[2022] JMCA Crim 53

JAMAICA

IN THE COURT OF APPEAL

BEFORE: THE HON MR JUSTICE F WILLIAMS JA
THE HON MISS JUSTICE SIMMONS JA
THE HON MR JUSTICE BROWN JA

PROSECUTION'S CRIMINAL APPEAL NO COA2021PACR00001

R v LINDELL POWELL

Miss Paula Llewellyn KC, Director of Public Prosecutions, Miss Renelle Morgan and Marvin Richards for the Crown

Mrs Dionne Meyler-Barrett for the respondent

30, 31 May and 28 October 2022

F WILLIAMS JA

Introduction

[1] This matter comes before us as the first appeal by the Crown, against a sentence passed by a judge of the Supreme Court ('the learned judge'), since the law was amended giving the Crown the right of appeal.

[2] The Judicature (Appellate Jurisdiction) (Amendment) Act, 2021, ('the Act') came into effect on 2 November 2021, amending the Judicature (Appellate Jurisdiction) Act ('the principal Act').

[3] The relevant section of the Act is the newly-introduced section 18A(2), which reads as follows:

> "(2) Subject to subsections (4) and (5), in any case, tried on indictment in the Supreme Court, the prosecutor may appeal to the Court of Appeal against-

(a) ….

(b) sentence imposed by the Supreme Court on conviction, if the appeal is on the grounds that-

(i) the Supreme Court did not have the power to impose the sentence; or

(ii) the sentence imposed is manifestly inadequate or unduly lenient (unless the sentence imposed is the maximum sentence permitted under the applicable laws)."

[4] Also of relevance to this appeal as indicating the options available to this court on hearing such an appeal, are sub-paragraphs 18A(8)(a)(i) and (ii), the wording of which is as follows:

"(8) Upon hearing an appeal under this section, the Court may-

(a) in the case of an appeal against sentence-

(i) quash the sentence imposed by the trial court and substitute such sentence as the Court considers appropriate; or

(ii) affirm the sentence of the trial court and dismiss the appeal;"

[5] The Crown has brought this appeal on two grounds, namely, that:

"(a) The Judge of the Supreme Court did not have the power to impose the sentence in accordance with section 42E(3) of the Criminal Justice (Administration) (Amendment) Act, 2015 [sic]. That is, he went below the mandatory minimum sentence of fifteen (15) years for the offence of Murder. In the alternative;

(b) that the sentence imposed by the Court below is manifestly inadequate or unduly lenient."

[6] By way of further background, it is useful to set out the charges contained in the indictment and also, although it will add considerably to the length of the judgment, the facts outlined to the court in respect of the offences.

The indictment

[7] The indictment charged the respondent with two counts of murder. The particulars of the offence of the first count stated that: "Linden Powell on the 07th day of January 2017 in the parish of Westmoreland murdered Oral McIntosh". The particulars of the offence in relation to the second count averred that: "Linden Powell on a day unknown between the 25th day of March 2017 and the 26th day of March 2017, in the parish of Westmoreland murdered Ika Clarke". It is to be noted that the respondent was not charged pursuant to any specific statutory provision for either of the counts. Each statement of offence simply states: "Murder".

The sentences

[8] On 17 November 2021, the respondent pleaded guilty to both counts of murder charged in the indictment in the Circuit Court for the parish of Westmoreland. As the pleas were taken near to the end of that circuit, the respondent's sentencing exercise was transferred to the Circuit Court for the parish of Hanover, in which the learned judge was next scheduled to preside. A social enquiry report and an antecedent report were ordered. On 2 December 2021, the respondent was sentenced to 12 years' imprisonment at hard labour on each count with the stipulation that he serve 10 years' imprisonment before becoming eligible for parole.

The facts

[9] The following are the facts as outlined to the court on 2 December 2021, (and contained at page 4, line 25 to page 10, line 25 of the transcript of proceedings below), which, due to their importance in this appeal, are reproduced verbatim:

> "**FACTS**
>
> The facts are, m'Lord, in respect of count one, that treats with the murder of Mr. Ika Clarke. On Sunday the 26th day of March, in the year 2017, at approximately 7:45 in the morning, Francesco Clarke, father of deceased, Ika Clarke, went to his farm in Mount Mountain, Grange Hill, Westmoreland, where he observed that a hut where his son Ika was living, and a hut which is on his farm, that is Mr. Francesco Clarke, was [sic] on fire. On approaching the hut he saw that his son was also set ablaze. He noticed

that there was wood and fire around him. He pulled off the wood and dragged his son's body from the fire. He appeared to be dead at the time.

Mr. Clarke then went to the police station at the Morgan's Bridge area and made a report. The police then had taken him back to the scene and he identified his son's body to the police using a scar that was on his left foot.

The scene was processed by Detective Constable Cox who removed a .40mm [sic] spent casing which was some forty feet from the hut. Also five (5) 9 millimeter spent casings and one expended bullet was removed from inside the hut.

M'Lord a Question and Answer interview was held with Mr. Lindell Powell who had been apprehended sometime thereafter. In that Question and Answer, my Lord, he stated that he knew one Carlington Godfrey, otherwise called Tommy and that it was he and Carlington Godfrey that 'mek step or do work'. He said – officer asked him when he said, 'mek step or do work' what he meant by that. He said when Ika Clarke was murdered. When asked the following question: 'What part did you play in Ika Clarke's murder?' He answered, in quotation, 'Fire five shots in a him chest.'

The accused then went on to state that it was Carlington Godfrey, otherwise called Tommy, that chopped up Ika Clarke and another person had burnt him. He states that this was done on Saturday, the 25th day of March 2017, between the hours of 10:30 p.m. and 3:00 a.m. He states that Ika Clarke was killed because 'Him did a mek talk say mi cousin, Bleachers, caan bury and then mi a go dead and him already kill one a mi friend, Jabez'. He also stated that the gun that the police had found on him on the 14th of July 2017, when he was apprehended, was one of the weapons used to kill Ika Clarke.

A postmortem examination was conducted on the 26th of June 2017, by Dr. S.D. Channa Perera where the cause of death was revealed to be multiple gunshot wounds to the chest.

