

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO. 24/07

**BEFORE: THE HON. MR. JUSTICE HARRISON, J.A.
THE HON. MR. JUSTICE MORRISON, J.A.
THE HON. MISS JUSTICE PHILLIPS, J.A.**

LEROY WILLIAMS

v

REGINA

Miss Althea McBean, instructed by Frater, Ennis & Gordon, for the applicant.

Miss Natalie Brooks, Assistant Director of Public Prosecutions, for the Crown.

October 27, 2009

Oral Judgment

HARRISON, J.A.

1. The applicant Leroy Williams was tried and convicted for the offence of murder in the Home Circuit Court held at King Street, Kingston, on the 16th January, 2007. He was sentenced to life imprisonment with a recommendation that he should not become eligible for parole until he has served a period of 25 years. The single judge refused him leave to appeal so he has renewed his application to the Court.

The facts are that on the 2nd February, 2005, the deceased Paul Russell was shot and killed by the applicant who is called "BOBO". Gerald Downer, an eye witness called by the Crown, was walking along the road at Gobay District sometime after 9:00 p.m. when he saw the applicant fire two shots from a gun at the deceased man. The deceased man then fell to the ground and the applicant and two others ran off and entered a bus which drove away.

3. Mr. Downer went to the assistance of the deceased. He saw blood on his pants. He held him and carried him up the road. Thereafter, medical attention was sought and he was taken to the hospital where he was pronounced dead. In his defence the applicant, who gave evidence under oath, raised the defence of alibi and said he was not along the roadway in Gobay District at the time of the shooting. He said he was at Sonia's house in Gobay at the material time. He also called a witness in support of his alibi.

4. The applicant filed five (5) grounds of appeal which complained of:

- (a) Mis-identity by the witness
- (b) Lack of evidence
- (c) Improper police procedures
- (d) Miscarriage of justice
- (e) Personal vendetta

5. Miss Althea McBean, who appears on behalf of the applicant, filed four (4) supplemental grounds of appeal on his behalf. They are:

- (1) That the verdict arrived at in the case was unreasonable having regard to the evidence before the Court;
- (2) The evidence was of such a tenuous nature and contained inherent discrepancies that the learned trial judge ought to have upheld the submissions that there was no case to answer;
- (3) The learned trial judge failed to properly address the issue of identification and;
- (4) The procedure by which the applicant was identified was improper and resulted in a miscarriage of justice.

6. Miss McBean however has graciously conceded that she cannot find any arguable ground which could be urged on behalf of the applicant with respect to his conviction and sentence. Miss Natalie Brooks for the Crown is also unable to urge anything useful on behalf of the applicant.

7. We have carefully examined the transcript of the evidence and the summation of the learned trial judge, and have found that the learned trial judge had painstakingly dealt with the evidence and the issues that arose therefrom for the jurors' consideration. He gave adequate directions on the burden of proof, the drawing of inferences, how to treat inconsistencies and discrepancies which arise from the evidence of the witnesses and how to treat the evidence given by the applicant and his witness.

8. The major issue in the trial was one concerning identification. There was ample evidence on which the jury could come to a conclusion adverse to the applicant. The applicant was well known to the witness Gerald Downer. We believe that he had more than ample opportunity to have recognized the applicant on the night of the shooting. The alibi defence was rejected by the jury and he was found guilty as charged. In the circumstances, we agree with counsel for the applicant, that no useful ground could be successfully argued on his behalf.

9. Conviction and sentence are affirmed. The sentence of the court should therefore commence as of the 6th May, 2007.