

**EASTERN CARIBBEAN SUPREME COURT
IN THE COURT OF APPEAL**

ANTIGUA AND BARBUDA

ANUHCRA2018/0011

BETWEEN:

DIRECTOR OF PUBLIC PROSECUTIONS

Appellant

and

SHANE WILLIAMS

Respondent

Before:

The Hon. Mr. Davidson Kelvin Baptiste
The Hon. Mde. Gertel Thom
The Hon. Mr. Paul Webster

Justice of Appeal
Justice of Appeal
Justice of Appeal [Ag.]

Appearances:

Mr. Anthony Armstrong, Director of Public Prosecutions, and Mrs. Shannon Jones-Gittens for the Appellant
Mr. Shane Williams in person

2020: May 26;
July 3.

Criminal appeal — Appeal against sentence — Goodyear Indication to unrepresented defendant — Initiation of Goodyear Indication by judge without request by defendant — Guilty plea — Voluntariness of plea — Whether Goodyear Indication to unrepresented defendant amounted to inducement to plead guilty — Suspended sentence — Whether learned judge erred in imposing suspended sentence — Whether legal basis exists in Antigua and Barbuda for the imposition of suspended sentences — Whether judge seized of jurisdiction to impose suspended sentence — Whether two year suspended sentence imposed for offence of sexual intercourse with a female under 14 years was manifestly lenient

The respondent, Shane Williams (“Mr. Williams”), was charged with the offence of sexual intercourse with a female under 14 years. Mr. Williams was unrepresented throughout the proceedings below. At his arraignment before a judge of the High Court (“the judge”),

Mr. Williams pleaded not guilty to the charge. On Mr. Williams' second appearance before the court, the judge determined of his own motion, without a request from Mr. Williams, that a Goodyear Indication ought to be given. The judge then asked Mr. Williams what he wanted to do in light of the indication given, in response to which Mr. Williams maintained that he was not guilty. The judge continued to engage Mr. Williams on the possibility of entering a guilty plea in light of the Goodyear Indication, at which time Mr. Williams queried whether he would be able to walk free if he entered a guilty plea. The judge answered affirmatively. Mr. Williams then entered a guilty plea and the judge imposed a sentence of 2 years' imprisonment, suspended for 1 year.

The Director of Public Prosecutions ("the appellant") appealed against Mr. Williams' sentence, arguing 2 grounds of appeal, that: (i) the learned judge did not have jurisdiction to impose a suspended sentence; and alternatively, (ii) the sentence imposed by the judge was manifestly lenient. The appellant also raised issues as to the propriety of the judge's Goodyear Indication and Mr. Williams' guilty plea.

Held: allowing the appeal to the extent that the sentence which was imposed by the learned judge is substituted to the 7 days Mr. Williams spent on remand, that:

1. In order for a plea to be validly entered, it must be unequivocal, voluntary, informed and devoid of undue pressure or inducements. In this case, it was not open to the judge to engage in negotiation with the respondent on his plea, and in effect hold out an inducement of a non-custodial sentence, after being twice told by the respondent that he wished to plead not guilty. The respondent having stated that he was not guilty, his plea ought to have been entered and the matter should have proceeded to trial.

R v Nightingale [2013] EWCA Crim 405 applied; **R v Turner** [1970] 2 QB 321 applied; **R v Goodyear** [2005] EWCA Crim 888 applied; **R v Sidhu** 2019 BCSC 129.

2. A judge should only give a Goodyear Indication where it has been sought by the defendant, or where the sentence or type of sentence would be the same whether the case proceeds on a guilty plea or, following a trial, results in a conviction. The learned judge therefore erred in so far as he initiated and took an active part in the Goodyear Indication without a request from the respondent for such an indication. In the circumstances, the judge's conduct improperly pressured Mr. Williams to plead guilty. It was not enough for the judge to merely say to Mr. Williams that he did not have to plead guilty.

R v Rajaeefard [1996] OJ No. 108 applied; **R v Goodyear** [2005] EWCA Crim 888 applied; **R v Nightingale** [2013] EWCA Crim 405 applied.

3. A statement that on a plea of guilty a judge would impose one sentence, but that on a conviction following a plea of not guilty a severer sentence would be imposed, is one which should never be made as it may amount to undue pressure on the accused which deprives them of complete freedom of choice.

In this case the judge erred in advising Mr. Williams along those lines. Accordingly, the sentence flowing from the Goodyear Indication and guilty plea, even if permissible by statute, could not, in any event, stand.

