

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NOS. 104 and 105 OF 1985

BEFORE: THE HON. MR. JUSTICE ROWE, P.  
THE HON. MR. JUSTICE CAREY, J.A.  
THE HON. MR. JUSTICE WHITE, J.A.

REGINA

VS

CARLTON COLLINS  
MICHAEL STEADMAN

Delroy Chuck for Applicants  
John Moodie for Crown

February 19, 1988

ROWE P.:

On 19th February, learned counsel who appeared for these applicants told us that there were no arguments which he felt able to put forward to affect their convictions. He however, addressed us on the matter of sentence.

These applicants were convicted in the Circuit Court Division of the Gun Court before Ellis J., and a jury of the murder on 26th June, 1983 of one Sylvester Morgan and both were sentenced to death.

The facts are short, brutal and violent and regrettably, common place. Four men, including these two youthful applicants, all of whom were armed with hand guns, went in search of Sylvester Morgan, a D.J., by profession, known also as Jim Kelly, in the district of Fraser's Content in the parish of St. Catherine. They went first to the premises of Ann-Marie Johnson, a witness for the prosecution, to ascertain Sylvester Morgan's whereabouts. She told them he had gone on the road. The applicant Steadman, turned his gun on

her and threatened to shoot her. She ran for her life. Collins also spoke to the mother of their victim, when she enquired why they wished to see him. He told her that one "Mickey" wanted him "dead or alive." Thereafter, they left the premises and she watched them disappear along the road in the direction of a district known as Red Pond.

These two applicants and their companions were next seen to enter premises referred to as Charlie Chaplain's yard. Sylvester Morgan who was there as also an eye-witness, Richard Johnson, a nephew of the slain man, hid in a goat-pen. It is not altogether clear which member of the gang spoke, but the words, "watch it, mek we shoot the bwoy" were heard. At this time both Johnson and Morgan were peeping over the pen. Collins fired one shot. It struck Sylvester Morgan at the outer side of his right eye. He fell, mortally wounded and died subsequently. The bullet had penetrated the brain to the back of the head and lodged in the scalp.

The defence in each case was an alibi. Steadman did not help his cause because although he stated that he had been at work between 2:00 p.m. to 10:00 p.m., when he left for home, under cross-examination testified that he arrived home at 7:20 p.m. (p. 172).

The evidence against the applicants was overwhelming. They were seen by a number of witnesses all of whom knew them over a number of years, and in circumstances in which there was no possibility of error. No question of mistaken identity arose on the facts. At all events, the mistake would necessarily be deliberate. No basis for any frame-up was suggested.

Learned counsel who appeared before us, in the light of this evidence, acted correctly and we entirely agree that there was not any ground for advancing argument of any merit.

We can now deal with the question of sentence which was raised before us.

The applicants having been so convicted were they amenable to the kind of sentence which was passed at that time by the presiding Judge? The allegations supported by Affidavits in respect of both the applicants are that

they were under the age of eighteen years at the time of the commission of the offence. In respect of the applicant Collins it is being contended that he was born on the 6th day of October, 1969, and a Birth Certificate for the parish of St. Catherine No. EA 6018 is tendered. It is recorded on that Certificate that his father is Edward Collins and his mother Gertrude Collins and that Certificate was allegedly certified by the Registrar General on November 6, 1987. If that is a true and correct Birth Certificate the applicant would have been little more than fourteen years at the time of the commission of the offence and certainly the sentence of death could not have been passed upon him.

Further researches however, were made and the Registrar General was able to find an Index of Births registered in 1965, which showed that a male child, Carlton Wilbert, was registered on either the 5th or the 6th of October, 1965. The father's name was given as Edward Collins and his wife was formerly "Peters." The number of that Registration in the Index is EA 6018 which represents the Registration District of Spanish Town in the parish of St. Catherine. So clearly, the Certificate produced in Court and the Index in the Registrar General's Office relate to the same person, Carlton Wilbert Collins, but with the difference that the Certificate produced in Court shows a birth date of 6th October 1965. It is quite impossible therefore for a person to be born in 1969 and registered in 1965.

The Registrar General said that having regard to the provisions of the Registration (Births and Deaths) Act, a parent has one year within which to register a child without the intervention of the Registrar General. Consequently, the child Carlton Wilbert, could have been born any time between the 6th of October 1964 and the 6th of October 1965.

The only direct evidence to show when the child was actually born or might have been born, came in an Affidavit from the mother of the applicant, Collins, which purported to show that the child Carlton was her very last of seventeen children, and that he was born in 1969. She swore falsely.

The police found in their investigations, and the mother in evidence before us this morning said, that Carlton Wilbert was not by any means her last child. There were several children born to her after Carlton Wilbert. How this woman in the autumn of her life came to swear to this particular Affidavit was never satisfactorily explained. However, that will not affect the situation, because the Law says that the Court may not pass sentence of death upon a person who at the time of the commission of the offence of murder was under the age of eighteen years.

The prosecution has the obligation to show that the applicant Collins was indeed born before the 26th of June, 1965. This they have been unable to do, notwithstanding the very strong suspicions which surround the disappearance of the original Records from the Registrar General's Office, and the unlikelihood that his birth would have been registered on the very day that he was born. The Records were in the Registrar's Office on November 6, 1987, yet by the time the police made their enquiry in 1988 in relation to this applicant the Records have completely disappeared. The benefit of whatever doubt there is must be given to the applicant Collins and therefore the sentence of death as passed upon him is set aside. He will therefore be detained in custody during Her Majesty's pleasure.

In relation to the applicant Steadman he produced an Affidavit which purported to show that he was born on the 31st of December, 1966 and he produced a Birth Certificate AA8871 in support thereof. That Certificate was a forgery.

At the request of the police, the Registrar General found the original Records which show that the applicant was born on December 31, 1964 and therefore was over the age of eighteen years on the 26th of June, 1983. His application therefore for a variation in the sentence on the ground that he had not attained the age of eighteen years in June, 1983 is refused.

In the result, the applications for leave to appeal are refused.  
In respect of Collins his sentence is varied to detention during Her Majesty's  
pleasure. The Court had jurisdiction to pass the sentence which it did upon  
the applicant Steadman.