

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO 39/2008

**BEFORE: THE HON. MR JUSTICE PANTON P
THE HON. MRS JUSTICE HARRIS JA
THE HON. MISS JUSTICE PHILLIPS JA**

RAPHAEL RUSSELL v R

Cecil J Mitchell for the applicant

Mrs Ann-Marie Feurtado-Richards & Miss Cadeen Barnett for the Crown

14 December 2010

ORAL JUDGMENT

PANTON P

[1] The applicant was convicted on his plea of guilty, the trial having started but he having decided after four witnesses for the Crown had given evidence, to plea guilty. The plea was recorded as one of guilty of manslaughter, he having been charged with murder.

[2] The particulars of the offence with which he was charged are that he, on a day unknown between 19 and 22 July 2004 in the parish of St Elizabeth, murdered Ico Anderson o/c "Bibi" in the course or furtherance of burglary. The

trial took place on 3 and 4 March 2008. He was sentenced on 6 March 2008 by Mr Justice Donald McIntosh to 21 years imprisonment.

[3] The circumstances as indicated by Mr Mitchell, who in a concise way has given the facts, were that the applicant used a piece of wood, commonly called in Jamaica 2 x 4, to deliver a single blow to the head of the deceased, whose error was to have been found by the applicant sleeping in a bed with his (the applicant's) former lady friend. This incident took place at the home of the former lady friend. Death was due to asphyxia resulting from the fracture of the head: asphyxia, in the sense of the brain having been deprived of oxygen by virtue of the severe blow that the doctor said would have been inflicted. Death would have been shortly after the infliction of the blow. Thereafter, to put it mildly, the applicant terrorized his former lady friend and rifled the pockets of the deceased.

[4] In imposing sentence, the learned trial judge took into account the plea of guilty and the circumstances of the case and imposed the sentence indicated earlier.

[5] We note that the single judge who reviewed this matter refused leave to appeal saying that despite the applicant's plea of guilty, albeit after the trial had proceeded some way, it cannot be said that a sentence of 21 years imprisonment in these circumstances is manifestly excessive.

[6] This morning, before us, Mr Mitchell indicated that the circumstances were indeed such, that he could not, in conscience, advance any useful arguments with regard to the lessening of the sentence.

[7] We fully agree with the position taken by Mr Mithcell. The task, if embarked on, would have been insurmountable.

[8] In the circumstances, we refuse the application for leave to appeal and order that the sentence is to run from the date specified by the single judge which is, 17 April 2008.