[2018] JMCA Crim 36

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO 42/2014

BEFORE: THE HON MR JUSTICE MORRISON P
THE HON MR JUSTICE BROOKS JA
THE HON MRS JUSTICE MCDONALD-BISHOP JA

OMAR POWELL v R

Ms Melrose Reid for the appellant

Mrs Lenster Lewis-Meade for the Crown

6, 7 June and 28 September 2018

BROOKS JA

[1] On 26 February 2014, the appellant, Mr Omar Powell, was convicted of wounding with intent. He had been tried before a judge sitting with a jury in the Circuit Court for the parish of Manchester. The jury found that he was the person who had chopped the virtual complainant, Miss Shauna McBean, causing an injury to her right hand. By virtue of the injury, the hand, later, had to be amputated. The learned trial judge, on 21 March 2014, sentenced him to serve 25 years imprisonment at hard labour.

[2] Mr Powell filed application for leave to appeal against both his conviction and sentence. A single judge of this court refused him leave to appeal against conviction,

but granted him leave to appeal against sentence. He has acted on that grant, but has also renewed his application for leave to appeal against his conviction.

[3] Ms Melrose Reid, on his behalf, made much of the fact that he had represented himself at the trial. She complained that the learned trial judge did not appreciate his responsibilities toward Mr Powell in those circumstances. She also made other complaints about the conviction.

The prosecution's case

[4] The prosecution's case at the trial was mainly based on the evidence of Miss McBean, who was its sole eyewitness. She testified that on 17 December 2011, she was sitting at the side of the road at Endeavour, in the parish of Manchester. It was minutes to 5:00 pm. She was facing a football field that was adjacent to the road. Another person, a man named Keneil, was sitting with her.

[5] While there, she saw Mr Powell pass by. He was going up the road. He called to her and she answered. She saw when he passed back just a few minutes later. She knew him. She had been living at the same house with him for about six months. She would cook for him sometimes.

[6] Miss McBean was at the same spot, in the same position, when she later felt a blow to the back of her head. She looked around and saw Mr Powell. She reached for a stone, but before she could pick it up, he grabbed her by her shirt and started pulling her across the roadway. He chopped at her with a machete. She raised her right hand to ward off the strike and the machete struck her hand at the wrist. It was cut to the

bone. He chopped her again. At least twice more. The last chop was on her shoulder. He said something at that time:

> "Hah hah hah, yuh think it done yet. Mi a come back. Yuh think mi mad." (page 19 of the transcript)

Mr Powell then ran off.

[7] Miss McBean was taken to the police station, where she made a report, and then to the Mandeville Regional Hospital where she was admitted and treated. Unfortunately, her right hand had to be amputated despite efforts to repair the injury.

[8] On cross-examination by Mr Powell, Miss McBean denied a number of suggestions that he made to her. Specifically, she denied that:

a. it was 7:00 pm, and that it was dark;

b. he and she were in a tussle;

c. some boys on the field were alerted to the altercation and came, armed with "stones, sticks and machete and whatever" (page 29 of the transcript), to where she and Mr Powell were;

d. it was the boys, who, in trying to chop and beat Mr Powell, injured her instead.

The case for the Defence

[9] At the close of the prosecution's case, Mr Powell was informed of the options that were open to him. He chose to make an unsworn statement from the prisoner's dock.

[10] In his statement, Mr Powell said that he had walked past Miss McBean and Keneil that evening, but that it was at about 7 o'clock. They were saying things, either or about or to him, and eventually Miss McBean spat on him. She and he then "begin a little tussling and noise start mekking" (page 65 of the transcript). He said that it was Miss McBean and Keneil who were making "excess noise" (page 65 of the transcript).

[11] On his account, the noise attracted the attention of the persons who were on the football field. They came to where he and Miss McBean were. These persons were armed with "sticks, stones, machete etc". They started chopping after him and hitting him, while he and Miss McBean were wrestling. He then said:

> "Then I got out of the little tussle and other guys and her were still on the scene. I [am] unable to say what took place from there." (See pages 65-66 of the transcript.)

He ran to avoid being injured.

The absence of defence counsel at the trial

[12] There was counsel on the record for Mr Powell. The case had been on the trial list since 2013, and had been traversed from the previous sitting of the circuit court. The trial date had been set and defence counsel was expected to be present. Miss McBean was present for the trial. The prosecution had ensured her attendance because defence counsel was expected to be present. There was a long history of past non-appearance, but the learned trial judge had given warning that the trial would have proceeded and the indications were that defence counsel communicated an intention to be present.

