[2025] JMCA Crim 11

JAMAICA

IN THE COURT OF APPEAL

BEFORE: THE HON MRS JUSTICE MCDONALD-BISHOP P
THE HON MISS JUSTICE STRAW JA
THE HON MRS JUSTICE V HARRIS JA

SUPREME COURT CRIMINAL APPEAL NO 87/2015

OKENO HARRIS v R

John Clarke for the applicant

Miss Ashtelle Steele and David Bowes for the respondent

17 and 20 June 2025

Criminal law – Identification evidence – Whether deficiencies in identification evidence required the trial judge to stop the case at the close of the prosecution's case – Whether judge erred in evaluating the reliability of identification – R v Galbraith principles

Criminal law – Good character direction – Whether trial judge was required to give a direction on good character in the absence of an evidential foundation for such a direction – Circumstances in which a good character direction arises

Constitutional law – Right to a hearing within a reasonable time – Post-conviction delay – Delay in production of transcript – Whether eight-year delay in production of transcript breached applicant's constitutional rights under section 16 of the Charter of Fundamental Rights and Freedoms – Appropriate redress to be granted

ORAL JUDGMENT

MCDONALD-BISHOP P

[1] This is a renewed application for leave to appeal conviction and sentence brought by the applicant, Mr Okeno Harris, following the refusal of permission by a single judge of this court.

[2] The charges that led to the applicant's conviction and sentence arose from an incident that occurred in Old Harbour, in the parish of Saint Catherine on 5 November 2012. Over several days in October 2015, the applicant was tried on an indictment containing two counts before Shelly-Williams J ('the learned judge'), sitting alone in the High Court Division of the Gun Court in Kingston. He was charged on count one of the indictment with illegal possession of a firearm and on count two with wounding with intent. On 15 October 2015, he was convicted on both counts, and on 16 November 2015, he was sentenced to five years' imprisonment at hard labour for illegal possession of firearm and 15 years' imprisonment for wounding with intent. The sentences were ordered to run concurrently.

[3] The prosecution's case, that was accepted by the learned judge, and which grounds the applicant's conviction for the offences, was that on 5 November 2012, at approximately 6:45 pm, the complainant, a taxi operator, was sitting in his car at the Gateway Plaza in Old Harbour when he saw someone approach his car at his window on the driver's side of the vehicle. The complainant was only able to see from the person's neck to his waist. The person pointed a firearm at the complainant and shot him. The complainant immediately felt a burning sensation on his right side, after which he saw blood. The complainant then observed the assailant cross the main road, stop, turn around, and look at him, at which point he was able to see the assailant's face for approximately 10-15 seconds. The complainant recognised the assailant to be the applicant, whom he had known before. The complainant started to pull his car door, and then the applicant ran off. Up to then, the complainant never lost sight of the assailant, who was wearing the same clothes when he went to the car window and when he was seen across the road after he shot the complainant. The complainant was aided in identifying the applicant by two streetlights and vehicular lights from oncoming traffic. There was nothing to obstruct his view.

[4] The complainant was subsequently taken to the Spanish Town Hospital, where he received medical treatment and was released.

[5] On 29 November 2012, at approximately 1:30 pm, while at the Lincoln Plaza in Old Harbour, the complainant saw the applicant again. Upon seeing the applicant, he

alerted the investigating officer and a second statement was recorded from the complainant in which he identified the applicant by the alias, "Puppy".

[6] On 17 December 2012, the applicant attended the Old Harbour Police Station where he was arrested by the investigating officer, who also knew him by the alias "Puppy".

[7] On 28 December 2012, the applicant was identified by the complainant in an identification parade. He was subsequently charged. Upon being cautioned, he denied involvement in the offences.

[8] At trial, the applicant gave sworn evidence in his defence. He claimed to sell yams, bananas, and pumpkins at the market in Kingston, as well as to reside in Portmore and Burke Road, Old Harbour in the parish of Saint Catherine. He asserted that, at the time of the incident, he was at home and knew nothing about any shooting that occurred in Old Harbour that day. After being informed by his mother that the police were looking for him, he attended the Old Harbour Police Station, where he spoke with the investigating officer. The investigating officer questioned him about the money he allegedly robbed from the complainant, whom he had shot. He lamented that he did not have a low-cut hairstyle and had been growing his hair for a year. The applicant confirmed that he is sometimes referred to as "Puppy". He said that he knew the complainant and would see him occasionally operating a taxi. He denied ever asking the complainant for money and claimed that, as far as he was aware, there was no animosity between him and the complainant.

