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

SUPREME COURT CRIMINAL APPEAL NO 25/2018

BOBBERT WALKER v R

TAKE NOTICE that this matter was heard by the Hon Mrs Justice McDonald-Bishop JA, the Hon Mr Justice D Fraser JA and the Hon Mrs Justice G Fraser JA (Ag) on 8 May 2024, with John Clarke for the applicant and Ms Paula-Sue Ferguson for the Crown.

TAKE FURTHER NOTICE that the court's memorandum of reasons as delivered orally in open court by the Hon Mrs Justice McDonald-Bishop JA is as follows:

[1] The applicant, Mr Bobbert Walker, was brought before the Hanover Circuit Court on an indictment that charged him with the offence of murder. The particulars of the offence were that he murdered Cordell Smikle ('the deceased') on 14 June 2014 in the parish of Hanover. Following a jury trial, he was found guilty and subsequently sentenced to 26 years' imprisonment with the stipulation that he spend 20 years before being eligible for parole.

[2] Mr Walker applied to this court for an extension of time to file his application for permission to appeal and for permission to appeal against his conviction and sentence for the offence of murder. His applications were first considered by a single judge who granted Mr Walker an extension of time to seek permission to appeal but refused his application for permission to appeal. In refusing the application for permission to appeal, the single judge opined that the learned trial judge gave directions on all the main issues in the case, which included alibi and accomplice evidence. The single judge also found

that Mr Walker's sentence is within the usual range and, therefore, not manifestly excessive.

[3] The applicant, as he is entitled to do, has renewed his application for permission to appeal for the court to consider whether his conviction should be quashed and his sentence set aside.

[4] The background to the appeal is helpfully set out in the written submissions filed by the Crown in response to the appeal, which we gratefully adopt, with some necessary modifications.

[5] The crux of the case for the prosecution at trial was that, on 14 June 2014, at around 10:00 pm, the applicant, Bebito Casely (the applicant's nephew and prosecution's main witness), and Leroy Soares (otherwise called 'Poppy') left the house in which they lived in Haddington District Hopewell, in the parish of Hanover. They saw the deceased walking uphill. Mr Casely saw the applicant take a gun from his waist and heard the applicant say "see di bway deh, him have fi dead". The three men waited in a cornfield until the deceased arrived home. Mr Casely stayed behind and watched while the applicant and Poppy walked over to the deceased's house and entered through an unfinished section. Seconds later, Mr Casely heard someone cry out from within the house. He also heard loud explosions sounding like gunshots. Mr Casely ran in the direction from which they came when he saw the applicant and Poppy running from the deceased's house in the same direction.

[6] In response to the prosecution's case, the applicant gave an unsworn statement from the dock stating that he was at his girlfriend's house on the day in question. He said he spent the night with her and only returned home in the morning of the next day.

[7] The main issues raised before the learned judge, which were also identified by the single judge of this court, were alibi and accomplice evidence. We adopt the finding of the learned single judge that the trial judge satisfactorily gave all necessary directions,

and there is no basis on which to complain that she misdirected the jury on the issues raised.

[8] Counsel Mr Clarke, who appeared on behalf of the applicant, submitted that, given the standard that must be reached for a successful application for leave to appeal against conviction, there was nothing he could “ethically” advance to the court as a basis on which the conviction should be disturbed.

[9] In addressing the sentence imposed by the trial judge, Mr Clarke also conceded, rightly in our view, that it cannot at all be said, in the light of the authorities, that the applicant’s sentence is manifestly excessive. Mr Clarke noted that, although he had identified two arguments that could be advanced in support of the application for permission to appeal the sentence, those arguments would not avail the applicant in the light of the aggravating and mitigating factors and the length of the sentence imposed.

[10] Counsel for the Crown, Miss Ferguson, agreed with Mr Clarke’s position. She noted that the eyewitness, the applicant’s nephew, gave cogent evidence that was accepted by the jury. The learned trial judge gave the jury all the necessary warnings, including a comprehensive accomplice warning. Therefore, there is no reason to disturb the verdict and so, the conviction must stand.

[11] As it relates to the sentence, Crown Counsel also noted, in keeping with Mr Clarke’s view, that the sentence was within the usual range. She noted that the applicant was given a determinate sentence, which is quite lenient when compared to similar cases of murder.

[12] The court accepts counsel’s submissions and acknowledges that the concession on the part of Mr Clarke is rightly made. We commend him for his approach in this regard.

[13] Therefore, having assessed the evidence, the trial judge’s directions to the jury, and the sentence in this case, we find the verdict and sentence unassailable. Accordingly,

the proposed grounds of appeal have no real prospect of success, so the application for permission to appeal must inevitably be refused.

[14] For the foregoing reasons, we make the following orders:

1. The application for permission to appeal is refused.
2. The sentence is to be reckoned as having commenced on 9 March 2018, the date on which it was imposed by the trial judge.