

JAMAICA

IN THE COURT OF APPEAL

MISCELLANEOUS APPEAL NO 3/2013

ON REFERRAL FROM THE GOVERNOR-GENERAL

**BEFORE: THE HON MR JUSTICE BROOKS JA
THE HON MRS JUSTICE MCDONALD-BISHOP JA
THE HON MR JUSTICE F WILLIAMS JA**

KEMAR JARRETT v R

Ms Jacqueline Cummings for the applicant

Mrs Natalie Ebanks-Miller for the Crown

6 and 9 February 2017

BROOKS JA

[1] We heard this application on 6 and 9 February 2017 and ruled on the latter date that it should be refused. Our reasons for our decisions were briefly stated at that time. We set out below a fuller outline of the factors that led to that outcome.

[2] The application was one for fresh evidence consisting of a statement of Ms Marjorie Bell to be adduced with a view to setting aside a conviction of the applicant, Mr Kemar Jarrett, for murder. Mr Jarrett was convicted on 17 January 2006. On 18 January

2006 he was sentenced to imprisonment for life and ordered to serve 25 years before being eligible for parole.

[3] The conviction arose from evidence adduced by the prosecution at Mr Jarrett's trial that he and Mr Lancelot Thompson shot and killed Mr Michael Wilson in the Dunkirk area of East Kingston. Mr Wilson's brother, Mr Devon Wilson, was the sole eyewitness for the prosecution.

[4] Mr Jarrett denied being involved in the incident. He said that he was outside of the island at that time.

[5] He sought to appeal that conviction. His application for leave to appeal was refused by this court on 18 October 2007. His present application has resulted from his petition to His Excellency the Governor-General, who has referred the matter for the court's consideration.

[6] The difficulty with the application is that Miss Bell has apparently died since making the statement on which Mr Jarrett seeks to rely. The death has resulted in a procedural difficulty as well as a substantive hurdle.

[7] The procedural difficulty is that her statement was not given on oath and there was no certificate attached to it, in which she acknowledged that she would be liable to prosecution in the event that she had given false information. Even if that difficulty were to be overcome, there is the fact that applications for fresh evidence must be considered capable of belief.

[8] The background to the case is that Miss Bell's statement comes 11 years after the event of the killing. Her explanation for the delay, as given in the statement, cannot, because of her death, be tested for reliability.

[9] Mr Jarrett called two witnesses at the trial to support his alibi, and despite having done so, the alibi was rejected. Miss Bell's statement seeking to cast blame for the killing on someone else, this long after the event and the trial, cannot be considered as credible.

[10] We have considered the written submissions advanced on behalf of Mr Jarrett and of the Crown and considered the further oral submissions of counsel. We are satisfied that the combined difficulties mentioned above prevented this application from being successful. We accept Ms Ebanks-Miller's submissions, for the Crown, that in the circumstances the statement cannot be considered as being capable of belief for the purposes of setting aside a conviction.

[11] It is for those reasons that we refused the application.