

EASTERN CARIBBEAN SUPREME COURT
COURT OF APPEAL SITTING
VIDEOCONFERENCE
GRENADA
27th April to 1st May 2020

APPLICATIONS AND APPEALS

Case Name: Dwayne Francis
v
The Queen
[GDAHCRAP2014/0007]
(Grenada)

Date: Monday, 27th April 2020

On paper:

Coram: The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal
[Ag.]

Appearances:

Appellant:	Mr. Jerry Edwin
Respondent:	Mr. Howard Pinnock

Issue: Application for bail pending appeal

Type of Order: Adjournment

Result / Order:

IT IS HEREBY ORDERED THAT:

1. The matter is adjourned until such time as counsel for the appellant can produce the necessary documents which will demonstrate that the notice of appeal was filed, whether leave to appeal was given and whether there was an extension of time granted, if that was necessary.
2. The Registrar of the High Court shall furnish to the Court and to counsel for the appellant and the respondent, on or before 12th May 2020, a report setting out the status of the transcript of the proceedings in the court below, as well as the ability of the court office to provide a complete transcript of the said proceedings.

Reason:

The Court formed the view that it was not in a position to proceed with the hearing of the application in the absence of evidence of a notice of appeal, a grant of an extension of time to file notice of appeal or leave to appeal invoking the jurisdiction of the court.

Case Name:

**Chevon Stephen
v
The Commissioner of Police**

**[GDAHCVAP2020/0001]
(Grenada)**

Date:

Monday, 27th April 2020

On paper:

Coram:

**The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal
[Ag.]**

Appearances:

Appellant: Mr. Derek Sylvester

Respondent: Mr. Howard Pinnock

Issue: Whether leave to appeal should be granted -
Whether an appeal lies with the Court in respect
to the grant or refusal of bail in the court below -
– Whether there is a right of appeal against a
decision in a criminal cause or matter - Whether
a claim brought under the Constitution against
the exercise of a Judge's discretion to refuse bail
entitles the appellant to the right of an appeal

Type of Order: Oral Decision

Result / Order: IT IS HEREBY ORDERED THAT:

The application for leave to appeal is hereby
dismissed.

Reason:

The Court noted that section 33(2)(a) of the West Indies Associated States Supreme Court (Grenada) Act precludes an appeal against an order made in a criminal cause or matter. The Court also noted that the order of the learned judge, refusing bail for which leave is sought to appeal, is an order made in a criminal cause or matter and that The Grenada Constitution Order 1973, when read in conjunction with The West Indies Associated States Supreme Court (Grenada) Act Cap. 336 permits an appeal against an order refusing bail only in circumstances where the application for bail was premised on the contravention of a constitutional right to personal liberty.

The Court also considered the principles espoused in the decision Michael Glasford and others v Commissioner of Police and another [1995] ECSC No. 6. The Court was satisfied that:

- (i) an application for bail does not presuppose a contravention of the constitutional right to personal liberty, the right not being absolute, and arrest, detention or imprisonment does not necessarily signify the violation of that right;
- (ii) the application for leave to appeal is primarily concerned with the learned judge's application of factors relevant to the consideration of bail; including the seriousness of the offence and the likelihood of the applicant absconding; and
- (iii) the applicant has not alleged any contravention of his constitutional right to personal liberty, other than the fact of his detention since 2018 in respect of the criminal offence for which the Applicant is charged.

Accordingly, the Court therefore found that the order of the learned judge refusing bail is therefore unappealable.

Reason: Counsel for the respondent, having been short served with the appellant's letter outlining his submissions, requested additional time to file submissions. The appellant indicated to the Court that he wished to proceed with the appeal in light of the delay in the hearing of the appeal.

The Court, in consideration of counsel for the respondent's request, granted Counsel additional time to file submissions on sentence.

Case Name: Arturo Plutin Rodriguez
v
The Queen
[GDAHCRAP2019/0015]
(Grenada)

Date: Monday, 27th April 2020

Coram: The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]

Appearances:
Appellant: Mr. Derek Sylvester
Respondent: Mr. Howard Pinnock

Issue: Criminal appeal – Manslaughter – Appeal against sentence – Whether sentence too excessive

Type of Order: Oral decision

Result / Order:

IT IS HEREBY ORDERED THAT:

- 1. The appeal against sentence is allowed.**
- 2. The sentence of 16 years is varied to a custodial sentence of 8 years and 6 months, with credit being given for the 3 years and 3 months spent on remand, leaving 5 years and 3 months as from the date of sentence to be served.**

Reasons:

The Court is of the view that even though sentencing is an exercise of discretion, it is clear to the Court that the learned trial judge made various errors of principle in the way that she approached sentencing in relation to the appellant.