In relation to Count 2, m'Lord, the murder of Mr. Oral McIntosh. On Saturday the 7th of January 2017, some three (3) months before the death of Mr. Ika Clarke, at approximately 5:00 a.m., Mr. Oral McIntosh was shot and killed at his home at Top Lincoln District, Grange Hill, Westmoreland. A witness indicated, m'Lord, that he and

Oral were on the outside of Oral's premises in the vicinity of the back door. He was assisting the now deceased to remove items from the deceased's vehicle. Whilst doing so he heard a voice say, 'Don't move, lie down pon unnu face.' The witness complied with these instructions. The witness said he saw two men, however, he could not identify them. He observed that Oral was approximately then (10) feet away from him and that he, Oral, the deceased, had also gotten down flat on his belly. The witness' phone started ringing and one of the gunmen said, 'Gimmi that phone.' The witness removed his phone and placed it on the ground. One of the men then asked if he had a firearm and he said no. He then heard when the man asked the deceased, Oral, if he had a gun with him. Further, that if he had a gun he would die. He then heard the same voice said, 'Gi mi dis.' M'Lord, it should be noted that the deceased was a licensed firearm holder. The witness then heard a loud explosion and heard footsteps leaving and he got up and called out to the deceased and realized that he was not responding. He observed that the deceased was lying on his back and blood was running from his head.

During an examination of the scene of the crime, one 9mm spent casing was removed from beside the deceased man's body.

On the 9th of March 2017, a postmortem examination was conducted on the body of Mr. Oral McIntosh and the cause of death was deemed to be a single gunshot wound to the face.

In a Question and Answer interview, m'Lord, interview which was conducted on the 15th of July 2017, accused, Mr. Lindell Powell, indicated that on the morning in question he was in the company of Mr. Logan Miller, otherwise called Alkaline, who, m'Lord, is now deceased. He said on Saturday, the 7th of January 2017, at about 5:00 a.m. when Mr. Oral McIntosh was killed, he states that he and Alkaline were on the road robbing men and women and he saw two men in a yard. He went to them and said, 'Go pon unnu face.' And whilst they were on their face he was searching the van. Alkaline then told them to turn over on their backs and he started searching them. He said Logan Miller, otherwise called Alkaline, found a gun on Oral and told him Powell to come. So Powell went to him and he Alkaline took the firearm that Lindell Powell was armed with at the time, and shot Oral in his head. He said Alkaline

> then took the gun from the deceased and both of them went into the bushes.
>
> He indicated that they took the deceased man's phone and gun and robbed him of about $32,000.00. He indicated that the firearm which was robbed from the deceased, Oral McIntosh, was a Taurus 18 shooter.
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> M'Lord, the examinations indicates [sic] -- had shown that that firearm had featured in the murder of the 26th of March 2017.
>
> M'Lord, those are the facts.
>
> His Lordship: You want to replead him?
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> Mrs. A. Martin-Swaby: I don't know if he has changed his mind. So, m'Lord, the only thing that had been tweaked m'Lord, my learned friend -- I had said the facts as were indicated before was that it was the accused, Powell, who took the firearm from the deceased, Oral McIntosh. But when I looked closely at the Question and Answer, m'Lord, it said, in my view it said 'mi' but my friend showed me where 'mi' and 'im', I-M and M-I were written at several pages on the document and m'Lord, it could be, m'Lord, I believe that he is saying 'im' took the gun from the deceased and they ran into bushes. So, I am not going to wrestle with my friend about that. That was the only issue, whether it was him, Alkaline that took the gun or me. And I will settle and give the benefit of the doubt to the accused that it says him. That is the only material."

[10] By way of correction, we note that the indictment itself shows that count one charged the respondent with Mr McIntosh's murder in January of 2017 and count two charged the respondent with Ika Clarke's murder in March of 2017; and not the other way around, as outlined in the facts.

Summary of the learned judge's sentencing remarks

[11] At the commencement of the sentencing exercise, the learned judge remarked: "In all my years on the Bench this has got to go down as one of the saddest cases I have ever come up on". He found that the respondent's 'autonomy' had been wrested away from him by a person said to be the leader of the gang of which he was a member. The learned judge had regard to the principles of sentencing, stating that he would not go the route of retribution; but would instead focus on the principles of

deterrence, reformation and protection of the society. He indicated that he was aware of section 42H of the Criminal Justice (Administration) Act, ('CJAA') and, in particular, the requirement for him to consider whether a sentence would "shock the public conscience".

[12] The learned judge stated that, in his determination of the appropriate sentences, he would be guided by the probation report and "the facts, which [are] outlined by the learned Director of Public Prosecutions". What then followed was a detailed review of the contents of the social enquiry report. At page 25 of the transcript, he listed the following as mitigating factors:

> "Mitigating Factors: I am going to take into account your youth, your immaturity, your mental state, your previous good character- if you have any – absence of premeditation, there is no planning here, the pressures under which the offence was committed, your capacity for reform, your co-operation with the police, and your expression of remorse."

[13] At lines 18 to 21 of the same page he observed:

> "By and large the aggravating factors far outweigh the mitigating ones. Even at a moment's glance that can be seen, that can be discerned from the report."

[14] The learned judge also, on more than one occasion, referred to section 42D(2) of the CJAA, which he understood to give him the power to discount a sentence on account of a guilty plea by up to 50%. He said that he was also considering such matters as the prevalence of the offence of murder; and "the circumstances surrounding the killing; whether the defendant has been charged with more than one offence".

[15] On three occasions, the learned judge referred to the facts outlined to the court as having been agreed. This may be seen, for example, at page 28, lines 10 to 11 of the transcript, where he refers to: "… the agreed statement of facts I have here…".

[16] The learned judge's final words on sentencing are to be found at page 29, lines 9 to 25 as follows:

> "I am going to be – I have to take away the four (4) years in which you have been in custody. I must give you credit for that. And like I say I don't think you are entitled to the fifty (50) percent discount, I don't think so. I just want to make sure. Remember now that the penalty for murder is life. We don't start there. The normal range is fifteen (15) years. So taking away the four (4) years from twenty (20), that would leave us with sixteen. I would also have to take away another percentage of those years, certainly not half. Another four years, that leaves us with what? Twelve. So that's the period of time you will have to serve. And you need to serve another ten years before you are eligible for parole."

[17] At that point, counsel for the Crown indicated an intention to appeal the sentences. The learned judge then summarized how he said he had approached the sentencing exercise, indicating, at the end, that he had acted pursuant to section 3(i)(b) of the Offences against the Person Act ('OAPA'), specifying a period of not less than 10 years' imprisonment for the respondent to serve on each count before becoming eligible for parole.

