

EASTERN CARIBBEAN SUPREME COURT
COURT OF APPEAL SITTING
VIDEOCONFERENCE

SAINT VINCENT AND THE GRENADINES
20th – 22nd July 2022

JUDGMENTS

Panel 2

Case Name:

WWRT Limited
v
[1] Carosan Trading Limited
[2] Boris Kaufman

[BVIHCMAP2022/0002]
(Territory of The Virgin Islands)

Date:

Wednesday 20th July 2022

Coram:

The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal

Appearances:

Appellant: **Dr. Alecia Johns with her, Ms. Sophia Hurst**

1st Respondent: **Mr. Brian Lacy**

2nd Respondent: **Mr. Richard Morgan, QC with him, Mr. Richard Brown and Ms. Rowena Page**

Issues:

Interlocutory appeal - Appellate interference with exercise of trial judge's discretion - Order setting aside permission to serve defendant outside jurisdiction - Whether learned judge erred in setting aside service-out order - Test for service outside the jurisdiction - Serious issue to be tried - Whether learned judge erred in holding no serious issue to be tried - Construction of foreign documents and laws - Locus Standi - Whether on a proper construction of the Star

Assignment and article 514 of the Civil Code of Ukraine (“CCU”) the appellant had standing to bring the claims against the respondents - Role of expert evidence in construing foreign documents and laws - Absence of expert evidence as to rules of construction of foreign documents - Whether in absence of rules of construction of the Star Assignment the learned judge erred in construing it according to its plain, ordinary meaning - Rejection of expert evidence as to foreign law - Whether learned judge erred in the construction of article 514 of the CCU by disregarding the evidence of the appellant’s expert witness as fanciful - Forum conveniens - Order granting stay of proceedings in the BVI on ground of forum non conveniens - Whether learned judge erred in the exercise of discretion by holding that Ukraine was the more natural and appropriate forum for trying the claims - Application to adduce fresh evidence - Principles in Ladd v Marshall - Time of availability of evidence - Whether evidence of the ongoing Ukrainian conflict should be adduced when such evidence became available after the hearing on forum in the lower court

Result / Order:

IT IS HEREBY ORDERED THAT:

- 1. The appeal is dismissed.**
- 2. Costs on the appeal and on the application to adduce fresh evidence are awarded to the respondents, to be assessed by a judge of the Commercial Division if not agreed within 21 days.**

Reason:

An appellate court should be cautious in interfering with the decision of the trial judge. An appellate court should only interfere with a trial judge’s decision if the court is satisfied that the judge erred in principle and as a result his or her decision exceeded the generous ambit of reasonable disagreement or was blatantly wrong.

Dufour and Others v Helenair Corporation Ltd and Others (1995) 52 WIR 188 applied.

On an application for permission to serve out of the jurisdiction, the claimant or counter-claimant has to satisfy three elements, namely (i) that there is a serious issue to be tried on the merits; (ii) there is a good arguable case that the claim falls within one or more classes of case in which permission to serve out may be given; and (iii) that the local jurisdiction must be clearly or distinctly the appropriate forum for the trial of the dispute and that it is appropriate to permit service out. A failure to establish even one of these elements would be grounds for the court to deny an application for leave to serve outside the jurisdiction or for the court to set aside the leave as granted.

Altimo Holdings and Investment Limited and Others v Kyrgyz Mobil Tel Limited and Others [2011] UKPC 7 applied; Mitsui Konoshita et al v JTrust Asia Pte Ltd BVIHCP2018/0047, BVIHCP2018/0020 (delivered 18th December 2018, unreported) applied.

In determining whether there is a serious issue to be tried for the purposes of a service-out order, a judge is not required to conduct a mini trial. Rather, the judge must assess the claim and evidence before him and determine whether it met the threshold of a serious issue. The trial judge in determining whether the case at bar met this threshold was cognisant of the relevant case law and engaged in a sound evaluative process, assessing the claim and the evidence before him. The learned judge began his analysis at the correct starting point, that is, whether the Bank's rights to tortious claims had been transferred under the Star Assignment, employed the correct approach in considering an English translation of the Star Assignment and was entitled to reject the evidence of an expert witness opinion as it pertained to article 514 of the CCU. The learned judge having come to these conclusions, did not err in determining that, as a matter of construction of the Star Assignment and by operation of article 514 of the CCU, there was no real prospect of showing that the Star Assignment had been effective to transfer to WWRT the right to sue in respect of tortious claims under article 1166 of the CCU. The tortious claims made against the respondents were bound to fail and accordingly WWRT had failed at the first stage of the process for

service-out. Therefore, the learned judge did not err in setting aside the service-out order.

Dicey, A. V., Morris, J. H. C., & Collins, L. (2018). Dicey, Morris, and Collins on the Conflict of Laws 15th edition. London: Sweet & Maxwell applied; *Bumper Development Corporation v Commissioner of Police of the Metropolis and others* [1991] 1 W.L.R. 1362 applied; *WWRT Limited v Tyshchenko and another* [2021] EWHC 939 (Ch) applied.

A stay of an action on the ground of *forum non conveniens* will only be granted where the court is satisfied that there is some available forum, which is the clearly or distinctly more appropriate forum for the trial of the claim. Such a forum must be a court where the case may be tried more suitably for the interests of all the parties and the ends of justice. To determine the most appropriate forum for trying a case, the court must conduct a three-stage inquiry. The first is whether there is another available forum, second, whether that forum is more appropriate than the local court, and third if so, whether there is a risk of injustice if the claim were to be prosecuted there.

Spiliada Maritime Corp v Cansulex Ltd [1987] AC 460 applied; *Livingston Properties Equities Inc and others v JSC MCC Eurochem and another* BVIHCP2016/0042-0046 (delivered 18th September 2018, unreported) applied.

An appellate court will be reluctant to interfere with a trial judge's decision on the most appropriate forum for the trial of the case. It will generally only interfere where the judge has taken into account immaterial factors, omitted to take account of material factors, erred in principle or come to a conclusion that was impermissible or not open to him. In this case, the learned judge applied the correct test to determine the most appropriate forum for trying the case in the interests of all the parties and the ends of justice. He considered the evidence before him and embarked on an evaluation exercise that gave sufficient weight to the multitude of factors placed before him by the parties. The learned judge was entitled to displace the BVI in favour of Ukraine as the *forum conveniens* for

trying the claims brought by WWRT, as the respondents were able to provide evidence that demonstrated that Ukraine was clearly the more appropriate forum, and that there were several connecting factors pointing to Ukraine being the natural forum to determine the claims. The learned judge's evaluation of the connecting factors was also reasonable and sought to ensure that the forum identified was distinctly more suitable in the interests of all the parties and the ends of justice. The learned judge's decision did not exceed the generous ambit within which reasonable disagreement is possible and therefore his decision should not be disturbed.

Aldi Stores Ltd v WSP Group plc [2007] EWCA Civ 1260 applied; Bitech Downstream Ltd v Rinex Capital Inc and another BVIHCV2002/0233 and BVIHCV2003/0008 (delivered 12th June 2003, unreported) applied; WWRT Limited v Tyshchenko and another [2021] EWHC 939 (Ch) considered; Showa Holdings Co. Ltd v Nicholas James Gronow and John David Ayres BVIHCMAP2020/0031 (delivered 31st May 2021, unreported) applied.

To satisfy the first limb of the Ladd v Marshall test, the applicant must show that the evidence to be adduced is evidence that existed at the time of the trial but could not have been obtained with reasonable diligence for the use at the trial. WWRT sought to adduce fresh evidence in relation to the ongoing armed conflict in Ukraine which commenced after the hearing and determination of the application to set aside the service-out order and stay application. The Court was not satisfied having regard to the applicable principles that the fresh evidence should be allowed on the hearing of the appeal.

Ladd v Marshall [1954] 1 W.L.R. 1489 applied; Staray Capital Limited and another v Cha, Yang (also known as Stanley) [2017] UKPC 43 distinguished; ISC Technologies Ltd. & Another v James Howard Guerin & Others [1992] 2 Lloyd's Rep 430 applied; Erste Group Bank AG (London) v JSC (VMZ Red October) [2015] EWCA Civ 379 applied.

Case Name:

**The Queen
v
[1] Harold Lovell
[2] Jacqui Quinn
[3] Wilmoth Daniel**

**[ANUHCRA2021/0012]
[ANUHCRA2022/0005]
(Antigua and Barbuda)**

Date:

Friday, 22nd July 2022

Coram:

**The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal**

Appearances:

Appellant:

**Mr. Gilbert Peterson, SC
Mr. Sean Nelson holding for the Director of Public Prosecutions**

Respondents:

**Mr. Justin Simon, QC holding papers for Ms. Anesta Weekes, QC for the 1st Respondent
Mr. Dame Hamilton, QC for the 2nd Respondent
Mr. Justin Simon for the 3rd Respondent**

Issues:

Criminal appeal – Application to strike out notice of appeal – Statutory interpretation of section 61B (1) of the Eastern Caribbean Supreme Court (Amendment) Act, 2005 – Failure to give oral notification of intention to appeal - Whether a failure to give oral notice of intention to appeal vitiates the appeal or deprives the court of its jurisdiction to hear the appeal

Result / Order:

IT IS HEREBY ORDERED THAT:

- 1. The application to strike out the notice of appeal is dismissed.**
- 2. In the circumstances, the application to extend time to file the second notice of appeal falls away.**

Reason:

The words and passages in a statute derive meaning from their context. The relevant context may be provided by other provisions in the statute and the statute as a whole. They are the words which Parliament has chosen to enact as an expression of the purpose of the legislation and are therefore the primary source by which meaning is ascertained. In ascertaining the meaning however, the court seeks to avoid a construction that produces an absurd result, since this is unlikely to have been intended by Parliament. The concept of absurdity is given a very wide meaning and includes virtually any result which is unworkable or impracticable, inconvenient, anomalous or illogical, futile or pointless, artificial, or productive of a disproportionate counter - mischief.

R v Secretary of State for the Environment, Transport and the Regions Ex p Spath Holme Ltd [2001] 2 AC 349 applied; R on the application of O (a minor, by her litigation friend AO) v Secretary of State for the Home Department [2022] UKSC 3 applied; R v McCool and another (Northern Ireland) [2018] UKSC 23 applied.

The effect of procedural defects does not depend upon whether the requirements in question should be classified as mandatory or directory but on what Parliament intended to be the consequences of non-compliance. Moreover, there is an important distinction between breaches of procedural requirements which go to jurisdiction and breaches of procedural requirements in the exercise of a jurisdiction. The Court will also consider the seriousness of the breach and the degree of any injustice and public inconvenience which may be caused by invalidating the act.

Section 61B of the Eastern Caribbean Supreme Court (Amendment) Act, 2005 Cap 143 of the Laws of Antigua and Barbuda applied; R v Secretary of State for the Home Department, Ex p Jeyanthan [2000] 1 WLR 354 considered; R v Soneji [2005] UKHL 49 applied; The Attorney General v Samuel Knowles Jnr. [2017] UKPC 5 considered; M (by his litigation friend TM) v Hackney London Borough Council and others [2011] EWCA Civ

4 applied; Director of Public Prosecutions v Owain McFarlane [2019] EWHC 1895 (Admin) applied.

The only consequence provided in section 61B of the Eastern Caribbean Supreme Court (Amendment) Act, 2005 resulting from a failure to comply with a requirement stated therein is that an appeal is treated as abandoned where the Director of Public Prosecutions fails to file the notice of appeal in the time stipulated. There is no consequence stipulated by a failure to give oral indication of the intention to appeal. The language of the provision does not lead to the conclusion that Parliament intended that a failure to give such notice of the intention to appeal upon discharge of the accused, deprives the Court of jurisdiction to hear the appeal or render the appeal invalid in circumstances where section 61B (1) or any other section does not so provide and where the notice of appeal was filed within the time period prescribed. Further, the breach of the procedural requirement of giving oral notice was neither serious nor did the applicant suffer any injustice consequent upon the breach. Invalidating the appeal by reason of the failure to give oral notice of intention to appeal, in circumstances where the notice of appeal was filed in time, and no sanction was imposed for not giving oral notice, would certainly not be in the public interest. The failure to give oral notification was, in any event, a procedural defect which did not go to the Court's jurisdiction to hear the appeal. It constituted a breach of a procedural requirement in the exercise of the Court's jurisdiction.

