**[2018] JMCA Crim 10**

**JAMAICA**

**IN THE COURT OF APPEAL**

**PARISH COURT CRIMINAL APPEAL NO 4/2017**

**BEFORE: THE HON MR JUSTICE MORRISON P**
**THE HON MRS JUSTICE SINCLAIR-HAYNES JA**
**THE HON MISS JUSTICE P WILLIAMS JA**

**GLENFORD CAMPBELL v R**

**Peter Champagnie and Richard Lynch for the appellant**

**Mrs Christine Johnson-Spence for the Crown**

**19 December 2017, 16 January and 16 March 2018**

**MORRISON P**

[1] At all material times, the appellant was a member of the Jamaica Constabulary Force ('the JCF'). On 15 May 2015, Her Honour Mrs Stephanie Jackson-Haisley ('the judge'), sitting in the Resident Magistrate's Court (now the Parish Court) for the parish of Saint Thomas, convicted the appellant of three offences under section 14(1)(a) of the Corruption Prevention Act ('the Act'). These were (i) corruptly accepting $5,000.00 as a gift or advantage from the complainant for himself for omitting to prosecute him for breaches of the Road Traffic Act; (ii) corruptly accepting $3,500.00 as a gift or

advantage from the complainant for himself for omitting to prosecute him for breaches of the Road Traffic Act; and (iii) corruptly soliciting money from the complainant as a gift or an advantage for himself for omitting to prosecute him for breaches of the Road Traffic Act.

[2] Pursuant to section 15(1) of the Act, any person who commits an act of corruption falling within section 14 of the Act shall be liable on summary conviction in a Resident Magistrate's Court –

> "(i) in the case of a first offence to a fine not exceeding one million dollars or to imprisonment for a term not exceeding two years, or to both such fine and imprisonment;"

[3] At a sentencing hearing held on 25 August 2015, counsel for the appellant made a plea in mitigation on his behalf. At the conclusion of the hearing, the judge sentenced the appellant to six months' imprisonment at hard labour on each of the three counts and ordered that the sentences should run concurrently.

[4] The appellant immediately indicated his intention to appeal against his conviction and sentence and was admitted to bail pending the appeal. Within a few days (on 1 September 2015), the appellant filed the following grounds of appeal:

> "(a) The Learned Trial Judge erred in her summation.
>
> (b) The conviction is unsafe as there was insufficient evidence upon which to base a verdict of guilt.
>
> (c) The sentence is manifestly excessive."

[5] When the matter came on for hearing on 19 December 2017, Mr Peter Champagne for the appellant candidly told the court, in our view quite properly so, that he could find no basis on which to challenge the conviction. However, he indicated his intention to pursue the appeal against the sentence and the hearing was adjourned to 16 January 2018 allow counsel to obtain a copy of the social enquiry report for submission to the court. The report was in due course provided to us. On 16 January 2018, having considered the report and the submissions of counsel, we dismissed the appeal, affirmed the conviction and sentence and ordered that the sentence should commence immediately. These are the reasons which were then promised for that decision.

[6] We take the facts of the case from the judge's findings, which are not now challenged by the appellant. At the material time, the appellant was assigned to the Cedar Valley Police Station and he had been known to the complainant for approximately 20 years prior to his arrest. The circumstances leading up to the appellant being charged and eventually convicted were as follows. At around 7:00 am on 10 October 2011, the appellant stopped at the complainant's gate and requested his car documents from him. Having inspected them, the appellant retained the complainant's documents. The complainant was then instructed to take the car to the Cedar Valley Police Station for further inspection, on the basis that the "licence disc" was not affixed to the car.

