

**JAMAICA**

**IN THE COURT OF APPEAL**

**SUPREME COURT CRIMINAL APEAL NO 124/2008**

**BEFORE:                    THE HON. MR JUSTICE HARRISON, JA  
                                 THE HON. MISS JUSTICE PHILLIPS, JA  
                                 THE HON. MRS JUSTICE M<sup>c</sup>INTOSH, JA (Ag)**

**DELROY GIVANS v R**

**Applicant unrepresented**

**Miss Sanchia Burrell for the Crown**

**8 and 9 March 2010**

**ORAL JUDGMENT**

**M<sup>c</sup>INTOSH, JA (Ag)**

[1] The applicant Delroy Givans, who admittedly is also known as Delroy Green, was convicted in the St. Catherine Circuit Court on 15 October 2008 after a trial on an indictment which contained three counts, two for the offence of indecent assault and one for the offence of attempted buggery. The trial was presided over by Mangatal J. who sentenced him on the first count of indecent assault to six years imprisonment at hard labour; on the second count of indecent assault to two years

imprisonment at hard labour; and on the third count for attempted buggery, she imposed a sentence of six years imprisonment at hard labour. The learned trial judge ordered that the two year sentence on count 2 was to run consecutively to the sentences on counts one and three, making it, by our calculation, an overall sentence of eight years imprisonment at hard labour.

[2] Mr Givans applied for leave to appeal against his conviction and sentence stating as his sole ground of appeal that the witness who gave evidence in this matter was false and misleading. The single judge of appeal who first considered his application identified the issue at trial to be credibility and found no cause for complaint in the trial judge's treatment of the issue. The single judge therefore refused his application which he now renews before us.

[3] Very briefly, the facts are that the applicant operated a school where "extra lessons" were given and the young complainant was one of his students. On a date in 2005, while the complainant was attending the applicant's summer school, he went to the applicant's office on an errand for his mother. While talking to him, the applicant made his advances touching the complainant's private parts, removing his clothing, putting the complainant on the floor and lying on top of him with the lower part of his anatomy exposed and rubbing against the

complainant's genital area. After this ordeal, the complainant said he told no one as, in our words, he was afraid of being labeled as being of the homosexual persuasion. He was a mere lad of the age of 13 years at the time.

[4] The second incident occurred in October, 2006 and again the complainant was in the applicant's office. He had discontinued his attendance at the applicant's school after the 2005 incident but, in October, 2006, the applicant had spoken to his uncle about him returning to school and the complainant returned. This time the applicant sent him to a nearby pharmacy to make a purchase for use by the complainant and that provided an opportunity for the second assault very similar in nature to the first except that this time there was also an attempt at anal penetration. The matter was subsequently reported to the police and this eventually led to the arrest and charge of the applicant.

[5] In his unsworn statement, Mr Givans said he was a trained diploma teacher who lived with his 82 year old mother. He denied the charges stating that he did not understand why the young man had to be telling so much lies on him. He always kept his office door open and his secretary was out there nearby. The tuck shop was also nearby.

[6] After an admirably careful summation in which the trial judge gave all the appropriate directions to the jury, including the appropriate warnings

and directions on their duty to consider the evidence on each count separately, the jury clearly accepted the complainant as a truthful witness and rejected the applicant's defence. There was, in our view, ample evidence to support the conviction and the applicant's application for leave to appeal is accordingly refused.

[7] Sentence is to commence from 15 January 2009.