Firstly, the learned trial judge appears to have treated the offence as one of murder rather than manslaughter, in terms of a starting point. The learned judge also erred when she arrived at various conclusions which were without any evidential or factual basis based on the facts placed before her. The Court therefore considered that for these reasons, the learned trial judge was led into error.

The Court, exercising its discretion afresh, was of the view that an appropriate starting point, in this matter, would be fifteen (15) years. As was said in the case of Pompey from the Court of Appeal in Saint Vincent and the Grenadines When the Court looked at the circumstances in relation to the offence in terms of aggravating and mitigating factors, the Court considered the fact that the appellant armed himself with a weapon, namely the concrete banister is an aggravating feature which in the circumstances outweighs the complaints with regard to the threats on him and his co-accused's lives having regard to the fact that the appellant acknowledged that he went out of the apartment and picked up the weapon and went back to the apartment after which this unfortunate incident occurred. In those circumstances this increases the sentence by an additional year to sixteen (16) years.

In relation to the circumstances of the offender, the mitigating factors are:

- i. the appellant was a young man aged 21;
- ii. the reports speak to his good character;
- iii. the psychological report speaks to the fact that the appellant appears to be a person who is easily led and would be more of a follower in certain circumstances;
- iv. the appellant expressed genuine remorse;
- v. the appellant does not have any prior convictions; and
- vi. the appellant was very co-operative with the police in relation to the investigation of the offence.

In light of the above, the Court in its reasoning stated that the sentence should be then reduced by three years which brings the sentence to thirteen years. A further reduction of one third should then be made for his early guilty plea thereby arriving at a sentence of eight and a half years (8½) years.

Therefore, the appropriate sentence in all the circumstances would be a sentence of eight and a half (8½) years or eight (8) years and six (6) months from which the time of three (3) years and three (3) months spent on remand must be credited. This would leave a remainder of five (5) years and three (3) months to run from the date of sentence in the court below.

Case Name:

Christopher Mitchell

v

The Queen

**[GDAHCRAP2018/0001]
(Grenada)**

Date:

Tuesday, 28th April 2020

Coram: The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal
The Hon. Mde. Louise Esther Blenman, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal

Appearances:

Appellant: Mr. Derek Sylvester

Respondent: Mr. Howard Pinnock

Issue: Criminal Appeal – Arson – Appeal against sentence – Whether the sentence was too excessive – 15 years – Appropriate starting point – Mitigating factors – Whether sentence was manifestly excessive

Type of Order: Oral judgment

Result / Order: IT IS HEREBY ORDERED THAT:

1. The appeal against sentence is allowed.
2. The sentence imposed by the learned judge is set aside in its entirety and is substituted with a sentence of 6 years and 6 months, taking into account the period of 6 months spent on remand.
3. The appellant's sentence shall run from 26th October 2017, being the date of his conviction on guilty plea.

The appellant was charged for having committed arson by setting fire to a dwelling house between 21st and 22nd March 2014. He was indicted on 15th September 2014 and first appeared in court at the October 2014 Assizes. On 26th October 2017, the appellant pleaded guilty to the offence and on 17th January 2018 he was sentenced to 15 years imprisonment and ordered to pay compensation of \$20,000.00 to his estranged wife, within 5 years of his release from prison, failing which he will serve an additional 2 years in prison.

On 8th October 2019, the appellant appealed against his sentence, on the principal ground that it was manifestly excessive, having regard to the fact that he had pleaded guilty, he had no previous convictions and had shown remorse.

In the submissions filed on behalf of the respondent, Mr. Howard Pinnock stated that the respondent is unable in the circumstances to justify the sentence imposed by the judge and conceded that the judge exceeded the broad range of sentences imposed by the courts over the last decade for the offence of arson, ranging from non-custodial sentences to sentences of 10 years and 8 months in prison.

