

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

SAINT LUCIA

SLUHCRA2025/0001

BETWEEN:

MARIO PEREZ CHARLES

Appellant

and

DIRECTOR OF PUBLIC PROSECUTIONS

Respondent

Before:

The Hon. Mde. Margaret Price Findlay
The Hon. Mr. Trevor M. Ward
The Hon. Mde. Esco L. Henry

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

Appearances:

Mrs. Wauneen Louis-Harris for the Appellant

Ms. Kelly Thomson and Ms. Karleen King for the Respondent

2026: March 11.

Criminal Appeal – Section 85(b) of the Criminal Code – Section 3(1) and (7) of the Criminal Records (Rehabilitation of Offender) Act - Whether the trial judge erred in law in deciding that there were no mitigating factors of the offence whereas the appellant was indicted under section 85(b) of the Criminal Code which enacts that a person commits murder if he or she causes the death of another person intending to cause grievous bodily injury – Intention to cause serious bodily harm - Whether the trial judge erred in law in deciding to make an upward adjustment from 25 years to 28 years and in failing to take into account that the intention to cause serious bodily harm rather than to kill was a mitigating factor in relation to the offence – Spent convictions - Whether the trial judge erred in law in concluding that the previous convictions of the appellant when he was a minor was an aggravating factor which ought to have been considered in determining the appropriate sentence of the appellant – Good character and good prospects of rehabilitation – Whether the trial judge misdirected herself on the law in failing to take into account the good character of the appellant and the fact that he had good prospects of rehabilitation in

relation to the mitigating factors which would have justified a further reduction in the sentence

On 9th December 2022 the appellant, Mario Perez Charles, pleaded guilty to the murder of Crystal St. Omer ("the deceased") contrary to section 85(b) of the Criminal Code of Saint Lucia. He was sentenced to 18 years and 9 months imprisonment on the same date. The appellant recounted the incident in his statement at the Major Crime Unit upon his arrest. He stated that on Wednesday morning (25th August 2012) the deceased called and asked to pick her up at the school because she had some things to do. He picked her up and took her to the Credit Union. They went to Domino's where he bought two cheesy bread. He ate one and gave one to Crystal. He then drove home to Cas en Bas. They were at the house cooling out when Crystal began to argue with him. He accidentally pushed her and she fell and hit her head. He put her by the pipe outside. He then saw her walking down the road. He got into the vehicle, picked her up and drove to Cap Estate. When he got there, Crystal continued arguing and hitting him. He hit her back and then things got out of hand and she died. There was something like a wall by the side of the road, where he dropped her behind the wall. He was afraid and did not know what to do so he left her there.

The appellant was subsequently indicted for the offence of murder contrary to section 85(b) of the Criminal Code. On 12th October 2022, counsel for the appellant in the court below requested a sentence indication and on 9th December 2022, the learned judge, after hearing submissions from both parties, gave an indication of 18 years and 9 months. After a discussion with his counsel, the appellant entered a guilty plea.

The appellant was granted leave to appeal on 27th May 2025, and upon obtaining an extension of time on 16th December 2025, filed his notice of appeal on 5th January 2026. The appeal was heard on 11th March 2026 where the Court determined that the appeal should be allowed with reasons to follow. The appellants grounds of appeal were: (i) that the sentence is excessive; (ii) the learned trial judge erred in law in deciding that there were no mitigating factors of the offence whereas the appellant was indicted under section 85(b) of the Criminal Code which enacts that a person commits murder if he or she causes the death of another person intending to cause grievous bodily injury; (iii) the learned trial judge erred in law in deciding to make an upward adjustment from 25 years to 28 years and in failing to take into account that the intention to cause serious bodily harm rather than to kill was a mitigating factor in relation to the offence; (iv) the learned trial judge erred in law in concluding that the previous convictions of the appellant when he was a minor was an aggravating factor which ought to have been considered in determining the appropriate sentence of the appellant; (v) the learned trial judge misdirected herself on the law in failing to take into account the good character of the appellant the fact that he had good prospects of rehabilitation in relation to the mitigating factors which would have justified a further reduction in sentence.

