[2021] JMCA Crim 11

JAMAICA

IN THE COURT OF APPEAL

PARISH COURT CRIMINAL APPEAL NO COAPCCR00002

BEFORE: THE HON MISS JUSTICE P WILLIAMS JA
THE HON MR JUSTICE FRASER JA
THE HON MRS JUSTICE DUNBAR-GREEN JA (AG)

DONOVAN POWELL V R

Mrs Valerie Neita-Robertson QC for the appellant

Mrs Kamisha Johnson-O'Connor and Mrs Nekisha Young-Shand for the Crown

8 February and 24 March 2021

P WILLIAMS JA

[1] On 22 July 2019, Mr Donovan Powell, the appellant, appeared in the Parish Court for the Corporate Area (Criminal) before the Judge of the Parish Court Her Honour Miss Jacqueline Wilcott ('the Parish Court Judge') and pleaded guilty on three informations charging him with breaches of the Cybercrimes Act, 2015. A social enquiry report was requested and his sentencing was adjourned.

[2] On 22 November 2019, the appellant was sentenced to two terms of 12 months' imprisonment at hard labour on two of the informations, with the sentences to run concurrently and on the third he was ordered to pay a fine of $1,000,000.00 or serve

four months' imprisonment in default of payment. This term of imprisonment of four months was to run consecutively to the sentences of 12 months.

[3] The appellant gave verbal notice of his intention to appeal this sentence and was granted bail pending the outcome of the appeal.

The facts

[4] The Parish Court Judge recorded the following as "the allegations read by the [C]rown". The complainant, DC, and the appellant had been involved in an intimate relationship between November 2016 and the spring of 2018. During this time, DC said the appellant took "photographs of her and they both took photographs of her". She however never gave him permission to take photographs of her nude body. She also told him to desist from videoing her.

[5] After the relationship ended, DC was threatened that she would either be shot stabbed, ruined or destroyed. (As recorded by the Parish Court Judge, there was no indication who issued those threats.)

[6] On 12 January 2017, the appellant sent DC, through WhatsApp messenger, a video that he had created. She observed that the video was naked photographs and private sexual images taken of her. She had not consented to the creation of this video. She also noted that along with the images were vulgar memes and pictures with typed words to the effect that she had a sexually transmitted disease which she had passed on to the appellant. DC recognised that an aspect of the video was of her exiting the bathroom at the Couples' Hotel in November 2016.

[7] On 2 March 2017, the appellant sent her nude photographs and explicit photographs of her genitalia (it is not stated by what method these photographs were sent). These photographs had been taken of her while she slept. Also on that day in March, the appellant told DC that he had created videos and that he and others had access to them.

[8] On 9 March 2017, the appellant sent DC a text message inviting her to visit a particular website. This was followed by an email again inviting her to visit the website. She visited and saw the same images and videos depicting her genitalia and those of her exiting a bathroom. The appellant told her he had created the website and he would be calling everyone she was associated with to tell them about this site. He also told her he would send explicit videos around her son's campus and threatened that her son would never play football again.

[9] On 9 March 2017, DC was no longer able to access the website. However, she said on 3 April 2017, the site had been restored and that it contained the same private sexual images and videos.

[10] The Parish Court Judge noted that in the plea in mitigation made on his behalf by Mrs Neita-Robertson QC, the appellant denied the allegations of physical threats and refuted those charges. He however accepted that he published private photographs that would cause her embarrassment but said he was given the photographs. He also said he accepted responsibility.

The charges

[11] It is useful to note the charges as laid in the informations to which the appellant pleaded guilty. He was charged for breaches of section 9 of the Cybercrimes Act, which provides:

> "9 (1) A person commits an offence if that person-
>
> (a) uses a computer to send to another person any data (whether in the form of a message or otherwise) that is obscene, constitutes a threat, or is menacing in nature, and
>
> (b) intends to cause, or is reckless as to whether the sending of the data causes annoyance, inconvenience, distress, or anxiety to that person or any other person.
>
> (2) An offence is committed under subsection (1) regardless of whether the actual recipient of the data is or is not the person to whom the offender intended the data to be sent."