Central Tenders Board v White (trading as White Construction Services) [2015] UKPC 39 applied; R v Quillan [2015] EWCA Crim 538 applied; R v NT [2010] EWCA Crim 711 distinguished; R v LSA [2008] EWCA Crim 1034 distinguished.

Case Name:

Inderjit Kaur Chhina

v

[1] Muhammad Nazir Muhammad Ismail

[2] Mohammed Nazim

**[BVIHCMAP2020/0024]
(Territory of the Virgin Islands)**

Date: Friday, 22nd July 2022

Coram: The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal

Appearances:

Appellant: Ms. Sara-Jane Knock

Respondents: Mr. Adrian Davies

Issues: Commercial appeal – Application to strike out notice of appeal for want of prosecution – No steps taken by appellant after notice of appeal filed and notice of availability of transcripts given – Whether appellant’s delay in prosecuting appeal was inordinate, intentional and prejudicial to respondents - Application for extension of time to file and serve record of appeal and core bundle – Test for granting extension of time – 9 month delay by appellant - Whether good reasons existed for appellant’s delay in filing and serving record of appeal and core bundle – Prospects of success – Whether appeal had a realistic prospect of success

Result / Order: IT IS HEREBY ORDERED THAT:

1. The application for an extension of time is refused.
2. The application to strike out the notice of appeal is granted.
3. Costs on the applications and on the appeal are awarded to the respondents in a sum to be assessed by a judge of the commercial court if not agreed within 21 days.

Reason: In considering an application to strike out a notice of appeal, the court’s aim must be to do justice between the parties in furtherance of the overriding objective.

Thus, the appeal should not be struck out where there is a satisfactory explanation for an appellant's delay, the delay is neither intentional nor inordinate, and there has been no prejudice to the respondents. Similar considerations would apply in relation to an application for an extension of time. Having regard to these factors, the appellant's 9-month delay in prosecuting the appeal was inordinate. Furthermore, the explanation given for the delay was unsatisfactory as the appellant would have been in possession of the very documents she claimed to need to advance her appeal by the time of the case management conference on 12th April 2022, and yet took no steps to progress the appeal. This justified the inference that the delay was intentional. The delay was prejudicial to the respondents as they were deprived of the fruits of their judgment for over a year and a half, and it caused related proceedings in the English Court relating to the Firmingham property to hang in abeyance pending the outcome of the appeal.

Michael Baptiste v Yoland Bain-Joseph GDAHCVAP2006/0026 (delivered 7th February 2008, unreported) followed; First Domestic Insurance Co. Ltd. v Industrial Enterprises Ltd. et al DOMHCVAP2014/0024 (delivered 27th May 2020, unreported) followed; Ratnam v Cumarasamy and another [1964] 3 All ER 933 applied; The Barbuda Council v Attorney General et al ANUHCVAP1994/0012 (delivered 15th January 2004, unreported) followed.

In exercising the court's discretion to grant an extension of time, a realistic prospect of success is not, by itself, sufficient to persuade the court to exercise its discretion. The court must take account of all relevant factors. This is only one of them and though relevant, could not be determinative of the manner in which the court should exercise its discretion.

First Domestic Insurance Co. Ltd. v Industrial Enterprises Ltd. et al DOMHCVAP2014/0024 (delivered 27th May 2020, unreported) followed.

The appellant argued that despite the delay in prosecuting the appeal, the appeal had a realistic

prospect of success on a point of law. The appellant contended that this realistic prospect of success was due to the fact that the first respondent had been found to engage in fraudulent conduct and had not come to the court with clean hands and should therefore be denied the equitable relief of rectification. Even if this contention were arguable, a realistic prospect of success was only one factor for the Court's consideration. On the facts, this had been considerably outweighed by the other factors. Consequently, the application for an extension of time was denied and the notice of appeal struck out.

An appellate court should attach the greatest weight to the opinion of the judge who saw the witnesses and heard the evidence, and should not interfere with a trial judge's findings of fact unless the court was satisfied that the findings were unsound. The trial judge would have found that the appellant held the shares in Firmingham as nominee for the first respondent. This conclusion was largely based on documents before him which he found provided cogent evidence of this. Despite the appellant's contention that she had a realistic prospect of success on fact, the Court was not satisfied that the judge's findings were unsound and thus, the appellant failed to dislodge his findings.

Betteto Frett v Flagship Properties Limited BVIHCVAP2009/0026 (delivered 26th and 27th September 2011, unreported) followed; Chiverton Construction Limited et al v Scrub Island Development Group Limited BVIHCVAP2009/0028 (delivered 19th September 2011, unreported) followed.

APPLICATIONS AND APPEALS

Panel 1

Case Name:

**Hagar Miller
v
Daniel Nichols**

**[SVGHCVAP2016/0028]
(Saint Vincent and the Grenadines)**

Date: Wednesday 20th July 2022

Coram: The Hon. Mr. Gerard St. C. Farara QC, Justice of Appeal [Ag.]
The Hon. Mde. Margaret Price-Findlay, Justice of Appeal [Ag.]
The Hon. Mr. Sydney Bennett QC, Justice of Appeal [Ag.]

Appearances:

Applicant: Ms. Ashelle Morgan

Respondent: Ms. Euchrista St. Hilaire Bruce-Lyle

Issues:

Application by respondent to strike out notice of appeal for want of prosecution - Delay by appellant in prosecuting appeal - 1 year and 8 months delay from receipt of notice of availability of transcripts dated 30th November 2020 under CPR 62.9(1)(a)(ii)- No steps taken by appellant since notice of availability of transcript given - Failure by appellant to file skeleton arguments as per rule 62.11(1) and record of appeal in accordance with rule 62.12(3) of the Civil Procedure Rules 2000 (“CPR”)

Application by appellant to strike out respondent’s application - Application to extend the time for the filing of appellant’s skeleton arguments and the record of appeal - Delay of about 1 year and 8 months in applying for the extension of time - Application for an extension not made promptly - 3 month extension with unless order requested - Reasons for delay - Impecuniosity of appellant - Whether reasons put forward are cogent reasons for the delay - Prejudice to respondent - Whether the respondent would be unduly prejudiced by the grant of the application - Overriding objective - Whether the application for an extension of time should be granted in the interests of justice having regard to the overriding objective - Application for relief from sanctions - No sanction under the CPR for failing to file the skeleton arguments and record of appeal

Type of Order:

Oral decision

Result / Order:

IT IS HEREBY ORDERED THAT:

- 1. The application filed by the appellant on 13th July 2022 for an extension of time to file and serve skeleton arguments and the record of appeal is dismissed.**
- 2. The application filed by the respondent on 15th October 2021 to strike out the appeal is granted.**
- 3. The appeal is accordingly struck out for want of prosecution.**
- 4. Each party shall bear their own costs in relation to both applications.**

Reason:

Before the Court were two applications. The first was by the respondent and filed on 15th October 2021. By this application, the respondent sought an order striking out the appeal for want of prosecution. The grounds of that application were that the appeal was against an order of the High Court dated 31st August 2016, by which judgment was granted to the respondent on certain terms, including possession of the subject property. On 13th October 2016, the appellant filed a notice of appeal against that judgment and on 30th November 2020 a notice of availability of the transcripts of proceedings was issued to both parties in accordance with rule 62.9(1)(a)(ii) of the Civil Procedure Rules 2000 ("CPR"). By virtue of that notice, the obligation then fell to the appellant to comply with the provisions of CPR 62.11(1) by filing skeleton arguments within 52 days of receipt of the said notice and to file a record of appeal. It was common ground that the appellant took no further steps in prosecuting the appeal and failed to comply with the provisions of CPR 62.11(1). Accordingly, the respondent applied for the appeal to be struck out for want of prosecution.

The second application before the Court was filed on 13th July 2022 by the appellant. The appellant sought an order striking out the respondent's notice of application on the ground that it failed to comply with CPR 8.12(1) having been served on the appellant 8 months after it was filed. This basis was misconceived as CPR 8.12(1) applies to striking out claim forms and

not an application to striking out an application which had not been served within a 6-month period.

The second limb of the appellant's application was for an extension of time to file and serve skeleton arguments and the record of appeal pursuant to rules 26.8 and 26.9 of the CPR. CPR 26.8 deals with relief from sanctions and CPR 26.9 relates to the general power of the court to rectify matters where there has been a procedural error. The provisions of CPR 26.8 relating to relief from sanctions, speaks to the application being made promptly and supported by evidence on affidavit. Learned counsel for the appellant pointed out that the CPR does not prescribe any particular sanction for failure to comply with CPR 62.11(1). However, an applicant for an extension of time must satisfy the court, on cogent evidence, that the application was made promptly, that there is a good reason or explanation for the delay and that the appeal, as set out in the notice of appeal, has good prospects of success.

The Court considered the appellant's affidavit filed on 13th July 2022, in particular paragraphs 4-8. In these paragraphs, the appellant averred that she had been faced with several challenges which had not enabled her to afford the cost of preparing and filing several bundles of skeleton arguments and the record of appeal. These challenges included the fact that she was unemployed with 7 children and that she had lost her home and possessions, including her cellular phone. She also averred that she had been unable to pay her lawyer the remaining fees in this matter. She further stated that she did not contact her lawyer because she did not have a telephone and she did not visit her office because she was embarrassed that she owed her lawyer, even after her lawyer had given her time to pay.

She also averred at paragraphs 7 and 8 of her affidavit that,

“I met my lawyer last week in town and I was advised that the bailiff had been looking for me and that my case was in danger of being struck out because certain documents were not filed to

support my case. I advised her that I am unable to pay the estimated cost to prepare and file the documents by the 18th July, 2022 when the matter is to be heard. However, I expect to get my severance payment approximately \$3000.00 within the next three months. I am therefore requesting an extension of time to the end of October, 2022 to have these documents filed.

The failure to file the documents was because I could not afford it at the time, it was not intentional, deliberate or spiteful. I am eager to get this matter settled and no disrespect is intended to the court or to Mr. Nicholls.”

The Court considered the affidavit of the appellant and the submissions made by learned counsel, who argued that the appropriate course was to grant the extension and make an unless order that the appellant file the skeleton arguments and record of appeal within 3 months. It was clear, and this was conceded, that the application to extend time was not made promptly. In the Court’s view, the reasons advanced by the appellant for the failure to prosecute the appeal were not a good explanation for the delay in doing so, and in the circumstances, the Court was not satisfied that there was any good reason why the Court ought to extend time. In particular, the appellant had not provided any cogent evidence with regard to a number of the matters which she had relied on in her affidavit, and in the absence of such evidence, the appellant had not put herself in a position where Court’s discretion ought to be exercised in her favour.

Case Name:

Helon Quammie

v

Learna Quammie

[SVGHCVP2017/0002]

(Saint Vincent and the Grenadines)

Date:

Wednesday 20th July 2022

Coram: The Hon. Mr. Gerard St. C. Farara QC, Justice of Appeal [Ag.]
The Hon. Mde. Margaret Price-Findlay, Justice of Appeal [Ag.]
The Hon. Mr. Sydney Bennett QC, Justice of Appeal [Ag.]

Appearances:
Applicant: Mr. Richard Williams and Mr. Art Williams
Respondent: Ms. Shirlan Barnwell

Issues: Application to strike out notice of appeal - Notice of discontinuance filed by appellant - Costs

Type of Order: Oral decision

Result / Order:
IT IS HEREBY ORDERED THAT:

1. The appeal stands discontinued and is accordingly struck out.
2. The appellant shall pay to the respondent costs in the sum of \$2,900.00, said costs to be paid within 30 days.

Reason: A notice of discontinuance was filed on 7th June 2022. The only matter which remained for determination was the issue of costs. The Court would have heard oral submissions on behalf of either side and determined that costs in the sum of \$2,900.00 would be appropriate in the circumstances.

Case Name: Nellie Forde
v
Bertille Da Silva

[SVGHCVAP2017/0012]
(Saint Vincent and the Grenadines)

Date: Wednesday 20th July 2022

Coram: The Hon. Mr. Gerard St. C. Farara QC, Justice of Appeal [Ag.]
The Hon. Mde. Margaret Price-Findlay, Justice of Appeal [Ag.]
The Hon. Mr. Sydney Bennett QC, Justice of Appeal [Ag.]