Summary of submissions

For the Crown

Ground (a): The Judge of the Supreme Court did not have the power to impose the sentence in accordance with section 42E (3) of the Criminal Justice (Administration) (Amendment) Act, 2015. That is, he went below the mandatory minimum sentence of fifteen (15) years for the offence of Murder.

[18] In support of ground (a) of its appeal, the Crown advanced a number of submissions. In summary, they were that: the facts agreed in respect of the murder of Mr Oral McIntosh, indicated that the murder was committed in furtherance of a robbery. Therefore, although this was not contained in the particulars of the offence, the learned judge ought to have considered section 2(1)(a) of the OAPA. As the murder was committed in furtherance of, arising out of or ancillary to a robbery, the learned judge, in sentencing the respondent, would have been required to consider section 3(1)(a) of OAPA in determining an appropriate sentence. The latter section mandates that the appropriate sentence for the type of murder committed in this count should be "…death or … imprisonment for life". The learned judge, therefore, erred in sentencing the respondent to 12 years' imprisonment. The learned judge, in

sentencing the respondent, would have been further constrained to apply section 3(1C) of OAPA, and to impose a pre-parole period of "not less than twenty years".

[19] As it relates to count two on the indictment, it was submitted that that offence required that the respondent be sentenced pursuant to section 3(1)(b) of OAPA. That section permitted the learned judge to sentence the respondent to life or "such other term as the court considers appropriate, not being less than fifteen (15) years". Thus, it was argued, the learned judge erred in sentencing the respondent to 12 years' imprisonment on that count. However, the learned judge did not err in imposing a pre-parole period of 10 years in respect of count two, as he was permitted to do so pursuant to section 3(1C).

[20] It was pointed out as well that, strictly speaking, the two offences charged on the indictment could have warranted the imposition of consecutive sentences. However, the Crown submitted that, in all the circumstances, it would not seek the imposition of consecutive sentences on this appeal; but would be content to maintain the position that it did before the learned judge, which is to request concurrent life sentences with non-eligibility for parole before 20 years.

Ground (b): In the alternative, that the sentence imposed by the Court below is manifestly inadequate or unduly lenient

[21] With respect to ground (b) of the notice of appeal the following is a summary of the Crown's position. It was submitted that, although the learned judge considered many of the factors relevant to sentencing, such as aggravating and mitigating factors and a starting point, "the starting point of fifteen (15) years was not appropriate". It was also submitted that the normal range of sentencing for the offence of murder is 15 years to life imprisonment (referring to the Sentencing Guidelines for Use by Judges of the Supreme Court of Jamaica and the Parish Courts, December 2017 ('The Sentencing Guidelines')). The Crown, in attempting to support this submission, referred at paragraph 32 of its submissions, to a table of cases in which appellants were ordered to serve periods of between 25 and 40 years' imprisonment before eligibility for parole, after conviction. Additionally, two cases were cited (**R v Fabian Skervin** [2021] JMSC Crim 7 and **R v Wade Blackwood** [2021] JMSC Crim 1) in

which, on each defendant pleading guilty to two counts of murder and being sentenced to life in prison, Skervin was ordered to serve 32 years and four months' imprisonment and Blackwood to serve 35 years' imprisonment before eligibility for parole.

[22] Although mentioning some of the relevant factors, the learned judge, it was submitted, needed to have been more forensic in his approach, indicating the number of years assigned to aggravating and mitigating factors. The learned judge, it was submitted, did not consider how the sentences would shock the public's conscience, a consideration required by section 42H(a) of the CJAA; and such a consequence being addressed in the social enquiry report.

[23] It was further submitted that the determinate sentences that were imposed on this respondent were not appropriate considering the heinous nature of the crimes in this case; and that the sentences being challenged do not fit the offence, having regard to all the circumstances. One case cited in support of the submission was **Tyrone Gillard v R** [2019] JMCA Crim 42. The Crown also referred to a number of other cases in further support of its submissions such as **Meisha Clement v R** [2016] JMCA Crim 26.

For the respondent

[24] On behalf of the respondent, counsel underscored the fact that much of what is known about the two murders, came from the respondent himself during the two question-and-answer sessions. It was further averred that the respondent also gave witness statements concerning his involvement in and the activities of a gang of which he is said to have been a member. Counsel also pointed to the respondent's indication that his involvement in the gang was born out of his fear that, had he not joined it, the leader would have killed him.

[25] Counsel informed the court that the main benefit to her client in pleading guilty was that the sentences were to have run concurrently and that the figure of 20 years' imprisonment was to have been "a starting point/a maximum time". She pointed out as an inconsistency, the Crown's contention that the sentences imposed should be substituted with life imprisonment with a 20-year pre-parole period, when, at the same

time, the Crown indicated that a pre-parole period of 10 years for count two was correct in law.

[26] The focus of counsel's submissions was that the learned judge had the power to impose the sentences that he did. She pointed out that in respect of count one, the Crown failed to indict the respondent as having committed the murder contrary to section 3(1)(b) of the OAPA. That permitted the court to treat the offence as it deemed appropriate. To alter the respondent's sentences, as the Crown requests, would be unfair and a breach of the rule of law, it was submitted.

[27] It was further submitted that, although section 3(1)(b) of the OAPA stated that a judge could sentence an offender to imprisonment for life or "such other term as the court considers appropriate, not being less than 15 years", section 42D(3)(a) of the CJAA permitted that judge to reduce that sentence on a guilty plea without regard to the prescribed minimum penalty.

[28] Counsel submitted that the learned judge used a starting point, not of 15 years, but of 20 years and took all relevant factors into account in arriving at, as being appropriate, a sentence of 12 years. In addition to that, the learned judge, it was submitted, was not without guidance, as he had the benefit of a social enquiry report and an antecedent report. In all the circumstances, therefore, it was submitted, the appeal should be dismissed.

Discussion

[29] It has often been said, and with good reason, that sentencing is perhaps the most difficult aspect of any criminal proceeding. It calls for a balancing exercise, with the judge considering the objects of sentencing; the particular facts of the case; the peculiar circumstances of the individual offender; mitigating and aggravating factors; the usual range of sentences for that type of offence; previous sentences and arriving at a sentence that fits the offence and the particular offender.