4. The power to impose a suspended sentence has statutory provenance. The Legislature of Antigua and Barbuda has not enacted any legislation providing for the imposition of suspended sentences. Accordingly, in the absence of the requisite statutory underpinning, the judge lacked jurisdiction or authority to impose Mr. Williams' sentence. In any event, even if the judge had jurisdiction to impose such a sentence, exceptional circumstances must be in play to facilitate the invocation of that jurisdiction. There were no exceptional circumstances at play in this case.

Winston Joseph, Benedict Charles and Glenroy Sean Victor v The Queen Saint Lucia Criminal Appeals Nos. 4, 7 and 8 of 2000 (delivered 17th September 2001 and re-issued 31st October 2001, unreported) considered.

5. In light of the findings on the impropriety of the judge's Goodyear Indication and Mr. Williams' guilty plea, the case ought properly to have gone to trial before a judge and jury to determine Mr. Williams' guilt or innocence. An order to that end would have been available to the Court if there were an appeal against Mr. Williams' conviction. In the absence of an appeal against conviction however, there is no question of the conviction being set aside. In the circumstances, the justice of the case is best served by setting aside the sentence imposed and substituting a sentence of seven days' imprisonment, being the time spent by Mr. Williams on remand.

REASONS FOR DECISION

- [1] **BAPTISTE JA:** It is rather unusual for a successful appeal against sentence where one of the two grounds, being a complaint that the sentence imposed is manifestly lenient, results in a far lesser sentence being imposed; namely, a sentence of seven days' imprisonment – time served. It assumes even greater awkwardness where the appeal stems from a guilty plea to the serious indictable offence of having sexual intercourse with a female under the age of 14, for which the respondent, Shane Williams, was the beneficiary of a benevolent sentence of 2 years' imprisonment, suspended for one year. The Director of Public Prosecutions, Mr. Anthony Armstrong, challenged the sentence on the grounds of

want of jurisdiction to impose a suspended sentence and that the sentence was manifestly lenient.

- [2] Mr. Armstrong posited that the errors that beset the proceedings below were considerable and irretrievable. They included the imposition of a suspended sentence, the unduly lenient sentence, the offering and initiation by the learned judge of what is referred to as a “Goodyear Indication”,¹ and the appearance of pressure on the respondent, by the learned judge, to plead guilty. For these reasons, he submitted, the sentence imposed cannot be sustained. We allowed the appeal on 26th May 2020 and now give full reasons for our decision.
- [3] An unrepresented defendant – a category in which the respondent fell – undeniably poses challenges to the court and the prosecution. Accordingly, the trial judge and the prosecuting counsel, as a minister of justice, have a heightened responsibility in ensuring the fairness of the trial process and, in the particular circumstances of this case, what turned out to be the conduct of the sentencing process.
- [4] It is important to note that the respondent did not appeal his conviction or sentence. This Court therefore has no jurisdiction to upset his conviction. The appeal against sentence is at the instance of the Director of Public Prosecutions. As a minister of justice, and in keeping with the finest traditions of Crown-side advocacy, Mr. Armstrong quite properly brought to the Court’s attention certain fundamental legal matters which undoubtedly affected the propriety of the respondent’s guilty plea, as well as the integrity of the Goodyear Indication. These matters cannot be regarded as tangential or peripheral to the appeal against sentence and they undoubtedly bear upon one of the reliefs sought by Mr. Armstrong – that the sentence imposed by the learned judge be set aside or varied.

¹ A binding indication by a judge of the maximum sentence an accused would face were he or she to plead guilty, in keeping with the guidelines set out in *R v Goodyear* [2005] EWCA Crim 888, discussed in greater detail at [18] to [23] herein.

- [5] In order to give context to the appeal against sentence, it is imperative to pay close regard to what transpired before the learned judge.

Background – the Goodyear Indication and guilty plea

- [6] The unrepresented respondent first appeared before the judge on 19th October 2018 and pleaded not guilty upon his arraignment. He appeared five days later with no change in his representation. The learned judge determined that there should be a Goodyear Indication without any intimation or request for such an indication from the respondent. The respondent never asked the judge to indicate the maximum sentence he would be given in the event that a guilty plea was entered.

