

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO 108/2007

APPLICATION NO COA2022APP00073

**BEFORE: THE HON MR JUSTICE BROOKS P
THE HON MRS JUSTICE SINCLAIR-HAYNES JA
THE HON MRS JUSTICE FOSTER-PUSEY JA**

LINCOLN HALL v R

Mrs Melrose Reid for the applicant

**Miss Paula Llewellyn QC, Daniel Kitson-Walters and Ms Vanessa Campbell for
the Crown**

24 May 2022

BROOKS P

[1] On 27 June 2006, Mr Lincoln Hall pleaded guilty in the High Court Division of the Gun Court for the offences of illegal possession of firearm and rape. He was sentenced to serve 15 years' imprisonment in respect of each offence.

[2] He filed an application for leave to appeal against the sentences. Regrettably, the transcript of the sentencing, despite the length of time that has transpired, has not been produced. Had he not filed an appeal, the time for Mr Hall's early release (pursuant to rule 178 of the Correctional Institution (Adult Correctional Centre) Rules, 1991) ('the rules') would have already arrived. Assuming that there were no negative considerations, or other relevant sentences, he would have been eligible to benefit from the rules' provisions for early release. He has, however, another conviction for which he is otherwise serving a sentence. That sentence is for murder.

[3] He, nonetheless, wishes to take advantage of the privilege afforded by the rules and to simplify his status at the correctional institution, in terms of the number of sentences that he is serving, but is unable to do so because of his pending application for leave to appeal. Because he has appealed, he has, technically, not yet started serving his sentences in respect of the convictions mentioned in paragraph [1] above (see section 31(1) and (3) of the Judicature (Appellate Jurisdiction) Act and 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 Hall 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 for the reasons stated above.

[4] He cannot, however, abandon this appeal without seeking this court's approbation. Were he to proceed without the court's intervention, his sentences 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, 26 June 2006. 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] Apart from the fact that Mr Hall is presently serving another sentence, the circumstances of this case are not materially different from those in the cases of **Tafari Williams v R** and **Sheldon Pusey v R**. As in those cases, it does not appear that the delay in the production of the transcript in Mr Hall's case is due to any fault on his part. Accordingly, orders similar to those made in those previous cases may be made in this case.

[6] As a result, the court's order is:

1. It is hereby directed that, upon the applicant filing a notice of abandonment of his application for leave to appeal, his sentences shall be reckoned as having commenced on the date on which they were imposed, namely 26 June 2006.
2. This order does not affect any other sentence that Mr Hall is currently serving.