is empowered to impose a maximum sentence of life imprisonment, or a minimum sentence of 15 years’ imprisonment, subject to any power conferred by law, to impose a sentence below the minimum. Section 6(2) further provides that the court should “specify a period of not less than ten years” which a person convicted of rape or grievous sexual assault shall serve before becoming eligible for parole. In this case, there was no stipulation regarding the period before eligibility for parole as required by law.

[37] Against that background, the court was obliged to analyse the circumstances of the offences, bearing in mind the methodology established in **Meisha Clement, Daniel Roulston** and the Sentencing Guidelines, namely:

- (1) identify the sentence range;
- (2) identify the appropriate starting point within the range;
- (3) consider any relevant aggravating factors;
- (4) consider any relevant mitigating features (including personal mitigation);

- (5) consider, where appropriate, any reduction for a guilty plea;
- (6) decide on the appropriate sentence (giving reasons); and
- (7) give credit for time spent in custody, awaiting trial for the offence (where applicable).

[38] According to the Sentencing Guidelines, the normal range for the offence of rape is 15 – 25 years, and the usual starting point is 15 years. Mr Clue had posited a starting point of 30 years, clearly recognising that this case falls outside the normal range. We appreciated his candour. In identifying the starting points for the offences, we examined the circumstances of the offences to establish the gravity and seriousness and the harm resulting. We identified the following aggravating factors relative to the offences, which we considered relevant to determining the appropriate sentence range and starting point:

- (1) There were multiple victims (five).
- (2) Three of the complainants were children, one of whom was just eight years old - a child of tender years. These child complainants were, therefore, particularly vulnerable.
- (3) The commission of the offences involved forced/uninvited entry into the complainants' home.
- (4) The complainants were forcibly moved out of their home and moved to another location.
- (5) There was intimidation and coercion through the threat of violence of a firearm and a knife, offensive weapons.
- (6) The offences involved degradation of the complainants who were made to be naked in the bushes, and in front of each other.

- (7) Some complainants were sexually assaulted and otherwise violated in the presence of other complainants.
- (8) The rapes were a part of a transaction which included other sexual acts and robbery.
- (9) The offences were committed with more than one offender present.
- (10) The offenders were masked, thereby deliberately concealing their identities.
- (11) The offences included some level of brutality resulting in injuries to some of the complainants.
- (12) The offences included tying up and/or restraining the victims.
- (13) The offences were committed at night in an isolated area, therefore decreasing the likelihood of detection by law enforcement or others.
- (14) The offenders did not use condoms, thereby exposing the complainants to the possibility of pregnancy and sexually transmitted diseases or other infections.

[39] Bearing these factors in mind, within the context of the cases cited by the appellant, and the principle that similar offences are to attract similar sentences (see **Meisha Clement**), we concluded that the circumstances of this offence warranted a sentence outside of the normal range of sentences imposed for the offence of rape. In the totality of the circumstances of this case, we are satisfied that a sentencing range of anywhere from 35 years to life imprisonment, with a starting point of no less than 40 years, would have been appropriate for these offences.

[40] There were additional aggravating factors related to the appellant that were not considered when establishing the starting point, which would have resulted in an upward adjustment. We identified these significant aggravating factors: (i) the appellant had 23 prior convictions for similar offences, making him a serial and habitual offender; and (ii)

there was evidence before the learned judge that he was mentally unstable that led to his dangerousness, especially to women. The fact that the appellant had 23 previous convictions for similar offences, coupled with a mental disorder that caused him to be dangerous, strongly indicates that he is likely to commit similar offences again and poses a serious threat to society, especially to women and girls (see **Daniel Roulston** at para. [25]). Society must be protected from him.

[41] The learned judge considered the maximum sentence of life imprisonment and decided against imposing it, stating- "I won't go there". He did not provide his reasons for this decision. The recommended approach for determining whether a life or determinate sentence should be imposed in cases where life imprisonment is the maximum is outlined in the more recent decision of this court in **Roland Bronstorph v R** [2024] JMCA Crim 29 ('**Bronstorph**'). **Bronstorph** involved the imposition of a life sentence for a murder committed in breach of section 2(2) of the Offences Against the Person Act ('OAPA'), and, like **Meisha Clement** and **Daniel Roulston**, was decided after the learned judge imposed the sentences in this case. Nonetheless, the decision primarily consolidates established general principles surrounding the imposition of life sentences, some of which had been applied by this court prior to the sentencing hearing in this case (see, for example, **R v Earl Simpson** (1994) 31 JLR 397). Therefore, **Bronstorph** simply clarified the process to ensure fairness and proportionality in sentencing outcomes.

[42] The approach to determining whether a life sentence is appropriate is set out in para. [79] of **Bronstorph**, in which the court adopted the reasoning of the Caribbean Court of Justice ('CCJ') in **Renaldo Anderson Alleyne v The Queen** [2019] CCJ 06 (AJ) ('**Alleyne**'). To make that determination, the court must examine the following factors:

"[79]...(a) the relevant principles of sentencing; (b) the circumstances surrounding the commission of the offence; (c) the seriousness of the offence; (d) pre-sentence reports; (e) psychological reports; (f) the aggravating and mitigating factors; (g)

any relevant statutory provisions impacting the sentence; and (h) a determination of which aims of sentencing should be the overriding ones in the circumstances of the case.”

