

[2012] JMCA Crim 18

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO 115/2010

**BEFORE: THE HON MR JUSTICE MORRISON JA
THE HON MR JUSTICE DUKHARAN JA
THE HON MRS JUSTICE McINTOSH JA**

TAFARI JOHNSON v R

Leroy Equiano for the applicant

Mrs Kamar Henry-Anderson and Miss Keisha Prince for the Crown

19 April and 18 May 2012

DUKHARAN JA

[1] The applicant was charged for the offence of murder, the particulars of which are that, on 27 December 2009 in the parish of St Ann, he murdered Rishena Smikle. On 29 October 2010 he pleaded guilty to manslaughter in the St Ann's Bay Circuit Court and was sentenced to imprisonment for life with a specification that he serves 15 years before being eligible for parole. The applicant was also pleaded on a second indictment which charged him with the offence of wounding with intent. To this indictment, he pleaded not guilty. However, he was erroneously sentenced to five years imprisonment at hard labour to run concurrently with the sentence for manslaughter.

[2] The brief facts of this case are that on 27 December 2009 between 2:30 and 3:00 pm Dave Richards accompanied the deceased Rishena Smikle to a house in Lime Tree Gardens, St Ann to retrieve her belongings. Mr Richards, not seeing the deceased after about 15 minutes, went to enquire about her when he saw the applicant by the doorway of the house, and the deceased seated on a bed. She indicated to Mr Richards to leave. As he turned to leave, the applicant took a machete from beside a door and began to chop him several times. Mr Richards retreated to his car and was subsequently taken to the hospital. After injuring Mr Richards, the applicant took a knife and stabbed the deceased several times. The forensic report revealed that there were 12 wounds on the body of the deceased and that the cause of death was due to multiple sharp force injury.

[3] The applicant, through Mr Equiano, sought to argue ground C of the original grounds of appeal which reads as follows:

“(c) Misrepresentation by Attorney: - That I was not adequately and sufficiently represented by my attorney assigned during the trial hence my innocence was compromised.

- That I was force [sic] to plea [sic] guilty by my attorney although I was wrongfully identified as the person who committed the alleged crime.”

[4] Affidavits were filed by the applicant as well as the attorney-at-law who represented him at the trial, Mr Ernest Smith. From a perusal of these affidavits, it was clear that the applicant’s plea of guilty had been entered by him voluntarily, Mr

Smith in fact exhibiting to his affidavit the applicant's explicit agreement that this was the course that he wished to adopt.

[5] Mr Equiano, after a brief exchange with the court, decided not to pursue the appeal against conviction but expressed some concern at the sentence imposed.

[6] We are of the view that the applicant having pleaded guilty to manslaughter, the learned trial judge erred when he imposed a sentence of imprisonment for life with the possibility of parole after 15 years. We are of the view that a term of years would have been appropriate in the circumstances. The formula applied by the learned trial judge is in fact only applicable in respect of a sentence of imprisonment for life upon conviction for the offence of murder (Offences Against the Person Act, section 3(1c)).

[7] The application for leave to appeal the conviction for manslaughter is refused. The application for leave to appeal sentence is granted and the application treated as the hearing of the appeal. The appeal is allowed; the sentence of imprisonment for life for manslaughter is set aside and a sentence of 15 years imprisonment at hard labour is substituted therefor. The sentence is to run from 29 October 2010.

[8] When dealing with sentence the learned trial judge proceeded to sentence the applicant to five years imprisonment for wounding with intent to run concurrently with the sentence for manslaughter. We find it amazing that no one in the court below picked up the error as the record clearly indicated that his plea was not guilty. Consequently, the purported conviction and sentence for that offence are a nullity.

[9] It is therefore for the Director of Public Prosecutions to determine the procedure to be adopted in relation to the charge of wounding with intent of Dave Richards.