

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO 78/2017

APPLICATION NO COA 2020APP00086

**BEFORE: THE HON MR JUSTICE BROOKS JA
THE HON MRS JUSTICE SINCLAIR-HAYNES JA
THE HON MISS JUSTICE STRAW JA**

LENROY LAWRENCE v R

Robert Fletcher for the applicant

Mrs Yanique Gardener-Brown and Hodine Williams for the Crown

8 June 2020

BROOKS JA

[1] On 28 July 2017, Mr Lenroy Lawrence pleaded guilty in the High Court Division of the Gun Court to the offence of illegal possession of firearm. He was sentenced to serve four years' imprisonment at hard labour.

[2] He filed an application for leave to appeal against his sentence. Although his application was refused by a single judge of this court, he sought to pursue it before the court. Regrettably, although the transcript of the proceedings in the court below was prepared in reasonably good time, his application for leave to appeal has not come on for hearing before the court.

[3] Because he has sought leave to appeal, Mr Lawrence has, technically, not yet started serving his sentence (see paragraphs [4] to [6] of **Tafari Williams v R** [2015] JMCA App 36). Had he not filed an application for leave to appeal, the time for Mr Lawrence's early release (pursuant to rule 178 of the Correctional Institution (Adult Correctional Centre) Rules, 1991), would have already passed. That statement assumes that he has no negative considerations, which are matters for the correctional institution.

[4] He wishes to take advantage of the privilege of early release rather than pursue his application for leave to appeal. In order to do so, he must file a notice of abandonment of his application for leave to appeal. He, however, cannot abandon the application for leave to appeal without seeking this court's approbation. Were he to proceed without the court's intervention, his sentence would be reckoned to have commenced on the date of the abandonment. The cases of **Tafari Williams v R** and **Sheldon Pusey v R** [2016] JMCA App 26 demonstrate that it is for this court to exercise its discretion whether Mr Lawrence may avoid that result.

[5] Mr Lawrence has filed an application asking this court to exercise its discretion and order that, on the filing of his notice of abandonment, his sentence should run from the date of his sentence. In an affidavit in support of his present application, Mr Lawrence deposed that at this stage, even if he were successful in his appeal, it "would be of no present meaning or benefit to" him. He wishes to be relieved of the hardships of the correctional institution and to go home to his family.

[6] The Crown has not opposed his application.

[7] There have been previous decisions of this court approving the course of proceeding that Mr Lawrence has requested. The cases include **Tafari Williams v R**, **Sheldon Pusey v R** and the Privy Council decision of **Tiwari (Leslie) v The State** [2002] UKPC 29. Regrettably, a steadily increasing number of cases have also been decided along these lines. As in those cases, Mr Lawrence's position is due to any fault on his part. Accordingly, orders similar to those made in **Tafari Williams v R** and **Sheldon Pusey v R**, may be made in this case.

Order

[6] It is hereby directed that, upon the applicant filing a notice of abandonment of his application for leave to appeal, his sentence shall be reckoned as having commenced on the date on which it was imposed, namely 28 July 2017.