[12] The informations on which the appellant pleaded guilty outlined the charges as follows:

> "Information CA2018CR02462-2
>
> [The appellant] on the 12th day of January 2017, in the parish of Saint Andrew, used a computer to send data to [DC], which is obscene, with the intention to cause harm or to harass [DC] contrary to section 9 of the Cybercrimes Act.
>
> Information # CA2018CR02462-4
>
> [The appellant] on the 2nd day of March 2017, in the parish of Saint Andrew, used a computer to send data to [DC], which is obscene with the intention to cause harm or to harass [DC] contrary to section 9 of the Cybercrimes Act.

> Information # CA2018CR02462-5
>
> [The appellant] on a day unknown between 2nd day of March 2017 and 9th day of March 2017 in the parish of Saint Andrew used a computer to send obscene data to [DC] and persons unknown via website [DirtyD.com], with the intention to cause harm or to harass [DC]."

[13] It is readily apparent that the intention alleged in the informations did not strictly conform to those as given in the legislation. The appellant had not raised this matter before the Parish Court Judge, at the time he accepted responsibility and pleaded guilty, thus avoiding any discussions as to whether he had been deceived or misled by this possible defect (see section 2 of the Justices of the Peace Jurisdiction Act). He also did not pursue the matter during the appeal when the court noted the defect. It was recognised that, in any event, no appeal could be allowed for any error or defect in form or substance appearing in any information unless raised at the trial or unless the court was of the opinion that there may have been injustice to the appellant (see section 303 of the Judicature (Parish Court) Act). Nonetheless, it is necessary that we encourage that care be exercised such that the form and substance in informations comply substantially with the provisions in the charging legislation.

The social enquiry report

[14] The Parish Court Judge had the benefit of a social enquiry report, which she acknowledged was fulsome. She also acknowledged that it gave a good community report in relation to the appellant.

[15] The report indicated that the appellant was born on 1 November 1964 and was 55 years of age at the time he was interviewed. It was noted that during his interview, the appellant was polite and cooperative. He sought to explain his actions. He explained that he had a relationship with DC while he was living in the United States of America ("USA") which had ended many years ago. Twenty-seven years after it had ended, they rekindled the relationship and since he was now living in Jamaica, she came here to spend time with him. He alleged that the relationship soured when he contracted herpes and a sexual transmitted infection from her which caused him to believe that she was unfaithful.

[16] This led to a confrontation which he said resulted in an intense quarrel. At the time they separated, DC left the condominium where they were staying in his absence and took with her some of his valuable possessions plus a telephone that had, recorded on it, most of their sexual encounters. He said that some months after she called him to say that he was a fool and she had used him to get a break and also have a good time. He also said she admitted to him that she had multiple sex partners hence the reason he contracted herpes.

[17] The appellant stated that DC sent slanderous pictures and messages to his friends and family which caused him much shame and embarrassment. He explained that she had told him that she was going to ensure that he would not be able to return to the USA and she also exposed him on social media and the activist group 'ME TOO'. He said he told her that if she did not stop slandering and discrediting him, he would do the same to her. He eventually retaliated by "sending pictures to her friends and family expressing what she did to him". He said that he reacted out of anger and impulse but "regrets what

his anger drove him to do and is remorseful for his deed, but never threatened her about rekindling the relationship".

[18] The residents from the community in which the appellant resides, described him as a pleasant and quiet individual. They added that he was helpful and cooperative and said that they never heard of any negative reports, wrong doings or rowdy behaviours in relation to him.

[19] The complainant was also interviewed and stated that she had lived with the appellant in Jamaica for six months. She related that it was in November 2014, after they had ended their relationship and she went back to collect her belongings, that he began to blackmail her by sending her pictures online and threatened to kill her if she did not rekindle the relationship. She said that he also threatened to send the pictures and videos to family, friends and business colleagues in an attempt to ruin her reputation and credibility. She explained that this was the worse time of her life, as his actions made her feel ashamed, humiliated and reduced her ability to gain employment as a television show host and speaker. She further explained that she was affected emotionally and mentally. It was her wish that the appellant receive the maximum sentence.

[20] Ultimately it was recommended that the appellant receive a non-custodial sentence.

The sentencing

[21] The Parish Court Judge acknowledged that the law provided for a sentence of up to four years' imprisonment with or without hard labour and/or a fine of $4,000,000.00. She thereafter identified the starting point she believed was appropriate as "$1.5 million and 8 months...taking into account the discount for early plea and the SIR [sic]".