[30] It is also by now trite law that the basis for this court allowing an appeal in relation to sentence should come, not from mere disagreement by this court with the

sentence imposed, but only as a result of an error in principle in the court below. As Hilbery J stated in **R v Ball** (1951) 35 Cr App R 164, 165:

> "The trial Judge has seen the prisoner and heard his history and any witnesses to character he may have chosen to call. It is only when a sentence appears to err in principle that this Court will alter it. If a sentence is excessive or inadequate to such an extent as to satisfy this Court that when it was passed there was a failure to apply the right principles, then this Court will intervene."

[31] Similarly, in **Meisha Clement v R**, Morrison P made the following observation at paragraph [43] of the judgment:

> "[43] On an appeal against sentence, therefore, this court's concern is to determine whether the sentence imposed by the judge (i) was arrived at by applying the usual, known and accepted principles of sentencing; and (ii) falls within the range of sentences which (a) the court is empowered to give for the particular offence, and (b) is usually given for like offences in like circumstances. Once this court determines that the sentence satisfies these criteria, it will be loath to interfere with the sentencing judge's exercise of his or her discretion."

[32] Our task, therefore, is to ask ourselves: looking at these sentences, can we fairly say that the learned judge, in imposing them, has erred in principle? Did the learned judge have the power to impose the sentences that were imposed? And are the sentences (or is either of them) unduly lenient or manifestly inadequate?

The facts on which the sentences were based

[33] In considering what sentences to impose, the learned judge, on some three occasions, indicated that he was being guided by what he referred to as the "agreed facts". At no point was there any objection to or disagreement with this description. Similarly, when the facts were being outlined by the Crown, there was no demur. These facts related details about the robbery of Mr McIntosh, whose murder was the subject of the first count on the indictment, and the robbery as well of the witness who spoke to the incident. As we understand it (although this court was not supplied with the statements and answers given by the respondent) the fact that Mr McIntosh was murdered during the course of a robbery was the account also given by the

respondent. In those circumstances, it would not accord with justice to give preeminence to the fact that the respondent was not indicted pursuant to section 3(1)(b) of OAPA. So far as we are aware, up to the hearing of this appeal, there has been no dispute as to the circumstances in which the killing of Mr McIntosh, averred in count one, occurred.

[34] With the incontestable factual circumstances indicating that Mr McIntosh was killed in the course of or ancillary to a robbery, it is apparent that the learned judge erred in not imposing a life sentence in respect of this count; and in imposing a sentence of 12 years' imprisonment instead. This is borne out by a perusal of section 3(1)(a) of the OAPA, which reads as follows:

> "3. - (1) Every person who is convicted of murder falling within –
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> (a) section 2(1)(a) to (f) or to whom subsection (1A) applies, shall be sentenced to death or to imprisonment for life;
>
> (b) section 2(2), shall be sentenced to imprisonment for life or such other term as the court considers appropriate, not being less than fifteen years."

[35] In briefest summary, section 2(1), paragraphs (a) to (f) treat with the murder of persons committed whilst they were acting in the course of their duties in the criminal justice system, such as: members of the security forces, judicial officers and so on. It also covers what are commonly referred to as 'contract killings' and murders calculated to create a state of fear in the public or any part of it.

[36] Again, briefly summarizing section 3(1A), that section deals with a category of offences during the course of or ancillary to which the murder is committed, such as a sexual offence or robbery, arson of a dwelling house; burglary or housebreaking.

[37] So far as section 2(2) is concerned, that subsection stipulates that offenders committing those murders that do not fall to be sentenced pursuant to section 3(1)(a) (death or imprisonment for life), fall to be sentenced under section 3(1)(b) (life imprisonment or such other term not being less than 15 years).

[38] If the sentence of life imprisonment had been imposed, then, in accordance with section 3(1)(a), the learned judge should have stipulated a period of not less than 20 years before the respondent would have become eligible for parole.

[39] However, even if, for the sake of argument, counsel for the respondent be correct in her submission that the murder should not be considered as having been committed in the course of a robbery, then the appropriate sentence for the first count would have been life imprisonment, or, if the learned judge chose to impose a determinate sentence, that sentence should not have been less than 15 years.

[40] This error that has been demonstrated in the learned judge's approach in sentencing the respondent on count one, entitles the court, without more, to allow the appeal in relation to the challenge on this count and to sentence the respondent afresh. However, if it should later be shown that this court has erred in this regard, it may be useful to consider other aspects of the sentencing exercise.

Section 42 of the CJAA

[41] On more than one occasion, the learned judge made reference (correctly) to section 42H of the CJAA as requiring him to consider, among other things, whether the sentences he would impose would shock the public conscience. He also made reference to other sections of the CJAA that govern the maximum discount that can be given when a guilty plea is entered, depending on the stage of the proceedings against a defendant. So, for example, he referred on more than one occasion to being empowered to grant a discount of up to 50%. A careful reading of the CJAA shows that this was, in fact, not so. In making this error, the learned judge seemed to have conflated the provisions under section 42D and section 42E of the CJAA. The reality is that section 42D of the CJAA applies to offences generally – that is, those other than murder, and permits a sentencing judge on a guilty plea on "the first relevant date" to reduce a sentence "by up to fifty percent". Section 42E(2), on the other hand, deals specifically with murders falling within section 2(2) of the OAPA. It gives a sentencing judge the discretion to reduce a sentence by "up to thirty-three and one-third percent" where a defendant indicates on the first relevant date that he wishes to plead guilty.

[42] This is perhaps the appropriate time at which to discuss the submission made by counsel for the respondent to the effect that the learned judge was empowered to impose a sentence that fell below the mandatory minimum pursuant to section 42D(3)(a) of the CJAA. That section reads as follows:

> "(3) Subject to section 42E, and notwithstanding the provisions of any law to the contrary, where the offence to which the defendant pleads guilty is punishable by a prescribed minimum penalty the Court may –
>
> (a) reduce the sentence pursuant to the provisions of this section without regard to the prescribed minimum penalty…"

[43] As previously observed, section 42D is not applicable to the offence of murder. However, even if it was somehow relevant, it is clearly stated that its provisions are: "[s]ubject to section 42E". Also, section 42E contains no provision similar to that in section 42D(3)(a). In fact, what is stated at section 42D(3)(a) is completely the opposite to that stated in section 42E(3), which reads as follows:

> "(3) Notwithstanding subsection (2), the Court shall not impose on the defendant a sentence that is less than the prescribed minimum penalty for the offence as provided for pursuant to section 3(1)(b) of the *Offences Against the Person Act*."

