

JAMAICA

IN THE COURT OF APPEAL

**BEFORE: THE HON MISS JUSTICE STRAW JA
THE HON MRS JUSTICE V HARRIS JA
THE HON MR JUSTICE LAING JA**

SUPREME COURT CRIMINAL APPEAL NO COA2020CR00051

APPLICATION NO COA2025APP00012

JASMAIN SPENCE v R

Kemoy McEkron instructed by McEkron Law for the applicant

Ms Paula Sue Ferguson for the Crown

5 February 2025

Criminal practice and procedure – Abandonment of application for leave to appeal – Documents requested for disclosure not produced - Requirement for directions from the court regarding reckoning of sentences - Judicature (Appellate Jurisdiction) Act, s 31(3)

ORAL JUDGMENT

STRAW JA

[1] On 12 March 2020, the applicant, Jasmain Spence, was convicted and sentenced in the Gun Court for the offences of illegal possession of firearm and illegal possession of ammunition. On 3 July 2020 he was sentenced to seven years' imprisonment for illegal possession of firearm and two years' imprisonment for illegal possession of ammunition, with the sentences ordered to run concurrently.

[2] The prosecution's case was that on 22 October 2017, at about 10:00 am, the applicant was seen by two police officers in the Payne Land Community, walking with a firearm. It was the evidence from the police that the applicant was ordered to drop the

gun, which he did, after which he ran away. It was not disputed that the applicant was known to one of the police officers for a number of years. The applicant gave sworn evidence in which he admitted to interacting with the police on that date, but insisted that he was not found with a firearm and was released by the police, following a search.

[3] The learned judge correctly stated that the main issue was one of credibility.

[4] The applicant sought leave to appeal against his convictions and sentences, which a single judge of this court refused on 22 July 2021. On 9 September 2021, he renewed his application for leave to appeal to the court. By notice of application filed 20 January 2025, the applicant now seeks the court's leave to abandon application for leave to appeal and for his sentences to be reckoned as having commenced on 3 July 2020, the date they were imposed.

[5] By his affidavit sworn on 20 January 2025, the applicant deposed that following the refusal by the single judge of his application for leave to appeal, he instructed his attorney to obtain the service vehicle log from the Hunts Bay Police Station for the date of the incident giving rise to his convictions (22 October 2017). This was with a view to making an application for fresh evidence, in order to discredit the evidence given at trial. The applicant exhibited correspondences, dating back to 7 September 2022, to demonstrate the efforts made by his counsel to procure the requested document. Despite these requests, the requested documents have not been produced to date.

[6] The applicant stated further that he was informed that, but for his application for leave to appeal, he would be eligible for early release on 1 March 2025. In the circumstances, he wishes to abandon his appeal.

[7] The Crown does not oppose this application.

[8] Section 31(3) of the Judicature (Appellate Jurisdiction) Act ('JAJA') provides:

"31. The time during which an appellant, pending the determination of his appeal, is released on bail, and subject

to any directions which the Court of Appeal may give to the contrary on any appeal, the time during which the appellant, if in custody, is specially treated as an appellant under this section, shall not count as part of any term of imprisonment under his sentence, and, in the case of an appeal under this Act, any imprisonment under the sentence of the appellant, whether it is the sentence passed by the court of trial or the sentence passed by the Court of Appeal shall, subject to any directions which may be given by the Court as aforesaid, be deemed to be resumed or to begin to run, as the case requires, if the appellant is in custody, as from the day on which the appeal is determined, and, if he is not in custody, as from the day on which he is received into a correctional institution under the sentence.”

[9] In the circumstances, in the absence of a direction from the court, the applicant’s sentence will be deemed to begin to run until the date of disposal of his application for leave to appeal (see **Tafari Williams v R** [2015] JMCA App 36 and **Sheldon Pusey v R** [2016] JMCA App 26). We are of the view that these circumstances require the favourable consideration of this court.

[10] The court, therefore, makes the following order:

It is hereby directed that, upon the applicant filing a notice of abandonment of his application for leave to appeal, his sentences of seven years’ imprisonment for illegal possession of firearm and two years’ imprisonment for illegal possession of ammunition are to be reckoned as having commenced on the date on which they were imposed, that is, 3 July 2020.