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

SUPREME COURT CRIMINAL APPEAL NO 73/2018

APPLICATION NO COA2023APP00220

SADIQUE ROBERTSON v R

TAKE NOTICE that this matter was heard by the Hon Miss Justice Straw JA, the Hon Mrs Justice Foster-Pusey JA, and the Hon Mr Justice D Fraser JA on the 3rd day of October 2023, with Ms Sherneika Jackson for the applicant and Ms Tamara Merchant and Ms Lori-Ann Tugwell for the Crown.

TAKE FURTHER NOTICE that the court's memorandum of reasons, as delivered orally in open court by the Hon Miss Justice Straw JA, is as follows:

[1] The applicant, Sadique Robertson, having been convicted on 18 June 2018 for the offence of murder and sentenced on 27 July 2018 to life imprisonment without eligibility for parole before serving at least 20 years, on 7 August 2018 sought leave to appeal his conviction and sentence. His application for leave was considered by a single judge of this court and refused on 4 November 2021.

[2] A renewal of his application was made on 3 December 2021. However, on 18 September 2023, after receiving notice that the renewed application for leave was listed to be heard in court in the week of 2 October 2023, the applicant filed a notice of abandonment of his appeal.

[3] By application filed 28 September 2023, the applicant now seeks to withdraw his notice of abandonment of appeal and requests that this court

exercises its discretion to order that upon the filing of a new notice of abandonment, his sentence be reckoned to commence as at the date his sentence was imposed, being 27 July 2018. The applicant, in his affidavit in support of this application, deposed, that having met with his attorney-at-law and discussed in detail the pending appeal, he is satisfied that there are no arguable grounds of appeal with respect to either conviction or sentence. As such, he no longer intends to pursue his appeal. He wishes however, that the court will allow his sentence to begin from the date it was handed down, on 27 July 2018.

[4] The Crown has not opposed this application.

[5] This court has no difficulty with the order sought, so as to avoid injustice being occasioned to the applicant. This is also not a novel issue. An applicant for permission to appeal or an appellant may at any time abandon his or her application or appeal, pursuant to rule 3.22 of the Court of Appeal Rules. So far as is relevant, rule 3.22 states:

“Abandonment of appeal

- 3.22 (1) An appellant may at any time abandon his or her appeal by giving notice to the registrar in form B15.
(2) The notice of abandonment must, subject to rule 3.5, be signed by the appellant even though he or she is represented by an attorney-at-law.
(3) Upon receipt of notice under paragraph (1)
(a) **the appeal is deemed to be dismissed;**
...” (Emphasis supplied)

[6] In this instance, should the applicant not receive the orders sought, then his sentence will not begin to run until the date of abandonment or dismissal of his appeal. This is by virtue of section 31(3) of the Judicature (Appellate Jurisdiction) Act, which provides that the time during which an appellant awaits the determination of his appeal does not count as part of his term of imprisonment

under his sentence, unless this court directs otherwise. This court has, on previous occasions, allowed applicants and appellants to abandon their appeal and has ordered that sentences should be reckoned as at the date they were imposed. The cases of **Tafari Williams v R** [2015] JMCA App 36 and **Sheldon Pusey v R** [2016] JMCA App 26 are two such examples. There being nothing in the instant case to prevent us from making such an order, we adopt the approach taken in the aforementioned cases and make the following order:

It is hereby directed that, upon the applicant's filing of a new notice of abandonment of his application for leave to appeal, his sentence is to be reckoned as having commenced on the date on which it was imposed, that is, 27 July 2018.