[44] That submission, therefore, has no merit and must, accordingly, be rejected.

The method by which the sentence was arrived at

[45] In **Meisha Clement v R**, Morrison P, at paragraph [41], helpfully outlined the method and approach that a sentencing judge should take in attempting to arrive at an appropriate sentence, as follows:

> "[41] As far as we are aware, there is no decision of this court explicitly prescribing the order in which the various considerations identified in the foregoing paragraphs of this judgment should be addressed by sentencing judges. However, it seems to us that the following sequence of decisions to be taken in each case, which we have adapted from the SGC's definitive guidelines, derives clear support from the authorities to which we have referred:

(i) identify the appropriate starting point;

(ii) consider any relevant aggravating features;

(iii) consider any relevant mitigating features (including personal mitigation);

(iv) consider, where appropriate, any reduction for a guilty plea; and

(v) decide on the appropriate sentence (giving reasons)".

[46] Similarly, in the case of **Daniel Roulston v R** [2018] JMCA Crim 20, the following guidance was given at paragraph [17]:

> "[17] Based on the governing principles, as elicited from the authorities, the correct approach and methodology that ought properly to have been employed is as follows:
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> 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)."

[47] Also, at paragraph [57] of **Meisha Clement v R**, Morrison P observed:

> "The appropriate value to be ascribed to the aggravating factors will usually be a matter for the determination of the sentencing judge, doing the best he or she can in all the circumstances of the particular case."

[48] That would also, of course, apply to mitigating factors. The question that arises at this point is whether we are able to say from the transcript what values were assigned to the mitigating and aggravating factors in this case. The relevant part of

the learned judge's sentencing remarks (page 29, lines 15 to 23) was captured at paragraph [16] hereof and so will not be repeated.

[49] It is apparent from this section of the transcript that, although the learned judge mentioned some of the main factors and principles to be taken into account in deciding on the appropriate sentences in this case, the approach taken was, with respect, at best unorthodox. With reference to the portion of the quotation stating that: "I would also have to take away another percentage of those years, certainly not half", we are unable definitively to say on what basis the learned judge felt that he was obliged to take away "another percentage" and what that percentage (which appears to be a quarter of the figure of 16) could represent. The first four years deducted represented the time that the respondent spent in custody. Was the deduction of this second "percentage" made on account of the guilty plea; or on account of mitigating factors; or both? If it was made on account of the guilty plea, (and the statement "certainly not half" suggests it was), why was a discount of 25% being given, when, from all indications, the plea would likely have been taken on the first relevant date? Certainly, if that was the reason for the deduction of a second "percentage", some explanation would have been warranted, (though it is acknowledged that the percentage applied is discretionary and goes "up to" the 33⅓%).

[50] In any event, going back to the view that a sentence of life imprisonment was warranted with a minimum period of parole, below which the sentences imposed in this case fell, section 42E(3) of the CJAA becomes relevant. It will be recalled that it prohibits the imposition of a sentence that is less than the prescribed minimum, when giving a discount for a guilty plea to a charge of murder

[51] The approach taken in the final imposition of the sentences also demonstrates an unusual lumping together of the sentences for the two offences or counts on the indictment. It is to be borne in mind that where the counts on the indictment arise from different circumstances there should be individual consideration of the appropriate sentences. The methodology employed by the learned judge resulted in

the same sentence being imposed for both offences without any apparent consideration of the difference in the circumstances.

Another issue re time in custody

[52] Although not raised by counsel on either side, there is another matter that struck us as also falling due for consideration: that is the crediting of the respondent with four years as time spent in custody before he was sentenced. It is acknowledged that cases such as **Romeo DaCosta Hall v The Queen** [2011] CCJ 6 (AJ) and **Meisha Clement v R**, among others, have established how a sentencing court should treat time spent on remand by a prisoner – that is, full credit should be given for the time spent on remand. And, if special circumstances enjoin a departure from that rule, reasons for that departure are to be given.

[53] However, there are exceptions to the general rule of giving full credit for time spent in custody. In **Romeo DaCosta Hall v R**, the majority, at paragraph [18] opined as follows:

> "[18] We recognize a residual discretion in the sentencing judge not to apply the primary rule, as for example: (1) where the defendant has deliberately contrived to enlarge the amount of time spent on remand, (2) where the defendant is or was on remand for some other offence unconnected with the one for which he is being sentenced, (3) where the period of pre-sentence custody is less than a day or the post-conviction sentence is less than 2 or 3 days, (4) where the defendant was serving a sentence of imprisonment during the whole or part of the period spent on remand and (5) generally where the same period of remand in custody would be credited to more than one offence. This is not an exhaustive list of instances where the judge may depart from the prima facie rule, and other examples may arise in actual practice." (Emphasis added)

[54] Similarly, in **Callachand & Anor v State of Mauritius (Mauritius)** [2008] UKPC 49, Sir Paul Kennedy, writing on behalf of the Board, made the following observation at paragraph 10 of the Board's advice:

> "10. Their Lordships recognise that there may be unusual cases where a defendant has deliberately delayed proceedings so as to ensure that a larger proportion of his

> sentence is spent as a prisoner on remand. In such a case it might be appropriate not to make what would otherwise be the usual order. Similarly, a defendant who is in custody for more than one offence should not expect to be able to take advantage of time spent in custody more than once." (Emphasis added)

[55] So, the authorities show that, although ultimately being left to a sentencing judge's discretion, there is now generally a difference in treatment between (a) time spent on remand when there are no other charges, and (b) time spent serving a sentence whilst awaiting trial on another charge for which a defendant is ultimately sentenced. A defendant is usually given credit for the former; but not for the latter, as the latter situation has nothing to do with the matter for which he is ultimately sentenced.

[56] In the instant case it is accepted that the respondent was sentenced on 21 August 2019 to a term of 18 months' imprisonment for illegal possession of firearm and to a concurrent term of 18 months' imprisonment for illegal possession of ammunition. So that between the time that the respondent was taken into custody on 14 July 2017, to when he was sentenced for the two murders on 2 December 2021, some 18 months, or thereabouts, were spent serving a sentence. That period of time, therefore, ought not to have been included in the amount with which the respondent was eventually credited. The words "18 months, or thereabouts" are used because it is not impossible that a part of his sentence was remitted in keeping with the provisions of the Correctional Institution (Adult Correctional Centre) Rules, 1991. Rule 178(1) reads as follows:

> "A remission, not exceeding one-quarter, or in the case of a first sentence of imprisonment, not exceeding one-third, of the sentence may be earned, by reason of good conduct, in respect of any sentence for a period exceeding one month."

