

**JAMAICA**

**IN THE COURT OF APPEAL**

**SUPREME COURT CRIMINAL APPEAL NO 79/2015**

**APPLICATION NO COA 2020APP00101**

**BEFORE: THE HON MR JUSTICE BROOKS JA  
THE HON MRS JUSTICE MCDONALD-BISHOP JA  
THE HON MISS JUSTICE STRAW JA**

**RODERICK WRAY v R**

**Sanjay Smith instructed by Ernest A Smith & Co for the applicant**

**Mrs Andrea Martin-Swaby and Mr Kemoy McEkron for the Crown**

**29 June 2020**

**BROOKS JA**

[1] On 23 October 2015, Mr Roderick Wray was convicted in the High Court Division of the Gun Court for the offences of assault, illegal possession of firearm and robbery with aggravation. He was sentenced to serve the following concurrent terms of imprisonment at hard labour:

|                                       |   |                              |
|---------------------------------------|---|------------------------------|
| Assault                               | - | two years                    |
| Illegal possession of firearm         | - | five years                   |
| Robbery with aggravation (two counts) | - | seven years (for each count) |

[2] He filed an application for leave to appeal against his sentence. Despite the lapse of time, the transcript of his trial and the learned trial judge's reasons for judgment have not been produced. Accordingly, the merits of Mr Wray's application had not had the benefit of any consideration, even by a single judge of this court. The result is that Mr Wray has spent a significant amount of time in custody without the benefit of having his application heard.

[3] Because he has sought leave to appeal, Mr Wray has, technically, not yet started serving his sentence (see paragraphs [4] to [6] of **Tafari Williams v R** [2015] JMCA App 36). Had he not filed an application for leave to appeal, the time for Mr Wray's early release (pursuant to rule 178 of the Correctional Institution (Adult Correctional Centre) Rules, 1991), would have ended on 22 June 2020. That statement assumes that he has no negative considerations, which are matters for the correctional institution.

[4] Mr Wray wishes to take advantage of the privilege of early release rather than pursue his application for leave to appeal. In order to do so, he must file a notice of abandonment of his application for leave to appeal. It, however, would be unwise for him to abandon the application for leave to appeal without seeking this court's approbation. Were he to proceed without the court's intervention, his sentence would be reckoned to have commenced on the date of the abandonment. This is because the appeal is deemed dismissed upon receipt of the notice of abandonment (see rule 3.22(3)(a) of the Court of Appeal Rules, 2002). Paragraphs [9] – [10] in particular of **Tafari Williams v R** and the judgment in **Sheldon Pusey v R** [2016] JMCA App 26

demonstrate that, in order for Mr Wray to avoid that result, the prudent course is for him to request this court to exercise its discretion, by making an order in respect of his sentence.

[5] Mr Wray has filed such an application. He has asked this court to order that, on the filing of his notice of abandonment, his sentence should be calculated to run from the date of his sentence. He has filed an affidavit in support of his present application, which outlines the circumstances described above. He therefore wishes to abandon the application for leave to appeal.

[6] The Crown has not opposed his application.

[7] There have been previous decisions of this court approving the course of proceeding that Mr Wray has requested. The cases include **Tafari Williams v R**, **Sheldon Pusey v R** and the Privy Council decision of **Tiwari (Leslie) v The State** [2002] UKPC 29. As in those cases, Mr Wray's position is not due to any fault on his part. Accordingly, orders similar to those made in **Tafari Williams v R** and **Sheldon Pusey v R**, may be made in this case.

### **Order**

[8] It is hereby directed that, upon the applicant filing a notice of abandonment of his application for leave to appeal, his sentence shall be reckoned as having commenced on the date on which it was imposed, namely 23 October 2015.