[22] She then proceeded to identify the mitigating and the aggravating factors. The migrating factors she identified are as follows:

> "The SIR [sic] gives a good community report in relation to [the appellant]
>
> It also indicates a degree of remorse.
>
> He has no previous convictions in this jurisdiction.
>
> Pleaded guilty without the need for [DC] to give testimony and waste of the court's time."

[23] The aggravating factors she identified as follows:

> "The age of Mr Powell - so there can be no excuse of youthful exuberance. He ought to have known that this course of action was wrong.
>
> The premeditation of the act - the calls, the creation of a website upon which images of [DC] were embedded. The distribution of same to persons where the intent was to cause harm and embarrassment to [DC]. The exposing and sharing of material obtained within the confines of their relationship at applicable time - to persons known and unknown with an intent to do harm."

[24] The Parish Court Judge recognised, and indicated that she would bear in mind, the four principles of sentencing as enunciated in **R v Beckford and Lewis** (1980) 17 JLR 202 – retribution, deterrence, prevention and rehabilitation. She also considered the

approach recommended by this court in **R v Perlina Wright** (1988) 25 JLR 221. She noted the following observation of Rowe P:

> "The rule of law is that when a person pleads guilty, the learned trial judge, as the tribunal of fact, should sentence on the set of facts which are most favourable to the accused."

[25] She concluded the sentencing exercise as follows:

> "In this case although [the appellant] lays down a set of circumstances in which he said (and I use my words with caution) justified at the time his course of actions against [DC] he does not dispute the acts as alleged that were done by him in relation to the 3 charges for which he has accepted responsibility.
>
> I also note that the SIR [sic] has made certain recommendations with regards to sentencing – but I am not of the view their recommendation is sufficient for acts done by [the appellant].
>
> Based on all I have considered and taking into account the egregious nature of this offence, the SIR [sic], and the plea in mitigation I sentence as follows
>
> Count 2 12 months at hard labour
>
> Count 4 12 months at hard labour
>
> Count 5 $1 m and 4 months' mandatory if the fine is not paid.
>
> Count 2 and Count 4 run concurrent
>
> Count 5 –the mandatory 4 months runs consecutively to the 12 months if the fine is not paid."

The appeal

[26] In his notice and grounds of appeal filed on 23 January 2020 the single ground of appeal was that the sentence of the court was manifestly excessive. When this matter

came on for hearing before us, Mrs Neita-Robertson sought and was granted permission to amend the order sought to read as follows:

> "The sentence be set aside and a non-custodial sentence be imposed and the fines be reduced."

The submissions

On behalf of the appellant

[27] In her submissions on behalf of the appellant Mrs Neita-Robertson first advanced what could be regarded as the underlying complaint regarding the sentence imposed. She submitted that, in light of his guilty plea and the considerations that ought to flow from his contrite position and his impeccable record, the sentence ought to be reduced to reflect the precedents set by the courts.

[28] Queen's Counsel appropriately referred to the well-known and oft rehearsed classical principles of sentencing, she described as having been characterised by Lawton LJ in **R v Sargeant** (1974) 60 Cr. App. R. 74 and as discussed in **Veen v The Queen** (No 2)(1988) 164 CLR 465; namely retribution, deterrence, prevention and rehabilitation. She identified the steps that a sentencing judge should follow in arriving at an appropriate sentence. She submitted that the sentencing judge must always keep in mind the character and antecedents of the individual offender. She referred to **R v Cecil Gibson** (1975) 13 JLR 207 in support of this submission.

[29] In referencing the social enquiry report, Mrs Neita-Robertson noted the community report which she described as favourable. She highlighted the recommendation of the

probation officer that a non-custodial sentence be given. Queen's Counsel concluded that the social enquiry report was a mitigating factor.

[30] Mrs Neita-Robertson further noted that the point had been made during the plea in mitigation that the taking of the pictures at the centre of the charges, was not done with any premeditation. She contended that the act that was premeditated came after conflict and acts of revenge which arose on both sides.

[31] Queen's Counsel urged that as a first time offender, the sentence passed on the appellant was particularly harsh keeping in mind all the mitigating circumstances. She submitted that the aggravating factor of his age, as identified by the Parish Court Judge to have eliminated the excuse of youthful exuberance, along with any premeditation were to be balanced by the mitigating factors.

