JAMAICA

IN THE COURT OF APPEAL

BEFORE: THE HON MRS JUSTICE MCDONALD BISHOP P
THE HON MISS JUSTICE STRAW JA
THE HON MR JUSTICE LAING JA (AG)

PARISH COURT CRIMINAL APPEAL NO COA2024PCCR00005

RAY MORGAN v R

Terrence Williams KC and Miss Celine Deidrick instructed by John Clarke for the appellant

Mrs Kimberly Dell-Williams and Miss Tamara Merchant for the Crown

14, 15 October 2024 and 14 February 2025

Criminal Law - Appeal against sentence - Jurisdiction of judge of the Parish Court to impose consecutive sentences - Principles in relation to imposition of consecutive sentences- Totality principle - Whether aggregate sentence can exceed statutory maximum penalty for any single offence - Judicature (Parish Courts) Act, section 268 - Criminal Justice (Administration) Act, section 14

Constitutional Law - Breach of right to a fair hearing within a reasonable time - Unreasonable delay in production of notes of evidence - Appropriate redress - Constitution of Jamaica, section 16(8)

LAING JA (AG)

Background

[1] The appellant was tried and convicted in the Resident Magistrates Court (now the Parish Court) before a Resident Magistrate (now judge of the Parish Court), on an indictment containing four counts of obtaining money by false pretences contrary to section 35(1) of the Larceny Act. On 7 February 2011, he was sentenced to three years' imprisonment on each count by the Resident Magistrate ('judge of the Parish Court'). The four sentences were each ordered to run consecutively, resulting in an aggregate sentence of 12 years' imprisonment. The appellant, at all material times, asserted that on

the same day, he gave a verbal notice of appeal against both conviction and sentence in accordance with section 294(1) of the Judicature (Parish Courts) Act ('the Act'). This section permits a convicted person to initiate the appeal procedure by giving a verbal notice of appeal at the time of the judgment or written notice of appeal within 14 days of his conviction. Pursuant to section 296(1) of the Act, the appellant was required within 21 days of judgment (conviction and sentence) to file his grounds of appeal with the Clerk of Courts for onward transmission to the Court of Appeal. Section 299 of the Act imposes the obligation on the Clerk of the Courts to forward the record of the case to the Registrar of the Court of Appeal no later than 14 days after receiving the notice of appeal.

[2] The appellant produced his grounds of appeal to the prison authorities on 12 February 2011, which was within 21 days of the court's judgment of guilt. However, the authorities incorrectly transmitted the form B1 containing the appellant's grounds of appeal directly to the Court of Appeal instead of to the Clerk of Courts. This set in motion a series of unfortunate events, the details of which do not need to be rehearsed, however, the effect of which was that on his application for bail pending appeal, a single judge of this court ruled that, in the absence of any ground of appeal filed within 21 days as required by the Act, any appeal he had was deemed to be abandoned.

[3] The appellant completed serving his sentence and was released from prison. He subsequently made an application under the proviso to section 296(1) of the Act to have his appeal reinstated. The proviso permits the court to hear and determine an appeal notwithstanding that the grounds of appeal were not filed within 21 days "…in any case for good cause shown".

[4] On 7 June 2021, this court refused that application on the basis that, he did not demonstrate any merit in his appeal against conviction. The court also determined that, although his complaints in respect of the sentences that were imposed showed some merit, because he had essentially served those sentences, he would receive no benefit even if his sentences were adjusted to change the consecutive element to concurrent. Additionally, the court found that in light of the time that had passed since the matter

was determined in the Parish Court, it would not be in the interests of justice to attempt to unearth the judge of the Parish Court's reasons for imposing consecutive sentences. Accordingly, the application for the court to hear and determine the appeal from the conviction and sentences imposed on 7 February 2011 was refused.

[5] The appellant appealed to the Judicial Committee of the Privy Council. The Board held that this court erred in concluding that an appeal against the sentence was "academic" because the appellant had served his sentence and, therefore, would receive no benefit if his appeal succeeded.

[6] The Board concluded that this court erred in its treatment of the fact that the absence of the judge of the Parish Court's reasons for imposing consecutive sentences and the inability of the court to consider those reasons was a result of the justice system's own failure, for which the appellant can bear no responsibility.

[7] The Board also concluded that this court was in error in failing to take into account the wider public interest in the exercise of its discretion under the proviso to hear the appeal, having regard to its general as well as particular significance and the "…strong public interest in ventilating the various administrative errors so that public confidence could be maintained in the judicial system".

[8] The Board found that this court should have exercised its discretion under the proviso in favour of hearing and determining the appellant's appeal against the sentence, notwithstanding that his grounds of appeal were served out of time and, accordingly, a serious miscarriage of justice had occurred. It advised His Majesty that the appeal should be allowed "to the extent that the Court of Appeal should hear and determine his appeal against sentence".

The grounds of appeal

[9] The appellant's notice of appeal (form B1), dated 12 February 2011 and filed 7 March 2011 in the Court of Appeal, lists the following grounds of appeal ('the original grounds of appeal'):

> "(1) Unfair trial – That based on the evidence as presented the sentences are harsh and excessive and cannot be justified under law.
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> (b) That the actions of the court is [sic] unlawful under law with the sentences of four (4), Three (3) years consecutive sentences.
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> (2) That [the judge of the Parish Court] did not temper justice with mercy as she failed to recognised [sic]and taken [sic] into consideration the two (2) years spent awaiting Trial.
>
> (3) That the manifestation of the sentences are [sic] reflected in a manner in which [the judge of the Parish Court] read her own view into the law and based on her utterances reflected in the severity of the sentences when she said 'you should not see the light of day'. This utterances [sic] prejudice the sentencing policy of the Court and the circumstances therefor [sic] …"

The preliminary point – ought the appellant to be permitted to appeal against his conviction

[10] Counsel for the applicant, Mr Williams KC, conceded that although the appellant indicated in his notice of appeal that he was appealing the conviction and sentence, he did not raise any grounds relating to his conviction in his grounds of appeal. King's Counsel submitted that, nevertheless, as a matter of "fundamental justice", that ought not to matter, and this court could have extended the time for the appellant to have filed his grounds of appeal against conviction when his appeal was heard by this court. King's Counsel also stated that the appellant was hindered in his preparation of his appeal at the first hearing before this court. He argued that the essence of the Privy Council's decision was that the proviso states that if good cause is shown, the court can allow an

appellant to argue an appeal. Therefore, he argued that the Privy Council found that this court was wrong in not extending the time for the hearing of the appeal, and this court should now hear the appeal against not just sentence but conviction as well.