[13] The learned trial judge thought it necessary to proceed. He cited cases which he viewed as encouraging the court to proceed with the trial, even in the absence of defence counsel. The learned trial judge revealed his history with the case. He is recorded at pages 2-3 of the transcript as saying:

> "…I will make comment, that I was here for four weeks in October and early November of last year. On at least four or five occasions, this matter was before me and we had given words with Mr. -- [sic] and I was told contact was made and promises were made. I had indicated earlier that the Court's permission [sic] is that the Court will proceed without the accused having representation. I will also indicate, that the Court did offer representation in terms of Legal Aid, to Mr. Powell and he indicated that he has counsel and so therefore, for the record, we will proceed as if Mr. Powell has no counsel."

[14] Before the first witness was called for the prosecution, the learned trial judge then indicated that Mr Powell was being provided with an amended copy of the indictment. He informed Mr Powell that if he required any further assistance, the registrar would provide it. There is no other indication on the record of anything else being provided to Mr Powell in terms of material.

[15] Ms Reid, on behalf of Mr Powell, sought and received leave to reformulate or abandon some of Mr Powell's original grounds of appeal. As a consequence, she argued a number of grounds of appeal, including the following:

> "The [learned trial judge] erred to have embarked on the Trial of [Mr Powell]; he being unrepresented."

[16] Learned counsel submitted that the learned judge was wrong to have started the trial. Although she accepted that the court should not be obliged to wait indefinitely on defence counsel to attend, she argued that the nature of the case and the severity of the likely sanction required that another adjournment ought to have been granted to allow Mr Powell to obtain the assistance of counsel. Ms Reid also submitted that the learned trial judge also failed in his duty to determine whether Mr Powell could understand the procedure at the trial, and to explain the nature and conduct of the proceedings to Mr Powell. She argued that in the circumstances the conviction should be quashed.

[17] Mrs Lewis-Meade, for the Crown, contended that the trial was not unfair to Mr Powell. She pointed out that the learned trial judge attempted to assist Mr Powell, to the extent that he could have, at every stage of the trial, from the selection of the jury to the presentation of the defence. Learned counsel submitted that the learned trial judge had a duty to ensure that the trial proceeded and was not adjourned.

[18] Ms Reid's submissions that the learned trial judge should have adjourned the case on the basis of the absence of counsel cannot be accepted as valid. Too many cases remain on trial lists because judges fail to take the robust stance of starting them, despite the unreasonable approach of some defence counsel to their duties to their client. The accused's rights to counsel, as important as it is, must be considered in the context of the history of the case and the demands of the general administration of justice. This court has stated that that consideration should be left to the discretion of

the trial judge (see **R v Joseph Walker** (1969) 15 WIR 355). Lord Parker CJ stated in **R v Howes** [1964] 2 All ER 172, at pages 175-176, that the ultimate test is whether there has been a miscarriage of justice. He said:

> "The real question at the end of the day is whether the court is completely satisfied that, notwithstanding the unfortunate course which this case took in regard to the appellant not being represented, there has been no miscarriage of justice. If there is the slightest doubt in the matter, then the court ought to quash the conviction."

[19] The learned judge was right to have started the case. Mrs Lewis-Meade provided an outline of the history of the case in the Manchester Circuit Court. It showed that the learned trial judge had previously granted a number of opportunities for Mr Powell's counsel to have attended and either proceeded with a plea of guilty, as had, at one stage, been indicated, or to have proceeded with the trial. The learned trial judge, on the occasion immediately preceding the trial date, warned that the case would proceed whether or not defence counsel was present. A court must be taken at its word. There was no miscarriage of justice on this basis.

[20] Despite those observations, this court pointed out to learned counsel, during submissions, the decision in **Damion Stewart v R** [2010] JMCA Crim 3. In that case, this court quashed Mr Stewart's conviction on the basis that his trial was unfair, because he had not been provided with the material required to conduct his defence. Mr Stewart represented himself at the trial when his counsel failed to attend. The missing material identified in that case were the witness statements.

[21] Mrs Lewis-Meade sought to distinguish **Damion Stewart v R** on the basis that the history of the present case was such that:

(a) his counsel had been expected to have been present when the case was called up for trial;

(b) there was a Social Enquiry Report, which was secured before the trial, that showed that Mr Powell was aware of the contents of the prosecution's case; and

(c) in presenting his defence, there was no deviation from the stance that he had adopted in the Social Enquiry Report.