Held: allowing the appeal and substituting a sentence of 17 years and 6 months to run from the date of sentencing with credit to be given to the appellant for time spent on remand, that:

1. Under the Eastern Caribbean Supreme Court Sentencing Guidelines 2019, a sentencing judge is required to take into account any aggravating and mitigating factors pertaining to the offence, and then as a second step to the offender, to the extent that it has not allowed for them in its choice of starting point, so that care must be taken not to double-count. This means that a sentencing judge must ensure that any aggravating or mitigating factor is not taken into account both in formulating a starting point and again in adjusting the sentence in accordance with the guidelines. The transcript reveals that the appellant's intent to cause serious bodily harm rather than to kill was expressly taken into account in arriving at the starting point of 25 years. Having done so, the learned judge could not properly consider the appellant's intent as a mitigating factor of the offense.

Eastern Caribbean Supreme Court (Sentencing Guidelines) Rules

2. The evidence does not reveal whether the offence was premeditated or not. The appellant's statement is sparse. He does not provide much detail, nor do the agreed facts of the case reveal any evidence of premeditation, whether it be supporting or rebutting the existence of planning or aforethought. The learned judge's approach was correct, that is to say that she was justified in not considering premeditation as an aggravating factor as there was no proper basis on which to do so. By the same token, there was equally no basis to consider premeditation as a mitigating factor. Grounds 2 and 3 therefore fail in light of the learned judge's proper finding that there were no mitigating factors of offense to be considered at that stage.

Eastern Caribbean Supreme Court (Sentencing Guidelines) Rules 2019 followed.

3. On grounds 3 and 4, the appellant's previous convictions were in relation to possession of marijuana and a firearm, and he received a non-custodial sentence in 2009. The correct rehabilitation period in accordance with Schedule 1 of the Criminal Records (Rehabilitation of Offender) Act ("Criminal Records Act") is 5 years. The Criminal Records Act is clear that a conviction is spent where the defendant has not been convicted of any other offence during the rehabilitation period. The conviction in this case for murder took place well over 10 years after the appellant's previous convictions in 2009. The rehabilitation of 5 years would have elapsed and the convictions for possession of marijuana and a firearm are spent. It is apparent from the record that the learned judge considered the appellant's previous convictions to not be spent at the time of the commission of the offence. That conclusion, in itself, is not an error of fact. The offence took place approximately 3 years after the possession of drugs and firearm convictions, during the rehabilitation period. Importantly however, the Criminal Records Act is concerned not with the date of the commission of the offence but with the date of conviction. In this case the appellant was only convicted in 2022, having been on remand for about 10 years. In those circumstances learned judge erred in concluding that the appellant's previous convictions were not spent under the

Criminal Records Act and consequently misdirected herself in treating those convictions as an aggravating factor of the offender.

Criminal Records (Rehabilitation of Offender) Act Chap 3.13 of the Revised Laws of Saint Lucia applied.

4. Section 7(1)(d) of the Criminal Records Act creates an exception through which spent convictions may be admitted in criminal proceedings. This exception exists in circumstances of absolute necessity, where justice is impossible without evidence of the previous spent convictions. This is a higher threshold and not applicable in this case, as a just and fair sentence could have been arrived at solely on the facts of the case itself without need for reference to the previous convictions. Since section 7(1)(d) is not applicable in this case, the learned judge fell into error in taking the previous convictions into account and determining that the appellant was not of positive good character. Before the judge could properly do so, she was required to engage with section 7(1)(d) and ask herself whether justice could not be done without reference to the spent convictions. Understandably, because she erred in treating the conviction as not spent, this question was not addressed. Even if it had been, the exceptions under section 7 of the Criminal Records Act would not have justified taking account of the spent convictions, which occurred when the appellant was a minor and which attracted a community service order. In those circumstances it would have been unjustifiable to have regard to the appellant's spent convictions and to treat them as aggravating factors. Therefore, there is some merit to ground 4 of the appellant's grounds of appeal.

Criminal Records (Rehabilitation of Offender) Act Chap 3.13 of the Revised Laws of Saint Lucia applied; **A V B** UKEAT/0025/13/DM considered.