[9] Following the single judge's refusal of the application for permission to appeal, on 15 January 2025, the applicant filed further supplemental grounds of appeal, which the court permitted him to argue on the renewed application.

[10] The original grounds were framed in these terms:

> "**Misidentity by the Witness**: - That the prosecution witnesses wrongfully identified me as the person or among any persons who committed the alleged crime.

Lack of Evidence: - That the prosecution failed to present to the court any 'concrete' piece of evidence (material, forensic or scientific) to link me to the alleged crime.

Conflicting Testimonies: - That the prosecution witnesses presented to the court conflicting and contrasting testimonies which amounted to perjury thus calls into question the soundness of the verdict.

Unfair Trial: - That the evidence and testimonies upon which the Learned Trial Judge relied for the purpose to convict me lack facts and credibility, thus rendering the verdict unsafe in the circumstances.

Miscarriage of Justice: - That the court failed to recognize the fact that I was wrongfully convicted for a crime, I knew nothing about and could not have committed."

[11] The supplemental grounds were framed as follows:

"Supplemental Ground 1- The Learned Trial Judge ought to have stopped the case at the end of the prosecution's case.

Supplemental Ground 2- The Learned Trial Judge erred by failing to point out the key aspects of weaknesses in the crown's case of identification during her summation

Supplemental Ground 3- The Learned Trial Judge erred in law in treatment of the Defence's case.

Supplemental Ground 4 - The Sentence is excessive or a different sentence ought to have been passed based on the specific facts of this case.

Supplemental Ground 5 - The Court should quash the sentence passed at trial and pass such sentence warranted by the law and facts of this case.

Supplemental Ground 6 –The applicant should receive a reduction in the applicable sentence

Supplemental Ground 7 – The Learned trial judge erred in failing to give a full direction as to the applicant's character."

[12] During the hearing of the renewed application, counsel for the applicant, Mr John Clarke, rightly abandoned supplemental ground 7, concerning the absence of a good character direction. Having reviewed the transcript of the proceedings, we are satisfied that the circumstances which would give rise to a good character direction from the learned judge did not exist in this case. Therefore, the learned judge was not obliged to give a good character direction (see **Teeluck v State of Trinidad and Tobago** [2005] 1 WLR 2421 para. [33]; **Jason Richards v R** [2017] JMCA Crim 5 paras. [59] – [65]; **Calvin Walker & Lorringston Walker v R** [2019] JMCA Crim 27 para. [35]; **Tino Jackson v R** [2016] JMCA Crim 13 para. [24] and **Shaun Cardoza and Lathon Hall v R** [2023] JMCA Crim 19 paras. [38]-[39]).

[13] Mr Clarke also sought permission to abandon supplemental ground 4, which asserts that the sentences were manifestly excessive. Having regard to all the circumstances of the case and the fact that the sentence imposed for the offence of wounding with intent (the greater sentence) was the mandatory minimum of 15 years, we agree with counsel's approach. Therefore, there would have been no justifiable basis to interfere with the sentences imposed by the learned judge on the ground that it was manifestly excessive.

[14] Having dealt with the foregoing issues, the remaining matters for determination are:

1. whether the deficiencies in the identification evidence led by the prosecution necessitated the learned judge stopping the case at the close of the prosecution's case (original grounds 1, 2 and 3; supplemental ground 1);

2. whether the learned judge erred in her assessment of the identification evidence (original ground 4 and supplemental ground 2);

3. whether the learned judge erred in her treatment of the defence's case (original ground 5 and supplemental ground 3); and

4. whether the inordinate delay of eight years between the filing of the applicant's application and the production of the transcript amounts to a

breach of the applicant's constitutional rights, and if so, what remedy, if any, this court ought to grant as appropriate in the circumstances (supplemental grounds 5 and 6).

Issue 1: whether the deficiencies in the identification evidence led by the prosecution necessitated the learned judge stopping the case at the close of the prosecution's case (original grounds 1, 2 and 3; supplemental ground 1)

[15] Mr Clarke contended that the learned judge ought to have stopped the case at the close of the prosecution's case, as the case depended almost entirely on the complainant's identification of the applicant, who provided conflicting accounts regarding the incident. He argued that the identification was unreliable, likely occurring during a fleeting glance under difficult circumstances or in an unclear encounter. He maintained that there is no clear evidence regarding when the complainant last saw the applicant. Mr Clarke posited that, "considering the facts most favourable to the prosecution, the opportunity the sole eye witness had to see the assailant could not have amounted to more than a fleeting glance and there was no other evidence supporting the correctness of the identification".