[57] The transcript shows that the learned judge was not assisted on this aspect of the matter. Neither have we been so assisted. However, in the circumstances, we are prepared to give the respondent the benefit of any doubt and to treat him as having served two-thirds (or 12 months) of his sentence and deduct that period from the

four-year period with which he was erroneously credited by the learned judge. It is arguable as well that the respondent should not be credited with the approximately two years and a month that he spent in custody in respect of both the murders and the offences of illegal possession of firearm and ammunition. However, we do not know if he was credited with that period when being sentenced for the illegal possession of firearm and ammunition. We will again give the respondent the benefit of the doubt and assume that he was not credited with this period when he was sentenced in August of 2019. He will, therefore, be credited with a period of three years and five months; and not four years.

[58] In summary on this ground, the learned judge erred (i) in imposing a sentence of 12 years' imprisonment instead of life imprisonment (or at the very least, of 15 years' imprisonment) in respect of count one; and (ii) in imposing a sentence of 12 years - that is, less than the prescribed minimum of 15 years' imprisonment - for count two.

[59] For all these reasons, we take the view that the learned judge fell into error in imposing the sentence that he did in relation to, at the very least, count one. He therefore imposed sentences that he had no power to impose, thus entitling us to sentence the respondent afresh. Before doing so, however, we will also examine ground two of this appeal.

Ground (b) – sentence manifestly inadequate or unduly lenient

[60] An examination of this ground calls for a consideration of: (i) the facts and circumstances of the murders and the guilty pleas; and (ii) sentences in similar cases.

[61] It would, of course, be helpful for us to come to some understanding of what the expression "unduly lenient" means. A definition of the term is not, as is customary, to be found in section 2 of the amending Act, the usual definition section. However, in section 18A(7) of the Act we are given some insight into the thinking of the legislature as to the meaning to be ascribed to the term. In that subsection, an explanation is given as to what "unduly lenient" means at the stage of an application for leave to appeal. The subsection reads as follows:

> "(7) The Court may grant an application for leave to appeal under subsection (2)(b)(ii) if the Court is satisfied that the sentence concerned is materially less than the generally expected and accepted level of sentence for the offence committed, having regard to the sentencing guidelines (if any) applicable to the offence, and the circumstances surrounding the offence." (Emphasis added)

[62] In our view, there is no need for a different interpretation to be placed on the phrase "unduly lenient" at the hearing of the appeal, from that used to decide whether to grant leave at the application for leave stage.

[63] Similarly, in **Attorney-General's Reference (No 4 of 1989)** [1990] 1 WLR 41, Lord Lane CJ, delivering the judgment of the Court of Appeal of England and Wales, at pages 45-46, observed as follows:

> "The first thing to be observed is that it is implicit in the section that this court may only increase sentences which it concludes were *unduly* lenient. It cannot, we are confident, have been the intention of Parliament to subject defendants to the risk of having their sentences increased — with all the anxiety that this naturally gives rise to — merely because in the opinion of this court the sentence was less than this court would have imposed. A sentence is unduly lenient, we would hold, where it falls outside the range of sentences which the judge, applying his mind to all the relevant factors, could reasonably consider appropriate. In that connection regard must of course be had to reported cases, and in particular to the guidance given by this court from time to time in the so-called guideline cases." (Emphasis added)

Lord Lane CJ, whilst saying that, also cautioned as follows:

> "However it must always be remembered that sentencing is an art rather than a science; that the trial judge is particularly well placed to assess the weight to be given to various competing considerations; and that leniency is not in itself a vice. That mercy should season justice is a proposition as soundly based in law as it is in literature."

[64] We have borne this caution in mind in our review of the matter.

[65] With respect to the phrase "manifestly inadequate", in other jurisdictions in which challenges similar to this one have been made, it has traditionally been

attributed its ordinary dictionary meaning or treated with in keeping with the words of Hilbery J in **R v Ball**, at page 165, as "… inadequate to such an extent as to satisfy this Court that when it was passed there was a failure to apply the right principles".

[66] Similarly, in the case of **Hili v The Queen, Jones v The Queen** [2010] HCA 45, the High Court of Australia observed at paragraph 60 of the judgment that:

> "[W]hat reveals manifest excess, or inadequacy, of sentence is consideration of all of the matters that are relevant to fixing the sentence."

[67] It is therefore apparent that the terms "manifestly inadequate" and "unduly lenient" speak to a sentence that, having regard to such considerations as the culpability of the offender, the seriousness of the offence, and whatever sentencing guidelines and sentences for similar offences in similar circumstances might exist, is inappropriately low in all the circumstances, arising from an error in principle or approach or a departure from established standards by the particular sentencing judge. Although the relevant sub-section states the phrases in the alternative (that is: "manifestly inadequate or unduly lenient") it seems that there is not much difference (if any) in meaning between the two phrases. The drafter of the provision, it appears, was simply endeavouring to cast a wide net to cover a broad variety of circumstances, as, it is difficult to see a sentence that would be regarded as "unduly lenient", for example, not also being regarded as "manifestly inadequate".

The Sentencing Guidelines

[68] A good starting point in considering the substance of this ground is the guidance offered in relation to murder sentences in the Sentencing Guidelines. According to the Quick Reference Table of the Sentencing Guidelines (page 35), the "normal range" for a sentence for murder is 15 years- life. Unlike in the case of most other offences, no usual starting point is given for the offence of murder. This, no doubt, is due to the many and varied forms and circumstances in which the murders that are committed come before the court. The court is expected to, as best it can, tailor the sentence to suit the circumstances of the particular murder. The other parts of the Sentencing Guidelines and the guidance that they give, are consistent with

section 3 of the OAPA, previously discussed at paragraphs [34] to [39] of this judgment.

Previous cases

[69] Previous cases can be helpful in giving the court general guidance as to a range of sentences for similar offences. However, as each case turns on its own peculiar facts and circumstances, the cases are to be considered, not with the intention of following and applying them slavishly, but only as general guides.