5. Where an offender is considered to have no relevant or recent convictions, he must be credited, as a mitigating factor, for being of good character. As a direct result of the judge's error in treating the previous convictions as not spent, the learned judge further erred in failing to consider the appellant's good character as a mitigating factor where the Sentencing Guidelines expressly provides for the same. The appeal must therefore succeed on the ground that the learned judge erred in considering the appellant's previous spent convictions as an aggravating factor and as a result failed to consider the good character of the appellant as a mitigating one.
6. Good prospects of rehabilitation constitute a distinct mitigating factor pertaining to the offender under the Sentencing Guidelines. The learned judge's statements in the record reveal that she was aware of the same. In fact, it was presented by counsel for the Crown in the court below as a mitigating factor. The parties to the sentencing exercise however seemingly placed primary focus on whether there was remorse on the part of the appellant and whether the lack of maturity explained the offending. As a result, it remains unclear whether the two-year downward adjustment included consideration of good prospects of rehabilitation.

This lack of clarity is particularly prejudicial to the appellant where his Pre-Sentence Report describes him as essentially a ‘model prisoner’ who embraced the journey of rehabilitation. In those circumstances the learned judge ought to have paid special attention to the appellant’s good prospects of rehabilitation as a mitigating factor. Accordingly, credit should properly be afforded to the appellant, as a mitigating factor of the offender, for good prospects of rehabilitation.

Reasons for Decision

- [1] **Price Findlay CJ [Ag.]:** On 9th December 2022 the appellant, Mario Perez Charles, pleaded guilty to murder contrary to section 85(b) of the **Criminal Code**¹ of Saint Lucia. He was sentenced to 18 years and 9 months imprisonment on the same date. The appellant was granted leave to appeal his sentence by order of this Court dated 27th May 2025, and upon obtaining an extension of time on 16th December 2025, the appellant filed his notice of appeal on the 5th January 2026. The appeal was heard on 11th March 2026 and the Court determined that the appeal should be allowed and that it would provide reasons in short order. These are those reasons.

Background

- [2] The facts underpinning this appeal are uncomplicated. I will summarise the agreed facts as set out in the court below.² On 22nd August 2012, Crystal St. Omer (“the deceased”) left her home but did not return, prompting her family to report her missing at the Gros Islet Police Station. Three days prior to the incident, the appellant’s mother received a phone call which she recognised as the voice of the deceased. She handed the phone to the appellant and heard him tell the caller ‘to not call that phone again.’ The appellant later told his mother that the deceased was harassing him.

¹ Chap 3.01 of the Revised Laws of Saint Lucia.

² See pages 91-96 of the Record of Appeal.

- [3] Some days after the incident, during a conversation with his mother after news of the deceased's disappearance had circulated, the appellant admitted to his mother that the deceased had been with him when an incident occurred at Cap Estate. He told his mother that while they were in his vehicle, the deceased fell, hit her head and never regained consciousness. The appellant left her at the location.
- [4] On 28th August 2012, a security guard discovered a decomposing body at South Hill, Cap Estate. The police attended the scene, and the body was later identified as that of the deceased. A post-mortem examination conducted by Dr. King determined that the cause of death was asphyxia due to ligature strangulation.
- [5] On 29th August 2012, police officers attended the residence of the appellant's mother where the appellant was present. He was arrested and taken to the Major Crime Unit. There, the appellant made the following statement:
- “On Wednesday morning Crystal called him and asked to pick her up at the school because she had some things to do. He picked her up and he took her to the Credit Union; they went to Dominoes where he bought two cheesy bread. He ate one and gave one to Crystal. He then drove home to Cas en Bas. They were at the house cooling out when Crystal began to argue with him. He accidentally pushed her, and she fell and hit her head. He put her by the stand – the pipe outside. He then saw her walking down the road. He got into the vehicle, picked her up and drove to Cas-en-Bas—to Cap Estate, sorry. When he got there, Crystal continued arguing and hitting him. He hit her back and then things got out of hand - - out of hand and she died. There was something like a wall by the side of the road, where he dropped her behind (inaudible) - -the wall. He was afraid and did not know what to do so he left her there.”³
- [6] The appellant was subsequently indicted for the offence of murder contrary to section 85(b) of the **Criminal Code**. On 12th October 2022 a sentence indication was requested and on 9th December 2022, the learned sentencing judge, after hearing the parties, gave an indication of 18 years and 9 months. After a short adjournment for a discussion between the appellant and his counsel, the appellant was rearraigned and entered a guilty plea.

³ Lines 8-19 of page 93 of the Record of Appeal.