[16] Counsel also detailed what he regarded as specific weaknesses in the identification evidence and contended that the learned judge ought to have "scrupulously" analysed those weaknesses. Had she done so, she would have been led to stop the case at the end of the prosecution's case. Key among the inconsistencies highlighted by counsel is whether the complainant mentioned the applicant's alias in his initial statement to the police and the conflict in his evidence regarding the period during which he saw the applicant prior to the commission of the offences. He noted a marked discrepancy in the evidence of the complainant, who stated that he spoke to the police after he was discharged from the hospital, which was contradicted by the police witness' evidence that he spoke to the complainant on the night of the incident at the hospital. Mr Clarke maintained that the cumulative effect of the inconsistencies, omissions, and the challenging circumstances under which the purported identification of the applicant was made, weakened the quality of the identification evidence, rendering it manifestly unreliable.

[17] In advancing his submissions, Mr Clarke drew support from pronouncements in the celebrated case of **R v Turnbull** [1977] 1 QB 224, and some of its many progeny, including, most notably, **R v Carlton Taylor** (unreported), Court of Appeal, Jamaica, Supreme Court Criminal Appeal No 57/1999, judgment delivered 20 December 2001; **R v Ivan Fergus** (1994) 98 Cr App R 313; **Daley v The Queen** [1994] 1 AC 117; and **R v Richardson** [2012] EWCA Crim 639.

[18] The Crown, in response, through Miss Ashtelle Steele, ably assisted by Mr David Bowes, relied on the seminal authority of **R v Galbraith** [1981] WLR 1039 and **R v Turnbull** to submit that there was evidence upon which a properly directed jury could convict, including the complainant's identification of the applicant, which occurred under satisfactory conditions. The Crown acknowledged that there were inconsistencies and discrepancies in the complainant's evidence that arose during cross-examination, but these were minor and did not render the identification evidence tenuous. Counsel for the Crown noted that the complainant provided an explanation for the conflicts in his evidence, stating that the incident had occurred three years before his testimony and that he did not recall the applicant's alias when he gave his initial statement to the police. Upon remembering the alias, he told the police in his second recorded statement shortly after giving his first statement and before seeing the applicant again. According to counsel for the Crown, the issue of the complainant's credibility was properly left to the learned judge in guiding her jury mind, and thus there would have been no basis in law for the learned judge to have stopped the case at the end of the prosecution's case.

[19] Having thoroughly reviewed the transcript of the proceedings, the applicant's complaint within the scope of the applicable law and the standard of review of the learned judge's decision, we accept the Crown's submissions that there was no basis in law for the learned judge to have stopped the case at the close of the prosecution's case. We share the view articulated by the Crown that the inconsistencies and discrepancies, highlighted to have emerged on the prosecution's case, were not of such a nature as to render the identification evidence tenuous or inherently unreliable to warrant the withdrawal of the case from the learned judge's jury mind.

[20] In light of the evidence presented, the learned judge was entitled to treat the complainant's credibility as a matter properly left for consideration by her jury mind. In so doing, she was required to, and did bear in mind that even an honest and convincing witness can nevertheless be mistaken. Ultimately, the circumstances required to justify withdrawing the case from her jury mind, as outlined in **R v Galbraith**, **R v Turnbull** and **Daley v The Queen** and the other authorities cited by Mr Clarke, did not exist in this instance. It is, therefore, not surprising that the trial counsel, being an experienced one, did not deem it appropriate to make a no-case submission.

[21] In concluding on this issue, no fault can be ascribed to the learned judge for declining to stop the proceedings at the close of the prosecution's case. Accordingly, original grounds 1, 2 and 3, along with supplemental ground 1, examined within the scope of this first issue, are without merit and do not provide a sustainable basis for granting leave to appeal conviction.

Issue 2: whether the learned judge erred in her assessment of the identification evidence (original ground 4; supplemental ground 2)

[22] This issue is closely connected to issue 1 and, therefore, involves consideration of related grounds concerning the identification evidence and the learned judge's treatment of them.