[32] It was submitted that according to the Criminal Justice Reform Act section 3(1) and 2, which was discussed in **Dwayne Strachan v R** [2016] JMCA Crim 16, in all cases where the court has an option to impose a non-custodial sentence, this option should receive the court's first consideration. This meant that in such cases imprisonment should be the last, rather than the first resort and custody should be reserved as a punishment for the most serious offences. Further Queen's Counsel noted section 6 of that Act which, in certain circumstances, permits the suspension of a term of imprisonment, which does not exceed three years.

[33] Mrs Neita-Robertson usefully shared with this court, what she described as, case law from England and Wales where disclosing intimate pictures or videos of someone

without their consent and with the intent to cause distress is now a criminal offence and carries a maximum sentence of 12 months in the Magistrate Court. She shared brief case notes of decisions from various magistrate courts where offenders were sentenced for offences involving the publishing, posting on Facebook and otherwise sharing intimate photographs of their victims. None of the terms of imprisonment were for periods exceeding 18 weeks. Some of the sentences also included curfew orders, community orders, restraining orders and fines.

[34] She also referred to the summary of a decision from a Crown Court where an offender successfully appealed a sentence of 17 weeks' imprisonment for what the magistrate had found to be an offence "so serious because it was a massive breach of trust and there were repeated attempts to keep it on Facebook and WhatsApp". The court substituted a sentence of eight weeks' imprisonment which was suspended for 24 months.

[35] Ultimately Mrs Neita-Robertson submitted the Parish Court Judge had erred in disregarding the recommendation of a non-custodial sentence and failed to strike an appropriate balance between retribution, deterrence, prevention and rehabilitation so as to arrive at a sentence which fit the offender as well as the crime. Queen's Counsel further submitted that the Parish Court Judge did not adequately take into account the fact that the appellant was a first offender and failed to acknowledge that he had denied the allegations of threatening [DC].

[36] Queen's Counsel urged that based on the case law and the sentencing guidelines, the sentence is manifestly excessive. She contended that the Parish Court Judge did not demonstrate any analysis and provided no substantive reasons for arriving at the sentence handed down. She submitted that, "based on these failings the sentence was uninformed, unfair and without application of the guiding principles and thereby was manifestly excessive".

On behalf of the Crown

[37] Mrs Johnson-O'Connor commenced her submissions in response by reminding this court of the basis on which we can interfere with the sentence imposed. She submitted that the sentence can only be altered if the Parish Court Judge erred in her application of any of the relevant principles. She referred to **Alpha Green v R** (1969) 11 JLR 283 and **R v Ball** (1951) 35 Cr. App. R. 164 in support of this submission.

[38] She submitted that in determining whether there was an error in principle by the Parish Court Judge, her approach must be analysed in light of the guidance given by this court in **Meisha Clement v R** [2016] JMCA Crim 26.

[39] Counsel contended that the Parish Court Judge properly determined a starting point and then considered the appropriate mitigating (including personal mitigation) and aggravating factors. Further Counsel contended that the Parish Court Judge did in fact consider the recommendation that a non-custodial sentence be imposed and demonstrated how she arrived at the conclusion that a custodial sentence was appropriate.

[40] Crown Counsel also pointed out that the maximum sentence in the cases from England and Wales to which Mrs Neita-Robertson had referred was 12 months whereas in our jurisdiction the maximum is four years. Ultimately, counsel concluded that the sentence of 12 months' imprisonment ought not to be disturbed.

[41] Crown Counsel submitted that the Parish Court Judge had erred in ordering that the mandatory sentence of four months to be served in default of paying the fine was to run consecutively to the 12 months' imprisonment. Counsel recognised that in the Sentencing Guidelines for use by Judges of the Supreme Court of Jamaica and the Parish Courts, December 2017 and in a decision from this court, **Kirk Mitchell v R** [2011] JMCA Crim 1, it is stipulated that where offences are of a similar nature and were committed over a short period of time against the same complainant, sentences should normally be made to run concurrently.