[11] We indicated to Mr Williams that we accepted that by applying the proviso, this court could have heard and determined the appellant's appeal against conviction, notwithstanding that his grounds of appeal regarding conviction were not filed within the prescribed time. However, an extension of time for the appellant to argue his appeal in respect of conviction would first have to be granted by the court. In considering whether such an extension of time should now be granted, we were influenced by the fact that this court had previously refused to hear the appellant's appeal against conviction and the Privy Council did not find that this court erred in that decision. Therefore, there was no basis on which this court could properly revisit its decision in respect of the appeal against conviction.

[12] The Privy Council did not find that this court was wrong in all respects and its opinion was circumscribed in that it was expressly stated in its conclusion at para. 80 that the appellant's appeal "should be allowed to the extent that the Court of Appeal should hear and determine his appeal against sentence".

[13] We did not find any merit in the submission of Mr Williams that it is inherent in the decision of the Privy Council that it anticipated that by allowing the appellant to appeal in respect of his sentence, the appellant would thereby also be permitted by this court to pursue his appeal against his conviction.

[14] Mr Williams also submitted that in the absence of the notes of evidence, the appellant would have been prejudiced in formulating his grounds of appeal against conviction. He expounded on that point to suggest that in the absence of those notes of evidence, it was impossible for the appellant to determine the learned judge of the Parish Court's reasons and whether the issues raised at trial were fairly considered and determined. It was further submitted that because the appellant was awaiting those

notes, which were not provided, he should be afforded the opportunity to appeal against conviction at the hearing of the appeal against sentence. The court indicated to Mr Williams that the Privy Council was evidently well aware that the appellant did not have the notes of evidence at the time of his appeal before that court, nevertheless, the Privy Council did not grant leave to appeal against conviction. We also indicated that this court had previously refused to hear the appellant's appeal against conviction and that decision of the court stands, it not having been disturbed by the Privy Council.

[15] The court refused to hear the appellant's appeal against conviction but ordered that the appellant was at liberty to argue ground 9 as reformulated below.

> "9. In the absence of the [judge of the Parish Court's] Findings of Fact, it is impossible to determine her reasons and whether the relevant issues on sentencing were fairly considered and determined."

[16] The appellant was permitted to abandon the original grounds as filed and to also argue supplemental grounds 3, 4 and 5 filed on 4 June 2021, which are as follows:

> "3. The [judge of the Parish Court] erred when she failed to fully take into account, by arithmetical deduction, all the time spent in custody prior to conviction (18 months) in assessing the length of the sentence that is to be served by the Appellant from the date of sentencing. The Appellant did not receive any credit for time spent in custody pending trial.
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> 4. The delay in relation to the hearing of this appeal breaches the Appellant's constitutional guaranteed right to a fair hearing as well as his rights guaranteed by section 16 (1), (2) and (8) of the constitution. The delay resulted in such prejudice to the appellant, including a breach of his right not to be subject to cruel and inhumane treatment and other treatment, or his sentence reduced or this court use its discretion to decline to order a retrial.
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> 5. Based on the full circumstances of this case, including the pre-conviction and post-convictions delays, the material sentence is manifestly excessive, harsh, unfair

> and unjust, especially on account of the breaches of the appellant's constitutional rights."

The appeal against sentence

The appellant's submissions

[17] The original grounds of appeal challenge the global sentence of 12 years' imprisonment imposed on the appellant and were addressed together. Mr Williams submitted that the sentence of the learned judge of the Parish Court was manifestly excessive. He put forward three bases for this conclusion. He stated that firstly, the judge of the Parish Court did not have jurisdiction to order consecutive sentences. Counsel submitted that the Parish Court, being a creature of statute, has no inherent jurisdiction, but only those conferred on it by statute. He argued that by virtue of section 24 of the Justice of the Peace Jurisdiction Act, a judge of the Parish Court is authorised to order consecutive sentences, but only where, at the time of conviction, the defendant was already serving a sentence for another offence. He also commended section 14 of the Criminal Justice (Administration) Act, which, he argued, also makes similar provisions.

[18] Secondly, Mr Williams submitted that the sentence imposed on the appellant usurped the powers of the Supreme Court. He indicated that section 35 of the Larceny Act stipulates a statutory maximum sentence of five years for the offence of obtaining money by false pretence when tried in the Circuit Court. However, he noted that by virtue of section 268 of the Act, the Parish Court was also vested with the authority to try such an offence, but its sentencing power is limited to only three years. Based on these premises, he opined that the sentence of 12 years imposed upon the applicant exceeded the sentencing powers of the judge of the Parish Court and became somewhat akin to the powers of the Circuit Court. Counsel acknowledged that in the case of **Sanja Elliott v R** [2023] JMCA Crim 53 ('**Sanja Elliot**'), also an appeal from the Parish Court, a five years' sentence was upheld by this court, but urged us, nevertheless, to maintain the sentencing limit of three years so as not to trespass on the remit of the superior court.

[19] Mr Williams submitted that the case of **Hinds v The Queen** [1977] AC 195 established that Parliament cannot confer upon an inferior court (the Parish Court) a jurisdiction that is concurrent with or replaces that of a superior court (the Circuit Court) to try grave crimes. He argued that though Parliament had granted the inferior court the power to try grave crimes, it was never the intention of Parliament to usurp the authority of the superior court to try grave crimes or even to empower the inferior courts to order severe sentences that approach or are akin to the sentencing powers of the superior court. Counsel further argued that, by section 272 of the Act, Parliament made specific provisions before a judge of the Parish Court can assume jurisdiction over such an indictable offence, namely, that the offence ought to be able to be adequately punished in keeping with the sentencing powers. King's Counsel advanced the argument that these principles not only preserve the dignity and function of the superior court but also protect the individual, and where Parliament intends to give the Parish Court powers of sentencing that are usually reserved to the Supreme Court, such an intention must be made patently clear.

