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

**SUPREME COURT CRIMINAL APPEAL NO 56/2018**

**JERMAINE KNIGHT v R**

**TAKE NOTICE** that this matter was heard by the Hon Mr Justice F Williams JA, the Hon Mrs Justice Foster-Pusey JA and the Hon Mr Justice Brown JA on the 25 day of September 2023, with Cecil J Mitchell for the applicant and Mrs Nickeisha Young-Shand for the Crown.

**TAKE FURTHER NOTICE** that the court's memorandum of reasons, as delivered orally in open court by the Hon Mr Justice F Williams JA, is as follows:

[1] This is an application by the appellant for the following orders:

"1. That this Honourable Court do exercise its discretion on the filing of his Notice of Abandonment to make his sentence run from the earliest date of release from the St. Catherine Adult Correctional Centre which is the 30<sup>th</sup> day of September, 2023.

2. Such further and other relief as may be just."

[2] The appellant was convicted in the High Court Division of the Gun Court on 13 April 2018 of the offences of illegal possession of firearm and robbery with aggravation. On 1 June 2018 he was sentenced to serve six years' imprisonment for the former offence and eight years' imprisonment for the latter, with an order that the sentences were to run concurrently.

[3] The applicant's affidavit, sworn on 9 August 2023, and documents on this court's file indicate that he filed his notice and grounds of appeal in criminal form B1 on 15 June 2018. Unfortunately, and as has been happening far too frequently, there was a delay in the production of the transcript of the trial, which was not received by the registry of this court until 6 January 2023, with the appellant being notified of its receipt by way of notice dated 24 January 2023.

[4] The appellant (who was granted permission to appeal by order of a single judge of this court on 20 March 2023), has been informed that his earliest date of release from the Saint Catherine Adult Correctional Centre, where he is on remand, pending his appeal, is 30 September 2023 – the end of the week in which his appeal is set for hearing (the week commencing 25 September 2023 – that is, this very week).

[5] Perhaps the most important paragraphs of the appellant's affidavit in support of his application, are those at paragraphs 13 to 18, which read as follows:

"13. that I have been advised by my Attorney-at-Law Mr. Cecil J. Mitchell and do verily believe that it is open to me to continue my appeal and to proceed with my appeal against conviction and sentence as I have a good opportunity and good prospect of success in having my appeal against conviction allowed and my sentence set aside.

14. That notwithstanding the advice of my said Attorney-at-Law I am positive and definitive in my decision to abandon my appeal as the date of my earliest release from prison is only a few days after the hearing of my appeal and that there is no guarantee that my appeal would be successful.

15. Further that by the time my appeal is due to be heard I will have almost served the sentence of imprisonment short of four days.

16. I hereby certify and acknowledge that I have instructed my Attorney-at-Law Mr. Cecil J. Mitchell, that I do not wish to argue or prosecute my appeal.

17. That I have signed the Notice of Abandonment which is attached hereto as exhibit 'JK1'.

18. That I fully understand the course I am embarking on and I have instructed my Attorney-at-Law.”

[6] Applications of this nature are now becoming fairly commonplace, caused primarily, but not solely, by the unfortunate delay in the production of transcripts of the trials of convicted individuals who wish to pursue their appeals.

[7] In several decisions, including that of **Tafari Williams v R** [2015] JMCA App 36, this court has traversed what is now fairly-well-trodden ground in indicating that it has a discretion to order from when an applicant’s or appellant’s sentence or sentences should run, upon the filing of a notice of abandonment of appeal. It has also been recognized that an applicant or appellant does not need the court’s permission to file such a notice of abandonment. It is worth emphasizing this point especially in the light of the Crown’s submission that, since the transcript in this matter is now to hand, the abandonment should not be allowed but that the court should proceed to the hearing of the substantive appeal. It may be helpful in this regard to consider the terms of the relevant rule in the Court of Appeal Rules – that is rule 3.22. That rule reads as follows:

**“Abandonment of appeal**

3.22 (1) An appellant may at any time abandon his or her appeal by giving notice to the registrar in form B15.