[43] Having examined the above factors, the court must then consider whether the circumstances warrant the imposition of a life sentence, assessing whether:

- (1) The offences committed can be described as “the worst examples of the offence likely to be encountered in practice”.
- (2) A sentence of life imprisonment suits the circumstances of the offence and the offender.
- (3) If there is medical evidence of the defendant’s mental instability or instability of character, whether:
 - (a) The offence or offences are in themselves grave enough to require a very long sentence;
 - (b) The nature of the offences or from the defendant’s history that he is a person of unstable character likely to commit such offences in the future; and
 - (c) If the offences are committed again, the consequences to others may be specifically injurious, as in the case of sexual offences or crimes of violence.
- (4) The dangerousness of the defendant warrants placing the defendant under the jurisdiction of the State for the remainder of his life, through the imposition of a life sentence, bearing in mind the gravity of the offence before the court, the likelihood of further offending and the gravity of any further offending should it occur.
- (5) The gravity or serious nature of the offence is such that, without more, a sentence of life imprisonment would be justified.

[44] In this case, the offences committed were horrific and undeniably egregious, having been perpetrated against five women and girls, one of tender years, and involving the use of a firearm and a knife. Although there is no direct medical evidence regarding the effects of the offences on the complainants, the physical and psychological effects on them can justifiably be presumed, given the manner of the commission of the offences and the special vulnerability of at least three of the victims, who were children.

[45] This court has consistently recognised the serious nature and impact of sexual offences on children (see, for example, **Samuel Blake v R** [2015] JMCA Crim 9 at para. [28] and **Garfield Green v R** [2025] JMCA Crim 12 at para. [78]). There has also been regional recognition of the severity of sexual offences committed against children. In **Linton Pompey v The Director of Public Prosecutions** [2020] CCJ 7 (AJ) GY, Jamadar JCCJ (referred to in subsequent CCJ judgments as 'Jamadar J'), in a concurring judgment, said:

“[45] Children are vulnerable. They need to be protected. Children are developing. They need to be nurtured. Children are precious. They must be valued. Society has these responsibilities, both at private individual levels and as a state. Sexual offences against children, of which rape may be one of the most vicious, and rape by a person in a relationship of trust in the sanctity of a family home the most damaging, is anathema to the fabric of society. The idea of it is morally repugnant. Its execution so condemned, that the State has deemed, as an appropriate benchmark, imprisonment for life as fit punishment in the worst cases.”

[46] Even more to the point, in **A B v The Director of Public Prosecutions** [2023] CCJ 8 (AJ) GY, Jamadar J, writing the unanimous decision of the CCJ, noted that in Guyana, there were several precedents which validated the imposition of life sentences for sexual offences involving children. He accepted that the young age of the victim was one of two factors which made the offence “distinct in severity”, which justified the imposition of a life sentence (see para. [19] of the judgment).

[47] In **Worrell Wint v R** [2019] JMCA Crim 11, Edwards JA, writing on behalf of the court, cited Blackstone's Criminal Practice 2002 in which the editors considered the

approach to be taken when determining whether the circumstances of an offence are among the worst examples of its kind to warrant imposition of the maximum sentence. The learned Judge of Appeal said:

“[50] In Blackstone’s Criminal Practice 2002 at paragraph E1.17 page 1787, the learned editors, in referring to cases considered worst of the worst said:

‘...In considering whether a particular offence is one of the worst examples of its kind, sentencers should have regard to range of cases which is actually encountered in practice ‘and ask themselves whether the particular case they are dealing with comes within the broad band of that type’ but ‘should not use their imaginations to conjure up unlikely worst possible kinds of case’ (per Lawton LJ in *Ambler* (1975) CSP A1–4C01).”

[48] Applying this approach, and having considered the cases cited by the appellant, it may fairly be said that, in the court’s experience, the instant case may appropriately be termed among the worst examples of the offence of rape encountered in practice. An example of such a case includes **Junior Maxwell and others v R** [2019] JMCA Crim 24.

[49] A further compelling feature of this case that makes it among the worst of its kind is the offender himself, which position him among the most severe offenders of this type of offence. Not only are the crimes extremely serious, but he also poses a serious and dangerous threat to women and girls, as he can safely be described as a serial rapist. Therefore, based on our independent assessment of the totality of the circumstances surrounding the commission of the first indictment offences, viewed against the legal principles summarised in **Bronstorff**, sentences of life imprisonment would have been justifiable in principle, particularly concerning the minor complainants.

[50] In practical terms, the sentence of life imprisonment means that the appellant would have been under the supervision of the state, whether in prison or on parole, for the extent of his life (see **R v Foy** [1962] 2 All ER 246 cited in **Bronstorff** at para.

[26]). Any scope for rehabilitation and protection of the public could be addressed by fixing the period before which he would be eligible for parole.

[51] In our view, therefore, the fact that the learned judge could have justifiably imposed life sentences on at least three counts of rape on the first indictment, fundamentally undermines and, indeed, defeats the appellant's position that the determinate sentences of 35 years' imprisonment were manifestly excessive.

