

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO 41/2012

**BEFORE: THE HON MR JUSTICE MORRISON P
THE HON MR JUSTICE BROOKS JA
THE HON MRS JUSTICE SINCLAIR-HAYNES JA**

JASON PALMER v R

Ravil Golding for the applicant

Miss Maxine Jackson and Stephen Smith for the Crown

22 January 2018

MORRISON P

[1] This is an application for leave to appeal against a conviction and sentence for murder, after a trial before D McIntosh and jury, in the Circuit Court for the parish of Saint Elizabeth. The jury returned a verdict of guilty of murder on 2 March 2012 and, on 19 March 2012, the applicant was sentenced to life imprisonment, with a stipulation that he should serve a minimum of 30 years' imprisonment before becoming eligible for parole.

[2] The application for leave to appeal against both conviction and sentence was first considered on paper by a single judge of this court on 25 November 2015, when it was refused. Accordingly, as he is entitled to do, the applicant now renews the application before the court.

[3] The applicant was convicted of the gruesome murder on 2 April 2007 of Mr Lesburn Watson, an elderly pensioner, in the district of Goshen in Saint Elizabeth. The conviction was based on overwhelming circumstantial evidence. Before us this morning, Mr Golding for the applicant has accepted – if we may say so, perfectly realistically - that there is no basis upon which the conviction can be successfully challenged. It is clear that the application for leave to appeal against conviction cannot succeed.

[4] However, the applicant now seeks leave to appeal against sentence, on the single ground that, in stipulating that the applicant should serve a minimum of 30 years in prison before parole, the judge failed to take into consideration the fact that he had already spent close to five years in custody while awaiting trial. The issue arises because, as the record confirms, the applicant was taken to hospital in police custody, having been rescued from the irate citizens who set upon him shortly after Mr Watson was killed on 2 April 2007. By the time he was sentenced on 19 March 2012, therefore, he had been in custody for just two weeks short of five years.

[5] Mr Golding very helpfully referred us to recent decisions of this court on this point, such as **Meisha Clement v R** [2016] JMCA Crim 26 and **Richard Brown v R** [2016] JMCA Crim 29. Both cases confirm that, in sentencing a convicted offender, the

now settled practice of the court is, in general, to give full credit to an accused person for time spent in custody pending trial.

[6] In this case, the judge gave consideration to most of the usual relevant factors in deciding what sentence to impose on the applicant. There is therefore no reason to suppose, as Mr Golding readily conceded, that the 30 year period before parole fixed by him was in any way out of range. However, as Miss Jackson and Mr Smith also quite properly accepted in their skeleton argument on behalf of the Crown (at paragraph 12), “[the judge] did not expressly demonstrate any regard for the duration of the Applicant’s incarceration prior to his trial”.

[7] In these circumstances, therefore, the application for leave to appeal against sentence is granted, the hearing of the application is treated as the hearing of the appeal, and the appeal is allowed. The sentence imposed by the judge is varied to one of imprisonment for life, with a stipulation that the applicant must serve a minimum of 25 years in prison before becoming eligible for parole.