- [7] The following appears from the transcript:

“THE COURT: ...Now you’re here today for what I call a Goodyear indication of sentence and what is going to happen is Miss Adams is going to tell me about the case. I’m gonna ask you a couple of questions and then I’m gonna calculate what the sentence would be if you pleaded guilty today. You don’t have to plead guilty. I am just letting you know because you don’t have a lawyer what the sentence would be. Do you understand me?

THE ACCUSED: Yes, your Honour.”²

- [8] The learned judge then embarked upon what he described as a Goodyear Indication to the respondent. Importantly, and as earlier indicated, the judge did this of his own motion. The judge commenced his indication by saying: ‘I have determined that there should be a Goodyear indication sentence in the matter of Shane Williams who is unrepresented.’³ The respondent, at the end of the judge’s indication, when asked what he wanted to do, replied that he wished to plead not guilty. The transcript shows:

² Record of Appeal, page 6, lines 1 to 9.

³ Record of Appeal, page 13, lines 7 to 9.

“THE COURT: Right. Now, have you understood what the calculation of the sentence is? Have you understood what I’ve said the sentence would be?

THE ACCUSED: Yes, Your Honour.

THE COURT: Right. What do you want to do? Do you want to maintain your not guilty plea or do you want to plead guilty.

THE ACCUSED: I want to pleading (*sic*) not guilty because I don’t think I’m guilty.”⁴

[9] The learned judge, after being told by the respondent that he wanted to plead not guilty, continued to engage him, whereupon the respondent queried if he would be able to walk free if he pleaded guilty. The judge answered affirmatively.

[10] The exchange between the judge and the respondent, again, merits reproduction:

“THE COURT: I think you need to understand that if you are convicted of this, the starting point of the sentence is four years and there are features which you can rely on in a Goodyear indication, which is what we’re doing, which really brings the sentence down. But if you go to a jury and a jury convicts you of this -

THE ACCUSED: (Unclear).

THE COURT: -- then I’m not going to be able to suspend the sentence and it’s gonna be a lot more. Do you understand what I’m saying?

THE ACCUSED: So what you’re saying now if I plead guilty to the lesser charge I will be able to walk free?

THE COURT: That’s correct.

THE ACCUSED: Yes.

⁴ Record of Appeal, page 22, lines 16 to 25.

THE COURT: Where as (*sic*) if you continue to plead not guilty and later ---

THE ACCUSED: And they try me find, I'll get a greater time, a bigger time?

THE COURT: Well, you'll go to jail.

THE ACCUSED: Yes, Your Honour.

THE COURT: And you'll go to jail for quite a bit of time.

THE ACCUSED: Okay, Your Honour. I'm willing to plea.”⁵

[11] There is a presumption that an appellant's guilty plea entered in open court and in his presence is voluntary. However, this presumption is rebuttable. A plea of guilty is a formal admission that the accused has committed the offence charged and consents to a conviction without any trial. It is a waiver of both the accused's right to have the Crown prove the charge beyond a reasonable doubt and the procedural safeguards associated with the trial process. In order for the plea to be valid, it is essential that it is unequivocal, voluntary and informed – see **R v Downes**.⁶

[12] It is an unyielding principle of the criminal justice system that a defendant charged with an offence is personally responsible for entering his plea, and in exercising that personal responsibility, he must be free to choose whether to plead guilty or not guilty. The principle applies whether or not the court or counsel on either side thinks that the case against the defendant is weak or apparently unanswerable. The law is very clear on this point, and was recently discussed by Lord Judge CJ in **R v Nightingale**⁷ which was a case concerned with inappropriate judicial intervention in relation to an appellant's freedom of choice to enter his plea. The

⁵ Record of Appeal, page 23.

⁶ 2012 ONCJ 45 at paragraph 7.

⁷ [2013] EWCA Crim 405 at paragraph 10.

foundational principle that a defendant is personally and exclusively responsible for his plea, also finds expression in **R v Turner**.⁸ When a defendant enters a plea, it must be entered voluntarily and without improper pressure. The decision of **R v Goodyear** makes it clear that there is to be no bargaining with or by the judge.⁹

[13] As Riley J in **R v Sidhu** put it, ‘...to be valid, a guilty plea must be informed, voluntary and unequivocal’.¹⁰ A voluntary plea refers to the conscious, volitional decision of the accused to plead guilty for reasons which he or she regards as appropriate.¹¹ A voluntary plea, in the context of this case, would mean that the accused was not coerced or pressured into pleading guilty. In other words, the guilty plea must have been the free choice of the accused, untainted by improper inducement to plead guilty.