The Appeal

[7] The appellant's notice of appeal filed on 5th January 2026 contained the following 5 grounds of appeal:

- (1) "The sentence is excessive.
- (2) The Learned Trial Judge erred in law in deciding that there were NO mitigating factors of the offence whereas the Appellant was indicted under section 85(b) of the Criminal Code which enacts that a person commits murder if he or she causes the death of another person intending to cause grievous bodily injury.
- (3) The Learned Trial Judge erred in law in deciding to make an upward adjustment from 25 years to 28 years and in failing to take into account that the intention to cause serious bodily harm rather than to kill was a mitigating factor in relation to the offense.
- (4) The learned trial judge erred in law in concluding that the previous convictions of the appellant when he was a minor was an aggravating factor which ought to have been considered in determining the appropriate sentence of the Appellant.
- (5) The Learned Trial Judge misdirected herself on the law in failing to take into account the good character of the Appellant and the fact that he had good prospects of rehabilitation in relation to the mitigating factors which would have justified a further reduction in the sentence."

Counsel for the appellant indicated at the outset of the hearing of the appeal that grounds 2-5 would be argued in support of the overarching ground 1 - that the sentence was excessive in the circumstances.

Grounds 2 and 3 – Mitigating Factors of the Offence

[8] I will address ground 2 and 3 together as they contend with the learned judge's findings concerning the mitigating factors of the offence. The crux of the appellant's submissions under those grounds is that the learned judge failed to consider the factor pursuant to paragraph 13(a) of the Sentencing Guidelines that the appellant had the intention to cause serious bodily harm and not to kill the deceased. Counsel for the appellant relied on the indictment which charged him

with causing the death of the deceased with intent to cause grievous harm. The appellant therefore submitted that this failure of the learned judge rendered the ultimate sentence excessive.

[9] The response from counsel for the Crown was that although the appellant was charged with murder pursuant to section 85(b) of the **Criminal Code**, and that lack of intention to kill is a recognised mitigating factor under the Sentencing Guidelines, the court retains a discretion to determine the weight to be given to that factor. The respondent relied on **Liam O’Pray v R**⁴ to argue that since the appellant’s conduct was highly reckless or created a very high risk of death, the reduction in sentence for lack of intent to kill may be limited.

[10] It is prudent to set out the relevant paragraphs of the **Eastern Caribbean Supreme Court (Sentencing Guidelines) Rules 2019** (the “guidelines” or “Sentencing Guidelines”)⁵ which contemplate the aggravating and mitigating factors of the offence:

Aggravating and mitigating factors

- “11. Having chosen a starting point, the court should take into account any further aggravating or mitigating factors pertaining to the offence, and then as a second step to the offender, **to the extent that it has not allowed for them in its choice of starting point, so that care must be taken not to double- count**” (Emphasis mine).
- 12. Aggravating factors pertaining to the offence (separate from those mentioned in paragraphs 5, 7 and 9) that may be relevant include:
 - a. a significant degree of planning or premeditation;
 - b. ...
 - c. ...
- 13. Mitigating factors pertaining to the offence that may be relevant include:
 - a. an intention to cause serious bodily harm rather than to kill;
 - b. ...
 - c. ...”

⁴ [2025] EWCA Crim 1379.

⁵ Practice Direction No.3 of 2021 re-issued on 26th November 2021.

[11] The emphasis here is that the sentencing judge must ensure not to consider an aggravating or mitigating factor twice; once when formulating the starting point of the sentence and a second time when considering the aggravating and mitigating factors in accordance with the guidelines. In the present case the sentencing judge examined the guidelines thoroughly together with counsel for the appellant and counsel for the Crown. The starting point she arrived at was 25 years. This was unchallenged on appeal. The following exchange between the learned judge and counsel sheds light on how the judge formulated her starting point:

“THE COURT: All right, I’m sa - - I’m told that it was - - he was charged under 85(b). So, that may well be a mitigating - - because, if, if, if, the Crown has charged it under 85(b), the Crown has accepted as a mitigating factor of the offence that there was an intention to cause serious harm rather than to kill. Mrs. Alexis-Francis, I can hear you on it if you disagree with me.

MRS. ALEXIS-FRANCIS: Yes. My Lady, I accept that that is exactly what is on the indictment, My Lady, But I must - - My Lady, it’s not in concur - - it’s not, it’s not in according (sic) to what is on the evidence. I mean, emulating from Dr. King’s post-mortem ...

...