[20] In addition, Mr Williams argued that there was a guardrail in place to ensure that an appropriate sentence is imposed, and justice is served, because pursuant to section 275 of the Act, if the inferior court is of the view that its sentencing powers are inadequate, the matter ought to be committed to the superior court.

[21] Thirdly, King's Counsel submitted that the sentences breached the totality principle. He argued that the totality principle dictates that the aggregate of the sentences should not substantially exceed the normal level of sentences for the most serious of the individual offences involved. He relied on the case of **Kirk Mitchell v R** [2011] JMCA Crim 1.

[22] Mr Williams noted that even superior criminal courts may not order consecutive sentences which exceed the statutory maximum and commended for the court's consideration the case of **Vishnu Bridgelall v Hardat Hariprasahad** [2017] CCJ 8 (AJ) ('**Bridgelall v Hariprasahad**') in which the Caribbean Court of Justice treated the

maximum sentence as being the same as the maximum aggregate sentence. Counsel also relied on the English case of **Attorney General's Reference; R v Ralphs** [2009] EWCA Crim 2555 ('**R v Ralphs**') in which he contended the court reached the same conclusion.

[23] In that regard, he submitted that the three years' sentence referred to as the maximum individual sentence in section 268 of the Act for the offence of obtaining money by false pretences ought to be treated as the maximum aggregate sentence when applying the totality principle. He argued that, therefore, the aggregate sentence of 12 years imposed on the appellant would offend the totality principle.

[24] King's Counsel posited that, consistent with the principles set out in **Kirk Mitchell**, the approach of the court for offences that are similar in nature such as those in respect of which the appellant was convicted should be that the court ought to impose a substantial sentence for the most serious offence, and then impose shorter sentences for the less serious offences which should run concurrently, but consecutively to the sentence for the most serious sentence.

[25] Submissions were also made to the effect that the judge of the Parish Court failed to credit the 18 months spent by the applicant in custody before the sentence contrary to the well-established principle in **Callachand and another v The State of Mauritius** [2009] 4 LRC 777, [2008] UKPC 49.

[26] King's Counsel recommended an overall sentence of three years and six months. On count one, he suggested three years with an 18-month deduction for time spent in custody, resulting in a sentence of one year and six months. The remaining counts, two years each, were to run concurrently with each other but asked for them to run consecutively to count one.

The Crown's submissions

[27] The Crown submitted that the issue of whether a judge of the Parish Court can pass consecutive sentences had been settled and relied on **Shadrach Momah v R**

[2013] JMCA Crim 52 (which was a case in which this court affirmed the appellant's consecutive sentences that were imposed by the then Resident Magistrate for the offences of obtaining money by false pretences and fraudulent conversion). While conceding that the 12-year aggregate sentence was excessive, it was submitted that Archbold Pleading, Evidence & Practice in Criminal Cases, 36th edition, para. 637 indicates that it is permissible to pass consecutive sentences on several counts the aggregate of which exceeded the maximum permitted on any one of the charges. In support of this assertion, counsel relied on the case of **R v Blake** 45 Cr App R 292.

[28] Counsel for the Crown also relied on **Sanja Elliot**. It was posited that since this court did not disturb the consecutive nature of the sentences, although it resulted in a total sentence of five years' imprisonment at hard labour which was in excess of the maximum sentence of three years' imprisonment allowable on any of the single counts, the court had implicitly approved the principle that in passing consecutive sentences the Parish Court was not limited to the maximum penalty that could be imposed for any single offence.

[29] The position was then advanced that having regard to all the circumstances of this case and especially the number and variety of counts against multiple parties, if the appellant is sentenced to a maximum of three years' imprisonment in respect of count one and he receives credit for time served in respect of this count, the sentence would be one year and six months' imprisonments. Thereafter, if he receives a sentence of two years' imprisonment for at least some of the other counts and those sentences are made consecutive to count one, his total sentence would be three years and six months, which could not be deemed to be excessive using the totality principle.

Analysis

[30] It is settled law that a judge of the Parish Court is empowered to impose consecutive sentences, and we agree with the Crown that the case of **Shadrach Momah v R** illustrates this. If additional support is needed, this can be found in the case of **R v Lloyd Chuck** (1991) 28 JLR 422 in which this court so found relying on section 14 of the

Criminal Justice (Administration) Act. **Sanja Elliot**, on which the Crown relies, also reinforces this jurisdictional authority.

[31] In **Sanja Elliot**, the appellant was convicted on 16 counts and sentenced to periods ranging from 18 months to a maximum of three years' imprisonment in respect of each. The sentences for the first group of offences, which constituted the majority of the offences, were to run concurrently, which meant that the total times to be served in respect of these sentences would be a maximum of three years. However, the sentences for a separate grouping of four counts, two of which were for 18 months and the other two, for two years' imprisonment, were ordered to run concurrently with each other but consecutively to the first group. The effect of this is that appellant was required to serve a total of five years' imprisonment.

[32] The issue that falls for our determination is whether the aggregate or global sentence resulting from the imposition of consecutive sentences may exceed the statutory sentencing power of the judge of the Parish Court. We do not agree with the Crown that **Sanja Elliot** supports its contention that the aggregate sentence can exceed the statutory maximum penalty for the offences. The reason being, among the offences committed by Mr Elliot was engaging in a transaction involving criminal property which is an offence contrary to section 93 of the Proceeds of Crime Act. Section 98 of that statute provides that an individual who commits an offence under that section is liable on conviction before a judge of the Parish Court "to a fine not exceeding three million dollars or to imprisonment for a term not exceeding five years or to both such fine and imprisonment". Accordingly, the aggregate sentence of five years' imprisonment, which Mr Elliot received, did not exceed the maximum of five years, which was permissible on at least one of the component offences for which he was punished. Therefore, it is evident why, with good reason, this issue was not expressly interrogated on appeal.

