[2010] JMCA Crim 8

**JAMAICA**

**IN THE COURT OF APPEAL**

**SUPREME COURT CRIMINAL APPEAL NO. 15/2009**

**BEFORE: THE HON. MR JUSTICE PANTON, P.**
**THE HON. MRS JUSTICE HARRIS, J.A**
**THE HON. MISS JUSTICE PHILLIPS, J.A.**

**ERROL WIGNALL v R**

**Wentworth Charles for the applicant**

**Miss Paula Llewellyn, Q.C., Director of Public Prosecutions and Adley Duncan for the Crown**

**15 March 2010**

**ORAL JUDGMENT**

**PANTON, P.**

[1] This applicant was convicted after a trial which lasted from the 14 to the 19 January 2009 and was sentenced on 21 January 2009 to life imprisonment at hard labour with a specification that he should not be eligible for parole before serving 20 years.

[2] The trial was for one the offence murder, the particulars being that he, on the 15 January 2006 in the parish of Kingston murdered Patrick

Rashford. The trial took place before Mrs Justice Norma McIntosh and a jury sitting at the Home Circuit Court in Kingston.

[3] A single judge refused the application for leave to appeal, stating that the applicant's defence was one of alibi, and that the trial judge had given full and accurate directions on identification. The single judge also pointed out that the trial judge had directed the jury on the drawing of inferences. The prosecution's case, to some extent, relied on circumstantial evidence. It was the single judge's view that the jury by its verdict, had accepted the prosecution's case as it was fully entitled to do. Nevertheless, the single judge had granted the applicant legal aid to pursue further application if he so desired.

[4] Before us this morning, Mr Wentworth Charles, appearing for the applicant, has quite candidly stated that he has combed the transcript and carefully examined the summation by the learned trial judge. Having so done, he formed the view that there was really nothing of worth that he could have urged on this court, and so would not trouble the court with the filing of supplemental grounds of appeal. Therefore, there was no need for us to invite the learned Director of Public Prosecutions who appeared with Mr Aldey Duncan to make any submissions.

[5] The facts, as accepted by the jury, were painfully familiar, in the sense that incidents of this nature are too common in our country. The

applicant, as well as the deceased and the main witness for the Crown, were persons who have their residence on the streets of the city of Kingston. They do higglering, according to the evidence. The main witness Miss Marilyn Hosang, gave evidence of having shared a sexual relationship with the deceased, who was called Michael, and also with the applicant, apparently the relationships running parallel.

[6] On the day in question, the applicant having invited Miss Hosang to join him and having been rebuff by her, stated that he was going to kill the deceased because the rebuffed of Miss Hosang was due to the relationship that she was having with the deceased. The applicant went away and while the deceased and Miss Hosang were curled up sleeping, Miss Hosang was awakened by a stone, having been thrown at her by the applicant. It appears that it was at that time that the deceased received the fatal blow. Indeed, he died as a result of injuries sustained to the back of the head by what the doctor said could have been a stone. In fright, Miss HoSang fled the scene and was followed by the applicant. She went to the police station. As sometimes happen, the police did not give any credence to the initial report. Eventually, they investigated and found that, indeed, the incident had occurred as stated by Miss Hosang.

[7] The defence at the trial was that the applicant did not even know the Church Street Arcade in which this incident had happened. He had a

twin brother and that fact had caused mistaken identity on the part of the witness. However, in evidence, Miss Hosang was able to give a description of certain physical disability that the applicant has in relation to his walk. There clearly were inconsistencies between her evidence at the trial and what she said at the preliminary examination in respect of the name of the applicant. However, the judge gave very careful and clear directions and it is obvious that the jury were not in the least doubt, given the fact that they returned within 18 minutes with a unanimous verdict of guilty.

[8] We, having examined the transcript ourselves and assessed the summation, agree wholeheartedly with Mr Charles in the position that he has adopted. This application is wholly without merit. The evidence was clear and convincing. The application for leave to appeal against conviction is therefore refused and so far as the sentence is concerned, we are adopting the suggestion made by Mr Charles that the sentence should run from the date that it was imposed. That date was 21 January 2009.

[9] Application for leave to appeal against conviction and sentence is refused. Sentence is to commence as of 21 January 2009.