Issue c: whether the learned judge erred by failing to give appropriate discounts for the guilty pleas

[52] The other complaint of the appellant is that the learned judge's failure to demonstrably apply guilty-plea discounts resulted in a manifestly excessive sentence. The question that now emerges from this argument is whether the fact that the appellant pleaded guilty on all the counts of rape, prior to the commencement of the trial, should affect this conclusion that 35 years for each count is not manifestly excessive.

[53] The starting point to analysing the appellant's contention in this regard was to recognise that, at the time the appellant was sentenced, the provisions of Part IA of the Criminal Justice (Administration) Act had not yet been enacted. Those provisions constitute the existing statutory framework for giving discounts for guilty pleas. As a result, the common law rules surrounding the giving of a guilty plea discount would be applicable (see **Joel Deer v R** [2014] JMCA Crim 33 ('**Joel Deer**'), per Phillips JA at para. [8]).

[54] The general position at common law was that if a person pleaded guilty, his sentence should be reduced. In **R v Boyd** (1980) 2 Cr App R (S) 234, the court stated that the policy of the courts is that where a man pleads guilty, "the court encourages a plea of guilty by knocking something off the sentence which would have been imposed if there had not been a plea of guilty". According to the authorities, the guilty plea discount confers a benefit on an offender in two circumstances: (i) where the guilty plea is an indication of remorse; and (ii) as a reward for saving the court's and the witnesses from

having to go through a trial (see, for example, **Evrald Dunkley, Joel Deer and Lindell Howell v R** [2017] JMCA Crim 9 ('**Lindell Howell**')).

[55] At common law, the percentage of the discount given was never fixed and was entirely discretionary. However, this court had established in numerous authorities that a discount of between one-fifth and one-third of the sentence may be granted depending on the circumstances of the case (see **Evrald Dunkley** and **Joel Deer** at para. [8]). The extent of the discount, however, depended primarily on the extent to which the guilty plea was seen as genuine evidence of remorse; the timing of the plea (that is, whether the plea was entered at the first opportunity, or at some later time); and whether the plea was seen as tactical, having regard to the strength of the evidence. In **Lindell Howell**, Brooks JA (as he then was) explained:

“[23] There is, however, a range that may be accorded to the discount that is to be attributed to a guilty plea. Undoubtedly, expressions of contrition and remorse will attract a greater discount than circumstances where the evidence is compelling and there is no expression of regret. It appears, however, that even in the latter circumstance, some discount should be given, if there is a real saving of judicial time and the expense of a trial.”

[56] However, there are circumstances in which a guilty plea discount may properly be reduced or completely withheld. As Brooks JA further recognised in **Lindell Howell**:

“[27] It may properly be said, therefore, that if an offender pleads guilty at a very late stage, such as during the trial, where there has really been no saving of time or expense, that there is no discount to be provided in such a case. If the plea is given only when the trial is about to begin, similarly, the discount must be very minimal.”

[57] Outside of the question of timing, a guilty plea discount may be reduced or withheld where the court is of the opinion that a guilty plea was inevitable due to the strength of the evidence (see **Morris** [1998] 10 Cr App R (S) 216; **Landy** [1995] 16 Cr App R (S) 908, **R v Collin Gordon** (unreported), Court of Appeal, Jamaica, Supreme Court Criminal Appeal No 211/1999, judgment delivered 3 November 2005 and **Meisha**

Clement at para. [38]); and where the dangerousness of the offender warrants withholding the discount (see **Alleyn** at para. [34]).

[58] Lastly, and of crucial importance, is that in **Joel Deer** and **Matthew Hull v R** [2013] JMCA Crim 21 (**Matthew Hull**), this court recognised that, at common law, a judge is required to indicate that an offender's guilty plea was taken into account when determining the ultimate sentence that will be passed. However, the failure to do so would not necessarily result in the court reducing a sentence if it is clear from the nature of the sentence in relation to the offence that credit was in fact given for the guilty plea (applying **R v Fearon** (1996) 2 Cr App R (S) 25 and Archbold: Criminal Pleading, Evidence and Practice 2013 Edition at paragraph 5-112).

[59] We examined the appellant's complaint within the context of the foregoing statements of principle. Essentially, we have already noted that this was a case in which a sentence of life imprisonment would have been justified if imposed on at least three of the counts (those relating to the children). The learned judge, having decided to impose a determinate sentence, chose a lesser sentence. From the nature of the sentence imposed, it can be reasonably inferred that the judge had indeed given a discount for the guilty pleas (applying **Joel Deer** and **Matthew Hull**). This view is supported and reinforced by the judge's own comments that (i) he considered the guilty pleas; (ii) the guilty pleas resulted in an "automatic reduction"; and (iii) the maximum sentence for rape was life imprisonment, but he would not "go there". The judge's decision to impose a determinate sentence rather than life imprisonment is strong evidence that he granted a reduction in the sentence due to the guilty plea. This is especially true since no significant mitigating factors were identified by the judge, nor are any apparent to us, which could justify a further reduction, especially having regard to the range within which the sentence should have fallen on our evaluation.

