

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO 77/2009

APPLICATION NO 123/2018

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

JOSEPH SIMPSON v R

Ms Kayon C Atkinson for the applicant

Mrs Lenster Lewis-Meade for the Crown

7 June 2018

BROOKS JA

[1] On 5 June 2009, Mr Joseph Simpson was convicted in the High Court Division of the Gun Court for the offences of illegal possession of firearm and shooting with intent. He was sentenced to serve seven years imprisonment in respect of the former offence and 12 years imprisonment in respect of the latter.

[2] He filed an application for leave to appeal against conviction and sentence. Regrettably, the transcript of the trial, despite the length of time that has transpired, has not been produced. Had he not filed an appeal, the time for Mr Simpson's early

release (pursuant to rule 178 of the Correctional Institution (Adult Correctional Centre) Rules, 1991) would have arrived. He would, assuming no negative considerations, have been eligible for early release on 4 June 2018.

[3] He wishes to take advantage of that privilege, but is unable to do so because of the pending application for leave to appeal. Because he has appealed, he has, technically, not yet started serving his sentence (see paragraphs [4] and [6] of **Tafari Williams v R** [2015] JMCA App 36). In order to secure that privilege, he must, albeit reluctantly, file a notice of abandonment of his appeal. Mr Simpson had deposed, in an affidavit in support of his application, that he is fully aware that abandoning his appeal will mean that his convictions will stand. He, nonetheless, is prepared to abandon the appeal because he wishes to go home to his family.

[4] He cannot, however, abandon the appeal without seeking this court's approbation. Were he to proceed without the court's intervention, his sentence would be reckoned to have commenced on the date of the abandonment. He has, therefore, applied for leave to file a notice of abandonment and that this court gives its direction that, upon the filing of the notice of abandonment, his sentences will be reckoned as having commenced on the date of sentencing in the court below, that is, 5 June 2009. There have been previous decisions of this court approving that course of proceeding (see **Tafari Williams v R** and **Sheldon Pusey v R** [2016] JMCA App 26).

[5] The circumstances of this case are not materially different from those in the cases mentioned in the last paragraph. It does not appear that Mr Simpson's position is

due to any fault on his part. Accordingly, orders similar to those made in **Tafari Williams v R** and **Sheldon Pusey v R** may be made in this case.

Order

[6] It is hereby directed that, upon the applicant filing a 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 5 June 2009.