[7] So the complainant duly took the car to the police station the following day. At that time, the appellant advised him that he could be charged $8,000.00 for not having

the licence disc displayed. The appellant disputed this amount, whereupon the appellant went into his office to check "the government book". Upon the appellant's return, he told the complainant that the amount was $5,000.00 and then asked him, "wha you a go do fi help yourself?" After a brief exchange, the complainant came to the understanding that he would have to give money to the appellant in exchange for the return of the documents for his car. In the light of this, the complainant placed $3,000.00 on the desk. The appellant then took up the money and asked for the licence disc for the car. The complainant indicated that it was in the possession of one Mr Waseman Thrue, who was then in Montego Bay. Mr Thrue subsequently sent the documents and a sum of money to the complainant, out of which the complainant kept $5,000.00 to give to the appellant to secure the release of his car documents.

[8] On 31 October 2011, prior to handing over the money, the complainant visited the Anti-Corruption Branch ('the ACB') of the JCF to file a complaint against the appellant. A statement was recorded from him by Woman Corporal Latoya Tomlinson and the serial numbers of the five $1,000.00 notes which made up the $5,000.00, were recorded and the notes initialled by him. The complainant, accompanied by a team from the ACB, proceeded to the Cedar Valley Police Station at around 8:30 pm the same day. He was fitted with covert recording devices by a member of the team, Detective Corporal Kesrick Anderson. He then proceeded inside the station to meet with the appellant. Whilst there, he told the appellant "mi have something for you" and placed the $5,000.00 on the appellant's desk. The appellant took up the money off the desk and placed it in his desk drawer. The complainant made another request for the return

of the car documents from the appellant and was told by the appellant to check with him that evening.

[9] On leaving the appellant's office, the complainant signalled the ACB team, which subsequently entered the appellant's office. The appellant identified himself to the team as Sergeant Glenford Campbell and was informed about the allegation which the complainant had made against him. The appellant was cautioned, his desk drawer was searched in his presence and $5,000.00 made up of five $1,000.00 notes was found. The money was examined and the serial numbers and initials matched those of the notes previously recorded at the ACB. The documents for the complainant's vehicle - the certificate of registration, original certificate of fitness and a licence disc - were requested and handed over to the police. The appellant was then arrested on reasonable suspicion of breaching the Act.

[10] The entire incident was recorded on a video recorder by Detective Corporal Anderson and a DVD of the recording was admitted into evidence. The money and the documents were placed in envelopes, sealed and labelled and admitted into evidence at the trial of the appellant.

[11] At the trial, the appellant made an unsworn statement in which he indicated that the complainant was suspected to be involved in stealing gas oil from a cell site and that it was while conducting these investigations that he discovered that the car in question had no licence disc. According to him, his request that the complainant drive the car to the station was refused and he was unable to transport the car to the police

station. On the day of the incident, he saw the complainant enter the station and inquire about his car. The complainant then put his hand in his pocket, stretched across his desk, opened the desk drawer, dropped the money in it and hurriedly left. He said he made no arrangements to solicit cash for the return of the documents. Shortly thereafter, a group of police officers entered the office and told him of the allegations. They proceeded to search the desk drawer and he observed them removing $5,000.00 from it. He denied having any knowledge of the money being there and that the reason for it being there was in exchange for the return of the car documents which he still had in his possession. The whole incident was a set-up, the appellant told the court, to prevent him from carrying out investigations into acts of larceny by the complainant and another businessman, a Mr Albert Smith.

[12] The judge dismissed the appellant's suggestion of malice on the part of the complainant and Mr Smith and rejected the appellant's defence. Having considered the inconsistencies, discrepancies and omissions that arose on the Crown's case, the judge found that they did not go to the root of the case and that the question was essentially one of credibility. The appellant was found to be a credible witness, as were all the other Crown witnesses. In the end, the judge said that:

> "I accept that the words used by the accused to Mr. Doyley on October 11, 2011 constituted an act of corruptly, directly soliciting money from him and that this was for the purpose of omitting to prosecute Mr. Doyley for breaches of the Road Traffic Act. I also accept that on the said date Mr Doyley gave the accused the sum of $3000.00 which the accused corruptly accepted and that the said sum was an advantage for himself for omitting to prosecute Mr. Doyley for breaches of the Road Traffic Act. I also accept that on October 31 2011 Mr. Doyley gave the accused an additional sum of

> $5000.00 which the accused corruptly accepted and that the said sum was an advantage for himself for omitting to prosecute Mr. Doyley for breaches of the Road Traffic Act. I am satisfied I feel sure of all of that. I am satisfied so that I feel sure of all of that. I find him guilty on these three counts ..."