[60] Even if a contrary view is taken, and it is believed that the learned judge should have demonstrably apply a discount but failed to do so, it is evident from an application of the common law principles outlined above, that a guilty plea discount in the

circumstances of the offence and the offender in the instant case would have been either negligible (at best) or justifiably withheld for the following reasons. Firstly, the appellant did not plead guilty at the first opportunity, as the learned judge recognised. Therefore, any discount which would have been given to the appellant would have been reduced to reflect that fact (applying **Joel Deer** and **Lindell Howell**). Secondly, the evidence against the appellant was very strong, involving compelling DNA evidence. A conviction was, therefore, virtually inevitable. A discount would justifiably have been significantly reduced or entirely withheld on account of that fact (applying **R v Collin Gordon**). Thirdly, there was sufficient evidence to establish that the appellant was a dangerous offender, from whom the public needed to be protected. Accordingly, a guilty plea discount could have been justifiably withheld to protect the public.

[61] Also, this would have been a case in which the aggravating circumstances of the offence, and the fact that the appellant had recently been convicted of similar crimes, were sufficiently powerful factors to “cancel out” any effect that the guilty plea could have had. In this regard, we rely on the case of **Alleyne** from the Court of Appeal of Barbados. In that case, the CCJ concluded that a guilty plea discount may be properly withheld, and life imprisonment nonetheless imposed, if the court is satisfied that a lengthy sentence is necessary to protect the public. In so holding, Anderson JCCJ (as he then was) explained:

“[34]...In deciding upon the appropriate sentence, the judge must consider all the aggravating and the mitigating factors, the latter of which will include, where factually relevant, an early guilty plea. **But it is quite another thing to suggest that the mere fact of the early guilty plea suffices to take a life sentence off the table. To accede to such a suggestion would in effect empower an accused or a convict with a veto over possible sentencing options which would be inconsistent with the proper sentencing principles.** In considering the suitability of any sentence the judge must give due consideration to any early guilty plea. For example, it could well be that in appropriate cases the fact of an early guilty plea, especially if accompanied by evidence of genuine remorse, could save a convicted person from a life sentence. But it is equally possible that a judge, having regard to the totality of the evidence may, even in the face of an early guilty plea, nevertheless properly impose a life sentence for manslaughter. **As**

Lord Lane CJ said in the case of *Sharon Elizabeth Costen*, having examined the principle of the discount, there are certain exceptions to the general rule that discount will be allowed for a guilty plea; the first and most important exception is the protection of the public and where it is necessary that a long sentence should be passed in order to protect the public, a guilty plea may not result in any discount.” (Emphasis added)

[62] In a concurring opinion, Saunders PCCJ succinctly applied those principles to the facts of the case before the court, stating:

“[85] Alleyne’s crime was a serious one deserving of a stiff sentence. For the premeditated act of setting a fire in a crowded and confined clothing store causing the deaths of six persons, the trial judge was fully entitled to regard a life sentence as being commensurate. **In other circumstances, Alleyne’s early guilty plea and youth might have served to reduce his sentence. But these factors were cancelled out firstly, by the seriously aggravating circumstances of the offence and, moreso, by the fact that Alleyne had, shortly before this incident, committed and pleaded guilty to torching premises to which the public had access.”** (Emphasis added)

[63] On the strength of this highly persuasive authority and considering the exceptional circumstances of the present case, it appears reasonable to conclude that the fact that the appellant pleaded guilty does not outweigh the gravity of the offences, his criminal antecedents, and mental instability, which together necessitate protecting the public from the serious risks he poses for a long time.

[64] When the preceding reasons are considered cumulatively, it is clear that it would also have been justifiable to withhold a discount for the guilty pleas if the learned judge had deemed it necessary to do so. However, there is evidence that he considered the guilty pleas and imposed a sentence that was less than what the appellant truly deserved.

Accordingly, we find no merit in the appellant’s argument that his sentences for rape on the first indictment were manifestly excessive, for failure to give a discount for the guilty pleas.

Whether there was any basis to interfere with the sentences

[65] Applying the relevant standard of review that we were obliged to deploy, we concluded that the appellant's arguments did not provide any proper basis in law to interfere with the determinate sentences of 35 years imposed for rape.

[66] However, having arrived at that conclusion based on the appellant's arguments, we observed that in imposing the sentences for rape, the learned judge failed to stipulate a period which the appellant was to serve before becoming eligible for parole, as he was required to do by section 6(2) of the SOA. Accordingly, the learned judge would have erred in law when he imposed the sentences for rape without making any stipulation as to the minimum term to be served before eligibility for parole. This error of law must be corrected to align the sentences with the mandatory statutory prescription.

[67] Regrettably, the learned judge's error was repeated in relation to the sentences for grievous sexual assault. Although no arguments were advanced in relation to the sentences for grievous sexual assault, it is also necessary for the proper administration of justice to make the relevant stipulation in accordance with the law.