[23] Mr Clarke contended under this head that the learned judge erred by failing to point out the key aspects of weaknesses in the Crown's case concerning identification during her summation, and that she had a duty to find that the Crown had not proved its case to the requisite standard. He argued that, given the special circumstances of the case, the Crown failed to properly explain or contextualise the 10-15 seconds during which the complainant claimed to have observed the applicant. He also submitted that the learned judge did not adequately address or assess this crucial element of the evidence in her summation, particularly as it related to the reliability of the identification.

[24] On the other hand, the Crown contended in response that the learned judge did not err in failing to highlight the weaknesses in the identification evidence during

her summation. On the contrary, she followed the **R v Turnbull** guidelines by expressly warning herself of the special need for caution in identification cases and by addressing all relevant factors, including lighting, duration, distance, and the complainant's prior familiarity with the accused. The learned judge, it was submitted, also acknowledged and assessed minor inconsistencies in the complainant's evidence but found them insufficient to undermine his credibility. The Crown maintained that the learned judge's summation demonstrated that she bore the proper legal framework and factual considerations in mind when considering the evidence, thereby discharging her duty as a judge sitting alone.

[25] Once again, we agree with the submissions advanced by the Crown. We are satisfied that the learned judge gave herself a proper and sufficient warning in accordance with the **R v Turnbull** guidelines. We must acknowledge that the learned judge did not explicitly state that she was required to examine the weaknesses in the identification evidence; however, her comprehensive summation demonstrates that she did so to a considerable extent. The learned judge explicitly highlighted the inconsistencies in the complainant's testimony (some of which would have amounted to being potential weaknesses in his identification evidence), evaluated, and reasonably dismissed those weaknesses as having no impact on the core issue of identification by recognition.

[26] The court appreciates the applicant's complaint that the learned judge did not expressly identify what counsel described as the frightening experience as a weakness that could likely undermine the impact of the identification evidence (see **Dwayne Knight v R** [2017] JMCA Crim 3). Miss Steele, however, pointed to the evidence which would demonstrate that the complainant was not overwhelmed by the shooting so as to be hindered in making a positive identification of his assailant. The identification was made after the shooting had ceased, and the applicant was said to have stopped and turned around to face the complainant. No one challenged the complainant on his ability to estimate time, and even if the time for observation was not as much as 10-15 seconds, it was enough for the complainant to recognise the applicant. Counsel pointed to an extract from the transcript on page 8 where the complainant said that, immediately after recognising the applicant as the shooter for 10-15 seconds, he said

to himself, "**and when I come so and look good I say to myself is you**". He testified that he said that to himself "**because I know the person**" (pages 7 and 8 of the transcript, with emphasis added).

[27] This bit of evidence did not escape the learned judge. At page 83 of the transcript, she reasoned within the context of examining the identification evidence:

> "After he was shot he never lost sight of the person who shot him until the person went across the road, turn around and he was then able to see his face for about 10-15 seconds before he ran off. **The complainant gave evidence that he looked good at the person who shot him and said to himself he knew the person from the Old Harbour Area i.e from Burke Road**." (Emphasis added)

[28] Although the learned judge did not mention the frightening circumstances of the incident as a weakness affecting the accuracy of the purported identification, this does not impugn the conviction. There is evidence that favourably established on the prosecution's case that, after the shooting, the complainant was in a stable position in his car, observing the applicant from the moment he moved from beside his vehicle, as he walked across the road, up until he eventually ran off. The complainant testified that after the shooting, and before the applicant ran, he attempted to open his door to exit the vehicle. It was at that moment that the applicant ran off. There is nothing to suggest that the complainant's attention was diverted while observing the applicant or that his ability to do so was negatively affected by the events of the moment, despite his admission of being frightened. In this regard, the case of **Dwayne Knight**, cited by the applicant, is wholly distinguishable and offers no support for his position.

[29] In all the circumstances and after due consideration of the matters highlighted by Mr Clarke at para. 5 of his written submissions and in his oral arguments, it cannot reasonably be said that the learned judge erred in the assessment and treatment of the identification evidence in her summation so as to render her decision assailable. These grounds, embodied in issue 2, also fail.