[14] From a review of the transcript, there is much to be said in favour of the conclusion that improper pressure or inducement was brought to bear on the respondent to plead guilty and, as such, the plea could not be regarded as free and voluntary. After being plainly told by the respondent twice that he is not guilty, the trial judge improperly continued to engage the respondent, whereupon the respondent inquired whether he would be able to walk free, if he pleaded guilty. Having received an affirmative response, he entered a guilty plea. The respondent having stated twice that he was not guilty, that plea ought properly to have been entered and the matter ought to have proceeded to trial. It was certainly not open to the judge to continue to engage in what appeared to be negotiation with the respondent on his plea, and in effect holding out an inducement of a non-custodial sentence.

⁸ [1970] 2 QB 321 at 326.

⁹ [2005] EWCA Crim 888 at paragraph 30.

¹⁰ 2019 BCSC 129 at paragraph 12.

¹¹ See *R v Rosen* 1979 CanLII 59 (SCC) in which the Supreme Court of Canada discussed generally the meaning for “voluntariness”.

- [15] **R v Rajaefard**,¹² a decision from the Ontario Court of Appeal, is instructive in these circumstances. There, the conduct of the trial judge was called into question. A law student appeared for the accused at trial for the limited purpose of requesting an adjournment. The trial judge refused the adjournment. The judge then conducted pre-trial discussion with the Crown and the student, on his own initiative, and in the absence of the accused, indicated sentences he would impose if the accused entered a guilty plea or if he were to be convicted after trial. The judge told the student that the accused could expect a suspended sentence and probation if he entered a guilty plea and, if he were convicted after trial, he would receive a 10 to 15 day term of imprisonment. The student conveyed the information to the accused, who then pleaded guilty.
- [16] It was held that the trial judge's conduct improperly pressured the accused to plead guilty, and the guilty plea was not freely and voluntarily given. The circumstances which influenced that conclusion included that: (1) the accused always maintained that he was not guilty and he intended to plead not guilty; and (2) it was the trial judge who initiated and took an active role in giving the sentence indication – the parties had not sought his assistance. These factors, among others, imposed improper pressure on the accused to plead guilty, and the appearance of fairness was lost.
- [17] Likewise, in this case, the respondent's plea was entered as a result of improper inducement to plead guilty. The respondent did not, in the literal sense of the word, enter his plea of guilt freely and voluntarily. The judge's conduct improperly pressured the respondent to plead guilty, and the plea was not freely and voluntarily given. That contention derives support from the fact that the respondent always maintained that he was not guilty and twice said he was not guilty. It was the judge who initiated and took an active part in the discussions. It was not enough for the judge to merely say to the respondent that he '[did not]

¹² [1996] OJ No. 108.

have to plead guilty'¹³ as, in all the circumstances, it cannot be said that the plea was devoid of any improper inducement – the appearance of fairness was lost.

[18] The procedure by which a defendant can obtain an indication as to the sentence to be imposed upon a guilty plea is governed by the decision in **R v Goodyear**.¹⁴ The court can indicate, at the defendant's request, the maximum sentence it would impose were the defendant to plead guilty at that stage of the proceedings. The Court of Appeal will scrutinise the circumstances in which the indication was given. The procedure laid down in **Goodyear** is designed to ensure that pleas are voluntary; firstly, by requiring that the initiative in seeking an indication comes from the defence; and secondly, by requiring the defendant to provide written authority to his or her advocate to seek the indication. If a Goodyear Indication is given, it will be as to the maximum sentence which would be imposed if a plea of guilty is entered at the stage at which the indication is sought. Once given, the indication is binding on the sentencing judge. In whatever circumstances an advanced indication of sentence is sought, the judge retains an unfettered discretion to refuse to give one.

[19] In marked distinction, unlike the defendant's lawyers who are obliged to offer defendants dispassionate (even if unwelcome) advice, the judge, subject only to express exceptions, must maintain his distance from and remain outside this confidential process. The specific exceptions to this rule include the judge's discretion, if invited to do so, to provide the defendant with a Goodyear Indication. If the judge chooses to respond to such request, that would not constitute inappropriate judicial pressure because the judge in that circumstance is agreeing to respond to a request by or on behalf of a defendant. It is also open, and perhaps as far as the judge can ever go, to remind the defence advocate that he is entitled, if the defendant wishes, to seek a Goodyear Indication. But if he chooses not to do so, it remains wholly inappropriate for the judge to give, or to insist on

¹³ Record of Appeal, page 6, line 6, quoted at paragraph 6 above.