The minimum terms to be served before eligibility for parole

[68] In determining the minimum term to be served before eligibility for parole, the court adopted the approach taken in **Quacie Hart v R** [2022] JMCA Crim 70 and **Bronstorff**, and examined all the circumstances of the offence and the individual circumstances of the appellant. We formed the view that a higher minimum term was necessary for the offences of rape and grievous sexual assault committed against the minors. We also considered, as the learned judge did, in imposing the sentence, the appellant's age, and the fact that his guilty pleas had the real and practical impact of saving the court's time and resources, as well as preventing the witnesses, especially the children, from having to relive the traumatic event through testifying at trial. Accordingly, we found that the appellant should be given some benefit, in keeping with the established principle, for that fact, and that it should be applied to the minimum term.

[69] Accordingly, for the counts of rape on the first indictment, the following minimum terms were deemed appropriate:

- (1) Counts III, VII and VIII (concerning the rape of the 8, 16 and 14-year-olds, respectively): 32 years before eligibility for parole on each count.
- (2) Counts V and VI (concerning the rape of the two adults): 30 years before eligibility for parole on each count.

[70] For the offences of grievous sexual assault, the following minimum terms are appropriate:

- (1) Counts IX and X (concerning the assault of the two adults): 11 years before eligibility for parole on each count.
- (2) Counts XI and XII (concerning the assault of the 16 and 14-year-olds): 13 years before eligibility for parole on each count.

The sentence for buggery

[71] Additionally, although Mr Clue did not advance any arguments in relation to the offence of buggery charged under count IV of the first indictment, the court, having taken into account that the grounds of appeal were not formally abandoned, brought to counsel's attention that the learned judge had imposed a sentence of 15 years' imprisonment, which exceeds the maximum sentence stipulated for the offence. Under section 76 of the OAPA, the maximum sentence is 10 years' imprisonment. The sentence imposed by the learned judge was, therefore, erroneous in law and, as such, manifestly excessive. In the interests of justice, we consider it necessary to reduce the sentence for buggery on count IV of the first indictment to align it with section 76 of the OAPA. To do so, the appeal had to be allowed.

[72] Having set aside the sentence, we applied the principles set out in **Meisha Clement**, **Daniel Roulston** and **Bronstorff** to the circumstances of this case in determining an appropriate sentence to be substituted. This offence was committed

against the 8-year-old complainant. Given all the other aggravating factors surrounding the commission of the offence, the peculiar characteristics of the appellant, and the age difference between him and the complainant, we were satisfied that the maximum sentence of 10 years' imprisonment was appropriate.

B. The second indictment

[73] As with the first indictment and for the same reasons, the appellant challenged the sentence imposed for the offence of rape under the second indictment on the ground that it was manifestly excessive. Mr Clue's argument was that a sentence of 24 years would have been reasonable in keeping with the methodology he employed with respect to the first indictment.

The circumstances of the offences

[74] The offences charged in the second indictment arose out of an incident that occurred on 1 January 2014. The pertinent facts were these: At some time after midnight, the complainant was in the backseat of a taxi in a community in Saint James (different from the community in the first indictment). She saw a man, later known to be the appellant, standing at the driver's side of the vehicle, pointing a knife at the driver. He had a gun in his other hand. He told the complainant to put her phone down. She complied. The appellant tied the driver's hands and instructed him to sit in the passenger seat. The appellant then tied the complainant's hands. The appellant asked for and took the driver's money. He then drove the car until it got stuck in a hole. He ordered the driver and the complainant to hand over their phones. The driver was told to sit on the back seat, and the complainant was told to get out of the car.

[75] The complainant was robbed of a Blackberry Curve cellular phone valued at \$20,000.00, and the driver was robbed of \$3,400.00 cash and a Blackberry Torch cellular phone. The appellant then pushed his penis into the complainant's mouth. The driver's feet were tied by the appellant, and he was made to lie on his belly in the bushes. The complainant was taken further into the bushes. The appellant, again, put his penis in the complainant's mouth. The driver was making sounds and moving around. The appellant

then went over to him and kicked him. The appellant then inserted his penis into the complainant's vagina and had sexual intercourse with her. The robber left the scene, and the complainant and the driver managed to loosen themselves. After dislodging the vehicle from the hole, they drove to the police station and made a report.

[76] The complainant was medically examined at the Cornwall Regional Hospital, and a sealed exhibit kit was secured and taken to the government forensic laboratory. As already indicated, the appellant was arrested on 7 January 2014. On 8 January 2014 swabs were taken from him for testing. When he was cautioned, he said he had not committed the rape, but he knew who did it. In a subsequent caution statement on 14 January 2014, however, he admitted committing the offences. He said he did so out of anger, and that he spared the taxi driver's life because of the complainant.

[77] On 21 January 2014, the appellant was pointed out by the complainant on an identification parade as her assailant. The relevant DNA analysis showed that the appellant could not be excluded as the donor of the semen stains taken from the complainant.

Analysis

[78] For substantially the same reasons indicated in relation to the counts of rape under the first indictment, we rejected the appellant's contention that the sentence for rape was manifestly excessive. In summary, we find that the learned judge was entitled to impose a sentence outside the range of 25 years, and within a range of at least 30 to 45 years, with a starting point of at least 35 years. Taking into account the overwhelming aggravating factors relative to the appellant as a repeat and convicted offender of various crimes, including similar offences and the danger he posed to society, the starting point would have been adjusted upwards with no countervailing mitigating features to reduce it below 35 years, and even taking into account the guilty plea. Furthermore, as already indicated, the imposition of a determinate sentence in this case suggests that the learned judge had applied some discount to the sentence for the offence on account of the guilty

pleas. Therefore, there would be no justifiable basis for a reduced sentence below 35 years.