[22] Mrs Lewis-Meade is not on good ground with those submissions. There is very little material difference between the circumstances of this case and those in **Damion Stewart v R**. In **Damion Stewart v R**, this court found that the failure of the trial judge to have ensured that Mr Stewart had received the witness statements, and had had adequate time to study them, resulted in a breach of Mr Stewart's constitutional rights.

[23] It is true that in **Damion Stewart v R**, unlike this case, there was affidavit evidence to support Mr Stewart's contention that he did not have the material and did not understand the procedure. There was also affidavit evidence in **Pauline Gail v R** [2010] JMCA Crim 44, which sought to demonstrate the prejudice caused to the appellant, by the trial judge refusing to grant an adjournment. However, the fact that

Mr Powell did not support his complaint with affidavit evidence does not deprive this court of its entitlement to examine the circumstances of his case, to determine the nature of the prejudice, if any, suffered by him.

[24] **Damion Stewart v R** was centred on, the then, section 20(6)(b) of the Constitution of Jamaica. The relevant portion of the section stated:

> "Every person who is charged with a criminal offence–
> ...
> (b) shall be given adequate time and facilities for the preparation of his defence;"

The court found that the witness statements constituted "facilities" for the purposes of that section. It ruled that Mr Stewart "did not receive a fair trial", and ordered that there should be a new trial.

[25] Section 20 was then part of chapter III of Constitution. The entire chapter was revoked in 2011 and the Charter of Fundamental Rights and Freedoms replaced it. The right given by section 20(6)(b) of the old chapter III is reproduced in almost exact terms in section 16(6)(b), which forms part of the Charter of Fundamental Rights and Freedoms. Section 16(6) states in part:

> "Every person who is charged with a criminal offence shall–
> ...
> (b) have adequate time and facilities for the preparation of his defence;"

[26] As the constitutional provisions were similar, so were the relevant circumstances in these two cases. These were:

a. defence counsel was expected to attend;

b. time was given to see if counsel would attend;

c. the virtual complainant had attended on previous occasions when the case had been set for trial;

d. the accused had been given an opportunity to secure legal representation. In Mr Stewart's case he was allowed to try and get counsel to attend. In Mr Powell's case, he had previously been offered legal aid assistance, which he refused;

e. there were no witness statements provided. Whereas there is no evidence of Mr Stewart being provided with any material whatsoever, the transcript of this case shows that the only thing that the learned trial judge ordered to be provided to Mr Powell was a copy of the indictment. It should not be presumed that he received them; and

f. the trial judge in each case rendered such assistance that could have prudently been rendered to the accused.

[27] Based on the above, there is no basis for distinguishing the circumstances of this case from that in **Damion Stewart v R**. The questions which arise from that stance are whether the conviction should be quashed, as it was in **Damion Stewart v R**, and if so, whether there should be a new trial.

[28] Before assessing those questions, it is necessary to examine the other grounds of appeal that Ms Reid argued.

The other grounds of complaint

[29] Ms Reid submitted that the verdict was not in accordance with the evidence. She argued that a number of flaws in the way the case was conducted resulted in, what she submitted, was an unreasonable verdict.

[30] The main points that Ms Reid made about defects in the prosecution's case were concerned with the issue of identification. Learned counsel quite correctly pointed out that the main question for the jury at the trial was whether it was Mr Powell who had chopped Miss McBean. Ms Reid stated that there were unexplained inconsistencies in Miss McBean's evidence, incompetent examination by the prosecutor on the issue of identification and inadequate directions by the learned trial judge to the jury on the issue.

[31] Ms Reid pointed out that there was an inconsistency in Miss McBean's testimony as to the time that the incident occurred. She said that Miss McBean had said at one point, that it occurred at a time, where one could, "call it actually night", but at another point, had said it was before 5:00 pm. Ms Reid submitted that that inconsistency had not been resolved on the prosecution's case. Learned counsel submitted that there was also an issue of whether a street lamp was lit and working at the time of the incident. Miss McBean testified that although it was not dark at the time, that street lamp was lit.

[32] Ms Reid also pointed out that the prosecution had, what the learned trial judge described as, "the third bite of the cherry" (page 46 of the transcript), in attempting to satisfy the requirements of proving identification. She showed that the transcript revealed that not only did the learned trial judge allow the prosecution to further examine Miss McBean on that issue, during re-examination, but also permitted the prosecutor to recall Miss McBean to give further identification evidence. All this, Ms Reid submitted, was improper and unfair to the, self-represented, Mr Powell.