The Court shares the view of counsel for both the appellant and the respondent that the sentence of 15 years imprisonment (plus compensation) imposed on the appellant was manifestly excessive and should accordingly be set aside, so that this Court can determine the appropriate sentence to be imposed on the appellant.

Having regard to the fact that the offence carries a maximum of life imprisonment, but usually attracts sentences of lesser severity than offences like manslaughter, which also carry a maximum of life imprisonment, and having regard to the fact that the appellant had set fire to a house which he knew to have been unoccupied at the time that he set fire to it, the Court considered that an appropriate starting point would be 12 years imprisonment.

The 12-year sentence should be discounted by 25% to take account of the appellant's plea of guilty, not at the first available opportunity, but before the start of a trial. A further 2 years should be deducted from the resulting 9-year sentence because of the very significant mitigating factors concerning the offender, including the fact that at age 52 he had no previous convictions, and was a person who was very well regarded in his community as a man of good character, and that he was remorseful. This would leave a sentence of 7 years imprisonment, from which would be deducted the 6 months which the appellant spent on remand.

The appellant would therefore be required to serve the remaining 6 years and 6 months of his sentence from the date of his conviction on 26th October 2017. The Court also considered that, in the circumstances of this case, no order should be made for the payment of compensation by the appellant following his release from prison.

Case Name:

**The Attorney General of Grenada
v
Corrine Clara
[GDAHCVAP2016/0032]
(Grenada)**

Date:

Tuesday, 28th April 2020

Coram:

**The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal
The Hon. Mde. Louise Esther Blenman, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal**

Appearances:

Appellant:

Ms. Chevaughn Spencer-Joseph

Respondent:

Mrs. Celia Edwards, QC with her Ms. Celine Edwards and Mr. Zuriel Francique

Issue:	Civil Appeal – Practice and procedure – Determination of factual issues – Whether the learned judge erred in hearing the matter ought on paper without hearing the parties – Whether matter suitable to be disposed of by way of trial due to grievances between parties and conflicts in evidence
Type of Order:	Oral Judgment
Result / Order:	IT IS HEREBY ORDERED AS FOLLOWS: 1. The appeal is allowed. 2. The judgment of Theodore J [Ag.] dated 27th May 2016 is set aside in its entirety. 3. The matter is remitted to be tried in High Court before another judge on the pleadings and witness statements as they exist without there being any opportunity to supplement either of these documents. 4. Each party shall bear its own costs on this appeal.
Reason:	This is an appeal by the appellant, the Attorney General of Grenada against the decision of Theodore J [Ag.] where the learned judge, at the invitation of the parties, acceded to hearing the claim on paper. He heard the claim and found for the respondent, Ms. Corrine Clara and determined that she was unlawfully arrested and unlawfully imprisoned. The Crown, aggrieved by this decision, filed a notice of appeal containing a number of grounds of appeal. The Court is of the considered view, having reviewed the submissions and based on interaction between the bench and the bar, that this matter was one which was eminently suitable to be disposed of by way of trial as based on the grievances between parties and conflicts in evidence, the issues could only have been resolved in cross-examination and re-examination. This did not occur, and the Court is of the view that the findings of the learned judge were not open to him in circumstances that there

was no evidence to find so. The judge ought to have rejected the suggestion to hear matter on paper and should have heard in open court to determine what were the factual issues especially since there were no agreed facts between the parties.

Case Name: **Devon Peters**
v
The Commissioner of Police
[GDAMCRAP2019/0016]
(Grenada)

Date: **Tuesday, 28th April 2020**

Coram: **The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal**
The Hon. Mde. Louise Esther Blenman, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal

Appearances:

Appellant: **Mrs. Sherrine Francis-Hackett**

Respondent: **Mr. Howard Pinnock**

Issue: **Magisterial criminal appeal – Stealing from dwelling house – Housebreaking – Appeal against sentence – Whether the sentence of three-years imprisonment was excessive – Whether the magistrate erred in failing to provide reasons for arriving at the particular sentence - Mitigating and aggravating factors – Whether the magistrate failed to take into account aggravating and mitigating factors**

Type of Order: **Oral judgment**

Result / Order: **IT IS HEREBY ORDERED AS FOLLOWS:**
1. The appeal is dismissed.

