

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO. 47 OF 2006

**BEFORE: THE HON. MR. JUSTICE HARRISON, J.A.
THE HON. MR. JUSTICE DUKHARAN, J.A.
THE HON. MISS JUSTICE PHILLIPS, J.A.**

LAMBERT WATSON

v

REGINA

Miss Nancy Anderson for the Appellant.

Miss Maxine Ellis, Crown Counsel, for the Crown.

September 21 and November 16, 2009

HARRISON, J.A.

1. This is an appeal from a re-sentencing hearing on December 13, 2005 by the Honourable Mr. Justice L. Wolfe, Chief Justice. We heard submissions in the matter and reserved our decision to November 16, 2009.

2. On June 15, 1999 the appellant was convicted in the Hanover Circuit Court of the murder of his common law wife and child. This conviction resulted in the imposition of the sentence of death under the provisions of the 1992 amendments to the Offences Against the Person Act. On July 7, 2004 the Judicial Committee of the Privy Council set aside the sentence of death which had been imposed and the case was remitted to the Supreme Court to decide what sentences ought to be pronounced for the murder convictions.

3. In February, 2005, Parliament amended the Offences Against the Person Act ("the Act") by deleting the terminologies "capital" and "non-capital", setting out minimum sentences for the offence of "murder" and making transitional provisions for the re-sentencing of persons sentenced to death on or after October 14, 1992.

4. On December 13, 2005 the learned Chief Justice re-sentenced the appellant to life imprisonment with a pre-parole period of twenty (20) years, commencing December 13, 2005.

5. This appeal raises important points of law in relation to the commencement date of sentence imposed at a re-sentencing hearing and the commencement date of the pre-parole period for a person who has been convicted of capital murder but whose sentence of death has been set aside and a sentence of life imprisonment is imposed. The issues for determination in the appeal are: (i) whether the sentence of death having been quashed, the new sentence imposed should commence from the date of conviction; and (ii) whether the eligibility period for parole should commence from the date of conviction or from the date of re-sentencing.

6. A single ground of appeal which was originally filed was abandoned. However, the appellant was granted leave by the Court to argue two supplemental grounds of appeal. It was contended by the appellant that the learned Chief Justice:

- (a) had failed to apply section 8 (2) (b) of the amending Act and determine the sentence with regard to the date of conviction; and
- (b) had applied Section 3(1C) of the Act when it was prohibited.

7. Section 8 of the Act reads as follows:

- "8(1) Subject to the provisions of this section, the provisions of the principal Act as amended by this Act shall have effect in relation to persons who were sentenced to death on or after the 14th October, 1992, but before the date of commencement of the Offences Against the Person (Amendment) Act, 2005 (hereinafter referred to as the amending Act) as if the amending Act were in force at the time of the sentence, and the provisions of this section shall have effect without prejudice to any appeal which may, at the date of commencement of the amending Act, be pending in respect of those persons or any right of those persons to appeal.
- (2) For the purpose of subsection (1), in relation to the case of every person referred to in that subsection, a judge of the Supreme Court shall-
- (a) quash any sentence passed before the date of commencement of the amending Act; and
 - (b) determine the appropriate sentence having regard to the date of conviction and the provisions of the principal Act as amended by the amending Act."

8. Section 3(1C) states inter alia:

"In the case of a person convicted of murder, the following provisions shall have effect with regard to that person's eligibility for parole, as if those provisions had been substituted for section 6(1) to (4) of the Parole Act –

- (a) where a court imposes a sentence of imprisonment for life pursuant to subsection (1)(a), the court shall specify a period, being not less than twenty years, which that person should serve before becoming eligible for parole;

..."

9. Miss Nancy Anderson for the appellant, submitted that the learned Chief Justice had imposed the minimum pre-parole period set out in section 3(1C) of the Act without having regard to the date of conviction in accordance with section 8 (2) (b) of the amending Act. She submitted that sentences generally run from the date of conviction and that Parliament had preserved this principle in the re-sentencing regime set out in section 8 of the amending Act. She therefore submitted that the appellant's pre-parole period should have commenced from the date of his conviction.

10. Miss Maxine Ellis, Crown Counsel, did not challenge the submissions of Miss Anderson. She expressed the view that the principle of fairness ought to apply since the appellant had been incarcerated for over six (6) years, prior to the re-sentencing hearing.

11. We were referred to two (2) other re-sentencing cases where judges in the Supreme Court decided that the pre-parole period for convicted persons should be from the date of conviction. In other re-sentencing cases, the re-sentencing judges had merely set the pre-parole periods without ordering when those periods should commence. In the instant case, the learned Chief Justice was of the view that since the imposition of the death sentence had been "quashed", the appellant's eligibility for parole should run from the date of his re-sentencing. The foregoing clearly shows that there is a divergence of views in the re-sentencing exercise carried out by judges in the court below. We are firmly of the view that there should be certainty in the imposition of sentences, including pre-parole periods for persons sentenced to life.

12. It is normally the case that the sentence imposed by a court takes effect from the beginning of the day on which it is imposed, unless the court otherwise directs. Of note, there is the practice in this Court that when an appeal is dismissed, the sentence usually commences three (3) months from the date of sentence in the Court below. However, in view of the provisions of section 8(2) (b), it is abundantly clear to us that regard should be had to the date of conviction when the re-sentencing judge comes to consider the date from which firstly, the sentence of the convicted person commences and secondly when he becomes eligible for parole. In the circumstances, we are of the view that the learned Chief Justice had fallen into error in failing to demonstrate that he had considered the date of conviction in determining when the sentence should commence. In the instant case, we are of the view that the sentence of life imprisonment should commence from the date of conviction. We are also of the view that he was in error when he ordered that the pre-parole period should have commenced as of the date of re-sentence as against the date of conviction.

13. The appeal is therefore allowed. The sentence imposed by the learned Chief Justice is set aside and the following order is substituted therefor:

“The appellant is hereby sentenced to life imprisonment on each count and becomes eligible for parole after serving a period of twenty years commencing from June 15, 1999 (the date of conviction). The sentences are to run concurrently.”