[79] In any case, and as previously stated when discussing the first indictment, it is clear that any discount the learned judge might have granted for the guilty plea could have been minimal or entirely withheld because (i) the appellant did not plead guilty at the first opportunity, as the learned judge acknowledged; (ii) the evidence against the appellant was compelling, involving strong DNA and identification evidence; (iii) there was ample evidence indicating that the appellant was a dangerous offender, from whom the public needed protection; (iv) there was no evidence to suggest that the appellant's guilty pleas were motivated by remorse; and (v) the appellant had committed and had been convicted of similar crimes prior to and up to 2012 and 2013, which made him a serial rapist. These considerations were sufficiently strong to "cancel out" any potential effect that the guilty plea might have had.

[80] When these reasons were considered cumulatively, it appeared reasonable to conclude that it would also have been justified for the learned judge to deny the appellant a discount for his guilty pleas if he were so minded. Therefore, the appellant's complaint that the learned judge erred when he failed to give a discount for the guilty plea for rape on the second indictment cannot avail him. Accordingly, the determinate sentence of 35 years' imprisonment imposed by the learned judge cannot be held to be manifestly excessive. This aspect of the grounds of appeal failed.

Minimum term before eligibility for parole on second indictment

[81] The only question arising concerning the sentence for rape on the second indictment relates to the setting of the minimum term to be served by the appellant before becoming eligible for parole. The learned judge did not specify a minimum term. As with the first indictment, the learned judge also failed to determine a minimum term for the sentence of grievous sexual assault. This court, therefore, finds it appropriate to make those determinations as a matter of law.

[82] In specifying the minimum terms for rape, the court considered all the circumstances of the offence and the appellant, and concluded that a minimum term of 32 years before eligibility for parole was justified. This is particularly true given that the appellant committed these offences on the second indictment after having committed similar offences on the first and third indictments against six other victims, including children, in 2012 and 2013.

[83] Regarding the offence of grievous sexual assault, we concluded that a minimum term of 13 years before eligibility for parole was justified for all the reasons given in relation to the minimum term for rape.

[84] All other sentences on the second indictment remain undisturbed.

Issue d: whether the learned judge erred by failing to give the appellant credit for time on pre-sentence remand

[85] We now turn to the final issue for consideration on the appellant's appeal as pursued before the court: credit for time spent on remand.

[86] It is accepted by both the appellant and the Crown that the learned judge did not consider whether to give the appellant credit for the time spent on remand. He would have had, at the time, the guidance from the Privy Council in **Callachand v The State of Mauritius** [2008] UKPC 49 ('**Callachand**') and the CCJ in **Romeo Da Costa Hall v R** [2011] CCJ 6 (AJ) ('**Romeo Da Costa Hall**'), albeit not binding authorities. It seemed that either of these two cases (or both) could have been the authority to which the appellant's counsel in the court below was likely referring when making the plea in mitigation, when he mentioned that "recent authority" permits the court to take into account the time spent on remand.

[87] We considered the totality of circumstances, including the Crown's concession that the appellant should be credited for the time spent on remand. Having done so, we concluded that the learned judge's failure to demonstrably give credit for time spent on

remand in this case was not an error in principle and, in any event, would not have been detrimental to the appellant, therefore not leading to a miscarriage of justice.

[88] In **Callachand**, the Privy Council established as a general rule that full credit “by means of an arithmetical deduction” should be given to an appellant for any time spent on remand. However, the Privy Council stated that the general rule is subject to exceptions. One of the exceptions identified by the Privy Council is that “a defendant who is in custody for more than one offence should not expect to be able to take advantage of time spent in custody more than once” (see para. 10). The decision of the CCJ in **Romeo Da Costa Hall** evidences similar exceptions to the general rule that full credit should be given to an appellant for time spent in custody. In that case, the CCJ recognised that the sentencing judge retains a “residual discretion” to refuse to give a defendant full credit for time spent in custody, where “the defendant is or was on remand for some other offence unconnected with the one for which he is being sentenced” and where “the same period of remand in custody would be credited to more than one offence” (see para. [18]).

[89] Based on these authorities, and particularly **Romeo Da Costa Hall**, it would have been entirely open to the learned judge to refuse to give credit for the time spent on remand simply because the appellant “was on remand for some other offence unconnected with the one for which he is being sentenced”.

[90] Furthermore, and equally important, is that, according to the authorities, any credit given to the appellant for time spent on remand must be applied so that he does not benefit from the same period of custody more than once. Therefore, the court is not required to grant credit across multiple offences, especially when those offences are unrelated and arise under separate indictments. At most, the appellant could have received credit for only one offence, subject to the court’s residual discretion, since he was simultaneously on remand for multiple unrelated matters. Applying credit for the time spent on remand to more than one offence or indictment would result in the double advantage warned against in **Callachand** and **Romeo Da Costa Hall**.