[70] Having said that, we note that in the two cases in the Supreme Court cited by the Crown in which guilty pleas were given, the sentences imposed that were to be served before eligibility for parole, exceeded 32 years. Those cases are likely the subject of appeals and, in any event, are decisions of a first-instance court, and so we bear that in mind.

[71] However, even considering cases that have come before this court in which sentences for the offence of murder have been reviewed, we have been hard pressed to find any in which determinate sentences have been imposed on an offender pleading guilty to two counts of murder. One case in which a determinate sentence was imposed and upheld for a single count of murder where the offender pleaded guilty is that of **Gawayne Thomas v R** [2022] JMCA Crim 11. In that case this court upheld a sentence of 35 years' imprisonment with the stipulation that that offender serve 25 years before becoming eligible for parole. More to the point, we also have not seen sentences of as low as 12 years imposed on an offender pleading guilty to two counts of murder. The lowest determinate sentence that we have seen was imposed in the case of **Ryan McLean, Richard Gordon & Christopher Counsel v R** [2021] JMCA Crim 21. In that case, in respect of the appellant Christopher Counsel, on a guilty plea, a sentence of 18 years' imprisonment with hard labour was imposed with 10 years stipulated as the period to be served before parole. It is noteworthy that that case concerned only one count of murder committed by the use of a knife.

[72] So that the sentences that were imposed in this case, do in fact appear to be unduly lenient as not having any comparable case with similar circumstances and a similar offender profile and such low sentences.

[73] To further show why we have come to that conclusion, we will consider some details of the circumstances of the two cases.

Count one - Oral McIntosh

[74] These are the more-important features in respect of this deceased, his death and its aftermath, that we think ought to be set out. They are taken from the question and answer session conducted with the respondent, as set out by the Crown in the agreed facts:

(i) He was killed, execution-style, during the course of being robbed and for no other reason than that he was in possession of a licensed firearm. He was told that he would have been killed if a firearm had been found on him. He was shot in the face. The murder occurred during the commission of multiple armed robberies of persons in that area by the respondent and another person.

(ii) It appears that, of the two robbers, the respondent was the one who was armed with the firearm at the time of the start of the robbery of Mr McIntosh and the one who gave the command for Mr McIntosh and his associate to lie on the ground.

(iii) The respondent, some four months later, was found in possession of Mr McIntosh's firearm, which, it appears, his accomplice took from Mr McIntosh. (It was also the firearm used in the murder of Ika Clarke.)

Count two - Ika Clarke

(i) The motive for the killing of Ika Clarke springs from threats made against and a boast directed specifically at the respondent and no one else. The motive for and manner of his killing suggest premeditation.

(ii) On his own admission, the respondent himself fired five bullets into Ika Clarke's chest, the cause of death confirmed by the forensic pathologist to have been those wounds.

(iii) In addition, Clarke was also chopped multiple times and his body set alight. Pieces of wood were placed around the body in an attempt to ensure that the body was severely burnt. The body was burnt almost beyond recognition and could be identified by Clarke's own father only by means of a scar on his "foot"; not by his face.

[75] It is therefore apparent that the murders which are the subject of this appeal were both execution-style killings, at least one of which the respondent himself committed by pulling the trigger. The accounts of how they occurred, as reflected in what the learned judge regarded as the agreed facts, differ somewhat from the account given by the respondent in the social enquiry report. In the report, it is fair to say that the respondent sought to downplay his role in the circumstances surrounding both killings, which he sought to portray more or less as chance encounters.

[76] There can also be no denying that the Crown's submission that, strictly speaking, sentencing for these two murders that did not arise from a single transaction but occurred in different months and in different circumstances, could have earned the respondent consecutive sentences (see, for example, the case of **Kirk Mitchell v R** [2011] JMCA Crim 1).

[77] Another consideration that was not in the respondent's favour is reflected in the social enquiry report. In that report, the respondent is characterized as "a high-risk offender". It was also stated that recidivism seems "highly probable" for the respondent. Additionally, it was indicated that, should the respondent be at large, that would place the wider society at risk.

[78] A consideration of a few cases will indicate that the sentences imposed that have resulted in this appeal, are out of line with sentences imposed for similar crimes in fairly-similar circumstances. For example, in the case of **Demar Shortridge v R** [2018] JMCA Crim 30, this court upheld a sentence of life imprisonment with a pre-parole period of 25 years, after a plea of guilty to one count of murder, only adjusting the sentence to credit the appellant with time spent in custody prior to sentencing. In the case of another appellant who had been 15 years old at the time of the commission of a gun murder and with a previous unblemished record, this court imposed a

sentence of life imprisonment with 15 years' imprisonment to be served before eligibility for consideration for parole (see **Maurice Lawrence v R** [2014] JMCA Crim 6).

[79] Conversely, sentences of 12 and 10 years' imprisonment are the types of sentences that we commonly see imposed and upheld after guilty pleas for lesser offences, such as robbery with aggravation and illegal possession of firearm and shooting with intent (see for example the cases of (i) **Troy Rogers v R** [2021] JMCA Crim 32 – in which, while adjustments were made to take account of pre-sentence custody, a sentence of 12 years' imprisonment for robbery with aggravation was upheld after a guilty plea by a first-time offender; and (ii) **Jermaine Barnes v R** [2015] JMCA Crim 3, in which sentences of 10 years' imprisonment for robbery with aggravation and illegal possession of firearm, on guilty pleas, were upheld by this court).

[80] The sentences imposed as well are lower than the starting points for several lesser offences, (although starting points are usually adjusted) as the observation of this court in **Lamoye Paul v R** [2017] JMCA Crim 41, shows. In that case, at paragraph [18] the court (per McDonald-Bishop JA) made the following observation with respect to the sentence imposed for the offence of illegal possession of firearm:

> "[18] In respect of illegal possession of firearm we have concluded that the sentence is manifestly excessive after an application of the relevant principles of sentencing. The learned judge was required to choose a starting point and a range for the offence, which she did not. Bearing in mind that this is not a case that involved the possession of a firearm simpliciter, but also the use of a firearm, a starting point, anywhere between 12 to 15 years, would be appropriate…". (Emphasis added)

[81] Similarly, at paragraph [22], the court also observed the following in relation to the offence of robbery with aggravation:

> "[22] ….The usual starting point for [the offence of robbery with aggravation] is 12 years. However, for a robbery executed with a firearm, and also by more than one perpetrator, the starting point must be higher. In this case, where there were at least two perpetrators, the range

within which the sentence should fall should be anywhere between 15-17 years." (Emphasis added)

[82] In **Paul Brown v R** [2019] JMCA Crim 3, this court also reviewed a number of cases relating to the offence of murder and found that there existed a range of between 25 and 45 years for pre-parole periods (with life sentences imposed) with those at the higher end of the range being imposed after trial for multiple counts of murder.

