[2023] JMCA Crim 7

JAMAICA

IN THE COURT OF APPEAL

BEFORE: THE HON MR JUSTICE F WILLIAMS JA
THE HON MISS JUSTICE STRAW JA
THE HON MISS JUSTICE SIMMONS JA

SUPREME COURT CRIMINAL APPEAL NO COA2019CR00056

RENALDO GORDON v R

Linton Gordon for the applicant

Mrs Nickeisha Young Shand and Miss Kathrina Watson for the Crown

23 January 2023

ORAL JUDGMENT

F WILLIAMS JA

[1] This matter came before us as a renewed application by the applicant for leave to appeal against his conviction and sentence in the Home Circuit Court for the offence of murder. The applicant and his co-accused were charged on the same indictment for a count of murder and a count of wounding with intent respectively. They were tried before M Gayle J ('the learned trial judge') and a jury between 13 February and 4 June 2019. The applicant was convicted on the latter date and thereafter sentenced on 13 June 2019 to 20 years' imprisonment at hard labour with eligibility for parole after serving 15 years.

Summary of the Crown's case

[2] The main witness for the Crown gave evidence that during the morning of 28 June 2015, whilst he and his cousin, Cedric Maxwell ('the deceased'), were walking along White Lane, Kingston 11 in the parish of Saint Andrew, the applicant came from behind, walked past them and made a stop at a gate. The applicant was carrying a gas cylinder on his

head. The co-accused, whom they had passed sitting on a bridge, then said "hold dem boy deh" and the witness then turned to see the co-accused taking a cutlass out of his waist and running towards them. The witness then told the deceased to run and as they were about to run past the applicant, the applicant threw the gas cylinder "in the deceased's head". The deceased fell to the ground while the witness continued running. He turned once more and saw the applicant standing over the deceased who was still on the ground.

[3] The witness stated he continued running until he slipped and fell. It was his evidence that whilst on the ground, the co-accused aimed to chop his head, he raised his hand defensively with the result that the co-accused chopped him on his arm. Thereafter he got up and ran. The co-accused continued chasing him until he was stopped by persons at the end of the lane. The witness then ran to another lane where he observed the applicant coming from behind the co-accused with a knife in hand declaring to the co-accused "one dead". The witness then ran into a yard and escaped and subsequently reported the matter to the police.

Summary of the defence

[4] The applicant gave an unsworn statement from the dock. His defence was to the effect that the deceased and the main witness for the Crown, each armed with a cutlass, were chasing his brother and the only thing he could do was use the gas cylinder to scare the deceased. He stated he did not mean to hit the deceased or kill him.

The application

Summary of submissions

[5] Mr Gordon frankly conceded that there was no legal or factual foundation on which to mount an appeal against the conviction and sentence. His filed submissions indicated that the learned trial judge had properly directed the jury on the main issue in the case and he could find no fault with the learned trial judge's summation. Nor could any

complaints be made about the consideration given to the matters discussed in arriving at the sentence imposed.

[6] On behalf of the Crown, Mrs Young Shand submitted that there was a clear evidential basis for the verdicts returned on each of the counts of the indictment. She futher indicated that, the jury having been adequately directed on the law, there was no basis upon which this Court ought to be moved to disturb the conviction. She submitted as well that the sentence imposed was not manifestly excessive.

Discussion

[7] Having ourselves conducted a thorough review of the matter, we found that the concession made by Mr Gordon was well made. The main issue raised in the court below was credibility. In our view, the learned trial judge gave adequate directions in his summation to the jury on the issue of credibility. He spoke to the demeanour and body language of the witnesses and adequately directed the jury on the omissions, inconsistencies and discrepancies in the witnesses' evidence.

[8] We have also given careful consideration to the sentence imposed and find that, although the sentencing remarks departed somewhat from the standard that one would expect today, the sentence is not outside the normal range of sentences imposed for this offence. We affirm the dictum of McDonald-Bishop JA in the case **Lincoln McKoy v R** [2019] JMCA Crim 35, where, at para. [54], it is stated as follows:

> "The learned trial judge stipulated a minimum of 25 years' imprisonment before parole, even though he did not demonstrably conduct the requisite analysis of the relevant principles of law and apply the accepted mathematical formula. He had taken into account, as a matter, which would have resulted in a reduction in the sentence, the time spent in custody before trial. He did not, however, indicate the extent of the credit given for pre-trial remand. Despite this, it cannot reasonably be said that the sentence he imposed is manifestly excessive to warrant the intervention of this court. It is well within the established range of sentences for murder committed in these circumstances."

[9] Similarly, the learned trial judge did not employ a mathematical methodology which involves, inter alia, identifying the appropriate starting point as this court has expressed in **Meisha Clement v R** [2016] JMCA Crim 26 or identifying the starting range and then the appropriate starting point enunciated in **Daniel Roulston v R** [2018] JMCA Crim 20. However, the learned trial judge took into consideration other relevant factors, such as time spent in custody pending trial, the objectives of rehabilitation and deterrence and the protection of the public in arriving at the sentence. We find that, all things considered, the sentence cannot be said to be manifestly excessive.

[10] Accordingly, it is ordered as follows:

i) The application for leave to appeal against conviction and sentence is refused.

ii) The sentence is to be reckoned as having commenced on the date imposed, that is, 13 June 2019.