Appearances:

Appellant: Mr. Joseph Delves

Respondent: Ms. Paula David

Issues: Civil appeal - Land law - Adverse possession – Application for declaration of possessory title - Whether learned judge failed to properly exercise his judgment in accordance with the facts and law before the court Whether the appellant was in continuous adverse possession of the subject land for a minimum of 12 years - Whether the learned judge erred in law in failing properly to consider and apply provisions of the Limitation Act CAP 129 and Possessory Titles Act CAP 328 - Whether learned judge relied on material not before the court during the trial - Whether the learned judge’s reliance on material not before the court led him to conclude that the respondent was the owner of the subject land – Whether the learned judge’s reliance on material not before the court rendered his judgment liable to be set aside

Type of Order: N/A

Result / Order: [Oral delivery]

IT IS HEREBY ORDERED THAT:

Judgment is reserved.

Panel 2

Case Name: Symcy Williams
v
The Queen

**[SVGHCRAP2017/0011]
(Saint Vincent and the Grenadines)**

Date: Wednesday 20th July 2022

Coram: The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal

Appearances:

Appellant: Ms. Chante Francis

Respondent: Ms. Maria Jackson-Richards, Office of the Director of Public Prosecutions

Issues: Appeal against sentence – Robbery - Sentence of 10 years imprisonment - Whether the sentence was excessive in the circumstances - Whether the trial judge gave sufficient discount in sentence for the assistance given by the appellant to the authorities in the conviction of the co-accused - Whether the trial judge failed to take into account the time spent on remand - Whether the judge took into consideration the applicable principles at the time of sentencing - Aggravating factors - Previous conviction of appellant

Type of Order: Oral judgment

Result / Order: IT IS HEREBY ORDERED THAT:

1. The appeal against sentence is allowed.
2. The sentence of ten (10) years imprisonment imposed on the appellant is set aside
3. The appellant is sentenced to a term of imprisonment of seven (7) years, eight (8) months and sixteen (16) days.

Reason: The appellant appealed against the sentence of 10 years imprisonment imposed on him on a guilty plea to the offence of robbery. On 30th July 2013 the

appellant was charged along with four other men for several offences ranging from trespass to murder. On 30th September 2014 the appellant pleaded not guilty to five of the charges including robbery and pleaded not guilty to five of them including Murder. Subsequent to his plea however, on 15th March 2017 the appellant entered into a plea bargain agreement with the Crown to give evidence against his co-accused in exchange for immunity in relation to the murder charge and the withdrawal of other charges against him apart from the robbery charge. On 21st June 2017 the ten-year sentence was imposed on the appellant. On 1st March 2018 the appellant filed a notice of appeal on the grounds that “The sentence handed down by the learned trial judge was excessive in the circumstances and further the learned trial judge did not take into account the time spent on remand.”

The crux of the appellant’s submissions on the appeal was that in imposing the 10-year sentence, the trial judge did not factor in his willingness to assist the authorities and the time which was spent on remand.

In paragraph 20 of his submissions the appellant submitted that the trial judge appeared to have declined to reduce the sentence on the basis of his assistance to the police, because the appellant had previous convictions of a similar nature and that the offence of robbery was becoming more and more prevalent and must be discouraged.

The appellant referred to several cases in his submissions where the courts have held that a defendant should be given a discount in some cases, a substantial discount for providing information to the police or prosecuting authorities which assists in the apprehension and/or prosecution of other offenders.

The courts have held that this discount should be separate from, and additional to, any other discount. The appellant submitted at paragraph 22 of his submissions that the trial judge did not and should have taken into account the fact that he had given a statement to the police and later evidence in court against his co-accused and that it was through that evidence, they came to be convicted.

It was the appellant's contention that instead of giving an appropriate discount to the appellant for his assistance to the police, the trial judge said "... [F]or your assistance or your willingness to assist the police, that would have gone in your favor there's also the problem of your criminal history which goes against you, I think that those things balanced themselves out so that I'm going to remain at the benchmark."

The appellant also stated in paragraph 30 of his submissions "it logically follows that the learned judge ought to have reduced the sentence of the appellant, on the basis of his willingness to assist the authorities...A discount ought to have been given for such assistance at a level appropriate to show the appellant that it was worthwhile to provide such assistance and to encourage other defendants to assist the authorities in bringing criminals to justice."

In paragraph 32 of the submissions the appellant advanced that a further discount of 33% should have been applied by the judge on the basis that he had testified against his co-accused which testimony substantially contributed to the conviction against them. The appellant submitted that the appropriate sentence should have been 6.67 years and not 10 years.

The response of the Crown to the appellant's submissions on this issue was that the judge did take into account the appellant's assistance to the police, because at page 32 of the record the trial judge said:

"The usual starting point for an offense of this nature would be a sentence of about 15 years in prison, and if I start from that point I apply the fact that you pleaded guilty and you're helping the police, and those are things which might persuade me to move to a lower level, but on the other hand, I also have to take into account the fact that you have previous convictions to this kind of offence, and that the type of offence is one which is becoming more and more prevalent, sadly, and one which we have to do everything to discourage."

Further on page 32 the judge stated “for your assistance or your willingness to assist the police, that would have gone in your favor, there’s also the problem of your criminal history which goes against you, I think those things balance themselves out so I’m going to remain at the benchmark minus the discount for your guilty plea.”

The Court concluded that the trial judge erred in stating this position because he did not treat the appellant’s assistance to the police as meriting a discount separate from, and additional to, other factors to be taken into account. The judge did not appear to factor in the very reason for giving a discount for assistance to the police, which is to demonstrate to offenders, that it is worthwhile to assist the police, because this can result in a significant discount on your sentence. The court noted that if the judge’s thinking were to be applied in similar cases, then a defendant with previous convictions might have no incentive to assist the police, because any discount that he might have gotten for his cooperation with the police would be nullified by his previous convictions.

It was noted that during the appeal hearing, counsel for the Crown conceded that the appellant should get a significant discount for the assistance which he gave to the police and the prosecution. Counsel proposed that this should be two years off the term of imprisonment.

In terms of the time spent by the appellant on remand between his detention on 28th July 2013 and his conviction and sentence for another offence on 17th October 2013, the Court noted that the appellant was entitled to have his time of 81 days totally deducted from his sentence. The Court considered that this was consistent with the authorities including the decision of the Privy Council in Mohammed Callachand et al v The State [2008] UKPC 49 and the decision of the Caribbean Court of Justice in Da Costa Hall v The Queen [2011] 77 WIR 60.

In Callachand the Privy Council explained that any period spent on remand should be fully taken into

account in assessing the length of the sentence to be served from the date of sentencing. In *Da Costa Hall* the CCJ applied the general rule in *Callachand* but went on to explain that the general rule was subject to a residual discretion in the sentencing judge, not to apply it in certain circumstances. The Court noted that none of the circumstances outlined in *Da Costa Hall* were appropriate on the facts of this case, and so the appellant should have gotten the 81 days which had been spent on remand with respect to the robbery offence, deducted from his prison sentence.

During the appeal hearing, counsel for the respondent conceded that the appellant should get the benefit of the full 81 days that he spent on remand between his detention for the robbery and his conviction and sentence for another offence.

In the circumstances, the Court was satisfied that the judge erred in principle in his failure to take into account, or to take sufficient account of the appellant's assistance to the police and the prosecution in securing convictions against his co-accused, and in his failure to deduct from the appellant's sentence the time spent on remand with respect to the offence of robbery.

The Court therefore set aside the sentence imposed by the trial judge and imposed a sentence on the appellant's plea of guilty for the offence of robbery. In imposing the sentence, the Court accepted the judge's starting point of 15 years and his discounting of that sentence by one third to take account of the appellant pleading guilty at the earliest opportunity.

The sentence was then discounted by two years as proposed by counsel for the respondent which reduced the sentence to eight years, to take account of the assistance given by the appellant to the police and the prosecution in securing convictions against his co-accused. The 81 days spent on remand was also deducted from the appellant's sentence in relation to the offence of robbery.

In the circumstances, the Court varied the appellant's sentence of 15 years by discounting one third for the

guilty plea, which took it down to 10 years. The sentence was further discounted by another two years for the appellant's assistance to the police and the prosecution which took it down to eight years from which 81 days was deducted for remand time, which amounted to a sentence of seven [7] years eight [8] months and sixteen [16] days.

Case Name:

Rennold Danzell

v

The Queen

[SVGHCRAP2018/0003]

(Saint Vincent and the Grenadines)

Date:

Wednesday 20th July 2022

Coram:

The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal

The Hon. Mr. Mario Michel, Justice of Appeal

The Hon. Mde. Gertel Thom, Justice of Appeal

Appearances:

Appellant:

In person

Respondent:

Ms. Renee Simmons of the Office of the Director of Public Prosecutions

Issues:

**Criminal appeal - Appeal against sentence -
Withdrawal of appeal**

Type of Order:

Oral judgment

Result / Order:

IT IS HEREBY ORDERED THAT:

- 1. Leave is granted to the appellant to withdraw his appeal.**
- 2. The appeal against sentence is accordingly dismissed.**

Reason: The appellant indicated to the Court that he no longer wished to pursue his appeal and made an oral application for his appeal to be withdrawn. Leave being granted to the appellant to withdraw his appeal against sentence, the appeal was accordingly dismissed.

Case Name: Danley Matthews
v
The Queen
[SVGHCRAP2018/0002]
(Saint Vincent and the Grenadines)

Date: Wednesday 20th July 2022

Coram: The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal

Appearances:

Appellant: No appearance

Respondent: Ms. Renee Simmons

Issues: Discontinuation of appeal – Death of appellant

Type of Order: Oral judgment

Result / Order: IT IS HEREBY ORDERED THAT:

The appellant is deceased and is accordingly not in a position to prosecute his appeal, the appeal is thus dismissed.

Reason: The Court noted that the appellant was deceased and was accordingly not in a position to pursue his appeal and the appeal was accordingly dismissed.

Case Name:

**Kerwin Aberdeen
V
The Commissioner of Police**

**[SVGMCRAP2022/0006]
(Saint Vincent and the Grenadines)**

Date:

Wednesday 20th July 2022

Coram:

**The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal**

Appearances:

Appellant:

In person

Respondent:

Mrs. Maria Jackson-Richards

Issues:

Criminal appeal - Application to withdraw appeal

Type of Order

Oral judgment

Result / Order:

IT IS HEREBY ORDERED THAT:

- 1. Leave is granted to the appellant to withdraw his appeal against sentence.**
- 2. The sentence is accordingly affirmed and the appeal against sentence is dismissed.**

Reason:

The appellant indicated that he did not wish to proceed with the matter. The respondent also indicated that the appellant had already paid the fine imposed, and the period of six months for disqualification of his driver's license had already elapsed.

Case Name:

**[1] Braydon Richards
[2] Kelroy Henry
V**

The Commissioner of Police
[SVGMCRAP2020/0017]
(Saint Vincent and the Grenadines)

Date: Wednesday 20th July 2022

Coram: The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal

Appearances:

Appellants: In person

Respondent: Ms. Kaylia Toney

Issues: Appeal against conviction and sentence - Possession of an offensive weapon 'to wit' imitation firearm - Whether the magistrate failed to take into account the prospect of rehabilitation and age of the offender when determining sentence - Whether the sentence was too severe in the circumstances - Whether the magistrate considered the relevant principles regarding the sentencing of young persons - Whether there are circumstances which would justify the Court overturning a guilty plea

Type of Order Oral judgment

Result / Order: IT IS HEREBY ORDERED THAT:

In respect of the 1st appellant, Braydon Richards:

1. The appeal against conviction is dismissed.
2. The sentence of six (6) months imprisonment is set aside and replaced by a sentence of a bond for a period of one (1) year to keep the peace and be of good behaviour, the breach of which, the 1st appellant, Braydon Richards would serve a term of six (6) months imprisonment.

In respect of the 2nd appellant, Kelroy Henry:

- 1. The appeal against sentence is allowed and the sentence of six (6) months imprisonment imposed by the magistrate is set aside and replaced with a sentence of time served.**

Reason:

On 2nd December 2019, the two appellants Braydon Richards and Kelroy Henry were convicted for the offence of possession of an offensive weapon ‘to wit’ an imitation firearm. They both pleaded guilty and were sentenced to six months imprisonment.

Braydon Richards appealed against his conviction and sentence whereas Kelroy Henry appealed against the sentence only. Neither appellant filed any submissions in the matter. Kelroy Henry indicated that he was representing himself, whereas Braydon Richards indicated that he had legal representation, however, the lawyer who he indicated was his legal representative indicated, otherwise to the Court. The Court then proceeded to hear the appeals.

Braydon Richards gave as his reason for appealing his conviction the fact that his co-accused, Kelroy Henry told him to plead guilty since it would make it easier. The Court found no reason or basis in this ground, on which his conviction on a guilty plea should be overturned.