Discussion

[42] In **Patrick Green v R** [2020] JMCA 17 Morrison P succinctly gave some useful points on the sentencing principles, which are sufficient to provide the necessary background against which consideration of the issues which arise in this appeal must take place. At paragraphs [21] to [23] he stated the following:

> "[21] We begin with three general observations. Firstly, it is beyond controversy that the four 'classical principles of sentencing', as this court described them in **R v Beckford & Lewis**, are retribution, deterrence, prevention and rehabilitation. Thus the possibility of rehabilitation, even in a case calling for condign punishment, must always be considered by the sentencing judge. Accordingly, in **R v Errol Brown**, the court considered that, in imposing a well-

> deserved deterrent sentence, the sentencing judge ought to have kept in mind 'a possible rehabilitation of the prisoner'. And similarly, in **Micheal Evans v R** the court found that counsel's criticism that the sentencing judge, whose primary focus appeared to have been on the principle of deterrence, had failed to demonstrate that he had also taken into account the need to rehabilitate the offender, was 'not at all unjustified'.
>
> [22] Secondly, the now accepted approach to sentencing is to (i) arrive at an appropriate starting point for the sentence (taking into account the seriousness of the offence, the usual range of sentences for like offences and other such factors); and (ii) adjust that figure upwards and/or downwards to allow for aggravating and/or mitigating factors. As Harrison JA explained in **R v Everald Dunkley**, once it has been determined that a sentence of imprisonment is appropriate in a particular case, the sentencing judge should 'make a determination, as an initial step, of the length of the sentence, as a starting point and then go on to consider any other factors that will serve to influence the sentence, whether in mitigation or otherwise'.
>
> [23] Thirdly, this court will not usually interfere with a sentence imposed by a judge in the court below unless it can be shown that the judge erred in principle or that the sentence 'is excessive or inadequate to such an extent as to satisfy this Court that when it was passed there was a failure to apply the right principles'."

[43] One other significant issue, for the purposes of this case, which must be borne in mind, is the proper approach the judge should take in regard to the guilty plea. The sentencing judge is required to have regard to section 42D of the Criminal Justice (Administration)(Amendment) Act, which reads as follows:

> "42D.-(1) Subject to the provisions of this Part, where a defendant pleads guilty to an offence with which he has been charged, the Court may, in accordance with subsection (2), reduce the sentence that it would otherwise have imposed on the defendant, had the defendant been convicted of the offence.

> (2) Pursuant to subsection (1), the Court may reduce the sentence that it would otherwise have imposed on the defendant in the following manner –
>
> (a) where the defendant indicates to the Court, on the first relevant date, that he wishes to plead guilty to the offence, the sentence may be reduced by up to fifty percent.
>
> ..."

[44] From this, it is clear that a sentencing judge is obliged to first arrive at an appropriate sentence which would have been imposed if the defendant had been tried and convicted before factoring any reduction to be given for the guilty plea. In recognition of the fact that there is a need for transparency and consistency in sentencing, the sentencing judge should make apparent how the sentence ultimately arrived at was calculated and this is best achieved by expressing what percentage discount was applied and why such a discount was awarded.

[45] There is no dispute that the Parish Court Judge demonstrated an appreciation of the relevant principles that should have guided her sentencing exercise and did so in a clear manner. She identified a starting point before noting and considering the mitigating and aggravating factors which impacted the calculation of the appropriate sentence. It is however her application of the law and the principles regarding how she arrived at the starting point and credited the discount for the guilty plea, which raises a concern.

[46] It would appear from what is recorded on the informations that the matter came up for hearing for the first time on 22 July 2019. This was the date that the guilty pleas were recorded and the sentencing adjourned. Thus the appellant was entitled to a

consideration of a reduction of up to 50% in the sentence which would otherwise have been imposed, had he been tried and convicted. While clearly indicating that she was aware that some discount should be given, the Parish Court Judge failed to state what discount she applied and, even more significantly, she first applied the discount in order to arrive at a starting point. Hence there was in effect no clear discernible starting point, which should have been identified before arriving at the sentence to which the unknown discount was to have been applied. The Parish Court Judge therefore erred when she did this and this court is therefore obliged to intervene.

[47] In considering the appropriate sentence, it is necessary to note section 3 of the Criminal Justice (Reform) Act which reads:

> "3(1) Subject to the provisions of subsection (2), where a person who has attained the age of eighteen years is convicted in any court for any offence, the court, instead of sentencing such person to imprisonment, shall deal with him in any other manner prescribed by law.
>
> 3(2) The provisions of subsection (1) shall not apply where-
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> (a) the court is of the opinion that no other method of dealing with the offender is appropriate;
>
> ...
>
> 3(3) Where a court is of opinion that no other method of dealing with an offender mentioned in subsection (1) is appropriate, and passes a sentence of imprisonment on the offender, the court shall state the reason for so doing; and for the purpose of determining whether any other method of dealing with such person is appropriate the court shall take into account the nature of the offence and shall obtain and consider information relating to the character, home surroundings and physical and mental condition of the offender."