[91] If the credit were to be applied as stipulated by the authorities, the learned judge's failure to give credit for time spent on remand would not operate to the appellant's detriment. The sentences on the first and second indictments were ordered to run concurrently. Therefore, even if credit were applied to the highest sentence on the first indictment (one of the sentences for rape), the credit would be of no practical benefit because the appellant would still be required to serve the 35 years for the count of rape on the second indictment. In those premises, the appellant would derive no practical advantage from receiving credit in these circumstances.

[92] Accordingly, we are satisfied that it is neither necessary nor practically useful for the court to give credit to the appellant for time spent on remand for the offences on any of the indictment. This aspect of the appeal also failed.

Issue e: whether the sentences imposed on the third indictment are wrong in law, unduly lenient, and should be disturbed by an upward adjustment

[93] Given the court's treatment of this issue, it is not necessary to provide a detailed account of the circumstances of the commission of the offences on the third indictment. It suffices to say that those offences arose from an incident on 18 December 2013, involving a woman on her way home from church in another community in Montego Bay. The appellant was in the company of another man, both armed with guns, when they pulled the complainant into nearby bushes, robbed and sexually assaulted her. DNA analysis subsequently linked the appellant to this crime.

[94] The appellant did not explicitly challenge the sentences imposed in the third indictment at the hearing before us, focusing only on the sentences for rape on the first and second indictments. However, the single judge of this court had granted leave to appeal in respect of the third indictment on the basis that the sentences imposed for rape and grievous sexual assault went below the statutory minimum sentences, and so the court should consider how to address the matter. The Crown argued that the sentences were unduly lenient and should be adjusted upwards to accord with the law.

Analysis

[95] The question arising in relation to the sentence imposed on the third indictment is whether the court should accede to the Crown's request to adjust the sentences for rape and grievous sexual assault, given the ruling of the single judge that the court should consider the issue.

[96] The Crown, as well as the single judge, are correct in highlighting that the SOA prescribes statutory mandatory minimum sentences for the offences of rape and grievous sexual assault. Sections 6(1)(a) and 6(1)(b)(ii), respectively, stipulate that the minimum sentence is "not less than fifteen years". Therefore, unless permitted by law, a sentencing judge is required to impose a sentence at or above the prescribed minimum sentence.

[97] Section 42D of the Criminal Justice (Administration) Act (enacted by the Criminal Justice (Administration) (Amendment) Act, 2015, on 30 November 2015) confers on sentencing judges the statutory authority to reduce a sentence below the mandatory minimum where a defendant pleads guilty. However, the Act was passed subsequent to the sentencing hearing before the learned judge. Therefore, the Act could not have provided a legal basis for the learned judge to have passed sentences below the mandatory minimum for rape and grievous sexual assault.

[98] Aside from section 42D, which was not in force at the time the appellant was sentenced, the Privy Council has also recognised that a sentencing judge has the limited and exceptional power to impose a sentence less than the mandatory minimum where imposing a sentence in accordance with the dictates of the statute would be "grossly disproportionate" and accordingly in breach of the protection against inhuman or degrading punishment or treatment (see **Aubeeluck v The State of Mauritius** [2010] UKPC 13 ('**Aubeeluck**') and **Tafari Morrison v The King** [2023] UKPC 14 ('**Tafari Morrison**')).

[99] There is no indication from the transcript of the proceedings that the learned judge had these principles in mind. No mention was made by the learned judge or counsel in

the court below of the Constitution or the court's exceptional power. The learned judge's view that the sentences were imposed based on the need to be "reasonable" is not the same as concluding that the sentences were "grossly disproportionate". The finding that going below the mandatory minimum was required in the interests of reasonableness was not sufficient to invoke the limited power mentioned in **Aubeeluck** and **Tafari Morrison** to impose sentences below the mandatory minimum sentences on constitutional grounds.

[100] Accordingly, in the absence of any power under either statute or the common law, the learned judge would have erred as a matter of law in imposing the sentences below the statutory mandatory minimum sentences for the offences of rape and grievous sexual assault on counts III and IV of the third indictment. There is, therefore, merit in the Crown's contention that the sentences imposed on those counts were made without lawful authority and accordingly unduly lenient.

[101] The Crown asks this court to correct the learned judge's error by increasing the sentences on counts III and IV of the indictment to align them with the sentences imposed under the first and second indictments, thereby bringing them above the mandatory minimum for both counts. Additionally, the court should order that the sentences on the third indictment run concurrently with the sentences on the first and second indictments, which would make allowance for the appellant's guilty plea.

[102] This court's power to increase a sentence is located in section 14(3) of the Judicature (Appellate Jurisdiction) Act, which provides:

"(3) On an appeal against sentence the Court shall, if they think that a different sentence ought to have been passed, quash the sentence passed at the trial, and **pass such other sentence warranted in law by the verdict (whether more or less severe) in substitution therefor** as they think ought to have been passed, and in any other case shall dismiss the appeal." (Emphasis added)

[103] Section 14(3) does not set out any procedure to be followed if the court is minded to pass a more severe sentence than that imposed in the lower court. It is, however, now settled that the court may only exercise its powers to increase sentence after giving notice

to the appellant of its intention to do so and providing the appellant an opportunity to address the court on the matter (see **Skeete v The State** [2003] UKPC 82, **Kailaysur v The State of Mauritius** [2004] UKPC 23, **Williams v The State** [2005] UKPC 11 (**Williams**) and **Linford McIntosh v R** [2015] JMCA Crim 26 (**Linford McIntosh**)).