[33] Learned counsel also complained about the conduct of the learned trial judge. She submitted that the learned trial judge descended into the arena in assisting the prosecution on the issue of identification. She pointed to certain questions, which the learned trial judge asked, that fell within the prosecution's purview. Ms Reid also submitted that the learned trial judge's directions to the jury on visual identification were inadequate. Not only, she submitted, did he fail to instruct the jury on the reason for the warning, which he had given to them on the point, but he failed to inform them of the weaknesses in the identification evidence that had been presented.

[34] The difficulty with accepting Ms Reid's submissions on these issues is that, as accurate as they may be as a record of the proceedings, this is not a case where visual identification was in issue. Mr Powell placed himself on the scene. He accepted that he was involved in an incident with Miss McBean at or about the time that she was chopped. His defence was that it was not he who had chopped her, but instead it must have been one of the persons who, he said, had come to her aid, while she was in a

tussle with him. The defects, to which Ms Reid has pointed, are therefore not fatal to the conviction in this case.

Whether a new trial should be ordered

[35] Ms Reid submitted that there should not be a new trial. Learned counsel pointed to a number of flaws in the presentation of the prosecution's case at the trial and submitted that a new trial would allow the prosecution to "patch-up" its case. She cited, among others, **Reid v R** (1978) 27 WIR 254; [1979] 2 All ER 904 and **Au Pui-Kuen v Attorney General of Hong Kong** [1980] AC 351 in support of those submissions. In both cases, learned counsel pointed out, the court stressed that the prosecution should not be allowed, by virtue of a new trial, to cure deficiencies in its case.

[36] Section 14(2) of the Judicature (Appellate Jurisdiction) Act empowers this court to order a new trial in cases where it is of the view that a conviction ought to be quashed. The section states:

> "Subject to the provisions of this Act the Court shall, if they allow an appeal against conviction, quash the conviction, and direct a judgment and verdict of acquittal to be entered, or, if the interests of justice so require, order a new trial at such time and place as the Court may think fit."

[37] The decision of the Judicial Committee of the Privy Council in **Reid v R** identified the competing interests which should be considered in determining whether to order a new trial. Their Lordships stated that among the factors to be considered in determining whether or not to order a new trial included: "(a) the seriousness and prevalence of the offence; (b) the expense and length of time involved in a fresh hearing; (c) the ordeal

suffered by an accused person on trial; (d) the length of time that will have elapsed between the offence and the new trial; (e) the fact, if it is so, that evidence which tended to support the defence on the first trial would be available at the new trial; (f) the strength of the case presented by the prosecution" (see the headnote).

[38] Lord Diplock, in his judgment on behalf of the Board, stressed that, where there has been a technical blunder, the decision to order a new trial would depend on the circumstances of each case. He said, in part, at page 257:

> "The interest of justice that is served by the power to order a new trial is the interest of the public in Jamaica that those persons who are guilty of serious crimes should be brought to justice and should not escape it merely because of some technical blunder by the judge in the conduct of the trial or his summing-up to the jury. There are, of course, countervailing interests of justice which must also be taken into consideration. **The nature and strength of these will vary from case to case**…." (Emphasis supplied)

[39] The learned Law Lord later stated the stances to be taken in relatively clear cases. On the one hand, the prosecution should not be allowed to cure defects in its case. On the other hand, however, where the case is very strong, the proviso to section 14(1) of the Judicature (Appellate Jurisdiction) Act should be applied. He said, in part, at page 258:

> "Their Lordships have already indicated in disposing of the instant appeal that **the interest of justice that is served by the power to order a new trial is the interest of the public in Jamaica that those persons who are guilty of serious crimes should be brought to justice and not escape it merely because of some technical blunder by the judge in the conduct of the trial or in his summing-up to the jury**. Save in circumstances so exceptional that their Lordships cannot

> readily envisage them it ought not to be exercised where, as in the instant case, a reason for setting aside the verdict is that the evidence adduced at the trial was insufficient to justify a conviction by a reasonable jury even if properly directed. **It is not in the interests of justice as administered under the common law system of criminal procedure that the prosecution should be given another chance to cure evidential deficiencies in its case against the accused**.
>
> At the other extreme, **where the evidence against the accused at the trial was so strong that any reasonable jury if properly directed would have convicted the accused, prima facie the more appropriate course is to apply the proviso to s 14 (1) and dismiss the appeal** instead of incurring the expense and inconvenience to witnesses and jurors which would be involved in another trial." (Emphasis supplied)

[40] In applying the considerations set out in **Reid v R**, the latter situation described by Lord Diplock should prevail. This was a very strong case for the prosecution. Apart from the fact that Mr Powell had placed himself on the scene at the relevant time, the testimony of the investigating officer was that he was assigned the case at about 6:00 pm on the day that Miss McBean was injured. That testimony would have assisted the jury in determining the time that the incident had occurred.