[33] Having regard to the authorities on which the appellant relies, it is necessary to analyse this issue in depth. A convenient starting point is section 268(1) of the Act

enumerates the offences triable in the Parish Courts. Section 268(2) sets out the punishment that may be imposed and is in the following terms:

> "(2) The offender, on conviction, shall be liable to the same punishment as for such offences he is now or hereafter may be liable to:
>
> Provided, that no Court shall award a sentence of more than three years' imprisonment, with or without hard labour, and a fine of one million dollars, where the conviction is for any offence referred to in this section other than an offence specified in section 13 of the Larceny Act, in relation to which a Court may award a sentence not exceeding four years' imprisonment or an offence specified in section 37 of the Larceny Act, or in section 4(2)(a) of the Forgery Act or an offence of uttering any document under section 9 of the Forgery Act, the forging of which is an offence under the said section 4(2)(a), in relation to which a Court may award a sentence not exceeding five years' imprisonment, and where a Judge of the Parish Court is only empowered, in respect of any such offence, to impose a sentence of imprisonment, he may impose a fine not exceeding one million dollars in lieu of imprisonment, if in the circumstances of any case he thinks fit so to do."

[34] The case of **R v Ralphs** was a reference under section 36 of the Criminal Justice Act 1988 (UK) by the Attorney General ('the AG') of a total sentence of six years' imprisonment imposed on the offender for serious breaches of the Firearms Act 1968. He received a sentence of six years' imprisonment on counts one and two, which were to run concurrently. He was sentenced to three years' imprisonment on the other counts, which were ordered to run concurrently with each other, and with the sentences of six years on counts one and two. The AG argued that the sentence was too lenient and should have been in the double digits. The statutory regime provided for a maximum of 10 years for some offences and a minimum of five years' imprisonment, save in the case of exceptional circumstances. Therefore, a sentence of 10 years' imprisonment required the imposition of consecutive sentences.

[35] The court made the following observation at para. 28:

> "… Our attention was also drawn to *R v Jameson and Jameson* [2009] 2 CAR (S) 26, a recent decision of this court, where it was stated that:
>
> '…A sentencing judge should pass a total sentence which properly reflects the overall criminality of the defendant and the course and nature of the criminal conduct disclosed by the offences for which he stands to be sentenced, while always having regard to the principle of totality. **However, the imposition of concurrent sentences for like offences may not be appropriate where, as here, the statutory maximum sentence for an offence prevents the proper reflection of these matters**'." (Emphasis added)

[36] The court considered that there was a problem deploying this decision and distinguished the case on its facts as follows:

> "However the problem with the deployment of this decision as authority for the proposition advanced on behalf of the Attorney General is that the offences of administering a poison or noxious substance involved a number of different occasions when acid was sprayed in faces of members of the staff of premises from which the appellants were stealing. These were 'like' offences which did not constitute a single incident. Where offences are indeed distinct or separate events, the court is entitled to order consecutive sentences to reflect the defendant's criminality."

The court was, therefore, concerned with what can be considered the first limb of the test for the application of consecutive sentences, that is, whether the offences were "like" offences which did not constitute a single incident. The court accepted that "[w]here offences are indeed distinct or separate events, the court is entitled to order consecutive sentences to reflect the defendant's criminality".

[37] Nevertheless, the court expressed a reluctance to accept on a point of principle what was considered in **R v Jameson and Jameson** [2009] 2 CAR (S) 26 ('**Jameson**') to be permissible and, at para. 29, the court concluded as follows:

> "29. When we invited Mr Atkinson to draw our attention to any sentencing decision which provided direct support for his

> submission that in this particular case consecutive sentences were appropriate, he was unable to do so. The problem is simple. In the context of a narrow range of available sentencing powers, and in particular the statutory maximum sentence, we are in reality being invited to circumvent the statutory maximum sentence on the basis that we believe it to be too low and to achieve our objective by disapplying well understood sentencing principles of which Parliament must be deemed to have been aware when the statutory maximum and minimum sentence was fixed. Tempting as it is to do so, that is a step too far."

[38] It is instructive that the court did not declare that the statement in **Jameson** to which it referred was incorrect as a matter of law. It appears to us that the court's decision in **R v Ralphs** turned on its particular facts and is reflected in the question posed to the AG, which reflects the overarching consideration, which is whether, in this particular case, consecutive sentences were appropriate. Nowhere in the decision does the court positively assert that consecutive sentences were not a possible option where they would result in a sentence above the statutory maximum of 10 years' imprisonment. The court was not convinced that a sentence in excess of 10 years was appropriate and ultimately increased the sentence from six years to eight years' imprisonment, which was below the maximum.

[39] In the absence of any express declaration that the statement in **Jameson** was not an accurate statement of the law, we examine critically the view expressed by the court, in para. 29 of **R v Ralphs**, that its use of consecutive sentences to result in a total sentence in excess of 10 years would "…circumvent the statutory maximum…by disapplying well understood sentencing principles of which Parliament must be deemed to have been aware when the statutory maximum and minimum sentence was fixed…".

[40] In **Bridgelall v Hariprasahad**, Bridgelall, the appellant, was tried and sentenced by a magistrate in Guyana to a fine and a five-year prison term for each of the two counts of being in possession of cocaine for the purpose of trafficking, with which he was charged. The sentences were ordered to run consecutively. The Full Court set aside the convictions and sentence, but on appeal by the Director of Public Prosecutions, the

magistrate's decisions were restored. Before the CCJ the issue was whether those sentences should have been made to run concurrently or consecutively. The court at paras. [31] and [32] recited the general principles relating to consecutive sentences and it is necessary to reproduce the court's observations as follows:

> "[31] Generally speaking, a Magistrate has the power to impose consecutive sentences. In this case, however, having regard to the circumstances, it was a mistake for the Magistrate to order the five-year sentences to run consecutively. Barring special circumstances, where a person is convicted of multiple offences which arise out of the same set of facts or the same incident, it will be appropriate to impose concurrent, and not consecutive, sentences. If, for example, a single incident of dangerous driving results in injuries or death to multiple victims, one would normally expect the court to impose concurrent sentences in respect of the separate charges related to each victim.
>
> [32] On the other hand, consecutive sentences may be given where the offences arise out of unrelated facts or incidents. If here, for example, Bridgelall's firearm had been un-licensed and he had been convicted on that offence as well, the Magistrate could have considered imposing on him, for the firearm offence, a sentence that was consecutive to those imposed for the drug offences. The Magistrate should have regarded the drug offences against Bridgelall as having arisen out of the same set of circumstances and so attracting concurrent sentences. There was here, as stated by the Full Court, a single act of possession of drugs found at one address albeit in two different places."