¹⁴ [2005] EWCA Crim 888.

giving, any indication of sentence. **Goodyear** underlines that 'the judge should not give any advance indication of sentence unless one has been sought by the defendant'.¹⁵

- [20] The other exception to the principle is where the judge is entitled to use his own initiative to give an indication of sentence. This is where the judge decides to let the defendant know that the sentence or the type of sentence will be the same whether the case proceeds on a guilty plea or, following a trial, results in a conviction. As explained by Lord Judge CJ at paragraph 14 of **R v Nightingale**:

"The principle adopted in Goodyear, derives from the final observation in Turner that 'it should be permissible for a judge to say, if it be the case, that whatever happens, whether the accused pleads guilty or not guilty, the sentence will or will not take a particular form, eg a probation order or a fine or a custodial sentence'. The basis upon which that principle is enunciated is that if the sentence is to be the same whether the defendant pleads guilty or not guilty, there is no extraneous additional pressure upon him. He can make up his mind free of any worry about the level of sentence being affected by his plea. The observation in Turner was made in the context of the judge indicating that the question whether the sentence would be custodial or non-custodial would depend on whether the defendant pleaded guilty."

- [21] Lord Judge CJ further explained as follows at paragraphs 15 and 16:

"15. The observations do not, however, mean that in a case where imprisonment is inevitable it is permissible for a judge on his own initiative, uninvited, to give an indication to the defendant that a very long sentence of imprisonment will be the consequence of conviction by the jury and a relatively short one if the defendant decides to plead guilty.

16. In the final analysis, the question is not whether the Judge Advocate contravened the principles which govern the giving of sentence indications. Of itself that should not be decisive. The question is whether the uninvited indication and its consequential impact on the defendant after considering the advice given to him by the judge, and its consequent impact on the defendant after considering the advice given to him by his legal advisers on the basis of their professional understanding of the effect of what the judge has said, had created inappropriate additional pressure

¹⁵ See at paragraph 13.

on the defendant and narrowed the proper ambit of his freedom of choice.”

[22] Paying regard to the learning with respect to the Goodyear Indication, it seems that the possibility of such an indication is likely to be thwarted in a case of an unrepresented defendant. It is a matter of common knowledge that many, if not most, defendants appearing before the criminal courts are unrepresented. Recognising that a Goodyear Indication has to be initiated by the defence, it may be unlikely that an unrepresented defendant would have the knowledge to seek such an indication from the judge. It appears therefore that a Goodyear Indication and an unrepresented defendant will not usually co-exist peaceably unless the defendant is independently aware of their right to seek the indication.¹⁶ This is a further indication of the challenge posed by the presence of an unrepresented defendant in criminal proceedings. In the present matter, the learned judge initiated the Goodyear Indication. The authorities are clear that a Goodyear Indication has to be initiated by the defendant – it is not for the judge to initiate the process.

[23] Apart from that, the judge should never indicate, subject to one exception, the sentence which he is minded to impose. A statement that on a plea of guilty he would impose one sentence, but that on a conviction following a plea of not guilty he would impose a severer sentence, is one which should never be made. This could be taken as undue pressure on the accused, thus depriving him of that complete freedom of choice, which is essential. In that regard, the judge erred in telling the respondent that if he were to be convicted, the starting point of the sentence would be four years and there are features he could rely on at the stage of the Goodyear Indication to bring the sentence down, but that if he goes to trial and gets convicted he would be not able to suspend the sentence, and that the sentence in those circumstances would be a lot more. The judge made it clear, if further clarity were needed, that if the respondent continued to plead not guilty and he is found guilty, ‘[he would] go to jail for quite a bit of time’.

¹⁶ See R v Goodyear [2005] EWCA Crim 888 at paragraph 68.

[24] The learned judge fundamentally contravened the principles governing a Goodyear Indication. In this case, there was inappropriate inducement and improper pressure on the respondent to plead guilty, thus narrowing the proper ambit of his freedom of choice. It was impermissible for the learned judge, of his own initiative, uninvited, to give an indication to the defendant that a long sentence of imprisonment will be the consequence of conviction by the jury, and a suspended sentence if the defendant decided to plead guilty. The sentence flowing from the Goodyear Indication, even if it were permissible by statute (and it was not), could not, in any event, stand.

