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# NOTICE TO PARTIES OF THE COURT'S MEMORANDUM OF REASONS FOR DECISION

## SUPREME COURT CRIMINAL APPEAL NO 20/2017

## RICHARD LINDO v R

**TAKE NOTICE** that this matter was heard by the Hon Miss Justice P Williams JA, the Hon Mrs Justice Foster-Pusey JA and the Hon Mrs Justice Dunbar Green JA on the 9 and 11 May 2023, with Mrs Melrose Reid for the appellant and Miss Syleen O'Gilvie for the Crown.

**TAKE FURTHER NOTICE** that the court's memorandum of reasons, as delivered orally in open court by the Hon Mrs Justice Foster-Pusey JA, is as follows:

[1] On 13 July 2016, after a trial before George J ('the learned trial judge') and a jury in the Home Circuit Court, the appellant, Richard Lindo ('Lindo') and Shamar Salmon ('Salmon') were convicted of the offence of murder of Ricardo Morgan ('Morgan'). On 15 February 2017, Lindo was sentenced to life imprisonment with the stipulation that he serves 20 years before being eligible for parole.

[2] A single judge of this court refused Lindo leave to appeal his conviction, but granted him leave to appeal the sentence imposed on him by the learned trial judge, on the basis that the calculation of the sentence had an arithmetical error. This is a renewal of his application for leave to appeal conviction and the hearing of the appeal against sentence.

[3] A brief outline of the Crown's case is useful. We found the outline in Mrs Reid's submissions very helpful, and gratefully adopt it with a few additions. The case for the prosecution was that, on 2 August 2011, Lindo and Salmon jointly murdered Morgan. Morgan was attacked by both men when they took over an argument between Morgan and one Tarphalus who suggested to Morgan that "all batty man fi die". Morgan was going under the building where Salmon and Lindo lived, but Lindo told Morgan "I don't want any batty-man under the building" whereupon Morgan told Lindo to go and "suck" his mother. Lindo and Salmon ran upstairs the building to the floor on which Lindo lived, and returned to where Morgan was. Salmon was armed with a machete while Lindo had a pickaxe stick. Salmon chopped Morgan in the neck and, after Morgan fell on the ground, Lindo hit him with the pickaxe stick. The wound to the neck was fatal.

[4] Mrs Reid was permitted to abandon the original grounds of appeal and argue six supplemental grounds.

Grounds 1 and 2 – Common design and no case submission

[5] Mrs Reid submitted that the learned trial judge misdirected herself on the law and confused the jury in her definition of common design resulting in the jury convicting Lindo. Counsel submitted that there were insufficient facts for the jury to find that a joint enterprise existed between Lindo and Salmon and, as a consequence, Lindo ought to have succeeded when his defence counsel made a no case submission on his behalf.

[6] Having reviewed the various instances when the learned trial judge instructed the jury on joint enterprise or common design, we agreed with the submissions made by the Crown. It is our view that the learned trial judge explained the law clearly and did not indicate that Lindo's mere presence at the scene when Salmon was attacking Morgan was sufficient for Lindo to be in a joint enterprise with Salmon. The learned trial judge made it clear that Lindo would be jointly liable if the jury found that he participated in or encouraged the

commission of the crime and intended to encourage or assist Salmon in the intentional infliction of grievous bodily harm on Morgan (see **R v Jogee** [2016] UKSC 8 and **Ruddock v R** [2016] UKPC 7, as well as **Terry Foster v R** [2020] JMCA Crim 13, paras. [37] – [40]). It is clear that there were sufficient facts supporting a finding that there was a joint enterprise between Salmon and Lindo as they attacked Morgan.

[7] Grounds 1 and 2 therefore fail.

Ground 3 – Manslaughter

[8] Mrs Reid argued that the learned trial judge did not explain manslaughter properly to the jury, merely gave it lip service, and her comments could be implied as saying to the jury that manslaughter did not exist.

[9] We agreed with the submissions of counsel for the Crown that this criticism was unfounded. The learned trial judge explained that there were two scenarios that could have resulted in a verdict of manslaughter for Lindo. One scenario was if the jury concluded that Lindo was provoked by comments made by the deceased Morgan. The other scenario was if Lindo was a part of a criminal venture with Salmon, but did not intend to assist Salmon to kill or cause really serious harm to Morgan, although he realized that some physical harm could have been caused to Morgan. These directions were correct in law (see **R v Jogee** and **Ruddock v R**, para. 96). Ground 3 therefore fails.

Ground 4 – Self-defence

[10] Mrs Reid withdrew her arguments on this issue and did not pursue a ground challenging the directions of the learned trial judge on self-defence.

Ground 5 – Circumstantial evidence

[11] Mrs Reid submitted that the learned trial judge confused the jury on the matter of circumstantial evidence leading them to convict Lindo. We examined

the summation and determined, again in agreement with the submissions from the Crown, that this complaint was not substantiated. Circumstantial evidence and inferences often come into play in cases of joint enterprise, as they did in the case at bar, and the learned trial judge gave correct directions explaining circumstantial evidence and the drawing of inferences (see for example, **Kevin Peterkin v R** [2022] JMCA Crim 5, at para [57]).

Ground 6 – Pre-trial delay and excessive sentence

[12] Mrs Reid submitted that the learned trial judge erred when she failed to grant time for the court's delay in conducting the appellant's trial.

[13] We were not able to explore this issue, as there was no affidavit evidence before the court from the appellant in support of this complaint, and the Crown was not put in a position to respond.

[14] Consequently, there was no factual base on which this court could conduct a functional analysis to determine whether there was a failure to conduct the trial of the appellant within a reasonable time (see **Julian Brown v R** [2020] JMCA Crim 42).

[15] We reviewed the sentence imposed on Lindo with the assistance of additional information provided by Crown Counsel. While the learned trial judge could not be faulted in her application of the sentencing principles, there was an arithmetical error as well as insufficient information before her. We proceeded to calculate the sentence in the following manner:

a. We affirmed the sentence of life imprisonment that was imposed as well as the 30-year pre-parole period to which the learned trial judge arrived after taking into account aggravating circumstances.

b. We adopted the eight-year discount for the mitigating circumstances as identified by the learned trial judge.

c. With the additional information provided by Crown Counsel, we ascertained that the pre-sentence detention of Lindo spanned two years and 11 months.

d. 22 years less the period of pre-sentence detention amounted to a pre-parole period of 19 years and one month.

[16] We, therefore, allow the appeal against sentence and substitute a sentence of life imprisonment with the stipulation that Lindo serves 19 years and one month before being eligible for parole.

[17] The orders of the court are as follows:

(1) The application for leave to appeal conviction is refused.

(2) The appeal against sentence is allowed.

(3) The sentence of life imprisonment with the stipulation that the appellant serves 20 years before being eligible for parole is set aside; substituted therefor is a sentence of life imprisonment with the stipulation that he serves 19 years and one month before being eligible for parole, having been credited with two years and 11 months spent in pre-sentence remand.

(4) The sentence is reckoned as having commenced on 15 February 2017, the date on which it was imposed.