

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO 48/2013

**BEFORE: THE HON MR JUSTICE MORRISON P
THE HON MISS JUSTICE PHILLIPS JA
THE HON MISS JUSTICE P WILLIAMS JA**

PAUL STEWART v REGINA

Cecil J Mitchell for the appellant

Miss Paula Llewellyn QC, Mrs Natiesha Fairclough-Hylton and Miss Natallie Malcolm for the Crown

15 January 2018

MORRISON P

[1] This is an application for leave to appeal against conviction and sentence for the offence of murder in the Manchester Circuit Court on 31 May 2013, after a trial before Gayle J ('the judge') and a jury.

[2] The applicant, who was tried with another person who was acquitted, was sentenced to 20 years' imprisonment, with a stipulation that he should not be eligible for parole until he had served a minimum of 12 years in prison.

[3] Before us this morning, Mr Mitchell for the applicant has quite properly indicated that, having studied the transcript of the evidence and considered the summing-up of

the judge, he has been unable to identify any arguable ground of appeal as regards either the conviction or the sentence. Mrs Fairclough-Hylton for the Crown has concurred with that assessment, and so do we.

[4] This was a matter which called for consideration by the jury of a number of issues. Naturally paramount among these was the credibility of the witnesses for prosecution, in particular, the two eye-witnesses. But of equal importance was the question of identification, the applicant in his rather laconic unsworn statement having squarely raised the issue. Issues also arose as regards the question of self-defence since, on one view of the case, assuming that he had been properly identified, the applicant could be taken to have acted in self-defence. And lastly, on a generous view of the case, the question of provocation also arose.

[5] As the single judge who refused leave to appeal on 10 May 2017 indicated, the judge gave adequate directions in law in relation to credibility, identification and how the jury should approach the assessment of the evidence. The judge also left for the jury's consideration the issues of provocation and self-defence, gave the applicant the benefit of the good character direction to which he was clearly entitled, based on the evidence of a witness whom he had called to give good character evidence on his behalf. In addition, the judge covered in adequate terms the issue of common design, which arose because of the alleged involvement of another person in the incident.

[6] In all the circumstances, it seems to us that there is nothing to argue on this application for leave to appeal against conviction and that application is therefore

refused. In relation to sentence, the judge had a choice as to whether to impose a sentence of life imprisonment with a stipulation of a minimum period for parole, in which case the minimum period before parole would have been 15 years. Instead, the judge chose to impose a determinate sentence of 20 years' imprisonment, stipulating, as he was entitled to do, a minimum period for parole of 12 years.

[7] It seems to us that, in these circumstances, the applicant is materially better off than he would have been had the judge imposed a sentence of life imprisonment, with which in fact no one could have quarrelled. So, as Mr Mitchell again candidly accepted, there was nothing that could properly be advanced in relation to the question of sentencing.

[8] In the result, the application for leave to appeal against conviction and sentence is refused. The sentence is to commence from 31 May 2013. For the avoidance of doubt, we reiterate that the sentence imposed by the judge was 20 years' imprisonment and not 25 years, as appeared at a couple of places in the transcript of the evidence.