

**JAMAICA**

**IN THE COURT OF APPEAL**

**SUPREME COURT CRIMINAL APPEAL NO 136/2008**

**BEFORE: THE HON MRS JUSTICE HARRIS P (Ag)  
THE HON MRS JUSTICE McINTOSH JA  
THE HON MR JUSTICE BROOKS JA**

**BRISTON SCARLETT v R**

**Leonard Green for the appellant**

**Dirk Harrison and Miss Melony Domville for the Crown**

**2 February 2012**

**ORAL JUDGMENT**

**HARRIS P (Ag)**

[1] At a re-sentencing hearing before Hibbert J on 7 April 2006, the appellant, having been previously sentenced to death, was resentedenced to a term of life imprisonment. It was ordered that he should not become eligible for parole until he has served 30 years. He now appeals against sentence.

[2] The appellant was tried and convicted on two occasions on an indictment charging him for capital murder with respect to the death of Shauna Morgan. He

successfully appealed his first conviction which was set aside on 14 October 1999 and a new trial ordered. His second conviction occurred on 17 April 2002.

[3] The facts of the case are briefly that, on the early morning of 30 September 1997, the appellant was seen in the yard of Miss Barbara Benjamin. She had, on previous occasions, repeatedly rejected sexual advances made by him. At the time of the incident, Miss Benjamin, her boyfriend and her roommate Shuana Morgan, were in a room of Miss Benjamin's house. Having been alerted by the smell of gas and fire coming from under the door of the room which led outside, Miss Benjamin looked through her window and saw the appellant. She called out to him and inquired as to the reason for his presence in her yard. He immediately threw a bottle "with fire" through the window. This resulted in all three occupants of the room being set on fire. They were badly burnt and had to be hospitalized. On 7 October 1997, Shauna succumbed to her injuries.

[4] The following grounds of appeal were filed:

- i. The learned trial judge, at the re-sentencing hearing, erred in that he failed to specifically order that the appellant would become eligible for parole as from the date of his conviction or thereabouts.
- ii. The learned trial judge failed to demonstrate in his reasons for judgment that he took into account, the age of the appellant at the time he imposed the sentence."

### **Ground one - Submissions**

[5] Mr Green argued that the learned judge failed to discharge his duty in applying the correct principles as to the appropriate sentence in this case and what should be the commencement date of the pre-parole period, his sentence of death having been set aside and life imprisonment substituted in lieu thereof. In placing reliance on ***Lambert Watson v R*** SCCA No 47/2006 delivered on 16 November 2009, he argued that sentence should commence at the date of conviction and the proper date for the purpose of conviction ought to have been 1999.

### **Ground two - Submissions**

[6] Counsel argued that in ***Lambert Watson*** which was a double murder, the learned judge, at sentencing, imposed a 20 year tariff with respect to ***Watson's*** eligibility for parole. In the present case, the learned judge applied a 30 year tariff in circumstances where the appellant was 43 years old and there is nothing to show that the learned judge had taken this into consideration in imposing the tariff, he contended.

### **Analysis**

[7] The learned judge, at the time of the re-sentencing had before him a Social Inquiry Report, a report from the Department of Correctional Services and a Psychologist's Report which he mentioned. He would have obviously taken the contents of these reports into account.

[8] He took into consideration the facts of the case and the offence which were in fact grave and serious, as he indicated. There is also no doubt that he would have considered the record and the character of the appellant.

[9] We are of the view that the learned judge had in fact taken into account all relevant factors which resulted in his setting aside the death sentence and imposing life sentence in substitution therefor and not failing to state a period after which the appellant shall become eligible for parole which he fixed at 30 years. This, he had done by discounting the period which the appellant had spent in custody between the first trial and the date of conviction at the second trial. The period during which he spent in custody between the first trial and second conviction would not be relevant for the proper sentencing despite Mr Green stating that it was. We are of the view that the learned judge had correctly assessed all the relevant factors in arriving at the pre-parole period.

[10] We, however, accept Mr Green's submission that, bearing in mind the decision of this court in *Lambert Watson*, the learned judge failed to specify that the date of commencement of the sentence should have been the date of conviction.

[11] In the event, ground one of the appeal succeeds, and ground two fails. The order therefore is that the appellant shall serve a sentence of imprisonment for life and shall not become eligible for parole until he has served 30 years. The sentence should commence 17 April 2002.