Issue 3: whether the learned judge erred in her treatment of the defence's case (original ground 5; supplemental ground 3)

[30] The applicant complained that the learned judge erred in law in her treatment of the defence's case and simply elected which side she believed "without conducting a proper credibility analysis of the unsupported testimony of the sole material witness". Counsel submitted that the learned judge made no finding of credibility as between the complainant and the applicant by demonstrating that the steps of further analysis were taken (see **R v Chittick** 2004 NSCA 135 at paras. [23]-[25]). Mr Clarke maintained that the learned judge seemingly reversed the burden of proof when she stated that it had not been demonstrated that the complainant and the applicant had a good relationship.

[31] Counsel for the Crown, on the other hand, argued that this ground has no merit and should fail. They noted that throughout the learned judge's summation, particularly on page 76 of the transcript, the learned judge highlighted the applicant's presumption of innocence and the prosecution's duty to prove the case beyond a reasonable doubt. They emphasised that the learned judge repeatedly and clearly stressed this standard of proof and reminded herself that the prosecution bore the burden of proof. The learned judge explicitly directed herself that even if she rejected the defence's case, including the alibi defence, she must return to the Crown's case to ascertain her certainty regarding the applicant's guilt before she could convict (**Vassell Douglas v R** [2024] JMCA Crim 10 cited).

[32] We find ourselves in agreement with the Crown's position that there is no merit in the assertion that the learned judge reversed the burden of proof. A review of the summation reveals that the judge properly directed herself on the applicable legal principles, including the presumption of innocence and the prosecution's duty to prove its case beyond a reasonable doubt, and demonstrably applied them. The complaint that the burden of proof was impermissibly shifted to the defence is, in our view, wholly unsubstantiated and, therefore, fails. Accordingly, supplemental ground 3 cannot provide a viable basis for the court to grant leave to the applicant to appeal his convictions.

[33] As a result, the applicant has failed to persuade this court that the convictions should be disturbed. Consequently, leave to appeal conviction must be refused.

[34] Regarding the sentences imposed by the learned judge, the applicant has rightly abandoned the sole ground challenging the sentences on the basis that they are manifestly excessive, as already indicated. In line with Mr Clarke's concession, we consider that the sentences imposed cannot in any way be said to be manifestly excessive.

[35] Accordingly, there is also no basis on which to grant leave to appeal sentence.

[36] In light of the preceding conclusions, the court holds that the application for leave to appeal conviction and sentence must be refused as there is no legal basis on which this court could justifiably interfere with the verdicts and sentences of the learned judge.

Issue 4: whether the inordinate delay of eight years between the filing of the applicant's application and the production of the transcript amounts to a breach of the applicant's constitutional rights, and if so, what remedy, if any, this court ought to grant as appropriate in the circumstances (supplemental grounds 5 and 6)

[37] The applicant filed his application for permission to appeal conviction and sentence on 16 November 2015. The transcript of the trial was not produced to this court until 11 December 2023 – eight years later. Mr Clarke argued that the delay between the sentence and the production of the transcript to this court, in addition to the two years it has taken for the application to be disposed of, constitutes a breach of the applicant's constitutional right and that an adequate remedy would be, at the very minimum, a two-year reduction in sentence.

[38] The Crown acknowledged that there was undue post-conviction delay in producing the transcript, for which the applicant was not at fault. They argued that although the delay is regrettable and unusual given the relatively short length of the transcript, a declaration would be an appropriate form of redress in the circumstances.

[39] Section 16 of the Constitution, as contained in Chapter III – the Charter of Fundamental Rights and Freedoms ('the Charter'), provides, in part, as follows:

> "(1) Whenever any person is charged with a criminal offence he shall, unless the charge is withdrawn, be afforded a **fair hearing within a reasonable time** by an independent and impartial court established by law…
>
> …
>
> (8) Any person convicted of a criminal offence shall have the right to have his conviction and sentence reviewed by a court the jurisdiction of which is superior to the court in which he was convicted and sentenced…". (Emphasis added)

[40] It is a well-established principle that the right to a fair hearing within a reasonable time by an independent and impartial court extends to delays in post-conviction proceedings (see **Evon Jack v R** [2021] JMCA Crim 31 at para. [19] and **generally, Melanie Tapper v Director of Public Prosecutions** [2012] UKPC 26). The case law surrounding this issue, which involves missing or delayed transcripts, clarifies that where, among other things, the delay in the resolution of the appeal is lengthy or inordinate; the reasons for it are attributable to the State; the appellant has asserted his constitutional right; the delay is demonstrated to be prejudicial to the appellant and is, ultimately, unjustified in a free and democratic society, the court ought to grant an appropriate remedy for the breach of the constitutional right to a fair hearing (see **Taito v The Queen** [2002] UKPC 15; **Tussan Whyne v R** [2022] JMCA Crim 42; **Flowers v The Queen** [2000] UKPC 41; and **Desmond Lawrence v R** [2022] JMCA Crim 68 paras. [42]–[46]).