[41] At para. 33, the CCJ expressly confirms the well-established principle that "[c]onsecutive sentences may also be imposed where the offences are of the same or similar kind but where the overall criminality will not sufficiently be reflected by concurrent sentences…" and the case of **Jameson** was footnoted. However, at para. [34], the court concluded that notwithstanding the large quantity of cocaine, it did not entitle her to

exceed her sentencing jurisdiction by effectively imposing a 10-year sentence when her sentencing limit was a prison term of only five years. The court concluded as follows:

> "… Given the Magistrate's sentencing limit of 5 years coupled with the single act of possession giving rise to the separate charges, the Magistrate ought to have made the sentences run concurrently."

[42] The court also took the opportunity to suggest that the appellant ought to have been charged indictably, which would have exposed him to the possibility of life imprisonment if the view was that the upper limit of the magistrate's sentencing jurisdiction of five years was inadequate given the egregious nature of his conduct.

[43] The CCJ in **Bridgelall v Hariprasahad**, therefore, as in the case of **R v Ralphs**, found that the relevant offences arose out of a single act of possession. In **R v Ralphs** it was the possession of firearms and related items, and it was the possession of cocaine in **Bridgelall v Hariprasahad**. The CCJ concluded that the magistrate had an absolute sentencing limit of five years. However, the CCJ did not explain the judicial basis on which it concluded that this was the position, even if there were consecutive sentences. The CCJ did not consider **R v Ralphs** but acknowledged the case of **Jameson**, which was referred to by the court in **R v Ralphs**. Unfortunately, the CCJ did not address the portion of the opinion of **Jameson** that lends support to the imposition of consecutive sentences in excess of a legislated maximum penalty (which is reproduced earlier in this judgment).

[44] In the case of **Linton Pompey v The Director of Public Prosecutions** [2020] CCJ 7 (AJ) GY ('**Linton Pompey**') at para. 15, the CCJ confirmed that the consecutive sentences in **Bridgelall v Hariprasahad** were inappropriate because they arose out of the same set of facts or the same incident and that "… by imposing, in effect, a ten-year sentence on Bridgelall, the Magistrate was exceeding her statutory sentencing limit of five years".

[45] We have considered carefully the cases of **R v Ralphs** and **Bridgelall v Hariprasahad,** which are relied on by the appellant, and we are unable to accept these as authorities which conclusively support the position that consecutive sentences cannot be imposed if it results in an aggregate sentence that exceeds the statutory maximum penalty which a judge of the Parish Court may pass if the offences were tried separately. That is to say, in the example of the case under consideration, we do not find these cases to support the position advanced by the appellant, that consecutive sentences cannot result in a sentence greater than three years, since that is the maximum sentence which can be imposed in respect of any of the offences for which the appellant was convicted.

[46] Archbold Pleading, Evidence & Practice in Criminal Cases, 33rd edition, para. 406 lends support to the position that consecutive sentences may exceed the permissible sentence for one offence:

> "…*The criminal Law act*, 1827, s 10 (*ante*) relates only to cases where a sentence is passed for *felony*, but the rule thus laid down by statute with regard to felony also holds good at common law where sentence is passed for a misdemeanor. *R v Castro* 5 QBD 490: *Castro v R* 6 App. Cas 229 *R v Greenberg (No.2)* [1943 K.B. 381; 29 Cr. App. R. 51. Therefore, upon an indictment for misdemeanor, containing two counts for distinct offences, the prisoner, if found guilty on each count, may be sentenced to imprisonment for two consecutive terms of punishment, one in respect of each count, although the aggregate of the punishments may exceed the punishment allowed by law for one offence. Ibid and see *R v Morriss*, 19 Cr. App.R 75."

In the 36th edition, para. 637 of the same work and to which the Crown referred, this position is maintained by the leaned authors, who rely on **R v Blake** 45 Cr App R 292 for support. However, we appreciate that the position being advanced by the appellant is more nuanced in that it is also founded on the premise that the effect of the statutory maximum is elevated when it applies to the sentencing jurisdiction of a judge of the Parish Court because he is a creature of statute. Consequently, the judge of the Parish Court is statutorily precluded from imposing a sentence that exceeds the maximum

sentences prescribed in section 268 of the Act, in other words, the appellant asserts that section 268 imposes "a statutory sentencing limit" that is absolute.

[47] It is, therefore, necessary to commence with an examination of the proviso in section 268(2):

> "Provided, that no Court shall award a sentence of more than three years' imprisonment, with or without hard labour, and a fine of one million dollars, where the conviction is for any offence referred to in this section other than an offence…."

We are of the opinion that "any offence" in this section is to be construed to mean "any single offence". The section limits the judge's sentencing power in respect of an individual offence but does not purport to create an absolute ceiling of the judge's sentencing powers in cases in which consecutive sentences are appropriate. Consecutive sentences introduce another consideration which is rooted in the common law and the necessity to impose a sentence that is just having regard to all the circumstances of the case and the totality principle. Consecutive sentences result in longer terms of imprisonment, and the resulting aggregate sentence accounts for the fact that although the offender faced one trial, he was being punished for more than one offence, which together do not comprise a single incident.

[48] In **Linton Pompey,** at para. [16], Saunders PCCJ indicated that the totality principle may be thought of in a similar manner to the principle of proportionality. He made the following observation:

> "… The sentence imposed upon a convicted person should ultimately be neither too harsh nor too lenient. It must be proportionate. The totality principle requires that when a judge sentences an offender for more than a single offence, the judge must give a sentence that reflects all the offending behaviour that is before the court. But this is subject to the notion that, ultimately, the total or overall sentence must be just and proportionate. This remains the case whether the individual sentences are structured to be served concurrently or consecutively."

Similar sentiments were expressed by Brooks JA (Ag) (as he then was) in **Kirk Mitchell v R** [2011] JMCA Crim 1 at para. [46], but, at para. [57] he highlighted the following:

> "e. In all cases, but especially if consecutive sentences are to be applied, the 'totality principle' must be considered, in application of which, the aggregate of the sentences should not substantially exceed the normal level of sentences for the most serious of the sentences involved…."

