[2026] JMCA Crim 21

JAMAICA

IN THE COURT OF APPEAL

BEFORE: THE HON MR JUSTICE F WILLIAMS JA
THE HON MISS JUSTICE P WILLIAMS JA
THE HON MRS JUSTICE V HARRIS JA

PROSECUTOR'S CRIMINAL APPEAL NO COA2023PACR00003

R v ANDRE THOMAS

AND

SUPREME COURT CRIMINAL APPEAL NO COA2023CR00088

ANDRE THOMAS v R

Ms Rennel Morgan, Dwayne Green and Nyron Wright for the Crown

Leroy Equiano for the respondent

9, 16 October 2025 and 25 September 2026

Criminal Procedure – Appeal by prosecutor – Timeline for hearing of appeal – Judicature (Appellate Jurisdiction) Act, section 18A

P WILLIAMS JA

Introduction

[1] On 27 July 2023, Mr Andre Thomas ('the respondent') was convicted of two counts of murder, following a 19-day trial in the Home Circuit Court before L Pusey J sitting with a jury. On 10 November 2023, the respondent was sentenced to life imprisonment with a requirement that he serve a minimum of 26 years' imprisonment at hard labour before becoming eligible for parole, on each count. The sentences were ordered to run concurrently. On 16 November 2023, the Crown filed a notice of application for leave to appeal this sentence. On 12 December 2023, the respondent applied for an extension of time within which to appeal as well as leave to appeal both conviction and sentence.

[2] By way of background, it is sufficient to note that the respondent had been charged along with another man who had pleaded guilty to both counts of murder and entered into a plea agreement with the Crown. Pursuant to the agreement, the co-accused was sentenced to life imprisonment with the stipulation that he serve a minimum of 28 years' imprisonment at hard labour on each count before becoming eligible for parole, and it was ordered that the sentences were to run concurrently. The case for the prosecution at the trial of the respondent rested largely on the evidence of the co-accused, who was the sole witness as to fact.

[3] The transcript of the trial was received by this court on 6 November 2024. A single judge of this court considered the applications and on 14 July 2025 granted the prosecution's application for leave to appeal the sentence. For completeness, at the same time, the single judge refused the respondent's application for leave to appeal conviction and sentence. He noted that although no grounds had been filed in relation to the application for leave to appeal the sentence, the issue would be considered in the context of the prosecution's leave to appeal. The single judge ultimately refused the application for leave to appeal both conviction and sentence. On 24 July 2025, the applicant renewed his application to appeal both conviction and sentence. This application is yet to be heard by the court.

[4] The matter came on for hearing on 9 October 2025, and we were compelled to consider whether there had been compliance with requirements imposed by the legislation giving the prosecution the right to appeal: namely the Judicature Appellate Jurisdiction (Amendment) Act 2021, amending the Judicature (Appellate Jurisdiction) Act ('the JAJA') which came into effect on 2 November 2021.

[5] The matter was adjourned to afford counsel for the Crown and the respondent an opportunity to consider and make submissions on the import of the provisions. On 16 October 2025, the applicant filed a "Renewed Prosecution's Notice of Application for Leave to Appeal", and Mr Nyron Wright ('Mr Wright') filed an affidavit in support of the application. On 22 October 2025, Mr Leroy Equiano ('Mr Equiano'), counsel appearing for

the respondent, filed submissions in response. We had proposed to reconvene to continue the hearing on 23 October 2025. However, with the impending arrival of Hurricane Melissa, we were forced to remove the matter from the list for hearing and to instead consider the issue on paper. We apologise for the delay in doing so.

The submissions

[6] In his affidavit, Mr Wright acknowledged that the law required that the appeal must be heard within 12 months from the date upon which the application for leave was made and that as a result of this procedural obstacle, the Crown's appeal can be deemed out of time and, therefore, barred.

[7] It was in light of this, the Crown sought to renew its application for leave to appeal the sentence on the ground that it is manifestly inadequate and/or unduly lenient in the circumstances. It was asserted that it would be in the interests of justice to have the appeal heard, as to deny the opportunity to have this appeal heard in these circumstances would be inimical to the public interest by undermining public confidence in the justice system, specifically in plea agreements.

[8] It was further asserted that there was nothing in law to restrict the Crown from renewing its application. The respondent would not be unduly prejudiced by the delay in the hearing of this appeal nor would he be unduly prejudiced if the orders sought in the renewed application were granted, whereas the Crown has a real prospect of succeeding in this appeal as there are arguable grounds for submitting that the sentence was manifestly inadequate or unduly lenient. It was contended that the orders sought would be in keeping with the overriding objective to deal with cases justly and on their merits.

[9] In response, Mr Equiano opined that one of the main concerns about the introduction of the prosecution's right to appeal must be the effect such appeal will have on the length of time affected persons will endure not knowing their individual fate. This concern would arise from the delays experienced in the criminal justice process and the possible impact on a subject's constitutional right to a fair trial within a reasonable time.

It was submitted that, to alleviate this fear, strict time limits were incorporated into JAJA. One such is the time allotted to the prosecution to appeal a decision; the other, and more rigid, is the time limit, that is, the time within which an appeal must be heard, namely 12 months after the date on which the application for leave to appeal was made.

[10] It was pointed out that there is no provision in this legislation for judicial discretion to extend time. It was submitted that, on balance, the amended legislation must be given a strict interpretation, especially in circumstances where prosecutors, legislators and the executive were fully aware of the resources available in the administration of the criminal justice system when the legislation was being proposed and debated before becoming law. Reference was made to **Beatrice Mckenzie et al v The Attorney General of Jamaica** (unreported), Court of Appeal, Jamaica, Supreme Court Criminal Appeal No 86/2003, judgment delivered on 22 March 2006.