In terms of the sentences of six months, imprisonment, imposed on each of the appellants, the Court noted the submission of counsel for the respondent that the sentences against both appellants should be set aside and replaced by other sentences.

With respect to Braydon Richards who was 17 years old at the time that the offense was committed the Court accepted that in all the circumstances, the recommendation by counsel for the respondent that the six-month sentence imposed should be substituted with a bond for one year, to keep the peace and good behavior and a breach of the bond would result in a six-month sentence for the appellant.

With respect to the 2nd appellant Kelroy Henry, the Court noted the that he had served nearly two months, out of the six-month sentence and accepted the recommendation by counsel for the respondent that in the circumstances of this case, the sentence of six months imprisonment should be set aside and replaced by a sentence of time already served and become the sentence imposed.

Panel 1

Case Name:

Michael Phillip Ullmann

v

[1] Lars Abrahamsson

[2] Luma Ltd.

[SVGHCVAP2018/0010]

(Saint Vincent and the Grenadines)

Date:

Thursday 21st July 2022

Coram:

**The Hon. Mr. Gerard St. C. Farara QC, Justice of Appeal
[Ag.]**

**The Hon. Mde. Margaret Price-Findlay, Justice of
Appeal [Ag.]**

**The Hon. Mr. Sydney Bennett QC, Justice of Appeal
[Ag.]**

Appearances:

Appellant: Mr. Richard Williams

Respondents: Ms. Ronnia Balcombe

Issues:

**Civil appeal - Contract law - Breach of contract -
Whether the learned judge erred in finding that there
was no valid contract existing between the appellant
and the first respondent Whether the learned judge
erred in not finding that the unsigned agreement
evinced the agreed terms of the contract between the
appellant and the first respondent Whether the judge
erred in finding that the first respondent did not breach
the purported agreement - Whether the learned judge
erred in not appreciating that an operating agreement
made by the principals, promoters and sole**

shareholders of a company can bind that company - Whether the learned judge erred in not accepting that the second respondent was bound by the pre-incorporation contract agreed to by its promoters, principals and shareholders - Sections 72 and 73 of the Companies Act - Whether the learned judge erred in not declaring that the purported removal of the appellant as a director of the second respondent was invalid - Whether the learned judge erred in failing to appreciate that failure of the respondents to comply with the mandatory provisions of the Companies Act for the appointment and termination of a director rendered the appellant's removal as a director of the company unlawful and was as such a nullity - Whether the learned judge erred in not finding that the appellant had proven that he had made the money transfers to the first respondent as part of his agreed capital investment in the second respondent - Section 3 of The Registration of Documents Act - Whether the learned judge erred in setting aside the order admitting the unsigned agreement into evidence - Whether the learned judge erred in finding that the unsigned agreement purported to be a power of attorney required to be registered pursuant to section 3 of The Registration of Documents Act

Type of Order:

Directions

Result / Order:

[Oral delivery]

IT IS HEREBY ORDERED THAT:

1. Counsel for the parties shall file and serve, within 14 days, a skeleton argument consisting of no more than four (4) pages together with authorities addressing the singular issue of the circumstances under which and the principles applicable where a company may be bound by a contract or agreement entered into by promoters of the company prior to its incorporation.
2. Judgment is reserved.

Reason: After hearing oral submissions by counsel on both sides, the Court was of the view that further written submissions were necessary on the singular issue of “the circumstances under which and the principles applicable where a company may be bound by a contract or agreement entered into by promoters of the company prior to its incorporation.” Consequently, directions were given for the filing of same and judgment was reserved in the matter.

Case Name: Shemmica Cain
v
Keisha Bailey
[SVGMCVAP2018/0002]
(Saint Vincent and the Grenadines)

Date: Thursday 21st July 2022

Coram: The Hon. Mr. Gerard St. C. Farara QC, Justice of Appeal [Ag.]
The Hon. Mde. Margaret Price-Findlay, Justice of Appeal [Ag.]
The Hon. Mr. Sydney Bennett QC, Justice of Appeal [Ag.]

Appearances:
Appellant: In person
Respondent: In person

Issues: Magisterial civil appeal - Judgment debt - Appellant’s failure to satisfy judgment debt - Whether the learned Magistrate erred by failing to inquire whether the appellant had the means to pay the judgment debt - Whether the order made by the learned Magistrate against the appellant was too excessive in all the circumstances

Type of Order: Oral judgment

Result / Order:

IT IS HEREBY ORDERED THAT:

1. The order dated 10th November 2017 is varied and the appellant shall pay to the respondent 50% of the judgment debt in the sum of \$12,374.00, that is the sum of \$6,187.00, within a period of 6 months, that is on or before 20th January 2023.
2. The remaining balance of the judgment debt, that is the sum of \$6,187.00, shall be paid by the appellant to the respondent on or before 20th July 2023, that is a further 6 months from the time in which the first payment is due.
3. In default of any of these payments, the appellant, Shemmica Cain, shall serve a period of 6 weeks in prison.

Reason:

The decision of the Court in this matter was unanimous. The Court gave careful consideration to the points raised by the appellant, Shemmica Cain, in support of her appeal by way of notice of appeal in this matter, which was filed on 7th February 2019. In her notice of appeal, the appellant relied on three grounds of appeal.

The first ground was that the learned Magistrate did not inquire from the appellant if she had any means or employment before imposing the fine, and by 'fine' there, the Court understood this to mean the order requiring payment of the judgment debt within a specified period of time. In fact, the record in these proceedings reveal that the learned Magistrate did inquire and did take note of the means and employment of the appellant. In the reasons for decision, the learned Magistrate expressly stated from the record that "the appellant was employed with someone. At the time she worked for 4 days at \$30.00 per day and had one child." In relation to that first ground, in the Court's assessment, the ground was not made out by the record in the proceedings before the learned Magistrate. The learned Magistrate did inquire and did record the means and employment of the appellant.

The second ground of appeal relied on by the appellant was that she had pleaded guilty at the first available opportunity. That ground was not applicable to these

proceedings. The proceedings before the Magistrate, which are the subject of the appeal, were civil proceedings and not criminal proceedings. The appellant may very well have been referring to the earlier criminal proceedings before the Magistrate's court in which on 19th April 2016, she pleaded guilty and was put on a bond to keep the peace, in default of which she was to pay \$750.00 or serve 6 months' imprisonment. That second ground, likewise, was not made out.

The third ground relied on by the appellant, which was the ground with which the Court had been concerned in the appeal, and which was more apt to the proceedings and the appeal itself, was that the fine imposed was too excessive in all the circumstances. By use of the word "fine" there, the Court understood the appellant to be referring to the order, which she had appealed, made on 10th November 2017 by the Magistrate, whereby it was ordered that the appellant pay the sum of \$12,374.00, which was the judgment sum, by 30th November 2017, in default, 6 weeks in prison. The Court noted that the judgment of the court below was given on 3rd March 2017, the civil claim having been filed on 21st April 2016. That being the case, the judgment debt remained unpaid for a period of 8 months and during that period, as was disclosed in the evidence, the appellant had not made any payment towards satisfaction of that judgment debt. It was now over 5 years since the judgment debt had been entered on 3rd March 2017.

Before the Court, the appellant stated that she was recently employed and that she earned a sum of \$30.00 per day, at what she described as a "Syrian store". She also pointed out that she had 2 daughters, one 11 years old and one 4 years old. Apparently, at the time when the judgment was entered and when the learned Magistrate made the requisite order, the appellant had only one child. Having considered the points raised by the appellant in support of her appeal, and having given careful consideration to the reasons and analysis of the learned Magistrate below, the Court reached the conclusion that the period which was stipulated in the order of 10th November 2017, on all the facts and circumstances, including the employment and commitments of the appellant, was much too short

a period within which to pay the very significant sum of \$12,374.00. That order made on 10th November 2017 required that sum to be paid, essentially within 20 days, bearing in mind that the appellant had had quite some time before that within which to make payments. The learned Magistrate was also satisfied that the appellant did not intend to take any steps to liquidate the judgment debt. Having concluded that the period for payment, with a default provision of 6 weeks' imprisonment, was too short, the Court, in exercise of its powers pursuant to section 29 of the Magistrate (Civil Decisions) Appeals Act Chapter 31 of the laws of St. Vincent and the Grenadines, determined that the order ought to be varied to give the appellant a longer period within which to pay the judgment debt.

Case Name:

Calvin Parsons

V

[1] Terrance Bartholmew

[2] Dan Hazel

[SVGMCVAP2020/0004]

(Saint Vincent and the Grenadines)

Date:

Thursday 21st July 2022

Coram:

**The Hon. Mr. Gerard St. C. Farara QC, Justice of Appeal
[Ag.]**

**The Hon. Mde. Margaret Price-Findlay, Justice of
Appeal [Ag.]**

**The Hon. Mr. Sydney Bennett QC, Justice of Appeal
[Ag.]**

Appearances:

Appellant: In person

Respondents: In person

Issues:

**Magisterial civil appeal - Trespass to the person -
Damages - Whether learned magistrate erred in
dismissing appellant's claim for trespass to person -
Whether magistrate ought to have adjourned the**

matter to allow appellant to produce medical forms substantiating his injuries

Type of Order

Oral judgment

Result / Order:

IT IS HEREBY ORDERED THAT:

The appeal is dismissed.

Reason:

This was an appeal brought by the appellant against the decision and order of the learned Magistrate made on 22nd May 2020, by which the learned Magistrate dismissed a claim brought by the appellant against the respondents for damages in the sum of \$5000.00 and costs for trespass to the person. The circumstances which gave rise to the claim were said to have involved a physical assault by the respondents against the appellant.

In the Magistrate's reasons for decision, the learned Magistrate at paragraph 2, stated that the appellant claimed that he was attacked by both respondents and sustained injuries in the process. However, no detail was proffered by the appellant in relation to the injuries that he sustained despite him visiting a doctor for the said injuries. The appellant did not call any witness in support of his claim and in giving his oral evidence he failed to meet the requisite standard, that is, satisfying the learned Magistrate that on a balance of probabilities the respondents committed an assault against him. Therefore the learned Magistrate concluded that he had no choice but to dismiss the claim.

The appellant filed a notice of appeal on 10th June 2020 in which he relied as the sole ground that the Magistrate ought to have adjourned the matter to allow him to get the injury forms to the court. The appellant also filed a letter dated 25th January 2022 in which he wrote to the Court setting out the circumstances surrounding the alleged assault and his subsequent doctor's visit.

This Court, having considered the points raised by the appellant in support of his appeal, was of the unanimous view that there was no basis made out upon which it ought to disturb and set aside the decision and order of the learned Magistrate. The learned Magistrate was entitled, having heard the witnesses and having assessed the evidence led before him, to arrive at the conclusion which he did, that the case had not been made out. Accordingly, the Court dismissed the appeal.

Case Name:

**Jilley Mitchell
v
Latisha Jackson**

**[SVGMCVAP2020/0010]
(Saint Vincent and the Grenadines)**

Date:

Thursday 21st July 2022

Coram:

**The Hon. Mr. Gerard St. C. Farara QC, Justice of Appeal
[Ag.]
The Hon. Mde. Margaret Price-Findlay, Justice of
Appeal [Ag.]
The Hon. Mr. Sydney Bennett QC, Justice of Appeal
[Ag.]**

Appearances:

Appellant: In person

Respondent: In person

Issues:

Magisterial civil appeal - Slander - Whether the appellant was denied a fair trial - Whether learned magistrate erred in finding that the words used were used against the respondent

Type of Order

Oral judgment

Result / Order:

IT IS HEREBY ORDERED THAT:

The appeal is dismissed.

Reason:

The respondent initially brought an action against the appellant claiming the sum of \$10,000 damages for slander. The matter was heard by the learned Magistrate on 27th March 2020. The Magistrate heard evidence from both the appellant and the respondent along with the respondent's witness, Mr. Delpeshce. Having heard the evidence of both parties, the Magistrate on 27th March 2020 delivered a decision giving judgment for the respondent in the sum of \$5,000.00 plus \$12.00 in costs. The Magistrate gave reasons for his decision and indicated that having heard the evidence, he found that the words were uttered, the words were slanderous, the words were uttered in the presence of others and the words uttered amounted to an imputation that the respondent was suffering from AIDS, which is a contagious disease and therefore, actionable per se. As a result, he awarded the respondent \$5,000.00 plus \$12.00 in costs.