[49] Where the case is one in which the first hurdle is crossed, that is, the offences do not arise out of the same set of facts or the same incident, and consecutive sentences may be appropriate, the totality principle becomes the paramount consideration in determining whether the court's power to impose consecutive sentences should be engaged. This principle will require us to determine whether consecutive sentences are necessary to achieve justice in all the circumstances of the case, even where the global sentence may exceed the statutory maximum which the judge of the Parish Court may impose for a single offence.

[50] Support for the court's position as reflected above may be found in the case of **R v Brendon Blair** (unreported), Court of Appeal, Jamaica, Resident Magistrate's Criminal Appeal No 129/1988, judgment delivered 18 January 1989 ('**Brendon Blair**'). The facts are recounted in the court's judgment and bear repeating to illustrate the appropriate boundaries of consecutive sentences. Between 21 November 1987 and 14 December 1987, Mr Blair, who was a member of the Jamaica Constabulary Force, collected money from four relatives. In exchange, he promised that he could stifle the prosecutions against them for the offence of possession of cocaine they were alleged to have committed. He received monies from three persons but the fourth did not pay over the money to him. He was tried on an indictment containing four counts. The first three counts charged him with bribery contrary to the Prevention of Corruption Act, which was repealed by the Corruption Prevention Act. The money he collected formed the basis for the first three counts of bribery, and the fourth count charged him with attempted bribery.

[51] Mr Blair was sentenced to serve two years' imprisonment at hard labour for the first three counts plus a fine of $1,000.00 on each count and two years' imprisonment suspended for three years for the fourth count in addition to a fine of $1,000.00. He was also ordered to repay the money he had collected as a bribe in each instance. The Resident Magistrate imposed two consecutive sentences for counts one, two and three, that is, the sentence of two years on count two was to be consecutive to the sentence of two years on count one, and the sentence of two years on count three was to run consecutively to the sentence on count two. This would have resulted in an aggregate sentence of six years' imprisonment. He appealed to this court which found that, by virtue of section 14 of the Criminal Justice (Administration) Act, the Resident Magistrate had no power to impose two consecutive sentences. This court cured this irregularity by vacating the Resident Magistrate's order that the sentence on count three is to run consecutive to the sentence on count two and ordering instead that the sentence on count three is to run concurrently with the sentence on count one. The effect of this amendment was that the sentences for counts one and three would be concurrent, and the sentence on count two would be consecutive (with count one and count three) resulting in an aggregate sentence of four years.

[52] It is essential to highlight that, as the court acknowledged, the learned Resident Magistrate imposed the maximum sentence under the Act and the essence of what was being urged was that the sentences were to run concurrently. Section 15 of the Prevention of Corruption Act, which establishes the penalties for the various acts of corruption, including bribery and attempted bribery, provides as follows:

> "15. –(1) Any person who commits an act of corruption commits an offence and is liable –
>
> (a) on summary conviction in a Resident Magistrate's Court-
>
> (i) in the case of a first offence to a fine not exceeding one million dollars or to imprisonment for a term not exceeding

two years, or to both such fine and imprisonment; and

(ii) in the case of a second or subsequent offence of fine not exceeding three million dollars or to imprisonment for a term not exceeding three years or to both such fine and imprisonment;"

[53] It must, therefore, be emphasised that the aggregate sentence of four years' imprisonment exceeded the statutory maximum of two years' imprisonment, which the Resident Magistrate was empowered to impose in the case of a first offence. It also exceeded the maximum sentence of three years in the case of a second or subsequent offence, although the question of whether any of the offences constituted a second or subsequent offence was not an issue in the case.

[54] What was raised as an issue was whether there was only one transaction and, therefore, consecutive sentences were not appropriate in any event, and all the sentences should have been made to run concurrently. The court addressed this issue, on page 4 of the judgment, as follows:

> "… We do not agree with that view of the facts. It is true that there was one prosecution by the appellant of some four persons under the Dangerous Drugs Act, but he approached for persons on different occasions and certainly was successful in obtaining money from three relatives of those persons. We cannot regard that as being one transaction, and therefore, we are in entire agreement with the learned resident magistrate when he imposed a consecutive sentence on count 2."

Although no authorities were cited by the court on this point, its analysis is squarely in keeping with the cases we have referred to in this judgment.

Conclusion on the parameters of consecutive sentences

[55] For the reasons we have expressed above, we are of the opinion that a judge of the Parish Court is empowered to impose consecutive sentences even where the

aggregate sentence exceeds the maximum sentence that could have been imposed for one offence. This principle applies whether the maximum sentence is imposed by virtue of section 268 of the Act or the particular statute which gives the judge of the Parish Court the jurisdiction to try the relevant offence.

[56] However, we find that the judge of the Parish Court erred in imposing the sentence of 12 years for two main reasons. The first is that, as confirmed in **Brendon Blair**, by virtue of section 14 of the Criminal Justice (Administration) Act, a judge of the Parish Court had no power to impose three consecutive sentences. The second is that a sentence of 12 years would, in any event, have been manifestly excessive.

[57] We wish to suggest, in the form of guidance, that judges of the Parish Court must exercise great care in imposing consecutive sentences and be guided by the principles identified by the authorities and in this case. When there is doubt as to whether the Parish Court can impose an appropriate sentence that is not unduly lenient, the prosecution should consider whether the jurisdiction of the Supreme Court should be engaged.

What is an appropriate sentence in this case?

[58] The Crown does not challenge the appellant's assertion that the sentence was manifestly excessive. It is clear from the facts that the offences for which the appellant was convicted involved multiple complainants and did not arise from the same incident. We accept the submission made by the Crown that consecutive sentences are appropriate in this case. We also find favour with the sentencing methodology suggested by the Crown, but only in part.