THE COURT: You see the, the, the fixing of the starting point sentence whether whole life, whether a determinate sentence with a sent - - starting at 40 years, or one at 30 or one at 25 does not take into consideration under our jurisdiction the – how murder is charged. Murder or in, intending to cause serious bodily harm did cause murder, and my view is that it requires that at this stage of the guideline, that that factor is taken into account. Because, in order to arrive at a determinate sentence with the starting point of years, the guideline identifies what you need to look at. What are the factors that you take into consideration? And we have arrived at the starting point of 25 years with the range based on the factors identified by the guideline (sic) that we have determined are applicable”.⁶

[12] The learned judge went on to agree with counsel for the Crown’s position that the starting point of 25 years took into account that the appellant was indicted under section 85(b) of the **Criminal Code**. She suggested that if the appellant was

⁶ Pages 127 - 128 of the Record of Appeal.

indicted under 85(a), a sentence of 30 years or perhaps even a whole life sentence would have been applicable. The transcript reveals that Mrs. Alexis-Francis submitted that this factor would have been considered at the starting point as opposed to it being a mitigating factor in these circumstances. The learned judge agreed, then went on to conclude that there were no other mitigating factors of the offence.

- [13] It is therefore apparent that the learned judge considered, and indeed placed particular emphasis on the fact, that the appellant was charged under section 85(b) of the **Criminal Code** and accepted that the appellant's intention to cause serious bodily harm, rather than to kill constituted a mitigating factor. The learned judge accounted for this in arriving at the starting point of 25 years. Having done so, the learned judge could not properly revisit the appellant's intent as a mitigating factor of the offence. To do this would be to double count; an error which the Sentencing Guidelines specifically cautions against.
- [14] On the date of the hearing of this appeal, counsel for the appellant rightly conceded that the learned judge considered the mitigating factor of the appellant's intent in formulating the sentence. There is therefore no merit to this ground.
- [15] Counsel for the appellant did however advance a further argument. The submission was that there existed an absence of significant or any degree of planning or premeditation which falls within the purview of a mitigating factor in relation to the offence. The reasoning was that premeditation as a factor is included within paragraph 11 of the Sentencing Guidelines as an aggravating factor.
- [16] Counsel for the appellant argued that the list of considerations under paragraph 13 of the Sentencing Guidelines is non-exhaustive and in the premises the court retains a discretion to consider a mitigating factor which is not included in the list in paragraph 13. In my view, while paragraph 13 is indeed non-exhaustive, the

evidence does not reveal whether the offence was premeditated or not. The appellant's statement is sparse. He does not provide much detail, nor do the agreed facts of the case reveal any evidence of premeditation, whether it be supporting or rebutting the existence of planning or aforethought. I take the view that the learned judge's approach was correct, that is to say that she was justified in **not** considering premeditation as an aggravating factor as there was no proper basis on which to do so. By the same token, there was equally no basis to consider premeditation as a mitigating factor. The appeal fails on this submission too.

Grounds 4 and 5 – Mitigating Factors of the Offender

- [17] The appellant's main contention regarding the mitigating factors of the offender concerns (1) the consideration of spent previous convictions as an aggravating factor when determining the appropriate sentence of the appellant and (2) related thereto the contention that in doing so, the learned judge erred in failing to take into account the good character of the appellant. The appellant further submitted that the learned judge erred in failing to consider the appellant's good prospects of rehabilitation as a mitigating factor of the offender.
- [18] The appellant argued that the previous convictions for possession of marijuana and possession of a firearm ought not to have been considered by the learned sentencing judge in arriving at the appropriate sentence since (a) the appellant was a minor when the convictions occurred; (b) the convictions were for nonviolent offences; and (c) the lapse of time between the dates of the previous convictions and the date the appellant was sentenced was substantial in the case at bar.
- [19] There is some merit to the appellant's contention, as conceded by the respondent. To demonstrate, it is imperative to set out the relevant provisions of the **Criminal Records (Rehabilitation of Offender) Act ("Criminal Records Act")**.⁷ Section 3(1) of the **Criminal Records Act** states:

⁷ Chap. 3.13 of the Revised Laws of Saint Lucia.

“Subject to the provisions of this Act, where a person –

- a. has been convicted of a criminal offence either before or after January 1st 2004; and
- b. has not, since the conviction referred to in paragraph (a), been convicted of any other offence during the relevant rehabilitation period, that person shall be treated as a rehabilitated person in respect of the offence of which he or she was convicted and the conviction shall be treated as spent.”