The appellant, being dissatisfied with the learned Magistrate's decision, on 1st April 2020 filed an appeal. The reasons for the appeal were stated as:

- "1. I don't believe that I received a fair trial.**
- 2. I never slandered the Plaintiff, she admitted in cross examination she and I had nothing, no argument.**
- 3. Plaintiff was unemployed at the time [the] claim was filed, yet the judgment sum reflected a working woman, as asked by [the] Magistrate.**
- 4. Plaintiff's witness is her common law partner, who is a retired Police Officer and bragged that I cannot win them in Court, they are affiliated to the system.**
- 5. I stated number four (4) reason to the Learned Magistrate, when I gave my evidence.**
- 6. The Plaintiff's witness lied and was a witness of convenience.**
- 7. I cannot walk the streets for this couple, many times I report to the police who warns them and still is of no help."**

The Court considered the circumstances which gave rise to the appeal and the reasons given by the Magistrate for his decision. The Magistrate, having heard and seen the witnesses give their evidence, found that the claim was made out. The Court was of the unanimous view that there was no basis upon which the Court could set aside the order of the learned Magistrate. The Magistrate was entitled, having seen and heard the witnesses to reach the decision that he did. The Court therefore found that the grounds of appeal were not made out and the appeal was dismissed.

Case Name:

Judy Cordice

v

Rosan Davis

[SVGMCVAP2020/0003]

(Saint Vincent and the Grenadines)

Date:

Thursday 21st July 2022

Coram:

**The Hon. Mr. Gerard St. C. Farara QC, Justice of Appeal
[Ag.]**

**The Hon. Mde. Margaret Price-Findlay, Justice of
Appeal [Ag.]**

**The Hon. Mr. Sydney Bennett QC, Justice of Appeal
[Ag.]**

Appearances:

Appellant: No appearance

Respondent: In person

Issues:

**Magisterial civil appeal - Non appearance of appellant
- Appellant's failure to prosecute the appeal**

Type of Order

Oral judgment

Result / Order:

IT IS HEREBY ORDERED THAT:

The appeal is dismissed for want of prosecution.

Reason:

This was an appeal by the appellant against the decision of the learned Magistrate whereby the appellant was ordered to pay damages of \$6,000.00 plus costs in the sum of \$12.00 for slander against the respondent. In the notice of appeal, there was no dispute as to the facts but the appellant's sole ground was that the judgment was too harsh and excessive.

The appellant was served to be present at the hearing of the appeal on 3rd July 2022 but failed to be present at Court. In light of her absence, the Court dismissed the appeal for want of prosecution.

Panel 2

Case Name:

**[1] Denzil Sam
[2] Ezekiel Robin
[3] Calvert Prince
[4] Danile Baptiste
v
The Queen**

**[SVGHCRA2019/0012]
[SVGHCRA2019/0013]
[SVGHCRA2019/0014]
[SVGHCRA2019/0015]
(Saint Vincent and the Grenadines)**

Date:

Thursday 21st July 2022

Coram:

**The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal**

Appearances:

Appellants:

Mr. Grant Cornell

Respondent:

Ms. Sejilla Mc Dowall

Issues:

Appeal against conviction and sentence - Possession of a controlled drug with intent to supply - Drug Trafficking - Whether there was any evidence to substantiate the charges - The burden of proof on the prosecution to prove that the controlled substance before the Court was cannabis - Drug Prevention of Misuse Act - Whether the certificate of analysis was in accordance with that which is defined as cannabis by law - Whether the sentence was harsh and excessive - Whether the judge took into account the time spent on remand - Whether the judge erred in sentencing in the context of the law which prevailed at the time of sentencing

Type of Order:

Oral judgment

Result / Order:

IT IS HEREBY ORDERED THAT:

- 1. The appeals against conviction on the four (4) charges of possession with intent to supply and drug trafficking are dismissed.**
- 2. The appeals against sentence are allowed and the sentence imposed by the learned judge on each of the appellants are set aside and the following sentences are substituted for the appellants:**
 - i. The appellant, Denzil Sam is sentenced to 9.3 years imprisonment for the offence of possession of 907,546 grams of cannabis with intent to supply to another; 3.5 years imprisonment for possession of 3,632 grams of cannabis with intent to supply to another; 11.5 years imprisonment for the offence of trafficking of 907,546 grams of cannabis; and 3.5 years imprisonment for the offence of trafficking 3,632 grams of cannabis; the sentences to run concurrently.**
 - ii. The appellant, Ezekiel Robin is sentenced to 7.3 years imprisonment for the offence of possession of 907,546 grams of cannabis with intention to supply to another; 1.5 years**

imprisonment for the offence of possession of 3,632 grams of cannabis with intent to supply to another; 9.5 years imprisonment for the offence of trafficking of 907,546 grams of cannabis; and 1.5 years imprisonment for the offence of trafficking of 3,632 grams of cannabis; all the sentences to run concurrently.

iii. The appellant, Danile Baptiste is sentenced to 9.3 years imprisonment for the offence of possession of 907,546 grams of cannabis with intent to supply to another; 3.5 years imprisonment for the offence of possessions of 3,632 grams of cannabis with intent to supply to another; 11.5 years imprisonment for the offence of trafficking of 907,546 grams of cannabis; and 3.5 years imprisonment for the offence of drug trafficking 3,632 grams of cannabis; all the sentences to run concurrently.

iv. The appellant, Calvert Prince is sentenced to 9.3 years imprisonment for the offence of possession of 907,546 grams of cannabis with intent to supply to another, less the time spent on remand of 3 years 9 months and 25 days, amounting to a final sentence of 5 years 5 months and 5 days imprisonment for the offence of possession of 907,546 grams of cannabis with intent to supply to another; 3.5 years imprisonment for the offence of possessions of 3,632 grams of cannabis with intent to supply to another, which in the circumstances would amount to a sentence of time served; 7 years and 8 months imprisonment for the offence of trafficking of 907,546 grams of cannabis, which sentence takes into account the 3 years 9 months and 25 days spent on remand; 3.5 years imprisonment for the offence of trafficking 3,632 grams of cannabis, which in the circumstances would amount to a sentence of time served; all the sentences to run concurrently.

Reason:

This was an appeal against the conviction and sentence for the offences of (1) possession of 907, 546 grams of cannabis with intention to supply to another,

possession of 3632 grams of cannabis with intention to supply to another (3) drug trafficking of 907, 546 grams of cannabis and (4) drug trafficking of 3,632 grams of cannabis. The appellants based the appeals against conviction principally on the submission that the substance tested and analysed by the analyst did not fit within the definition of cannabis under section 2 of the Drugs Prevention and Misuse Act and the appellants could not therefore, based on that certificate, be convicted for the offences for which they were charged. Counsel for the appellant however conceded that the certificate of the analyst does indicate that the substance found in possession of the appellant included the leaves of the cannabis plant which does in fact come into the definition of cannabis under the Act. Based on this concession the Court therefore found no basis to upset the conviction of the appellants on the four charges of possession with intent to supply and drug trafficking.

With respect to the appeal against sentence, the Court having heard the submissions for both counsel, was satisfied that the learned judge erred in principle when he followed the sentencing guidelines which were not then in operation instead of applying the sentencing principles laid down by the case of *Desmond Baptiste v The Queen* SVGHCRA2003/0008 (delivered 6th December 2004, unreported) and the several cases which applied it. Further, the Court found that the learned judge did not take into account the time spent on remand particularly the appellant Calvert Prince in the manner set out by the CCJ in the case of *Da Costa Hall v The Queen* [2011] CCJ 6 (AJ). It was noted that Calvert Prince spent 3 years 9 months and 25 days on remand, which time the Court deducted from the final sentence. Accordingly, the appeal against sentence was allowed and the sentence imposed by the learned judge was set aside and the sentences substituted as indicated in the appellant's submissions.

Case Name:

Preben Lyttle

v

The Queen

[SVGHCRA2017/0013]

(Saint Vincent and the Grenadines)

Date: Thursday 21st July 2022

Coram: The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal

Appearances:

Appellant: Ms. Shirlan Barnwell

Respondent: Ms. Rose-Ann Richardson

Issues: Discontinuance of appeal against conviction and sentence

Type of Order: Oral judgment

Result / Order: IT IS HEREBY ORDERED THAT:

The appeal against conviction and sentence having been discontinued by notice filed on 29th June 2022 is accordingly dismissed.

Reason: Counsel for the appellant filed a notice of discontinuance on 29th June 2022. The appellant confirmed his intention to discontinue the appeal.

Case Name: Jariel Belle
v
The Queen

[SVGHCRAP2017/0014]
(Saint Vincent and the Grenadines)

Date: Thursday 21st July 2022

Coram: The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal

Appearances:

Appellant: In person
Respondent: Ms. Rose-Ann Richardson

Issues: Criminal appeal - Robbery - Possession of firearm with intent to endanger life - Admission - Defence of duress - Whether judge erred in law by failing to fully and accurately direct the jury on the defence of duress - Whether judge materially misdirected jurors on defence of duress thereby rendering conviction unsafe and unsatisfactory - Sentence - Sentencing remarks - Aggravating and mitigating factors - Prior conviction - Whether sentence was manifestly excessive - Proviso - Section 18 of the Eastern Caribbean Supreme Court (Saint Vincent and the Grenadines) Act

Type of Order: Oral judgment

Result / Order: IT IS HEREBY ORDERED THAT:

1. The appeal against conviction and sentence is dismissed.
2. The conviction and sentence is affirmed.

Reason: The appellant was convicted of robbery and possession of a firearm with intent to endanger life and was sentenced to prison terms of 14 years and five years respectively; the sentences to run concurrently. He appealed his conviction and sentence on four grounds. Ground 1: The appellant's case was not properly put to the jury; Ground 2: The judge erred by allowing inadmissible evidence; Ground 3: The conviction was unsafe and unsatisfactory, and Ground 4: The sentence of 14 years was manifestly excessive. The prosecution's case was that the appellant and another, acting pursuant to a joint enterprise, robbed

one Raymond Durant of cash, cheque and a firearm in the heart of Kingstown. The appellant discharged two shots in the process before escaping on foot, only to be arrested a few days after and charged with the subject offences. While in custody, he gave a caution statement admitting to the robbery but stated he only did the acts because he was threatened by Kwasi Ryan (who was initially his co – accused). The crux of the defence was one of duress; he believed that Ryan would have killed him if he did not commit the robbery as he was told. He took the firearm that Ryan gave him and awaited instructions as to who was the target.

Ms. Richardson, counsel for the respondent, conceded that the learned judge did not put the full defence of duress to the jury. Further, the judge allowed irrelevant evidence against the appellant during cross-examination, which was more prejudicial than probative, and which was also referred to in the summation. Ms. Richardson stated that the questioning should not have been allowed as it was suggestive that the appellant was guilty of the offence charged. The questions relate to whether the appellant knew where one Lenroy King is and whether King gave the police a statement in relation to the robbery. The appellant replied that King is dead, and King's statement is in the 'indictment'. Ms. Richardson submits, however, that there was no miscarriage of justice as the judge reminded the jury that the appellant was only facing two counts and it was in respect of those counts that they were to return a verdict. Further, the jury were directed as to how to treat with the evidence in relation to the matter and this acted as a cure to the defect and there was no miscarriage of justice.

Furthermore, Ms. Richardson submitted that even if the line of questioning prejudiced the jury, even without the eyewitnesses, through the appellant's caution statements and evidence at trial, he did admit to committing the unlawful acts.

The appellant did not rely on or pursue that issue on appeal but confined his appeal to the issue of duress. Counsel for the respondent posited that the critical issue was one of duress and stated that the judge's

direction was not as thorough as to allow the jury to appreciate the principle of duress. In counsel's view, the concise summation of the defence had the effect of a misdirection in law.

Ms. Richardson stated that the crux of the summation was that the learned told the jury to direct their minds to:

- a. Whether the appellant acted as he did because he was or may have been forced by Ryan as a result of threats to his life and he believed that these threats would be carried out; and
- b. Whether a sober and reasonable person of normal firmness with the same characteristics of the appellant would have responded the same way as a result of the threat to his life.

The learned judge also directed the jury that the defence of duress would not be available to those who placed themselves within an organization or to persons who would subject them to compulsion.

The gravamen of the appeal against conviction concerned whether the judge's failure to put all the elements of duress to the jury rendered the conviction unsafe as contended by the appellant. Ms. Richardson conceded that the direction was not as fulsome as it should have been but did not amount to a miscarriage of justice. The deficiencies referred to by counsel were that the jury were not directed on the limitations on the defence of duress. They did not consider whether there was a threat and whether it would have been committed immediately if the unlawful acts were not carried out. Further, the jury were not directed to consider whether the appellant had the opportunity to avoid the act without harm to himself or his family.

