

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO 108/2008

**BEFORE: THE HON MR JUSTICE MORRISON JA
THE HON MRS JUSTICE McINTOSH JA
THE HON MS JUSTICE LAWRENCE-BESWICK JA (Ag)**

ALWIN STONE v R

Gladstone Wilson for the applicant

Mrs Lisa Palmer Hamilton and Gavin Stewart for the Crown

3 June 2014

ORAL JUDGMENT

MORRISON JA

[1] In this matter, the applicant was convicted on one count of incest and two counts of indecent assault in the Home Circuit Court on 31 July 2008. He was sentenced to five years imprisonment on the count charging him with incest and three years' imprisonment on each of the two counts charging him with indecent assault. The learned trial judge ordered that the sentences on counts two and three were to run concurrently, but consecutive to the sentence on count one. So the total sentence to be served by the applicant was eight years' imprisonment at hard labour.

[2] The applicant's application for leave to appeal was first considered by a single judge of this court on 7 October 2010, when it was refused. The learned single judge considered that the main issue in the case was credibility, that the learned trial judge had given adequate directions and that the jury by its verdict had obviously accepted the complainant's evidence. The single judge also took the view that the sentences could not be said to be manifestly excessive in the circumstances.

[3] It is unnecessary to do more than to state the very brief facts of the case, which are that the applicant was alleged by his 14 year old daughter to have had sexual intercourse with her against her will on one occasion. He was also alleged to have indecently assaulted her on two subsequent occasions. His defence was to the effect that his daughter was a troublesome girl, who was said to giving a lot of trouble at school and given to telling lies on other persons, in particular the person described in the evidence as her step-mother, the applicant's then current girlfriend. Suffice it to say that, as the single judge stated, the single issue in the case was who was to be believed; it was a stark contest between the evidence of the 14 year old complainant and the applicant. The jury was carefully directed by the learned trial judge on all the possibilities that might arise, he gave adequate directions in law and the jury, as we have said, accepted the complainant's evidence.

[4] Before us this morning, Mr Gladstone Wilson for the applicant has quite properly advised the court that, in his view, having read the papers carefully and having discussed the matter with the applicant, there is no ground that can properly be advanced on his behalf, either in respect of the conviction or the sentence. With this

position, we entirely agree and in the circumstances, the application for leave to appeal will be dismissed. The court will order that the sentences passed on the applicant are to run from the date on which they were imposed, which is 31 July 2008.