[48] There can be no dispute that the offences for which the appellant was charged were serious given the impact they could have on the victim. It could well be argued that the actions of sharing the nude photographs and videos with DC alone may have only been embarrassing to her; but certainly the appellant's deliberate desire to humiliate her escalated when he created a website specifically for posting the objectionable and offensive items.

[49] However, it ought not to be ignored that the appellant said that DC had given him the photographs, which then means she trusted him at some point and it was in breach of this trust that he proceeded to violate her in this way. Also to be acknowledged is the fact that the appellant claimed that DC had also done some hurtful things to him, perhaps the most grievous being exposing him to sexually transmitted diseases. His desire for revenge in the circumstances may well have explained, while not excusing, his first act in January. But to have persisted in the manner he did culminating in the ultimate act of creating the website, made his behaviour sufficiently serious to warrant the consideration of a custodial sentence. If he had committed a single act, a suspension of a custodial sentence might have been appropriate.

[50] It ought therefore to be recognised that the Parish Court Judge is not to be faulted for concluding that in these circumstances a non-custodial sentence was inappropriate. We are unable to say that the Parish Court judge erred in principle in deciding to impose a custodial sentence.

[51] As already identified, the Parish Court Judge erred in her approach to identifying the appropriate starting point. The determination of an appropriate starting point normally involves a consideration of the normal range of sentences for the particular offence. In fairness to the Parish Court Judge, it is recognised that the legislation under which the appellant was charged is still relatively new and there is no established range for offences thereunder to assist.

[52] It is trite that a maximum sentence ought to be reserved for the most egregious offence, thus a starting point of four years would not be appropriate. We find that given the progression in the seriousness of these offences a starting point of 12 months would be reasonable. We find that the aggravating and mitigating factors identified by the Parish Court Judge were appropriate and that they balance each other in a such a way that when a calculation is done the sentence is returned to the starting point of 12 months.

[53] Given the fact that the appellant was a first time offender and pleaded guilty on the first occasion, we find that he should be given the full benefit of a 50% reduction in the sentence. Thus a term of six months' imprisonment is appropriate in the circumstances.

[54] We are compelled to comment on the fact that the fine, which can be viewed as the lesser punishment, was imposed for the most egregious act of creating the website. We considered whether this sentence ought to be disturbed to reflect the fact that the imposition of this sentence seemed not to fully reflect the serious nature of this offence when compared with the first two. However, while we recognise that we have the power

to increase the sentence, having not given an indication that we would consider doing so, we accept that it would be unfair and a breach of natural justice to do so having not heard from the appellant or his counsel on this issue, (see **Earl Williams v R** [2005] 66 WIR 313). In the circumstances a reduction in the fine imposed is not warranted.

[55] Although Crown Counsel relied on the pronouncements of this court in **Kirk Mitchell v R** in submitting that the Parish Court Judge had erred in ordering that the term of imprisonment in default of payment run consecutive to the custodial sentence, it is necessary to point out that this court was not dealing then with cases where there is a mixture of custodial sentences and fines. It is readily recognised that where a mandatory sentence in default of paying a fine is the same as or less than a custodial sentence being imposed at the same time, and it is ordered that these sentences run concurrently, the offender may well find it more financially feasible to opt not to pay the fine. A sentencing court would have to consider if that is the punishment they wish to achieve by imposing such a sentence. Given the circumstances of this case where, as we have noted, the most egregious offence was the one for which the fine was imposed, we are of the opinion that this is an appropriate matter for an order that the mandatory sentence for failure to pay the fine, is to run consecutive to the other sentences.

Disposal of the appeal

[56] The order of this court is as follows:

1. The appeal against sentence is allowed in part.

2. The sentences imposed by the Parish Court Judge in relation to the first two informations are set aside and the following sentences substituted therefor:

    a. Information number 2018 CR02462-2 — Six months' imprisonment at hard labour.

    b. Information number 2018 CR02462-4 — Six months' imprisonment at hard labour.

    These sentences are to run concurrently.

3. The sentence of the Parish Court Judge on the information number 2018 CR02462-5 of a fine of $1,000,000.00 or four months' imprisonment in default of payment is affirmed.

4. The order of the Parish Court Judge requiring that the term of imprisonment in default of payment of the fine should run consecutive to the other counts is affirmed.