The court considered the legal framework for the defence of duress as set out in *R v Hasan* [2005] UHHL 22 (summarised in *Brandford et al v R* [2016] EWCA Crim 1794) and *Johnson v R* [2022] EWCA Crim 832, [2022] EWCA Crim 832. Firstly, duress affords a defence which, if raised and not disproved, exonerates the defendant altogether: (*R v Hasan*) For obvious

policy reasons, the defence is to be narrowly and carefully confined.

Secondly, the accepted test for duress was, formulated by Lord Lane in *R v Graham* [1982] 1 All ER 801, and subsequently approved in *R v Howe* [1987] AC 417. As set out in Blackstone (2017), at A3.37, it provides:

“Was the defendant, or may he have been, impelled to act as he did because, as a result of what he reasonably believed [the threatener] had said or done, he had good cause to fear that if he did not so act [the threatener] would kill him or ... cause him serious physical injury? (2) If so, have the prosecution made the jury sure that a sober person of reasonable firmness, sharing the characteristics of the defendant, would not have responded to whatever he reasonably believed [the threatener] said or did by taking part [in the offence]?”

The Court noted that only a very limited category of threats qualify. Traditionally, the threats relied upon had been confined to causing death or serious injury: (See Hasan at paragraph 21.) Threats are not confined to those directed to the defendant. They may be directed to a member of his immediate family or a person for whose safety the defendant would reasonably regard himself as responsible: (Blackstones, at A3 .36.) There is a strong objective element in the defence.

Thirdly, the threat must carry with it immediacy. For reasons of public policy, it is untenable to suggest that the defence of duress ought to operate without a clear requirement of immediacy or imminency. Immediacy and the inability to take evasive action is a key aspect of the defence of duress. Otherwise, duress would become an open-ended defence, which is difficult or impossible to disprove: *Johnson v R* [2022] EWCA Crim 832, paragraph [50].

“If the retribution threatened against the defendant or his family or a person for whom he reasonable feels responsible is not such as he reasonably expects to follow immediately or almost

immediately on his failure to comply with the threat, there may be little if any room for doubt that he could have taken evasive action, whether by going to the police, or in some other way, to avoid continuing the crime with which he is charged” (R v Hasan at paragraph 28).

Fourthly, a person cannot rely on the defence of duress, if he has voluntarily by association with others exposed himself to the risk of such duress (e.g., by joining a criminal organization or gang). Fifthly, where there is evidence sufficient to raise an issue of duress, the burden is on the prosecution to disprove it on the criminal standard. (R v Hasan at paragraph 20). Sixthly, where no reasonable jury properly directed could fail to find the defence of duress disproved, the judge is entitled to withdraw it from the jury. The power of a judge to withdraw a defence from the jury is to be exercised with caution.

In summary, the Court stated that duress was a unique defence with significant limitations. The law of duress developed to confine the defence within narrowly defined limits. Immediacy and the inability to take evasive action is a key aspect of the defence. The defence of duress was available only where the criminal conduct which it is sought to excuse has been directly caused by the threats relied on. The defendant may excuse his criminal conduct on the ground of duress only, if placed as he was, there was no evasive action he could reasonably have been expected to take. This is an important limitation of the duress defence: The defendant may not rely on duress to which he has voluntarily laid himself open.

In dealing with the omissions of the learned judge, counsel pointed to the absence of a direction to the jury to consider whether if there was indeed a threat, the appellant believed that the threat would indeed be carried out immediately or almost immediately if the unlawful act was not carried out. Further, the jury was not directed to consider whether the appellant had an opportunity to avoid the act without harm to himself or his family. The Court considered these to be significant omissions regarding the limitation of the defence, lowering the standard of the defence of

duress, which could not have disadvantaged the appellant.

Ms. Richardson submitted that there was no miscarriage of justice given the totality of the evidence and the proviso found in section 40 of the Eastern Caribbean Supreme Court Act (Saint Vincent and the Grenadines) should be applied. In advocating for the application of the proviso, learned counsel advanced the position that a conviction would be inevitable. Ms. Richardson pointed out that the appellant admitted to the offence and although he gave his reasons for committing the offence, the jury did not believe him. The appellant admitted to being in a criminal organization / gang that broke up in 2007. In his caution statement he indicated that he and Ryan hung out sometimes, and he too was part of the gang. Ryan is the person he said who brought him the firearm in 2014 and instructed him to commit the robbery. However, at the trial, he indicated that he and Ryan did not hang out and Ryan simply approached him and threatened him to commit the robbery.

In considering the appellant's submission that his conviction was unsafe, and his appeal should be allowed, it must be pointed out that the Court of Appeal shall allow an appeal against conviction only if they think -

- (a) That the verdict of the jury should be set aside on the ground that it is unsafe or unsatisfactory; or
- (b) That the judgment of the court of trial should be set aside on the ground of a wrong decision of any question of law or;
- (c) That there was a material irregularity in the course of the trial; and in any other case shall dismiss the appeal:

Provided that the Court may, notwithstanding that they are of opinion that the point raised in the appeal might be decided in favour of the appellant, dismiss the appeal if they consider that no miscarriage of justice has occurred. The Court of Appeal is empowered, and duty bound by virtue of the Eastern Caribbean

Supreme Court Act, to allow an appeal against conviction if in all circumstances the Court thinks that such conviction is unsafe. The omission of the learned judge to direct the jury on two of the critical aspects of the limitation of the defence of duress: immediacy or imminency; and the ability to take evasive action did not occasion a miscarriage of justice. The omission resulted in the lowering of the bar of the defence. The Court was of the view that any jury properly directed must inevitably have convicted the appellant.

The Court found no basis to disturb the sentence imposed. The aggravating factors included that the appellant had a previous conviction for a firearms offence. There were no mitigating factors. Accordingly, the Court dismissed the appeal against conviction and sentence and the conviction and sentence were affirmed.

Case Name:

Geraldo Tash

V

The Commissioner of Police

[SVGMCRAP2021/0005]

(Saint Vincent and the Grenadines)

Date:

Thursday 21st July 2022

Coram:

The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal

The Hon. Mr. Mario Michel, Justice of Appeal

The Hon. Mde. Gertel Thom, Justice of Appeal

Appearances:

Appellant:

Mr. Grant Connell

Respondent:

Ms. Maria Jackson-Richards

Issues:

Magisterial criminal appeal - Appeal against conviction and sentence - Whether decision is unreasonable and cannot be supported by evidence - Whether learned judge erred by failing to uphold no case submission

on behalf of the appellant - Whether sentence is excessive in the circumstances

Type of Order

Oral Judgment

Result / Order:

IT IS HEREBY ORDERED THAT:

1. The appeal against conviction is dismissed and the conviction is affirmed.
2. The appeal against sentence is dismissed and the sentence imposed by the learned magistrate is affirmed.

Reason:

The appellant was charged with possession of a firearm and ammunition. He was found guilty by the learned magistrate and was sentenced to 4 years 8 months imprisonment for possession of a firearm and 12 months imprisonment for possession of ammunition and 1 week imprisonment for driving without a license. He appealed against his conviction and sentence. At the hearing of the appeal, learned counsel for the appellant, Mr. Grant Connell pursued two grounds in relation to the conviction and sentence for the firearm offense only.

The first ground advanced by Mr. Connell on behalf of the appellant was that there was no evidence to support the conviction and therefore the learned magistrate should have upheld the no case submission. Mr. Connell's main argument was that the firearm which was tendered in court bore the serial number WNE545 whereas the evidence of the police officers who made the arrest and who found the firearm all gave the firearm number to be MNE545 and not WNE545. The analyst who examined the firearm also stated the number to be MNE545. Learned counsel Mr. Connell therefore contended and asked the Court to find that MNE545 which was examined by the analyst and of which the police witnesses testified was a different firearm from the firearm that was exhibited before the learned magistrate.

The Court examined carefully, the reasoning of the learned magistrate and the evidence that was before the learned magistrate. The Court noted that apart from the mention of the serial number on the firearm, the officers gave a detailed account of the firearm that they found in the possession of the appellant. The Court was satisfied with the chain of custody as led by the Crown and was further satisfied that the learned magistrate did not err in her finding that it was one and the same firearm and there was simply an error in terms of the first letter of the serial number. The Court was of the view that there was a sufficient basis for the learned magistrate to make that finding and therefore found no reason to disturb that finding of fact made by the learned magistrate. The Court accordingly dismissed the appeal against conviction.

In relation to the appeal against sentence, learned counsel Mr. Connell submitted that the learned magistrate erred in two ways. Firstly, that the starting point was incorrect in that the starting point should have been 3.5 years and the learned magistrate failed to take into account that the appellant was of a young age, being age 27, and that he had no previous convictions. Learned counsel Ms. Jackson Richards for the Crown referred the Court to the reasons of the learned magistrate which showed very clearly that the learned magistrate considered that the appellant, even though he was age 27, was of a young age. The learned magistrate also took into account that a reduction should be made in relation to the fact that the appellant had no previous convictions even though this was a serious offense and the firearm was a loaded firearm. The Court considered the totality of the circumstances of the case and was of the view that even though the learned magistrate could have started the starting point at 3.5 years, that in the circumstances that this was a loaded firearm in a vehicle at night, the sentence imposed by the learned magistrate of 4 years and 8 months was not manifestly excessive and therefore found no basis to interfere with the sentence of the learned magistrate.

Case Name:

Tambu Patrick

v

The Commissioner of Police
[SVGMCRAP2020/0005]
(Saint Vincent and the Grenadines)

Date: Thursday 21st July 2022

Coram: The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal

Appearances:

Appellant: In person

Respondent: Ms. Rose-Ann Richardson

Issues: Magisterial criminal appeal - Possession of firearm and ammunition - Appeal against conviction and sentence - Whether sentence was harsh in the circumstances - Whether appellant was denied a fair trial

Type of Order Oral judgment

Result / Order: IT IS HEREBY ORDERED THAT:

1. The appeal against conviction is dismissed and the conviction is affirmed.

2. The appeal against sentence is dismissed and the sentence is affirmed.

Reason: The appellant, Tambu Patrick was convicted of the offences of possession of a firearm, possession of ammunition, assault and damage to property. For the offence of possession of firearm, the learned magistrate imposed a sentence of 4 ½ years, for the offence of possession of ammunition, the learned magistrate imposed a sentence of 18 months, for the offence of assault, for which there were two counts, the learned magistrate imposed a sentence of 6 months for each of the two counts and in relation to the offence of damage to property, the learned

magistrate ordered the appellant to pay compensation in the sum of \$235.00, in default 2 months imprisonment.

The appellant being dissatisfied with his conviction and sentence appealed on four grounds. The first ground was that the magistrate misinterpreted the evidence given by the witnesses and thereby came up with an incorrect verdict of guilty. The appellant also said that he was denied a fair trial and the conviction was therefore unsafe.

The Court listened to the appellant's submissions and read the written submissions of the Crown and having examined the record and the reasons for the decision of the learned magistrate, found no basis to disturb the finding of the learned magistrate that the appellant was guilty of the offences for which he was charged. The Court was satisfied that there was cogent evidence on which the learned magistrate could have made that decision. The Court found no basis to disturb the learned magistrate's ruling and further found that there was no basis to support the appellant's allegation that his trial was not fair. The Court examined the record and was satisfied that the appellant had an opportunity to cross examine the witnesses and to give evidence. The Court therefore dismissed the appeal against conviction.

In relation to the appeal against sentence, the appellant contended that the sentence was too harsh. The Court noted that the maximum sentence for the offence of possession of a firearm is 7 years and that the learned magistrate imposed a sentence of 4 ½ years. The Court was of the view that in so doing, the learned magistrate conducted a detailed assessment of the relevant factors and found no basis to interfere with the sentence imposed by the learned magistrate. The Court noted that the learned magistrate took into account that the appellant was of previous good character, that he had no previous convictions, that he also had a young child who was six years old and reduced the sentence having regard to those factors in arriving at the sentence of 4 ½ years. The Court therefore found no basis to interfere with the sentence imposed by the learned magistrate for the firearm

offence or any of the other offences. The Court dismissed the appeal against both conviction and sentence and affirmed the conviction and sentence of the appellant.