[41] The learned trial judge placed the critical issue before the jury. After relating the essence of the respective cases to them the learned trial judge is recorded, at pages 84-85 of the transcript, as stating:

> "So basically Ladies and Gentlemen, what you need to do, is to look at the evidence and see whether or not you believe the main Crown witness, that's Miss McBean. If you believe Miss McBean that she was chopped by Mr. Powell, and you remember that it was said that when she was chopped by Mr. Powell, she said she didn't have anything in her hand….So, if you believe her evidence, that is it. If you don't

> believe her, if it leaves a doubt in your mind, then you will find Mr Powell not guilty. So the issue in this case, is a [sic] issue of credibility....So that's the one issue you need to find."

[42] The fact that there was a breach of a constitutional provision is not by itself fatal to the conviction. In **Melanie Tapper v Director of Public Prosecutions** [2012] UKPC 26, their Lordships ruled that a breach of a person's constitutional right to a trial within a reasonable time, did not, by itself, require a stay of the proceedings or the quashing of the conviction. The question would be whether the result was unfair to the accused. Their Lordships approved the principle that the "public interest in the final determination of criminal charges requires that [a criminal] charge should not be stayed or dismissed if any lesser remedy will be just and proportionate in all the circumstances" (paragraph 24 – citing **Attorney General's Reference (No 2 of 2001)** [2004] 2 AC 72). A similar observation may be made in the case of a conviction and a breach of a right under section 16(6)(b) of the Charter of Fundamental Rights and Freedoms. This is not a case that requires the quashing of Mr Powell's conviction.

[43] The circumstances of this case require an application of the proviso to section 14(1) of the Judicature (Appellate Jurisdiction) Act. The conviction should stand.

[44] Before parting with this aspect of the case it must be stated that the learned trial judge's decision to proceed with the trial is to be commended. The history of the case demanded a robust approach to having it tried. Trial judges must, however, if they do decide to proceed with a trial, in the absence of counsel for the accused, be careful to

ensure, after refusing an application for an adjournment, that the rights of the accused, as set out in the Charter of Fundamental Rights and Freedoms, and such other provisions as are relevant, are not breached.

Sentence

[45] The next issue to be decided is that of the complaint against the sentence that the learned trial judge imposed. Ms Reid submitted that, despite the severity of the injury inflicted on Miss McBean, the sentence of 25 years was excessive. She accepted that the maximum penalty for this offence is imprisonment for life, but that the sentence imposed on Mr Powell was outside of the normal range currently applied.

[46] Mrs Lewis-Mead agreed that the sentence seemed to be manifestly excessive. She submitted that the learned trial judge did not show how he arrived at the figure of 25 years. She submitted that a sentence of 12 years, as was imposed in **Raymond Whyte v R** [2010] JMCA Crim 10 would have been more appropriate.

[47] Learned counsel are correct that the sentence imposed is outside of the normal range of sentences for this type of offence.

[48] This court has repeatedly stated that it will not alter a sentence imposed at first instance "merely because the members of the Court might have passed a different sentence" (see **R v Kenneth John Ball** (1951) 35 Cr App R 164, 165; **R v Alpha Green** (1969) 11 JLR 283 and **Meisha Clement v R** [2016] JMCA Crim 26). The court, in its comprehensive judgment in **Meisha Clement v R**, has required that trial judges demonstrate that they have followed a method in imposing sentence, which may be

considered systematic. **Meisha Clement v R** was decided after Mr Powell was tried and sentenced but the principles in that case may still be used to assess the sentencing process in this case.

[49] The sentencing process prescribed in **Meisha Clement v R** requires that in sentencing judges should consider, at least, the following concepts:

a. whether a custodial sentence is the appropriate penalty;
b. what is the normal range of sentences for that offence;
c. what is the usual starting point of sentences for that offence;
d. what is an appropriate starting point for the particular case, taking into account the aggravating and mitigating factors in respect of the offence;
e. what are the aggravating and mitigating factors relating to the offender.