[41] There is no part of the eight-year delay that can be attributed to the applicant. In addition, the further delay of 18 months since the receipt of the transcript and the hearing of the renewed application for leave to appeal was due to the normal processes and schedule of this court. Therefore, the hearing of this renewed application for leave has been delayed by a period of nine years and six months.

[42] Counsel for the applicant conceded that one adjournment during the additional year and a half was due to his unavailability. However, while that instance contributed in part to the overall delay, the record reflects that the greater part of the delay remains attributable to the State. It also cannot fairly be said that the applicant was not prejudiced by the delay, even though the prejudice might not be as considerable

as in cases where the missing transcript had an impact on the consideration of the appeal as in **Evon Jack v R**. Finally, the applicant, having asserted his right, it was incumbent on the State to justify the delay and it has not done so. It is, therefore, indisputable that the applicant's right to a fair hearing of his application to appeal within a reasonable time has been breached by the State.

[43] The question now is, what remedy would be suitable in these circumstances to vindicate the applicant's constitutional right?

[44] In **Evon Jack v R**, Brooks P, indicated that where there is a breach of an applicant's right to have their appeal heard within a reasonable time, the form of redress may vary. The remedies may include a formal acknowledgement of the violation, a reduction in sentence, or, in some cases, the quashing of the conviction.

[45] In **Jahvid Absolam and others v R** [2022] JMCA Crim 50, the court considered that an eight-year period between conviction and the hearing of the appeal amounted to a constitutional breach and necessitated a constitutional remedy of two years' reduction in the applicant's sentence. Similarly, in **Anthony Russell v R** [2018] JMCA Crim 9 and **Andra Grant v R** [2021] JMCA Crim 49, there were four-year delays in the hearing of the appeals due to transcripts not being furnished to the court in a timely manner. As a result, this court reduced sentences in both matters by a period of one year.

[46] In light of this development in the court's jurisprudence concerning cases involving prolonged delays in the production of transcripts, this court deems it suitable and just to reduce the applicant's sentence on count two by two years as a remedy for the breach of his constitutional right. The court has also considered that the applicant was granted bail pending the hearing of his renewed application for leave to appeal since February 2025. While this would have served to positively impact his liberty rights, it was not sufficient to vindicate his right to have his application disposed of within a reasonable time. It must, nevertheless, be viewed as a part of the remedy offered to him for breach of his constitutional right. For this reason, the court would rule that the time on bail be treated as part of the sentence for the purpose of calculating his earliest date for release.

[47] This conclusion effectively implies that the sentence on count two for wounding with intent is being reduced not because it is manifestly excessive, but solely as a remedy for the infringement of the applicant's constitutional right to have his application considered by this court within a reasonable time, as guaranteed to him by section 16 of the Charter.

[48] Accordingly, the court makes the following orders:

1. The application for leave to appeal conviction and sentence is dismissed.

2. However, it is hereby declared that the constitutional right of the applicant to have his application for leave to appeal heard within a reasonable time, pursuant to section 16 of the Constitution, has been breached.

3. As a remedy for the breach of the applicant's constitutional right, the sentence of 15 years' imprisonment imposed for the offence of wounding with intent is set aside, and in its place is substituted a sentence of 13 years' imprisonment, representing a two-year reduction of the sentence imposed by the learned judge.

4. The sentences are to be reckoned as having commenced on 16 November 2015, the date they were imposed, and are to run concurrently as ordered by the learned judge.

5. The applicant's bail granted on 26 February 2025 and taken up on 4 March 2025 is hereby revoked, and he shall be re-committed to the jurisdiction of the Department of Correctional Services for his eligibility for early release to be determined as soon as reasonably practicable, based on the reduced sentence of 13 years' imprisonment on count two for the offence of wounding with intent, as ordered by this court.

6. The period the applicant was on bail must be counted as part of the sentence of imprisonment in computing his earliest date for release.