

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO 91/2010

APPLICATION NO 75/2017

**BEFORE: THE HON MR JUSTICE BROOKS JA
THE HON MRS JUSTICE SINCLAIR-HAYNES JA
THE HON MISS JUSTICE STRAW JA (AG)**

LEROY SHAW v R

**Oswest Senior Smith, Ms Olivia Derrett and Ms Sonya Stewart instructed by
Oswest Senior Smith & Co for the applicant**

Ms Kelly-Ann Boyne for the Crown

15 May 2017

BROOKS JA

[1] On 16 August 2010 Mr Leroy Shaw was convicted for manslaughter in the Circuit Court held in the parish of Saint James. He was sentenced to 10 years imprisonment.

[2] Mr Shaw filed an application for leave to appeal. His application was refused by a single judge of appeal, but Mr Shaw sought to renew the application before the court. The case came before the court, but it was thought necessary at that time to secure a transcript of the evidence taken at the trial. There was, however, a delay in producing

that transcript and when the matter came on again before the court, the time for Mr Shaw's early release was imminent.

[3] On the application of his counsel, however, the appeal was not heard when it came on before the court and on 1 November 2016 Mr Shaw filed a notice of abandonment of his appeal. It was only after he had filed the notice that Mr Shaw realised that, upon his appeal having been dismissed as a result of his abandoning it, his sentence, without an order of the court, would be deemed to have commenced on the date of the dismissal.

[4] With this realisation, Mr Shaw has applied for the appeal to be re-instated so that it can be the subject of a court order for the date for the commencement of his sentence, as he does not intend to pursue the appeal.

[5] Mr Shaw's application is different from the cases of **Tafari Williams v R** [2015] JMCA App 36 and **Sheldon Pusey v R** [2016] JMCA App 26 in that, in those cases, the applicants had not yet filed a notice of abandonment. The court, in each of those cases, then ruled that "upon the applicant filing a notice of abandonment of his application for leave to appeal, his sentences are reckoned as having commenced on the date on which they were imposed".

[6] The first question for this court is whether it can and should allow Mr Shaw to re-instate his application so as to allow it to be dealt with in the manner carried out in **Tafari Williams v R** and **Sheldon Pusey v R**.

[7] As the dismissal of his appeal was purely an administrative step taken as a result of his filing a notice of abandonment it is open to this court to set it aside. There have been many instances of appeals being re-instated after having been struck out, because of mis-steps by the appellants.

[8] The next question for the court is whether the court's discretion should be exercised to re-instate Mr Shaw's application.

[9] It appears from his affidavit in support of this application for re-instatement that his notice of abandonment was filed, albeit after consultation with his counsel, without an appreciation of the effect of the step. It seems therefore that it was done out of ignorance.

[10] In the circumstances, this court, being empowered to correct situations arising from the ignorance of parties, can and should look favourably on Mr Shaw's present application. Mr Senior-Smith has stressed that Mr Shaw's present position is not due to any fault on his part and we agree.

[11] Accordingly orders similar to those made in **Tafari Williams v R** and **Sheldon Pusey v R** should be made in this case. Before doing so however, we have to stress the words of the President in the **Tafari Williams** matter in which he castigated the situation whereby transcripts are not produced in a timely way and stated that applicants for relief arising from that delay, should be given favourable consideration. He said:

“There can be no question, in our view, that the circumstances of this case are such as to fully entitle the applicant to whatever favourable consideration the court is able to afford him at this time. By any standard, the delay of over eight years in producing the transcript of the applicant’s trial in the Gun Court can only be described as outrageous. There is absolutely no suggestion that any part of this delay has been attributable to any fault of his. The result of this is that he has been denied his right to a fair consideration of his application for leave to appeal.”

ORDER

1. The notice of abandonment filed on 1 November 2016 is hereby set aside and the application for leave to appeal filed on 13 September 2010 is re-instated.
2. It is hereby directed that, upon the applicant filing a fresh notice of abandonment of his application for leave to appeal, his sentence shall be reckoned as having commenced on the date on which it was imposed, namely 17 August 2010.