Panel 1

Case Name:

Caribbean Resorts Limited

V

Glennis Marlon Mills

[SVGHCVAP2020/0014]

(Saint Vincent and the Grenadines)

Date:

Friday 22nd July 2022

Coram:

The Hon. Mr. Gerard St. C. Farara QC, Justice of Appeal [Ag.]

The Hon. Mde. Margaret Price-Findlay, Justice of Appeal [Ag.]

The Hon. Mr. Sydney Bennett QC, Justice of Appeal [Ag.]

Appearances:

Appellant/Respondent:

Mr. Stanley John, QC with him Mr. Akin John and Ms. Nakita Charles

Respondent/Applicant:

Mrs. Zhingha Horne Edwards and Ms. Chelsea Alexander

Issues:

Application for extension of time to file and serve submissions

Type of Order:

Oral Decision

Result / Order:

IT IS HEREBY ORDERED THAT:

The application filed by the respondent on 15th December 2021 to extend time for the filing and service of the respondent's skeleton arguments to the 31st of January 2022, and to deem the skeleton arguments

filed on that date properly filed, being not opposed by the appellants, is granted.

Reason: The Court noted that there was no objection to the application by the appellant/respondent and granted the application.

Case Name: Caribbean Resorts Limited
v
Glennis Marlon Mills
[SVGHCVP2020/0014]
(Saint Vincent and the Grenadines)

Date: Friday 22nd July 2022

Coram: The Hon. Mr. Gerard St. C. Farara QC, Justice of Appeal [Ag.]
The Hon. Mde. Margaret Price-Findlay, Justice of Appeal [Ag.]
The Hon. Mr. Sydney Bennett QC, Justice of Appeal [Ag.]

Appearances:
Appellant/Applicant: Mr. Stanley John, QC with him Mr. Akin John and Ms. Nakita Charles
Respondent: Mrs. Zhingha Horne Edwards and Ms. Chelsea Alexander

Issues: Application for an extension of time to file and serve talking points

Type of Order: Oral decision

Result / Order: IT IS HEREBY ORDERED THAT:

The application by the appellant filed on 13th July 2022 to extend time for the filing and service of the appellant's "Talking Points - Reply to Respondent's Skeleton Arguments" and the list of authorities, and to

deem the talking points and list of authorities filed on the 8th July 2022 properly filed, is granted.

Reason: The Court noted that there was no objection to the application by the respondent and so granted the application.

Case Name: Caribbean Resorts Limited
v
Glennis Marlon Mills
[SVGHCVAP2020/0014]
(Saint Vincent and the Grenadines)

Date: Friday 22nd July 2022

Coram: The Hon. Mr. Gerard St. C. Farara QC, Justice of Appeal [Ag.]
The Hon. Mde. Margaret Price-Findlay, Justice of Appeal [Ag.]
The Hon. Mr. Sydney Bennett QC, Justice of Appeal [Ag.]

Appearances:

Appellant:	Mr. Stanley John, QC with him Mr Akin John and Ms. Nakita Charles
Respondent:	Ms. Zhingha Horne Edwards and Ms. Chelsea Alexander

Issues: Civil Appeal - Possession of land and mense profits - Settlement agreement setting disputes in ancillary proceedings for division of assets and businesses acquired by wife and husband during their marriage and held and manage in companies owned equally by them – Whether vesting deed transferred property inclusive of car park and knoll to respondent free of encumbrances - Whether the learned judge erred in finding that the settlement agreement, consent order and vesting deed transferred all proprietary interests in the car park and knoll to the respondent free and clear of all encumbrances - Whether the learned judge erred in not finding that the first appellant had acquired

a proprietary interest in the car park – Whether the learned judge erred in finding that any interest which the first appellant had acquired in the car park had been relinquished by virtue of the settlement agreement - Whether the appellant retained an equitable proprietary interest in the car park - Tenancy at will - Trespass to land - Whether trial judge erred in finding that a tenancy at will was created when the respondent permitted the appellant to remain in occupation after she became the owner in 2011 - Whether trial judge erred in finding that the appellant occupied the disputed car park as a tenant at will - Whether the tenancy at will was terminated on the institution of proceedings by the respondent - Whether the appellant, by remaining on the property after the institution of the proceedings, trespassed on the respondent's property - Limitation - Whether the learned judge erred in finding that the respondent's claim was not statute barred - Adverse possession - Whether the learned judge erred by rejecting the appellant's claim to adverse possession - Res judicata - Abuse of process - Whether the learned judge erred by dismissing the appellant's counter claim as an abuse of process on the ground that the doctrine of res judicata was operational - Whether the learned judge erred by failing to find that the respondent's claim for trespass was precluded by the doctrine of res judicata - Proprietary Estoppel - Whether the learned judge erred by failing to consider the appellant's claim for proprietary estoppel

Type of Order:

N/A

Result / Order:

[Oral delivery]

IT IS HEREBY ORDERED THAT:
Judgment is reserved.

Case Name:

Rosan Davis
v
Judy Cordice

[SVGMCVAP2020/0003]

(Saint Vincent and the Grenadines)

Date: Friday 22nd July 2022

Coram: The Hon. Mr. Gerard St. C. Farara QC, Justice of Appeal [Ag.]
The Hon. Mde. Margaret Price-Findlay, Justice of Appeal [Ag.]
The Hon. Mr. Sydney Bennett QC, Justice of Appeal [Ag.]

Appearances:

Appellant: In person

Respondent: No appearance

Issues: Magisterial civil appeal - Vacation of order made day before and not sealed - Error in notice of appeal as to parties – Respondent not present

Type of Order Directions

Result / Order: [Oral delivery]

IT IS HEREBY ORDERED THAT:

1. The order made by the Court on 21st July 2022 in this matter is vacated.
2. The appeal is adjourned to the next sitting of the Court of Appeal for Saint Vincent and the Grenadines during the week commencing 23rd January 2023.
3. The notice of hearing shall be served by the Registrar of the High Court on the respondent.

Reason: This matter came up for hearing before the Court on 21st July 2022 where the parties were listed with Ms. Judy Cordice as the appellant and Ms. Rosan Davis as the respondent. At the hearing, Ms. Davis was present but Ms. Cordice, despite being served to be present, was absent. On the basis that Ms. Cordice was listed as the appellant, the appeal was dismissed for want of prosecution owing to her absence.

However, it came to the Court's attention after the order was made that there was an error on the notice of appeal and Ms. Davis was really the appellant and Ms. Cordice was the respondent. The matter was therefore called on 22nd July 2022, however Ms. Cordice was once more absent. The High Court registry would have indicated that she would not have been served to be present on 22nd July 2022 owing to the short notice and that their attempts to contact her after the hearing on 21st July 2022 proved to be futile. Ms. Davis, the appellant, however, was present and she would have been informed that in the interests of justice, Ms. Cordice would have to be served to appear at the next hearing and the matter would therefore have to be adjourned.

The Court therefore vacated its order made on 21st July 2022 dismissing the appeal, which order had not been sealed, and adjourned the hearing of the appeal to the next sitting of the Court for the State of Saint Vincent and the Grenadines to allow the respondent, Ms. Cordice to be served to be present.

Panel 2

Case Name:

Wayde Grant

v

The Commissioner of Police

[SVGMCRAP2021/0008]

(Saint Vincent and the Grenadines)

Date:

Friday, 22nd July 2022

Coram:

The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal

The Hon. Mr. Mario Michel, Justice of Appeal

The Hon. Mde. Gertel Thom, Justice of Appeal

Appearances:

Appellant:

In person

Respondent:

Ms. Allana Cumberbatch

Issues: Application for adjournment – Application for directions

Type of Order: Directions

Result / Order: [Oral delivery]

IT IS HEREBY ORDERED THAT:

1. The application by the appellant for an adjournment of the hearing of the appeal to enable him to retain counsel is granted.
2. The appellant has leave to file and serve written submissions with authorities on or before 30th September 2022.
3. The respondent has leave to file and serve submissions with authorities in response on or before 31st October 2022.
4. The hearing of the appeal is adjourned to the next sitting of the Court in the state of Saint Vincent and the Grenadines during the week commencing 23rd January 2023.

Reason: The court heard the oral application of the appellant for an adjournment of the hearing of the appeal to enable him to retain counsel, Mr. Grant Connell. The Court noted that Mr. Connell was present and indicated that he would be willing to assist the appellant in prosecuting the appeal if an adjournment was granted by the Court. The Court also noted that there was no objection to the application for the adjournment by the Crown. Accordingly, the Court granted an adjournment of the hearing of the appeal and provided directions for the filing of submissions to further the matter.

Case Name: Granvil Defreitas
v
The Commissioner of Police
[SVGMCRAP2021/0013]

(Saint Vincent and the Grenadines)

Date: Friday, 22nd July 2022

Coram: The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal

Appearances:

Appellant: Mr. Ronald Marks

Respondent: Ms. Rose-Ann Richardson

Issues: Application for Adjournment – Application for directions

Type of Order: Directions

Result / Order: [Oral delivery]

IT IS HEREBY ORDERED THAT:

1. The application on behalf of the appellant for an adjournment of the hearing of the appeal is granted.
2. The appellant shall file and serve written submissions with authorities on or before the 30th day of September 2022.
3. The respondent shall file and serve written submissions and authorities in response on or before 31st October 2022.
4. The hearing of the appeal is adjourned to the next sitting of the Court of Appeal in the state of St. Vincent and the Grenadines during the week commencing 23rd January 2023.

Reason: The Court heard the application by the appellant through his counsel Ronald Marks for an adjournment of the hearing of the appeal on the grounds that: he was not fully instructed, the record of appeal was received in November 2021 and the appellant was out

of the jurisdiction and noted that there was no objection from the Crown to the request for the adjournment. Accordingly, the Court granted an adjournment of the hearing of the appeal and gave directions for the filing of submissions.

Case Name:

Oswald Nero

V

The Commissioner of Police

[SVGMCRAP2020/0020]

(Saint Vincent and the Grenadines)

Date:

Friday, 22nd July 2022

Coram:

The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal

The Hon. Mr. Mario Michel, Justice of Appeal

The Hon. Mde. Gertel Thom, Justice of Appeal

Appearances:

Appellant:

In person

Respondent:

Ms. Kaylia Toney

Issues:

Criminal appeal against conviction - Throwing litter in a public place - Section 3(1)(a) of Litter Act Chapter 291 of the Revised Edition of the Laws of Saint Vincent and the Grenadines 2009 - Section 3(1)(a) of the Criminal Code of Saint Vincent and the Grenadines - Charge entered on information inapplicable to offence - Charge wrongly entered on charge sheet - Whether the charge on the charge sheet was correctly referred to as being under section 3(1)(a) of Litter Act Chapter 291 of the Revised Edition of the Laws of Saint Vincent and the Grenadines 2009

Type of Order

Oral judgment

Result / Order:

IT IS HEREBY ORDERED THAT:

1. The appeal is dismissed.
2. The conviction is affirmed.
3. The sentence imposed by the learned magistrate is affirmed and the appellant shall pay the fine imposed by the learned magistrate within two (2) months of today's date.

Reason:

This was an appeal against the conviction of the appellant for the offence of throwing litter in a public place contrary to section 3(1)(a) of the Litter Act of Chapter 291 of the Revised Edition of the Laws of Saint Vincent and the Grenadines 2009. The appellant based his submission on the fact that the section under which he was charged was not an appropriate section under which he could have been found guilty for the offence.

The appellant's error in his submissions was founded largely on the fact that he claimed to have been charged under section 3(1)(a) of the Criminal Code of Saint Vincent and the Grenadines which did not create the offence; the offence having been created under section 3(1)(a) of the Litter Act. It was brought to the appellant's attention that in fact the charge sheet on which he was brought to court did state section 3(1)(a) of the Litter Act and not section 3(1)(a) of the Criminal Code, as was erroneously stated on the information. The appellant took the position that even if the Litter Act was properly mentioned, it was referred to as being in Chapter 291 of the Revised Laws of Saint Vincent and the Grenadines 2009, when in fact the Act was in 1991.

The Court informed the appellant that he had an incorrect understanding of the legislation because the Litter Act is contained in Chapter 291 of the Revised Edition of the Laws of Saint Vincent and the Grenadines 2009, and the Litter Act was No. 15 of 1991 contained therein. Furthermore, it was not a requirement in stating legislation in a charge to state the number of the Act of which the defendant is charged. It was sufficient that the charge sheet properly identified the Act and indicated the applicable section, which was properly done on the appellant's charge sheet to be section 3(1)(a) of the Litter Act of

Chapter 291 of the Revised Laws of Saint Vincent and the Grenadines 2009.