Section 5(1) states:

- (1) “For the purposes of this Act, the rehabilitation period applicable to a sentence specified in column one of Schedule 1 is the period specified in column two of that Schedule in relation to that sentence”.

Section 6, so far as relevant, provides at subsection (1):

“(1) Subject to the provisions of this Act, a person who is a rehabilitated person within the meaning of this Act, shall be treated for all purposes in law as a person who has not committed or been charged with or prosecuted for or convicted of or sentenced for the offence or offences which were the subject of that conviction and notwithstanding the provisions of any other enactment to the contrary –

- (a) no evidence shall be admissible in any proceedings before a judicial authority to prove that any such person has committed or had been charged with or prosecuted for or convicted of or sentenced for any offence which was the subject of a spent conviction”.

Finally, the relevant part of Section 7 of the **Criminal Records Act** states:

- (1) “Nothing in section 6(1) shall affect -

...

- (d) any civil or criminal proceedings where justice cannot be done without admitting or requiring evidence relating to a person's spent convictions;

[20] The appellant's previous convictions were in relation to possession of marijuana and a firearm, and he received a non-custodial sentence in 2009. Therefore, the correct rehabilitation period in accordance with Schedule 1 of the **Criminal Records Act** is 5 years. The **Criminal Records Act** is clear that a conviction is spent where the defendant has not been convicted of any other offence during the rehabilitation period. The conviction in this case for murder took place well over 10

years after the appellant's previous convictions in 2009. The rehabilitation of 5 years would have elapsed and the convictions for possession of marijuana and a firearm are spent.

[21] The learned judge's findings on the appellant's previous convictions can be extracted from the following excerpts of the transcript:

"MRS. ALEXIS-FRANCIS: My Lady, there are convictions

THE COURT: - - yes.

MRS. ALEXIS-FRANCIS: - -for possession of a firearm, possession of ammunition and drugs.

THE COURT: All right, thank you.... What are the dates of these offences?

MRS. ALEXIS-FRANCIS: My Lady, those were in two thousand and nine, My Lady, but having regard to the fact that the con - - the subsequent offence would have been committed - - this offence for which we are considering, My Lady, would have been only three years.

THE COURT: Yes. After the, the last conviction of two thousand and nine. And what was the sentence that the defendant received in two thousand and nine?

MRS. ALEXIS-FRANCIS: My Lady, although there was no custodial sentence, it was - -

MR. RICHELIEU, SC: A Probation Order.

...

THE COURT: All right. And according to the *Rehabilitation of Offenders Act*, it would be five years; would it not?

...

THE COURT: Five years. So, it's not - - **it was not a spent conviction at the time of the commission of this offence (Emphasis mine)**

...

THE COURT: Very well. So, therefore, an aggravating factor of the offender would be a previous conviction for other offences...”⁸

[22] It is apparent from the record that the learned judge considered the appellant's previous convictions to not be spent at the time of the commission of the offence. That conclusion, in itself, is not an error of fact. The offence took place approximately 3 years after the possession of drugs and firearm convictions, during the rehabilitation period. However, and importantly, the **Criminal Records Act** is concerned not with the date of the commission of the offence but with the date of conviction. In this case the appellant was only convicted in 2022, having been on remand for about 10 years. In those circumstances, and as conceded by counsel for the Crown, the learned judge erred in concluding that the appellant's previous convictions were not spent under the **Criminal Records Act** and consequently misdirected herself in treating those convictions as an aggravating factor of the offender.

[23] The conviction being deemed spent does not automatically mean that the learned sentencing judge should not consider its existence at all. Section 7(1)(d) of the **Criminal Records Act** was brought to the attention of counsel for the parties during the hearing of the appeal. It provides an exception which may allow a sentencing judge to consider spent convictions in determining an appropriate sentence. As mentioned above, evidence concerning a spent conviction may be considered in any criminal proceedings, including appeals, where justice cannot be done without admitting or requiring evidence relating to a person's spent convictions. Section 7 was not in the mind of any of the parties below. There was no need for it to be since the parties were in agreement that the convictions were not spent.