[104] Having considered all the circumstances of this case, we decided that this is not a case in which we would exercise the power to increase the sentence. Our reasons for refusing to do so align substantially with those offered by this court in **Linford McIntosh** in somewhat similar circumstances. That case involved an application for leave to appeal against conviction and sentence. The trial judge imposed a sentence of eight years' imprisonment for the offence of rape on the basis of her view that "the Court can impose any number of specified years for that offence" (para. [19]). This court (Morrison P (Ag), McDonald-Bishop JA and P Williams JA (Ag)) concluded that section 6(1) of the SOA did not permit the court to impose that sentence. Therefore, in imposing that sentence, the judge acted in excess of her jurisdiction by stipulating a penalty not prescribed by the SOA.

[105] At the hearing of the application for leave, counsel for the applicant informed the court that the applicant consented to his position not to pursue the application (a feature which is not present in this case). In the face of the applicant's position, the court had to determine whether that was an appropriate case to take the appropriate steps to ensure that the sentence properly accords with the applicable law by increasing it. The court deemed it unnecessary to do so for two primary reasons.

[106] Firstly, the court treated the applicant's indication that he did not wish to pursue the application as tantamount to a withdrawal of the application, notwithstanding the absence of a formal application for leave to do so. In keeping with the Privy Council's decision in **Williams**, the regular practice of the courts is to accede to such applications when made. Secondly, and more relevant to this appeal, the court considered that no useful purpose would be served in granting the applicant leave to appeal solely for the court to increase the sentence imposed for rape, given that the ends of justice could

properly be served by the relatively long sentence that had been imposed for grievous sexual assault.

[107] In the instant case, the learned judge had imposed substantial sentences for rape and grievous sexual assault on the first and second indictments. But, even more importantly, the appellant had not pursued an appeal against those sentences even though leave to appeal had been granted. He focused his challenge on the 35-year sentences in the first and second indictments. The position of the appellant is, therefore, not different in actuality and effect from the position taken in **Linford McIntosh**, where the application for permission to appeal that offence was not pursued. The only difference is that in **Linford McIntosh**, the court was explicitly told that the applicant had consented to counsel not pursuing that aspect of the application. Based on how the appeal was deployed before us by Mr Clue, we strongly believed that if notice were given to the appellant in this case, he would have explicitly informed the court that he was not pursuing the appeal regarding the third indictment.

[108] In those circumstances, to interfere with the appellant's sentence on the third indictment for the sole purpose of increasing the sentences for rape and grievous sexual assault would have been unfair to the appellant as he would not have been given prior notice of the court's intention to increase the sentence to afford him the opportunity to explicitly state in no uncertain terms that he was not challenging the sentences on the third indictment or to expressly abandon that aspect of the appeal.

[109] Furthermore, and even more importantly, giving notice to increase the sentence would serve little practical purpose and would have been a waste of precious judicial time not only because the option would have been available to the appellant not to pursue that ground (even though he did not in actuality), but because of the existing aggregate sentence and the aggregate minimum pre-parole period the appellant is required to serve are not manifestly excessive. The aggregate sentence for rape of 40 years with an aggregate minimum term of 32 reflects the seriousness and gravity of the offending

behaviour and ensures that he will remain subject to a lengthy period of incarceration and removal from society sufficient to achieve the objectives of sentencing.

[110] The Crown's proposition that the same sentences of 35 years for rape and 15 years for grievous sexual assault imposed on the first and second indictments should be imposed for those offences on the third indictment and all ordered to run concurrently to give the appellant credit for his guilty plea is, regrettably, not accepted, when the totality principle is applied to the consideration of the sentences imposed by the learned judge. We have already indicated our decision regarding the guilty plea and concluded that the appellant was entitled to no further credit. Therefore, if the Crown's approach were adopted, then the total sentence to be served would be 35 years, five years less than the total sentence imposed by the learned judge. This would not sufficiently punish his overall criminality as the 40 years would. Accordingly, while the sentences imposed for rape and grievous sexual assault on the third indictment were passed without lawful authority by virtue of the provisions of the SOA, in keeping with the approach taken in **Linford McIntosh** and in the interests of the proper administration of justice, we declined to exercise our power to increase those sentences.

[111] In the premises, the sentences imposed on the third indictment were not disturbed.

Conclusion

[112] For all the reasons disclosed in the analyses above, we determined that there was no justifiable basis to interfere with the sentences imposed by the learned judge except (a) to specify on the first and second indictments the minimum terms the appellant must serve before becoming eligible for parole for all counts of rape and grievous sexual assault, and (b) to reduce the sentence for the offence of buggery charged on count IV of the first indictment on the grounds that the sentence imposed was in excess of the statutory maximum and, therefore, manifestly excessive.

[113] For the avoidance of doubt, the sentences that were not disturbed in all other respects were affirmed.

[114] It was for all the foregoing reasons that we made the orders detailed at para. [5].