Those concepts are also set out in the Sentencing Guidelines for use by Judges of the Supreme Court of Jamaica and the Parish Courts.

[50] The learned trial judge did not demonstrate a systematic procedure in pronouncing a sentence on Mr Powell. He stressed the severity of the injury, the manner in which Mr Powell inflicted it and the need for a deterrent sentence to

dissuade other potential offenders. On the other hand, the learned trial judge expressed the view that the injury did not seem to have been premeditated. Having made those comments, the learned trial judge merely stated that, "I am sentencing you [to] twenty-five years at hard labour in relation to this offence" (page 112 of the transcript). In this regard the procedure was inadequate and the learned trial judge was therefore in error.

[51] The errors allow this court to intervene.

[52] Although Ms Reid submitted that a non-custodial sentence should be considered, it would be quite wrong to accede to such a submission. The nature of the offence and the severity of the injury could not but attract a custodial sentence.

[53] The Sentencing Guidelines for use by Judges of the Supreme Court of Jamaica and the Parish Courts were published after the present case was concluded. The guidelines show that the normal range of sentences for this offence is five to 20 years. The usual starting point, according to the guidelines, is seven years for cases that do not involve the use of a firearm.

[54] In **Ronald Webley and Rohan Meikle v R** [2013] JMCA Crim 22, Mr Webley, who was armed with a cutlass, chopped the door of a house, entered the house and chopped the virtual complainant, Mr Wilson, almost completely severing his right hand. This court upheld the sentence of 12 years imprisonment that had been imposed on him. In coming to its decision it conducted a review of sentences in similar cases.

[55] One of those cases reviewed, was **Raymond Whyte v R**. In that case, Mr Whyte chopped a woman at the base of her hand. The injury caused damage to the nerves and tendons of the hand and a resultant loss of sensation in the fingers and the thumb of that hand. This court upheld the sentence of 12 years that had been imposed at first instance. Panton P, who delivered the judgment of the court, stated that the sentence could not be said to be manifestly excessive.

[56] A starting point of 12 years would, therefore, be an appropriate one in these circumstances.

[57] Mr Powell's antecedent report showed that he had no previous convictions. He received a favourable report from his community. It is also noted that the learned trial judge took the view that Miss McBean's permanent disability was "really a result, it seems of infection at the hospital rather than the wound itself" (page 111 of the transcript). The breach of his section 16(6) rights may also be recognized by a reduction in his sentence.

[58] Applying these mitigating factors to the starting point for the sentence, the appropriate sentence is 10 years at hard labour.

[59] Although he had spent some time in custody prior to trial, that period was not apparent from the transcript and cannot be calculated in this exercise.

[60] The appeal against sentence should succeed.

Summary and conclusion

[61] The learned trial judge erred in ordering the trial to proceed without ensuring that Mr Powell was provided with the necessary material to assist him in conducting his defence. Despite the error, and the breach of his constitutional rights in that regard, the conviction should not be quashed. The case was exceptionally strong and as a result, the proviso to section 14(1) of the Judicature (Appellate Jurisdiction) Act should be applied. The discussion requires that the application for leave to appeal be granted and that the hearing of the application be considered the hearing of the appeal. For those reasons stated above, however, the appeal against conviction should fail.

[62] The appeal against sentence should, however, succeed. The learned trial judge did not demonstrate how he had arrived at the sentence of 25 years, which he imposed on Mr Powell. The error allows this court to interfere. An application of the procedure recommended in **Meisha Clement v R**, and the Sentencing Guidelines for use by Judges of the Supreme Court of Jamaica and the Parish Courts, supports a reduction in the sentence imposed by the learned trial judge. A remedy for the breach of Mr Powell's constitutional rights may be considered in the reduction of his sentence.

[63] A period of 10 years would be appropriate in the circumstances.

Orders

[64] These are the orders of the court:-

(1) The application for leave to appeal against conviction is granted.

(2) The hearing of the application is treated as the hearing of the appeal.

(3) The appeal against conviction is dismissed and the conviction is affirmed.

(4) The appeal against sentence is allowed.

(5) The sentence of 25 years imprisonment imposed by the learned trial judge is set aside and a sentence of 10 years imprisonment is imposed in its stead.

(6) The sentence is deemed to have commenced on 21 March 2014.