The notice of abandonment must, subject to rule 3.5, be signed by the appellant even though he or she is represented by an attorney-at-law.” (Emphasis added)

[8] On these plain words, we entertain no doubt that it is the right of an applicant or appellant to abandon his application for permission to appeal or appeal whenever he or she chooses to do so. However, that it would be advisable for that person to seek the court’s direction that the sentence(s) should run from the date on which they were imposed. Failing to do so, might result in the sentence(s) running from the date of the filing of the notice of abandonment of the appeal, which could be many years after the individual was first imprisoned.

[9] This position arises from the provisions of section 31(1) of the Judicature (Appellate Jurisdiction) Act ('the Act'), which reads as follows:

"The time during which an appellant, pending the determination of his appeal, is released on bail, and subject to any directions which the Court of Appeal may give to the contrary on any appeal, the time during which the appellant, if in custody, is specially treated as an appellant under this section, shall not count as part of any term of imprisonment under his sentence, and, in the case of an appeal under this Act, any imprisonment under the sentence of the appellant, whether it is the sentence passed by the court of trial or the sentence passed by the Court of Appeal shall, subject to any directions which may be given by the Court as aforesaid, be deemed to be resumed or to begin to run, as the case requires, if the appellant is in custody, as from the day on which the appeal is determined, and, if he is not in custody, as from the day on which he is received into a correctional institution under the sentence."

[10] As was observed by Morrison P (then acting) in **Tafari Williams v R**, at para. [6], there is this concern:

"[6] The upshot of all of this is that, in the absence of a direction from the court, the sentence of an appellant is deemed to begin to run as from the date upon which his appeal is determined and not before. In this case therefore, the applicant's sentences would not yet have begun to run, and will not do so until his appeal has been determined, unless this court gives a contrary direction."

[11] Similarly, at para. [7] of **Tafari Williams v R**, it was also observed:

"[7] Accordingly, the question whether to give directions as to the date on which sentence shall be deemed to begin to run pursuant to section 31(3) in a particular case and, if so, what directions should be given, remains a matter entirely for the discretion of the court."

[12] There can be no doubt that, had the transcript in this matter been produced in a timely manner, the appellant's appeal would have been disposed of long ago – whether

in his favour or otherwise. There has, however, been a delay of some five years that the appellant has had to suffer, through no fault of his. The regrettable result of this is that the hearing of his appeal and his earliest date of release are separated only by a few days. In these circumstances, the decision to abandon his appeal is a matter entirely for the applicant. This court said as much in **Sheldon Pusey v R** [2016] JMCA App 26, where at para. [24] it observed as follows: “[24] The appellant's wish to abandon his appeal remains a matter entirely for him”.

[13] In **Andrew Williams v R** [2022] JMCA App 31, the difference between that and the instant appeal lay in the finding at para. [13] of that appeal that: “In his case, the transcript is available. His early release date has not yet passed, nor is it imminent”. That appellant therefore faced no prejudice. In the instant case the appellant’s earliest date of release is but a few days away and so most imminent, and (we are advised by the Department of Corrections by letter dated 27 June 2023) his date for eligibility for parole already passed on 31 January 2021 – more than two years ago and before the transcript was received.

[14] Having given the matter our careful consideration, we are minded, in the circumstances of this case, to exercise our discretion by directing (in keeping with the current practice when an appeal in this court is being dismissed) that the sentences are to be reckoned as having commenced on the date on which they were imposed, that is: 1 June 2018. It is clear to us that this result is what the appellant actually wants and not, as inadvertently indicated in para. 1 of the order prayed: “to make his sentence run from the earliest date of release”.

[15] In the result, we make the following order:

- i. It is hereby directed that, upon the appellant’s filing a notice of abandonment of his appeal, his sentences are to be reckoned as having commenced on the date on which they were imposed, that is, 1 June 2018.

ii. Mr C J Mitchell is granted a legal aid assignment in this matter, if the applicant qualifies.