[13] In her reasons for imposing the sentence on the appellant, the judge took into account the plea in mitigation and the character witnesses of the appellant. She also gave consideration to the social enquiry report which contained both positive and negative feedback from members of the community. The fact that the appellant was "sworn to uphold the law" was given much consideration by the judge.

[14] On 16 January 2018, we heard submissions from Mr Richard Lynch on the social enquiry report and the appropriate sentence that should be imposed on the appellant. Mr Lynch submitted that the social enquiry report was an excellent one and commended the section headed "Community Report" to the court. In this section, the citizens of Font Hill and Cedar Valley spoke to the appellant's "wholesome character" and the fact that he was respected and loved by a number of citizens in the communities. The officers at the Cedar Valley Police Station, where the appellant was assigned, and a justice of the peace, referred to the appellant as "a good officer who was disciplined and perceptive in the fulfilment of his duties"; and one who "shared a good relationship with his colleagues". They said that they were surprised at the incident. On the other hand, some citizens of both the Font Hill and Cedar Valley communities said they were not surprised about the incident, as the appellant was "a person who could not be trusted", and "there were rumours of him involved in

dishonest activities". They however supported the general consensus by asking the court to extend leniency to him and not to impose a custodial sentence. The report also indicated that he was a first time offender. On this basis, Mr Lynch, pointing out that the appellant had been enlisted in the JCF since 1992, urged the court to be lenient towards the appellant and impose a non-custodial sentence.

[15] For the Crown, Mrs Johnson-Spence submitted that during the sentencing process the judge had balanced the evidence and the contents of the social enquiry report. It was accordingly submitted that this court should not interfere with the judge's exercise of her sentencing discretion.

[16] The guiding principle on appeals against sentence was succinctly stated in **Christopher Brown v R** [2014] JMCA Crim 5, where Brooks JA said the following (at paragraph [10]):

> "A fundamental principle applied by this court in appeals against sentence is that it does not alter a sentence imposed at first instance merely because it would have imposed a different sentence. This court adheres to the principle set out in **R v Ball** [1951] 35 Cr App R 164. Hilbery J, in delivering the judgment of that court said, in part, at page 165:
>
> > 'In the first place, this Court does not alter a sentence which is the subject of an appeal merely because the members of the Court might have passed a different sentence. The trial Judge has seen the prisoner and heard his history and any witnesses to character he may have chosen to call. It is only when a sentence appears to err in principle that this Court will alter it. If a sentence is excessive or inadequate to such an extent as to satisfy this court that when it was passed there was a failure to apply the right principles, then this court will intervene.'"

(See also **Roger Forrester v R** [2016] JMCA Crim 25, paragraphs [33]-[34].)

[17] In **Meisha Clement v R** [2016] JMCA Crim 26, paragraph [43], this court adopted a similar approach:

> "[43] On an appeal against sentence, therefore, this court's concern is to determine whether the sentence imposed by the judge (i) was arrived at by applying the usual, known and accepted principles of sentencing; and (ii) falls within the range of sentences which (a) the court is empowered to give for the particular offence, and (b) is usually given for like offences in like circumstances. Once this court determines that the sentence satisfies these criteria, it will be loath to interfere with the sentencing judge's exercise of his or her discretion."