The Court was therefore of the view that there was no basis upon which the conviction of the appellant should be overturned and affirmed the conviction of the appellant for the offence of throwing litter into a public place. The sentence passed in respect of that conviction was also affirmed.

Case Name:

Mark Bristol

V

The Commissioner of Police

[SVGMCRAP2022/0013]

(Saint Vincent and the Grenadines)

Date:

Friday 22nd July 2022

Coram:

The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal

The Hon. Mr. Mario Michel, Justice of Appeal

The Hon. Mde. Gertel Thom, Justice of Appeal

Appearances:

Appellant:

Mr. Grant Connell

Respondent:

Mr. Karim Nelson

Issues:

**Magisterial criminal appeal - Appeal against sentence
- Whether sentence was excessive in the
circumstances**

Type of Order

Oral judgment

Result / Order:

IT IS HEREBY ORDERED THAT:

- 1. The appeal against sentence is allowed.**
- 2. The sentence of 4 years and 7 months is set aside, and a sentence of time already served is imposed.**

Reason:

This was an appeal against a sentence of 4 years and 7 months imprisonment imposed on the appellant, Mark Bristol, for each of four offences that he was found guilty of after a full trial.

The appellant, through his counsel submitted that the sentence of 4 years and 7 months imposed on the appellant was excessive having regard to the fact that his role in the enterprise might not have been as significant as the role played by some of his co-accused. In particular, the co-accused, who was the pilot of the craft, and who indicated that he was taking full responsibility for the cannabis which was found on the boat. Significantly, the respondent in the submissions in response, conceded that the sentence imposed on the appellant was in fact excessive and that the appeal against sentence should accordingly be allowed, and having regard to the time already served by the appellant and the time which the appellant spent on remand, he having already served 2 years and 3 months along with 9 months and 5 days on remand, the sentence of 4 years and 7 months imprisonment imposed on the appellant should be set aside.

Accordingly, the Court, having noted that the appellant and the respondent were in agreement with respect to the excessive nature of the sentence imposed and on what the proper sentence in the circumstances ought to be, allowed the appeal against sentence. The Court therefore set aside the sentence of 4 years and 7 months imprisonment imposed by the magistrate in respect of each of the four offences and replaced it with a sentence of time already served.

Case Name:

[1] Javed Chetram

[2] Kezroy Edwards

v

The Commissioner of Police

[SVGMCRAP2021/0009]

(Saint Vincent and the Grenadines)

Date: Friday 22nd July 2022

Coram: The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal

Appearances:

Appellants: Mr. Grant Connell

Respondent: Ms. Renee Simmons

Issues: Criminal magisterial appeal - Appeal against conviction and sentence - Possession of controlled drug with intent to supply - Possession of controlled drug for the purpose of drug trafficking - Attempt to export a controlled drug - No case submission - Whether the learned judge erred in not upholding the no case submission - Interpretation of the law - Section 2 of the Drug (Prevention of Misuse) Act - Whether appellants could be charged for possession of cannabis pursuant to section 2 of the Drug (Prevention of Misuse) Act - Certificate of analysis - Whether the substance tested and analysed fit within the definition under section 2 of the Drug (Prevention of Misuse) Act - Whether the learned magistrate erred in applying the weight she did to the certificate of analysis - Whether conviction unsafe and unsatisfactory - Right to fair trial - Whether the appellants were afforded a fair trial given that they were not present when the samples of the substance were taken - Chain of custody - Whether there was a break in the chain of custody given that the samples of the substance in possession of the appellants were taken in their absence - Sentence - Whether the sentence was manifestly excessive

Type of Order: Oral judgment

Result / Order: IT IS HEREBY ORDERED THAT:

1. The appeal against conviction is dismissed and the magistrate's decision on conviction is affirmed.
2. The appeal against sentence is allowed.
3. The sentences imposed by the magistrate on each of the appellants are set aside and the following sentences are substituted:
 - i. The appellant, Kezroy Edwards will serve a term of imprisonment 2 years, 4 months and 28 days which takes full account of the time spent by him on remand, commencing from 27th July 2020, which is the date when he was sentenced.
 - ii. The appellant, Javed Chetram is sentenced to 2 years, 5 months, and 15 days which takes full account of the time spent by him on remand, which amounts to a sentence of time already served.

Reason:

This was an appeal against conviction and sentence of the appellants, Javed Chetram and Kezroy Edwards. The appeal proceeded on three grounds of appeal. The first ground was that conviction of the appellants was unsafe and that essentially the no case submission made on behalf of the appellants should have been upheld. The second ground was that the appellants were denied a fair trial arising from the fact that the entire content of the package was not cannabis and that the appellants were prejudiced by the sampling procedure of the controlled substance. The appellants' third ground of appeal was with respect to sentence where they submitted that the sentences imposed were harsh in the circumstances.

The Court noted the submissions of both counsel, Mr. Connell for the appellant and Ms. Simmons for the respondent, and concluded that there was no justification for overturning the convictions of the appellants for the three offences to which they were found guilty. The Court indicated that the convictions of the appellants were not unsafe nor were the appellants denied a fair trial in the matter. Accordingly,

the appeal against conviction was dismissed and the decision of the magistrate with respect to conviction was affirmed.

With respect to the sentences imposed on the appellants, the Court accepted the submissions made by counsel on both sides that the appeals against sentence should be allowed because the sentences imposed by the magistrate were in all the circumstances excessive. The Court allowed the appeal against sentence, set aside the sentences imposed by the learned magistrate and imposed the sentences that were considered appropriate. Having listened to both counsel, the Court was inclined to accept the submissions of counsel for the respondent as to the level of the sentences which should be imposed on each of the appellants with respect to the three offences for which they were both found guilty.

The appellant Kezroy Edwards was sentenced to serve a term of imprisonment of two years four months and 28 days which took full account of the time spent by him on remand, commencing from 27th July 2020, which is the date when he was sentenced.

The appellant Javed Chetram was sentenced to a term of imprisonment of two years five months and 15 days which takes full account of the time spent by him on remand.

The appellant Javed Chetram would have served most if not all of the proposed sentence and his sentence will therefore be time already served.

Case Name:

Ronald Deshong

v

The Commissioner of Police

[SVGMCRAP2021/0012]

(Saint Vincent and the Grenadines)

Date:

Friday, 22nd July 2022

Coram: The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal

Appearances:
Appellant: Ms. Samantha Robertson
Respondent: Ms. Allana Cumberbatch

Issues: Withdrawal of appeal

Type of Order: Oral decision

Result / Order: IT IS HEREBY ORDERED THAT:

Leave is granted to the appellant to withdraw his appeal and the appeal shall therefore stand dismissed.

Reason: This was an appeal against conviction and sentence for the offence of grievous bodily harm. The appellant informed the Court both personally and through his counsel that he wished to withdraw the appeal. Accordingly, leave was granted to the appellant to withdraw his appeal and was therefore dismissed.

Case Name: Ian Jacobs
V
The Commissioner of Police

[SVGMCRAP2020/0021]
(Saint Vincent and the Grenadines)

Date: Friday 22nd July 2022

Coram: The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal

Appearances:

Appellant: In person
Respondent: Ms. Tameka DaSilva-McKenzie

Issues:

Criminal appeal against conviction and sentence - Possession of controlled drugs with intent to supply - Possession of controlled drugs for drug trafficking - Official corruption - Bias - Whether the magistrate ought to have given the appellant sufficient time to retain new counsel - Whether appellant sought an adjournment - Whether the appellant's surety being denied entry into court caused him prejudice - Whether the appellant was denied legal counsel - Whether official corruption charge properly founded - Whether the appellant was charged for the offence whilst in the performance of his duties as a police officer.

Type of Order

Oral judgment

Result / Order:

IT IS HEREBY ORDERED THAT:

1. The appeal in respect of the charge for official corruption is allowed and the conviction and sentence is set aside.
2. The appeal in respect of both cannabis charges is dismissed and the sentence imposed for both charges are affirmed.

Reason:

After a trial before a magistrate the appellant was convicted of the offences of:

1. Possession of a controlled drug to wit "two hundred and thirty-four (234) grammes of cannabis" with intent to supply to another;
2. Possession of a controlled drug to wit "two hundred and thirty-four (234) grammes of cannabis" for drug trafficking;
3. Official corruption: Being employed on the public service as a member of the Royal Saint Vincent and the Grenadines police force, and

being charged with the performance of his duties by virtue of such employment, corruptly obtained property for himself on account of a transaction done in the discharge of duties of his office contrary to section 85(a) of the Criminal Code Chap 171 of the Revised Edition of the Laws of Saint Vincent and the Grenadines 2009.

In respect of the offence of possession of cannabis with intent to supply the appellant was sentenced to two months imprisonment. With respect to the offence of possession of cannabis for the purpose of drug trafficking he was sentenced to three months imprisonment. With respect to the offence of official corruption he was sentenced to eleven months imprisonment.

The appellant appealed his conviction and sentence. He appealed his conviction on the grounds that:

1. The court was bias toward him;
2. He was not given a fair trial;
3. He was not properly represented which made it difficult to question the prosecution because his lawyer withdrew from the case and he did not receive additional time to retain new counsel;

He appealed his sentence on the ground that:

1. As a first-time offender the punishment was too harsh.

During the hearing of the appeal the respondent conceded the appeal in respect of the charge of official corruption as it was clear that the evidential basis in support of this charge was not made out. The appellant's complaint in respect of his conviction concerned the fact that his counsel withdrew from the case on the morning of the trial. The matter was stood down for some time, recalled and then proceeded. There was no indication that the appellant requested an adjournment or that the magistrate considered an adjournment. The appellant claimed that he was frightened and therefore did not request an adjournment, however the Court noted that the appellant was still able to cross-examine witnesses at trial and give evidence despite being frightened. The

Court stated that it was the responsibility of a magistrate to ensure a fair trial, and although the Court had concerns, the Court was not of the view that the appellant suffered unfairness or prejudice. He did not request an adjournment, but rather proceeded with the matter and was found guilty.

In respect of the ground of bias against him by the Court, the appellant did not proffer evidence supporting this allegation. The matters he relied on were extraneous to the charge against him, and so the Court found no merit in this ground of appeal.

Likewise, the Court also found his ground of unfairness due to inadequate time to retain new counsel, as lacking merit for the reasons previously stated on the adjournment issue.

With respect to the appeal against sentence, the appellant contended that the punishment was too harsh as a first-time offender. The punishment in respect of the cannabis charges were two (2) months and three (3) months respectively. The Court was not of the view that the sentence imposed in respect of these charges was manifestly excessive.

Case Name:

Cardel Jacobs

V

The Commissioner of Police

[SVGMCRAP2019/0029]

(Saint Vincent and the Grenadines)

Date:

Friday 22nd July 2022

Coram:

The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal

The Hon. Mr. Mario Michel, Justice of Appeal

The Hon. Mde. Gertel Thom, Justice of Appeal

Appearances:

Appellant:

In person

Respondent:

Ms. Renee Simmons

Issues: Magisterial criminal appeal - Appeal against conviction
- Whether decision unreasonable and unsupported by evidence - Whether learned magistrate failed to observe due process

Type of Order Oral Judgment

Result / Order: IT IS HEREBY ORDERED THAT:

1. The appeal is dismissed.
2. The conviction is affirmed.
3. The sentence is affirmed.
4. The appellant being on bail from 12th November 2019 and at that time having not completed serving his sentence of two (2) years imprisonment, the appellant will therefore continue to serve the remainder of that term of imprisonment effective today.

Reason: The appellant, Cardel Jacobs, was convicted of the offence of burglary and sentenced by the learned magistrate to two years imprisonment. He appealed against his conviction on five grounds. His main argument before the Court was that the evidence could not support his conviction, in that a video footage which the prosecution had indicated was in their possession and which they intended to tender as evidence against him was not tendered into evidence and therefore there was not sufficient evidence to connect him to the offence.

The Court examined the record in the appeal and affirmed that there was cogent evidence from more than one witness who identified the appellant on the night of the incident and that the generator was in the appellant's possession.

The Court was therefore satisfied that there was a sufficient evidential basis on which the learned magistrate could convict the appellant of the offence

of burglary. The Court therefore did not find any basis to interfere with the learned magistrate's finding of fact and the decision to convict. There being no appeal against sentence, the appeal against conviction was therefore dismissed and the conviction and sentence affirmed.