[59] The current approach to sentencing is now settled by cases such as **Meisha Clement v R** [2016] JMCA Crim 26 ('**Meisha Clement**') and **Daniel Roulston v R** [2018] JMCA Crim 20 ('**Daniel Roulston**'), in which McDonald-Bishop JA (as she then was), at para. [17], indicated that the following approach and methodology is to be employed:

> "a. identify the sentence range;

b. identify the appropriate starting point within the range;

c. consider any relevant aggravating factors;

d. consider any relevant mitigating features (including personal mitigation);

e. consider, where appropriate, any reduction for a guilty plea;

f. decide on the appropriate sentence (giving reasons); and

g. give credit for time spent in custody, awaiting trial for the offence (where applicable[])."

Counsel for the appellant brought to the court's attention the Sentencing Guidelines for Parish Court Judges ('the Parish Court sentencing guidelines'), which loosely follow the sentencing methodology established in **Meisha Clement** and **Daniel Roulston**. The Parish Court sentencing guidelines include the offence of obtaining money by false pretences and although it refers to section 29, this is clearly an error since section 29 refers to falsification of accounts which is the preceding offence addressed. It proposes a sentencing range of 18 to 24 months for the first offence and two - three years for subsequent offences. The usual starting point is 24 months, and the maximum is three years which is the maximum sentence in the Parish Court as fixed by section 268.

[60] In respect of count one, on which the appellant was found guilty of obtaining $3,415,000.00 from Horace Hall (the highest sum), there are no mitigating factors, but the appellant's criminal record spanned a period of 33 years and included an alarming total of 72 previous convictions for offences of dishonesty. These multiple prior convictions and the sum of money involved, constitute significant aggravating factors. When these aggravating factors are applied to the starting point, the appropriate sentence is increased beyond the upper limit of three years. We would impose three years imprisonment, which is the maximum that could have been imposed by the judge of the Parish Court.

[61] In respect of the remaining three counts, there are no mitigating factors, and the aggravating factors are similarly the appellant's previously referenced multiple prior convictions for offences of dishonesty, as well as the large sums of money that were involved. This would increase the starting point of one year and six months to a sentence of two and a half years on counts two and three. We would increase the sentence to three years on count four, given the brazen criminality of the appellant in the commission of this offence, having already deceived three persons in his latest series of reoffending.

[62] The offences for which the appellant was found guilty did not arise from a single event or transaction but were all separate offences committed against different complainants on diverse dates. For the reasons we have expounded on previously, this would justify the imposition of consecutive sentences to ensure appropriate punishment for the appellant in the interests of justice. Accordingly, the sentences in respect of counts two, three and four are to run concurrently with each other, but consecutively to the sentence of three years' imprisonment for count one.

[63] This results in an aggregate sentence of six years' imprisonment, which we believe appropriately reflects the overall criminality and the unfavourable antecedent history of this offender. We are of the view that this sentence is not only proportionate, but it would not usurp the jurisdiction of the Supreme Court.

Supplementary ground 3 - The learned Trial Judge erred when she failed to fully take into account, by arithmetical deduction, all the time spent in custody prior to conviction (18 months) in assessing the length of the sentence that is to be served by the Appellant from the date of sentencing. The Appellant did not receive any credit for time spent in custody pending trial.

[64] It is also now settled by this court that the appellant is to receive full credit for the time spent in custody before trial. Morrison P clearly stated this in **Meisha Clement**, at para. [34], as follows:

> "[34] This list is now largely uncontroversial. However, in relation to time spent in custody before trial, we would add that it is now accepted that an offender should generally

> receive full credit, and not some lesser discretionary discount, for time spent in custody pending trial. As the Privy Council stated in **Callachand & Anor v The State** [[2008] UKPC 49], an appeal from the Court of Appeal of Mauritius –
>
> > '... any time spent in custody prior to sentencing should be taken fully into account, not simply by means of a form of words but by means of an arithmetical deduction when assessing the length of the sentence that is to be served from the date of sentencing.'"

[65] In England, credit for time served in custody before trial is governed by section 240ZA of the Criminal Justice Act 2003 (under the heading "Time remanded in custody to count as time served"). Subsection (5) provides that a day counts as time served in relation to only one sentence and only once in relation to that sentence, however, subsections (8) and (9), when read together, indicate that consecutive sentences imposed on the same occasion are to be treated as a single sentence. Accordingly, the credit should apply to the total custodial term on the various counts. We are of the view that this approach is manifestly sensible and should be adopted in this jurisdiction despite earlier cases which might have applied a different methodology.

[66] The credit which the appellant is to receive should not be disaggregated so as to apply only to one or some of the counts, as the Crown submitted. Consequently, the outcome of applying the credit of one and a half years to the aggregate sentence of six years, is that the total period of imprisonment to be served by the appellant is four years and six months.

Supplementary ground 4- The delay in relation to the hearing of this appeal breaches the Appellant's constitutional guaranteed right to a fair hearing as well as his rights guaranteed by section 16 (1), (2) and (8) of the constitution. The delay resulted in such prejudice to the appellant, including a breach of his right not to be subject to cruel and inhumane treatment and other treatment, or his sentence reduced or this court use its discretion to decline to order a retrial.

Supplementary ground 5- Based on the full circumstances of this case, including the pre-conviction and post-convictions delays, the material

sentence is manifestly excessive, harsh, unfair and unjust, especially on account of the breaches of the appellant's constitutional rights

[67] These grounds and the bases for their inclusion are self-explanatory and can conveniently be dealt with together. Before commencing our analysis, it is necessary to reproduce sections 16(1) and (2) which are in the following terms:

> "(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.
>
> (2) In the determination of a person's civil rights and obligations or of any legal proceedings which may result in a decision adverse to his interests, he shall be entitled to a fair hearing within a reasonable time by an independent and impartial court or authority established by law."

[68] In the recent case of **Jerome Palmer v R** [2024] JMCA Crim 41 ('**Jerome Palmer**'), this court confirmed that included in the bundle of constitutional rights conferred on a person charged with a criminal offence are the rights to a fair hearing, by an independent and impartial court established by law, within a reasonable time. For our purposes the issue of reasonable time is paramount since the gravamen of the appellant's claim is that an unreasonable delay resulted in a breach of this right.

[69] Whereas section 16(1) addresses circumstances in which a person is charged with a criminal offence, section 16(2) confers a similar bundle of rights but in respect of the determination of civil rights and obligations of any legal proceedings which may result in a decision adverse to his interests. We do not find section 16(2) to have been engaged.