[83] All these observations from various perspectives bring into question the suitability or adequacy of the sentences imposed in the instant case. Added to these is the fact that, when he came to be sentenced for the murders that are the subject of this appeal, the respondent had previous convictions for illegal possession of firearm and ammunition.

The mitigating factors

[84] On the other hand, in relation to the mitigating factors that featured in this case, the learned judge had regard to all of them. They included: (i) the respondent's age (he was 18 years of age at the time of the commission of the offences and some 22 years of age at the time of his sentencing); (ii) his guilty pleas; (iii) his co-operation with the police; (iv) his unfortunate upbringing, which saw him interacting only briefly with his mother and lacking proper supervision; (v) his involvement in a gang with the possible coercion that that might involve.

Re-sentencing

[85] Approaching the sentencing of the respondent afresh, in light of errors made by the learned judge, and using a range of between 30 and 40 years, we are guided by the approach recommended in **Meisha Clement v R** as follows:

Act Required	**Consideration**	**Result/Count one**	**Result/ Count two**
(i) identify the appropriate starting point;	We take into account and seek to reflect the intrinsic seriousness of the particular offences. These are the offender's culpability in committing the offences and any harm which the offence has caused, was intended to cause, or might foreseeably have caused. Included is the level of premeditation.	Starting point of 30 years.	Starting point of 35 years.
(ii) consider any relevant aggravating features;	This includes consideration of factors such as use of a firearm; use of gratuitous violence; his previous convictions for illegal possession of firearm and ammunition etc (see para. 55).	Add eight years = 38 years	Add eight years = 43 years
(iii) consider any relevant mitigating features (including	These include such matters as: (a) the alleged coercion as a gang member; (b) the respondent's age etc (see para. [84])	Reduce by six years = 32 years	Reduce by six years = 37 years

personal mitigation);			
(iv) consider, where appropriate, any reduction for a guilty plea; and	A reduction of up to 33⅓%	32 years less 25% = 24 years	37 years less 25% = 28 years
(v) Time spent in custody	Three years and five months	24 years less three years and five months = 20 years and seven months	28 years less three years and seven months = 24 years and seven months
(vi) decide on the appropriate sentence (giving reasons)		20 years and seven months	24 years and seven months

[86] So in relation to count one – (Oral McIntosh) on the indictment, the sentence is life imprisonment, with the stipulation that the respondent serve 20 years and seven months before becoming eligible for parole.

[87] In relation to count two - the murder of (Ika Clarke) as previously discussed, the main error made by the learned judge in relation to this count on the indictment, was not to have imposed, at the very least, a minimum sentence of 15 years. However, even if the learned judge had imposed the minimum 15-year sentence, having regard

to the gruesome nature of this murder, he would again have fallen into error in imposing the minimum sentence for such a murder – even taking the totality principle into account. As also previously discussed, the learned judge had the power to have imposed, as he did, a period of 10 years (the minimum sentence) before the respondent became eligible for parole. However, as we are sentencing afresh, and given the heinous nature of the murder, we are of the view that imposing the minimum period stipulated was inappropriate in all the circumstances, and we consider that life imprisonment with a pre-parole period of 24 years and seven months would be more appropriate.

[88] We will, therefore, alter the sentence on this count to life imprisonment, with the stipulation that the respondent serve 24 years and seven months before becoming eligible for parole.

[89] Both sentences are to run concurrently.

[90] Additionally, the sentences are to be reckoned as having commenced on the date on which they were imposed – to wit, 2 December 2021.

Conclusion

The matter of sentencing

[91] In the decision of this court in **Paul Brown v R**, at paragraph [19], it was observed that:

> "[19] It has often been said that sentencing is the most difficult part of a criminal trial. It is often similarly a most difficult exercise for a court of review."

[92] That observation still holds true. It is apparent from a reading of the transcript that this was not a case in which the learned judge had arbitrarily imposed the sentences that he did. Rather, it can be seen that he tried to grapple with the difficult task and unusual circumstances of the offender and each murder with which he was confronted. In the end, he fell into error primarily as a result of a failure to follow systematically the guidance in cases such as **Meisha Clement v R** and **Daniel**

Roulston v R which first-instance judges may, to their advantage, use as a template to guide their sentencing decisions. His errors necessitated our intervention.

[93] Additionally, it seems to us that, although the learned judge several times referred to section 42(H) of the CJAA and the concept of a sentence shocking the public conscience, he failed to pay sufficient regard to the views expressed in the community report section of the social enquiry report; and to give those views greater weight than he did in informing the sentences ultimately imposed. We are of the view that those considerations, along with all the other circumstances discussed in this case, give a sufficient indication that the sentences imposed would, indeed, shock the public conscience. The respondent's being a high-risk offender and so likely to be a recidivist would suggest that greater weight ought to have been given to the objects of deterrence and incapacitation than was done; or, at the very least, rehabilitation within the context of a structured environment that a correctional institution, it is hoped, would provide. We are satisfied that the sentences imposed in this case were not just lenient; but unduly lenient and manifestly inadequate.

[94] We note in passing the Crown's seeming concern with the fact that the sentences imposed did not accord with what was recommended. Of course, a judge is not bound by a recommendation from counsel; and would only be bound by a sentence indication given as a result of a Goodyear-type hearing (see **R v Karl Goodyear** [2005] EWCA Crim 888) as is reflected in Practice Direction No 2 of 2016 of the Supreme Court of Judicature of Jamaica. That process was not formally engaged in this case.

[95] In the result, we make the following orders:

(i) The appeal is allowed.

(ii) The sentences imposed by the learned judge are quashed and, in their stead, the following are imposed:

a) Count one – life imprisonment, with the stipulation that the respondent serve 20 years and seven

months at hard labour before becoming eligible for parole.

b) Count two –life imprisonment with the stipulation that the respondent serve 24 years and seven months at hard labour before becoming eligible for parole.

(iii) The sentences are to run concurrently and are to be reckoned as having commenced on the date on which they were imposed – to wit, 2 December 2021.