[24] The issue therefore before this Court is whether, notwithstanding that the convictions were spent, the learned judge was nevertheless entitled to consider

⁸ Pages 131-133 of the Record of Appeal.

them as aggravating factors by virtue of section 7(1)(d) of the **Criminal Records Act**. In my view section 7(1)(d) provides an exception in circumstances of absolute necessity, where justice is impossible without evidence of the previous spent convictions.⁹ This is a higher threshold and not applicable in this case as a just and fair sentence could have been arrived at solely on the facts of the case itself without need for reference to the previous convictions, and therefore the exception under section 7(1)(d) was not engaged.

[25] Since I am not persuaded that section 7(1)(d) is applicable in this case, it is my view that the learned judge fell into error in taking the previous convictions into account and determining that the appellant was not of positive good character. Before the judge could properly do so, she was required to engage with section 7(1)(d) and ask herself whether justice could not be done without reference to the spent convictions. Understandably, because she erred in treating the conviction as not spent, this question was not addressed. Even if it had been, in my considered opinion, the exceptions under section 7 of the **Criminal Records Act** would not have justified taking account of the spent convictions, which occurred when the appellant was a minor and which attracted a community service order. In those circumstances it would have been unjustifiable to have regard to the appellant's spent convictions and to treat them as aggravating factors. Therefore, there is some merit to ground 4 of the appellant's grounds of appeal.

[26] As a direct result of the judge's error in treating the previous convictions as not spent, the learned judge further erred in failing to consider the appellant's good character as a mitigating factor where the Sentencing Guidelines expressly provides for the same. Paragraph 15 thereof states that:

"Mitigating factors pertaining to the offender that may be relevant include:

- a. Good character;
- b. Genuine remorse;
- c. Physical or mental disability or ill-health;

⁹ See A V B UKEAT/0025/13/DM where the UK Court considered the UK equivalent to section 7(1)(d) of the Saint Lucia Criminal Records (Rehabilitation of Offender) Act and proposed a narrow approach in its interpretation.

- d. Youth and/or lack of maturity where it explains offender; or
- e. Good prospects of rehabilitation.”

[27] I borrow from the words of Ward JA in the Court of Appeal case of **Yannick Pelage v PC 785 Mario Chicquot**¹⁰ to say that ‘in the absence of evidence of previous convictions, the appellant must be treated as a person of good character.’ In the case of **Tarik Aaron v The Commissioner of Police**,¹¹ the learned magistrate concluded that the appellant could not be regarded as a person of previous good character, having (erroneously) treated him as a person with prior convictions which were, on appeal, found to be spent. The learned magistrate in that case gave the appellant no credit for his good character in sentencing. On that point, the Court of Appeal found that:

“[23] The learned magistrate therefore gave the appellant no credit for his previous good character. It is usual where a court finds that an offender has previous convictions that this is treated as an aggravating factor and may result in a more severe sentence being imposed on the offender. Where, however, the offender is considered to have no relevant or recent convictions this is a mitigating factor and may lead to a less severe penalty being imposed.

[24] The learned magistrate, having the previous conviction before her, something which ought not to have been allowed, erred in taking this previous conviction into account and determining that the appellant was not of positive good character. The appellant ought to have been treated as a person without antecedents, and of good character and the learned magistrate fell into error in respect of this issue.”

[28] In the present appeal, counsel for the Crown in the court below originally had in mind the previous good character of the appellant but after the discussion and eventual conclusion on the appellant’s previous convictions, did not consider good character to be a mitigating factor of the offender. This course was incorrect as I have already found since the convictions of the appellant were spent and should not have been considered by the learned judge. Therefore, the appeal must succeed on the ground that the learned judge erred in considering the appellant’s

¹⁰ SLUMCRAP2023/0002 (delivered 8th May 2025, unreported), paragraph [155].

¹¹ BVIMCRAP2022/0003 (delivered 25th July 2024, unreported).

previous spent convictions as an aggravating factor and as a result failed to consider the good character of the appellant as a mitigating one.