[70] In **Jerome Palmer**, in issue was the eight-year delay in the production of the trial transcript. The court found that this delay constituted a breach of the appellant's constitutional right to have his convictions and sentences reviewed by a superior court within a reasonable time as provided by section 16(8), which is in the following terms:

> "(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."

It should be noted that section 16(8) does not expressly state that the review by the superior court should be within a reasonable time. However, as the court in **Jerome Palmer** confirmed, the reasonable time guarantee conferred by section 16(1) extends to all stages of the adjudication process.

[71] The court considered whether a litigant asserting a breach of his constitutional right to a hearing within a reasonable time has to demonstrate actual prejudice to justify a reduction in his sentence. D Fraser JA conducted a scholarly analysis of the law and examined a number of relevant cases from the United Kingdom and this court. His observation at para. [30] is apt, and is reproduced as follows:

> "[30] In the cases reviewed, at least one or more of the factors that generate prejudice were evident. Significantly, in all the cases reviewed, the appellants challenged their convictions. Actually, in **Jahvid Absolam et al v R** [[2022] JMCA Crim 50], the appellants were partially successful in that challenge. Thus, in all these cases it could be said that the appellants harboured expectations or hopes of acquittal either at trial (where the delay was pre-trial) or on appeal (where the delay was post-trial) or at both stages of the adjudication process where there was delay at each stage. On appeal, they may also have contemplated a reduction of sentence even if their convictions were upheld. They were, therefore, subject to 'anxiety and concern' as they awaited the next stage of proceedings."

[72] In the instant case, the appellant is asserting that the delay in the hearing of the appeal and the non-production of the judge of the Parish Court's reasons for decision resulted in prejudice to him. In our analysis addressing the preliminary point, we explained why the issue of the appellant's appeal against conviction was not extant. We also articulated why we would not review that issue since this court had already on 7 June 2021, refused to hear the appeal against conviction on the basis that the applicant did not demonstrate any merit in that appeal. Furthermore, the Privy Council did not interfere with the finding of this court in that regard. However, it is acknowledged that

the appellant produced his grounds of appeal to the prison authorities on 12 February 2011, and his appeal was not concluded until 7 June 2021, which was a delay in excess of 10 years. We have also chronicled the events leading to the delay, which was wholly the fault of the State. The learned judge's reasons for her decision were unavailable at the hearing of the first appeal and before this court.

[73] It cannot be reasonably argued that the delay in excess of 10 years before the appeal was heard in this case was demonstrably justifiable, and the Crown quite admirably, did not attempt to do so. We find that the delay breached the appellant's constitutional rights to have his appeal heard within a reasonable time, contrary to sections 16(1) and 16(8) of the Constitution.

[74] The question that naturally arises from this finding is, what is the appropriate remedy for this breach? Given that the appropriate remedy for such breach depends on the nature of the breach and all the circumstances of the breach, including the stage at which the breach occurred (see **Attorney General's Reference** (No 2 of 2001) [2004] 2 AC 72. As highlighted in **Jerome Palmer**), an important consideration is whether the appellant suffered any prejudice as a result of the breach.

[75] On the strength of the overwhelming evidence against the appellant, we are of the view that he could not have reasonably "entertained any realistic expectation of success on his appeal" against conviction. As it relates to his appeal against his sentence, there was merit in that appeal, as demonstrated by the Privy Council and this court. Nevertheless, the appeal against the sentence is purely one of law, in respect of which the learned judge's notes of evidence could provide no material assistance. The decision of the Privy Council tacitly acknowledged this in its referral to this court to hear the appeal without concomitantly expressing any concern that the notes may be material to the appeal against sentence and/or that its absence might hinder the just disposition of the appeal. Accordingly, we are of the view that the appellant was not prejudiced by the delay in the provision of the judge of the Parish Court's notes of evidence.

[76] However, we are of the view that the appellant has demonstrated sufficient prejudice occasioned by the administrative errors of the State that prevented the timely transmission of his grounds of appeal to this court. The sentence imposed by the judge of the Parish Court was also manifestly excessive and was compounded by the delay in the appeal being heard. The result was that, not only did the appellant serve his sentence in full before his appeal was heard, but he served a sentence which we have found was significantly longer than he ought to have served as punishment for his crimes.

Conclusion on the claim for constitutional redress

[77] The appellant has already served the sentence ordered by the judge of the Parish Court and would not be entitled to a reduction in sentence as an appropriate remedy. He is, nevertheless, entitled to obtain an acknowledgement and declaration from this court that his constitutional rights to have his appeal heard by this court within a reasonable time, in accordance with sections 16(1) and 16(8) of the Constitution, have been breached.

[78] The appellant's contention that other rights have been breached and that he is entitled to other constitutional reliefs are better left to be ventilated before the Supreme Court, the court with original jurisdiction in these matters.

Disposition

[79] For the reasons expressed herein, we make the following orders:

(1) The appeal against the sentence of the judge of the Parish Court is allowed.

(2) The sentences imposed by the judge of the Parish Court are set aside and the following sentences substituted therefor:

i. On count one, the appellant is sentenced to three years' imprisonment.

ii. On counts two and three, the appellant is sentenced to two and a half years imprisonment on each count.

iii. On count four, the appellant is sentenced to three years imprisonment

iv. The sentences on counts two, three and four are to run concurrently but consecutively to the sentence of three years on count one.

v. From the aggregate sentence of six years to be served by the appellant, the appellant is credited with a deduction of one year and six months for time spent in pre-sentence custody.

vi. Accordingly, the appellant is to serve an aggregate sentence of four years and six months' imprisonment.

(3) The sentences are reckoned as having commenced on 7 February 2011, the date on which they were imposed by the judge of the Parish Court.

(4) The appellant having already served the sentences ordered by the judge of the Parish Court, the sentences substituted above are deemed to have been served.

(5) It is hereby publicly acknowledged and declared, that, regrettably, the rights of the appellant under sections 16(1) and 16(8) of the Constitution of Jamaica to have his sentences reviewed by this court, within a reasonable time, have been breached by the excessive delay between the filing and hearing of his appeal.