Discussion

[25] With this background, the two grounds of appeal are considered. First, the complaint that the judge erred in imposing a suspended sentence as he had no jurisdiction to impose such a sentence. On this point, Mr. Armstrong posited that a suspended sentence is a creature of statute which sets out the terms and conditions for its imposition. In that regard he referenced, among other provisions, section 3 of the Criminal Law Reform Act 1988 of Guyana,¹⁷ section 6 of the Criminal Justice (Reform) Act of Jamaica,¹⁸ and section 6(1) of the **Criminal Justice (Reform) Act** for the Commonwealth of Dominica.¹⁹ Mr. Armstrong argued that, unlike these countries, the Legislature of Antigua and Barbuda has not enacted any legislation providing for the imposition of suspended sentences, and pointed out that the learned judge did not refer to any legislation upon which he relied to impose the sentence. In the circumstances, he submitted that the learned judge fell into error in imposing a suspended sentence, and acted without jurisdiction or lawful authority.

[26] Mr. Armstrong further submitted that, even if the Legislature had provided for a suspended sentence, the particular circumstances of the case did not warrant its

¹⁷ Act No. 12 of 1988.

¹⁸ Act No. 7 of 1978.

¹⁹ Cap 12:35 of the Laws of the Commonwealth of Dominica.

imposition. The offence was a very serious one, attracting a life sentence; the aggravating factors significantly outweighed the mitigating factors, and there were no exceptional circumstances justifying its imposition.

- [27] The complaint in the second ground of appeal is that the sentence imposed was manifestly lenient. Mr. Armstrong argued that the offence is one of the most pervasive crimes in Antigua and Barbuda. Mr. Armstrong referred to the guidelines for sentencing in sexual offences cases established by Byron CJ in **Winston Joseph, Benedict Charles and Glenroy Sean Victor v The Queen**.²⁰ There, the learned Chief Justice stated that in the case of carnal knowledge of a girl under 13, a maximum starting point of 8 years imprisonment, where there are no mitigating factors. Mr. Armstrong submitted that even if one were to apply the principles stated by Byron CJ, one would have to conclude that the respondent's case demanded a custodial sentence as opposed to a suspended one.
- [28] We accepted Mr. Armstrong's submissions with respect to both grounds of appeal and agreed that both grounds would be allowed. The power to impose a suspended sentence has statutory provenance and there is no statute in Antigua and Barbuda equipping a judge with such a power. In the absence of the requisite statutory underpinning, the judge lacked jurisdiction or authority to impose such a sentence. Even where a statute grants such power, exceptional circumstances must be in play to facilitate its invocation. There were no exceptional circumstances here.
- [29] Mr. Armstrong invited us to allow the appeal, set aside and vary the sentence imposed, and grant any other relief considered appropriate. He also suggested, but did not pursue it, that the conviction should be said aside and a retrial ordered. While accepting that the learned judge had no jurisdiction to impose a suspended sentence, and that the sentence imposed was in any event unduly lenient, we

²⁰ Saint Lucia Criminal Appeals Nos. 4, 7 and 8 of 2000 (delivered 17th September 2001 and re-issued 31st October 2001, unreported).

recognised that the case ought properly to have gone to trial before a judge and jury to determine the guilt or innocence of the respondent. An order to that end would have been a disposition available to this Court if there were an appeal against conviction. Regrettably, the Court is seriously handicapped in this matter.

- [30] We have pointed to the fundamental issues raised with respect to the propriety of the guilty plea and the Goodyear Indication. The Court could not ignore the fundamental legal issues highlighted by Mr. Armstrong pertaining to the propriety and integrity of the guilty plea and the Goodyear Indication. Having regard to our findings on those issues, the justice of the case would be best served by setting aside the sentence imposed and substituting a sentence of seven days' imprisonment. This represented the time spent by the respondent on remand. This disposition may not be regarded as the most palatable outcome, but is dictated by the twin requirements of justice and fairness.

Conclusion

- [31] For the above reasons, the Court ordered that the appeal against sentence be allowed to the extent that the sentence which was imposed is substituted to the seven days the respondent, Mr. Williams, spent on remand.
- [32] The Court expresses its appreciation to the learned Director of Public Prosecutions for his commendable assistance in this matter.

I concur.
Gertel Thom
Justice of Appeal

I concur.
Paul Webster
Justice of Appeal [Ag.]

By the Court

Chief Registrar