Discussion and disposal

[11] The relevant sections of JAJA are found in section 18A, and read 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).
>
> (3) Where a prosecutor intends to appeal under subsection (2) or to obtain the leave of the Court to do so, the prosecutor shall give notice thereof, in such manner as may be directed by rules of court, within fourteen days after the date of the decision or sentence (as the case may be) or such longer period as the Court may allow.

(4) Leave of the Court –

…

(b) is required for an appeal under subsection... (2)(b)(ii).

…

(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.

…

(9) Where under this section-

(a) an application for leave is granted, the Court shall hear the appeal within twelve months after the date on which the application was made, …"

[12] The procedure and the time limits for an appeal by a prosecutor are very clearly and unambiguously set out. Of relevance to this matter, where the prosecutor intends to appeal against a sentence imposed by the Supreme Court, pursuant to section 18A(2)(b)(ii), leave of this court is required. In seeking to appeal, the prosecutor must do as directed by rule 3.4A of the Court of Appeal Rules ('CAR'). Pursuant to rule 3.4A(1)(b), the prosecutor is required to file a notice of application for permission to appeal. The first time limit of significance is that this must be done within 14 days after sentence. However, section 18A(3) of the JAJA provides that the time for so doing can be for such longer period as the court may allow. The application for permission to appeal was filed 6 days after the sentence was imposed and, therefore, was well within the time permitted by the JAJA.

[13] The next significant time limit prescribed by the JAJA for this matter is that where the application for leave to appeal is granted, the appeal shall be heard within 12 months after the date on which the application was made. This means that once this notice of

application for permission to appeal was filed with the registrar of this court, she was to require the registrar of the court below to supply the record so that a single judge could consider the application (see rule 3.7(2) of the CAR). In practical terms, this meant that within the 12 months stipulated by the legislation, the transcript of this trial, which had lasted some 19 days, was to have been prepared and sent to this court for consideration by a single judge, to facilitate the hearing of the appeal within that time. The fact that the transcript was received by this court on 6 November 2024 is commendable given the usual and unfortunate delays in the system as it currently exists. This was, however, just 10 days before the expiration of the 12-month period.

[14] The application for leave to appeal was filed on 16 November 2023, and the appeal was to have been heard within 12 months of that date. Thus, when this matter came on for hearing in October 2025, that time had long expired. Commendably, the Crown acknowledged that this time limit had not been met and, therefore, accepted that the appeal was time-barred.

[15] However, the Crown seeks to pursue the appeal against the sentence by making a renewed application for leave to appeal. By doing so, the Crown must be seeking to reset the time for the hearing of the appeal. This would amount to an effort to circumvent the requirements which resulted in the appeal being statute-barred after the expiration of the initial 12 months. Where time limits are prescribed by statute, a court cannot extend that time unless the statute gives the power to do so. Also, the failure to comply with the statutory requirements goes to the jurisdiction of this court to entertain the appeal.

[16] In this case, the Crown cannot be faulted for the subsequent delay in the application being considered. But the consequences which inevitably flow from the delay cannot be ignored and evaded with the filing of a renewed application.

[17] The circumstances in which a person is permitted to renew an application in criminal appeals are set out in section 32 of the JAJA. This section deals with the powers

which may be exercised by a judge of this court, including the power to give leave, and provides that if the judge refuses an application by the appellant to exercise any such power in his favour, the appellant shall be entitled to have the application determined by the court.

[18] In this instance, the existing application was considered and granted. If it had been refused, the possibility of the prosecutor renewing the application may well have had to be considered. In the circumstances of the prosecutor's notice of application for leave to appeal being granted, it cannot be renewed.

[19] The legislature in setting a time limit for the hearing of the appeal recognised that an appeal against sentence by the prosecutor must be brought promptly so that there is certainty concerning the punishment of convicted persons. For whatever reason, the legislature felt it best to prescribe that the time for the hearing of the appeal begins to run from the time that the application for leave to appeal was made, as distinct from the time the application was granted. This court is obliged to observe and uphold the law as set out in the JAJA, however harsh the prosecutor may find the consequences to be.

[20] Before concluding, it is necessary to briefly address Mr Wright's contention that granting the orders sought in the Crown's renewed application would be in keeping with the overriding objective. The concept of the overriding objective gained significance with the introduction of the Supreme Court Civil Procedure Rules ('the CPR') and the CAR in 2002. Importantly, the application of the overriding objective by the court is that a court must seek to give effect to it when interpreting the rules or exercising powers under those rules (see rule 1.2 of the CPR). That provision is applicable to appeals to this court pursuant to rule 1.10 of the CAR.

[21] There are no rules which require interpretation in this matter, and the court is not exercising any power under the rules of court. It is section 18A of the JAJA which is applicable, and the meaning of the provision is clear and requires no interpretation.

Reliance on the application of the overriding objective is, consequently, entirely misplaced.

[22] The time for hearing the appeal having expired and the appeal having not been heard is statute-barred pursuant to section 18A(9)(a). There remains the renewed prosecution's notice of application for leave to appeal, which in the circumstances is refused. For the avoidance of doubt, there being now no appeal against the sentence, the sentence stands as imposed by L Pusey J and is reckoned to have commenced on 10 November 2023, the date it was imposed.

[23] We, therefore, order as follows:

> (1) The prosecution's appeal filed on 16 November 2023 is struck out as statute-barred.
>
> (2) The renewed prosecution's notice of application for leave to appeal, filed on 16 October 2025, is refused.
>
> (3) The sentences imposed by L Pusey J remain in force and are reckoned as having commenced on 10 November 2023, the date on which they were imposed.