

**JAMAICA**

**IN THE COURT OF APPEAL**

**BEFORE: THE HON MISS JUSTICE STRAW JA  
THE HON MR JUSTICE D FRASER JA  
THE HON MISS JUSTICE SIMMONS JA**

**SUPREME COURT CRIMINAL APPEAL NO 52/2018**

**MELVILLE WILLIAMS v R**

**Derrick Thompson for the appellant**

**Miss Natallie Malcolm for the Crown**

**10 July 2023**

**Endorsement read by Straw JA**

[1] The appellant was convicted on an indictment for the offence of rape under section 3(1) of the Sexual Offences Act ('the Act') on 17 May 2018, after a trial by judge and jury. He was sentenced to 18 years' imprisonment at hard labour.

[2] He applied for leave to appeal the conviction and sentence. On 2 April 2021, a single judge of appeal refused the application in relation to conviction, but granted leave to appeal sentence.

[3] The appellant, on his renewed application before us, has abandoned his original grounds against conviction, but is proceeding to argue the appeal against sentence. Section 6(1)(a) of the Act specifies the penalty for rape contrary to section 3(1) of the said Act, as being the minimum term of 15 years. The sole issue raised in the appeal is whether the learned trial judge erred by failing to take into consideration the 11 months spent by the appellant on pre-trial remand (the transcript of the sentencing hearing actually speaks to the appellant having spent 11 months and 16 days in pre-trial custody). This is a well-traversed issue and requires no lengthy analysis. The appellant is entitled to be credited for pre-trial custody unless the sentencing judge indicates an appropriate reason for refusing to do so (see **Callachand & Anor v The State** [2008] UKPC 49;

**Romeo Da Costa Hall v The Queen** [2011] CCJ 6 (AJ); and **Charley Junior v R** [2019] JMCA Crim 16). The Crown has conceded the point. The learned trial judge failed to demonstrate that she took into account the pre-trial period indicated above, as required by the authorities. There has been an error in the application of the sentencing principles and this court is, therefore, empowered to intervene (see **R v Ball** (1951) 35 Cr App Rep 164). The court will subtract 12 months as the period of pre-trial custody.

[4] The court noted that the learned trial judge failed, also, to specify the period to be served before eligibility for parole as required by section 6(2) of the Act. The minimum period stipulated by the Act is 10 years. However, given that the appellant had a recent previous conviction for a similar offence, the court is of the view that he should serve 12 years' imprisonment before eligibility for parole.

[5] We, therefore, make the following orders:

1. The appeal against sentence is allowed.
2. The sentence of 18 years' imprisonment for the offence of rape is set aside; substituted therefor is the sentence of 17 years (12 months being credited for pre-trial custody). The appellant is to serve 12 years' imprisonment before being eligible for parole.
3. The sentence is to be reckoned as having commenced on 29 May 2018, the date on which it was imposed.