[29] I now wish to address the argument of the appellant that the learned judge failed to make a downward adjustment for the appellant's good prospects of rehabilitation. As I have outlined above, this is a paragraph 15 factor which must be considered as a mitigating factor of the offender according to the Sentencing Guidelines. It is clear from the transcript that the learned judge considered the other mitigating factors of remorse and lack of maturity as there was ample discussion on those factors. What remains is whether the learned judge properly adjusted the sentence downward for good prospects of rehabilitation specifically. After the discussion on remorse and the conclusion that remorse should be a mitigating factor, the transcript reveals:

“THE COURT: Yes, thank you, Mr. Richelieu. I'm I am, I am with Mr. Richelieu. I believe that the second correspondence, in particular, although the Defendant reflects on how his life has been impacted, I believe the tenor of the letter, of the letter had sent suggests that he is remorseful and that he has started to learn and rehabilitate himself from the events that he accepts that he perpetrated. I'm, therefore prepared to give the Defendant a one-year downward adjustment for remorse.

...

THE COURT: - - and it is also it is accepted by both parties his youth and immaturity. He was 19 at the time. And so, a total of a two-year downward adjustment”.¹²

[30] The learned judge's statements reveal that she was aware of the mitigating factor of good prospects of rehabilitation. In fact, it was presented by counsel for the Crown in the court below as a mitigating factor. The parties to the sentencing exercise however seemingly placed primary focus on whether there was remorse

¹² Page 140 of the Record of Appeal.

on the part of the appellant and whether the lack of maturity explained the offending. As a result, it remains unclear whether the two-year downward adjustment included consideration of good prospects of rehabilitation.

[31] In my view this lack of clarity is particularly prejudicial to the appellant where the appellant's Pre-Sentence Report describes him as essentially a 'model prisoner' who embraced the journey of rehabilitation. In those circumstances the learned judge ought to have paid special attention to the appellant's good prospects of rehabilitation as a mitigating factor. Accordingly, credit should properly be afforded to the appellant, as a mitigating factor of the offender, for good prospects of rehabilitation.

[32] Finally, for the sake of completeness, I will address the respondent's submissions that the appeal should be dismissed since overall, the sentence handed down to the appellant was fair in the circumstances. The respondent argued that the learned judge failed to consider further aggravating factors such as abuse of a position of trust and the post-offence conduct of the appellant as contemplated by the Sentencing Guidelines and as a result the admitted errors of the learned judge did not make the sentence excessive. To begin, there is no counter-appeal before the Court. While the Court may adjust the sentence upwards if it deems fit of its own volition, it is not required to consider those submissions of the respondent. Secondly, I have found that there was some error in principle by the learned judge in conducting her sentencing exercise. As a direct consequence, there must be some form of adjustment to the sentence, even if limited in scope. If the learned judge had not erred in her consideration of the mitigating factors of the appellant, the appellant would have been sentenced to a shorter term of imprisonment. Therefore, I find no merit in the respondent's contention on this point.

The Sentence

- [33] I bear in mind the role of an appellate court when considering an appeal against sentence. In **Curt John and Ano v R**¹³ it was held that “an appellate court will not lightly interfere with a sentence by a trial judge even if it would have imposed a different sentence. The Court must be satisfied that the sentence was manifestly excessive or wrong in principle. The Court must remain mindful that an appeal against a sentence is not a re-hearing but merely an evaluation of the sentence passed, and the steps taken to craft it, to inquire whether the sentencing judge failed to consider or apply any settled principles of law.”
- [34] Having found that the sentencing judge did in fact fail to consider certain principles of law when crafting the sentence, the Court must now determine an appropriate sentence for the appellant. The parties take no issue with the starting point of 25 years, nor the upward adjustment of 28 years. As I have already found, the learned judge properly considered the appellant’s intention to cause serious harm and not to kill in the formulation of that starting point. The errors appear in the evaluation of the following mitigating factors of the offender: (1) that previous spent convictions should not have been considered as an aggravating factor, (2) that as a result the appellant’s good character should have been considered as a mitigating factor and (3) that proper credit should be given to the appellant for his good prospects of rehabilitation.
- [35] Therefore, a downward adjustment of one (1) year will be applied to the sentence of the Court below.

¹³ SVGHCRA2020/0007, SVGHCRA2020/0008 (delivered 12th March 2025, unreported).

Disposition

[36] For the reasons outlined, I would make the following orders:

- (1) The appeal is allowed.
- (2) The appellant's sentence of 18 years and 6 months is varied. A sentence of 17 years and 6 months is substituted, to run from the original date of sentencing, i.e. 9th December 2022, with credit given to the appellant for time spent on remand.

I concur.
Trevor M. Ward
Justice of Appeal

I concur.
Esco L. Henry
Justice of Appeal

By The Court

Chief Registrar