[18] The court commended the following sequence of decisions to judges in each sentencing case (at paragraph [41]):

> "(i) identify the appropriate starting point;
>
> (ii) consider any relevant aggravating features;
>
> (iii) consider any relevant mitigating features (including personal mitigation);
>
> (iv) consider, where appropriate, any reduction for a guilty plea; and
>
> (v) decide on the appropriate sentence (giving reasons)"

[19] The judge in the instant case did not specify a starting point during sentencing. However, she did consider the aggravating features, the major ones being the conduct of the offence at the police station and the "disturbing indication of some community members of his involvement in dishonest activities". She was, the judge said, "unable to

turn a blind eye to that". The judge stated further that she had considered the plea in mitigation advanced on the appellant's behalf thoroughly, and that she had also considered the character witnesses called on the appellant's behalf, whom she described as "impressive". She also took into account the comments from some members of the community that the appellant was "respected and loved, an industrious person who is of a wholesome character", and that they "felt safe whilst he is on duty". Taking into account the frequency of the occurrences of offences involving corruption where police officers are concerned, the judge took the view that a clear message must be "sent to all would be offenders that this is not to be condoned ... not to be tolerated", and that there must be "some attempt at changing this and this has to be reflected in the type of sentence". Accordingly, the judge concluded that a "short sharp sentence" of six months' imprisonment at hard labour on all three counts was appropriate.

[20] Based on the foregoing, despite not having indicated a starting point, it appears to us that the judge took into account all the relevant factors in arriving at the sentence imposed, which fell within the range specified in section 15(1)(i) of the Act.

[21] Counsel for the appellant asked this court to consider a non-custodial sentence. This court has been consistent in the treatment of offenders who have committed acts of corruption for decades. Almost three decades ago, in **R v Brendon Blair** (unreported), Court of Appeal, Jamaica, Resident Magistrates' Criminal Appeal No 129/1988, judgment delivered 18 January 1989, Carey JA stated that:

> "... We would have thought that the incidence of corruption with the Force has been sufficiently publicized. This court has on occasions, prior to this, intimated that the sort of sentences which should be imposed for corruption by members of the Force will in fact be serious and condign. It is a matter of regret that police officers choose to continue to ignore what they know to be correct procedure and correct action on their part. They have taken an oath to uphold the law and are well aware that they cannot sell their services in this way. We wish to repeat, that if officers in the police force are caught and convicted of acts of corruption, they must expect sentences of the sort which were imposed in this case. ..."

[22] In that case the appellant was accordingly sentenced to two years' imprisonment on each of the three counts of the indictment for the offences of bribery under the Act, the sentences to run concurrently. The consistency in the approach of this court towards police officers convicted of acts of corruption has been evident in several cases since then. In the more recent cases of **Dewayne Williams** v R [2011] JMCA Crim 17; **Clive Rowe v R** [2012] JMCA Crim 2; **Willard Williamson v R** [2015] JMCA Crim 8; **Patrick Williams v R** [2016] JMCA Crim 22 and **Roger Forrester v R** [2016] JMCA Crim 25, the appellants, who were all police officers, were sentenced to terms of imprisonment ranging from four to 12 months for breaches of the Act.

[23] In the instant case, the judge expressed similar sentiments to Carey JA in **R v Brendon Blair** when she said:

> "I take into account several factors. **The accused was sworn to uphold the law and although throughout his career he was said to be involved in doing just that and was even given accolades for his bravery and achievement, all of which I find to be impressive, I cannot turn a blind eye to the offence that it is. The offences of Soliciting and Accepting are some of the most common offences involving corruption**

> **where police officers are concerned. One would have thought that the message would have already been sent to deter officers but it still remains a frequent offence. There must be a clear message sent to all would be offenders that this is not to be condoned, that this is not to be tolerated. Our citizens have come to accept this kind of offence as being a part and parcel of being a police and as the norm. There must be some attempt at changing this and this has to be reflected in the type of sentence.**
>
> I have considered the character witnesses and have to ask myself why would this accused put his career in jeopardy for the measly sums of $3000.00 and $5,000.00 and do so whilst in his office at the Police Station. I find disturbing the indication of some community members of his involvement in dishonest activities and I am unable to turn a blind eye to that. In the circumstances I am of the view that a custodial sentence is appropriate." (Emphasis applied)

[24] It seems to us that, based on the clear tendency of this court's previous decisions in similar cases over several years, the judge was fully entitled to adopt this approach in this case. In the light of this, and taking all the factors into account, we could find no reason to disturb the sentence imposed by the judge and made the orders set out in paragraph [5] above.