2. The sentence of 3 years imprisonment is affirmed.

Reason:

This is an appeal against a sentence of three years imprisonment imposed by a magistrate with respect to each of two offences committed by the appellant; housebreaking and stealing. The appellant having pleaded guilty in May 2019 was sentenced to three years imprisonment on each of the offence.

Being dissatisfied with his sentence, the appellant appealed against the sentence on the grounds that the sentence was excessive, having regard to all the circumstances that the appellant was not afforded a fair hearing on the issue of sentence in that he was not provided with the opportunity for the attorney he had retained to appear before the court to mitigate on his behalf and that by virtue of ground two he was denied of the opportunity to put before the court mitigating circumstances including that the offence committed was committed within the context of a family dispute, the virtual complainant being the uncle of the appellant.

The appellant submitted that in applying the sentencing guidelines, the sentence imposed on the appellant for housebreaking which carries a maximum fine of five years imprisonment, should be 10-month imprisonment notwithstanding the several previous convictions of the appellant for like offences.

In submissions filed on behalf of the respondent, counsel for the respondent did indicate that the magistrate did not provide reasons for the decision which would have assisted the Court in reviewing the methodology of how the sentences were arrived at. The respondent submitted that this Court should then be in a position to determine the full sentence taking into account the mitigating factors which the appellant indicated had not been considered by the magistrate.

The Court noted that the mitigating factors presented by counsel for the appellant are in fact to be taken in the reverse, considering them to

all be aggravating factors, namely the fact that none of the property was recovered, the appellant saw himself as having some type of entitlement in respect of the dwelling house sufficient to justify him removing therefrom the personal belongings of the virtual complainant.

The Court formed the view that these factors in fact aggravate rather than mitigate the commission of the offence. Whereas the Court was in agreement with counsel for the respondent that the magistrate ought to have stated the reasons for arriving at the particular sentence, the Court was of the considered view that the submission of counsel for the appellant that the sentence ought to be 10-months imprisonment to be was unreasonable considering the facts and circumstances. The Court was of the view that the sentence of three years imprisonment is adequate to meet the justice of the case.

The Court noted that if it had in fact been minded at all to interfere with that sentence, given the impressive record of the appellant for similar offences and other aggravating factors, the Court would have moved upwards in the sentencing rather than down. In all the circumstances however, the Court is intent to preserve the sentence as it was imposed.

Case Name:

[1] Carriacou Development Corporation

[2] The Attorney General

v

[1] Margaret Corion

**[2] Nellie Adams (The personal
representatives of the Estate of Samuel
Corion, deceased)**

[GDAHCVAP2018/0014]

(Grenada)

Date:

Wednesday, 29th April 2020

On paper:

Coram: The Hon. Dame Janice M. Pereira, DBE, Chief Justice
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Gerard St. C., Justice of Appeal [Ag.]

Appearances:

Appellant: Mr. Ramesh Lawrence Maharaj S.C with Ms. Kim George and Ms. Sheriba Lewis for the First Appellant
Ms. Dia Forrester with her Ms. Lauren Simon for the Second Appellant

Respondent: Mr. Nazim Burke

Issue: Motion for conditional leave to Her Majesty in Council – Section 104(1) of the Constitution of Grenada – Whether intended appeal lies as of right and is of prescribed value

Type of Order: Oral Decision

Result / Order:

IT IS HEREBY ORDERED THAT:

1. The Applicants /Appellants are granted leave pursuant to section 104(1)(a) of the Constitution of Grenada to appeal to Her Majesty in Council against the judgment and order made by the Eastern Caribbean Court of Appeal on 31st October, 2019 on condition that:

(i)The Applicants/Appellants shall within 90 days of the date of this order enter into good and sufficient security in the sum of £500 sterling for the due prosecution of the appeal and the payment of all such costs as may become payable by the Applicants/Appellants in the event of them not obtaining an order granting them final leave to appeal, or of the appeal being dismissed for non-prosecution, or of the Privy Council ordering them to pay the costs of the appeal, such security to consist of a deposit of the said amount at the Court Office;

(ii) The Applicants/Appellants shall within 90 days of the date of this order take the necessary steps to settle the record with the Solicitors for the Respondents and to prepare and file the record and the certification of the record by the Registrar of the Court of Appeal.

(iii) The parties shall abide by Rules 18 to 20 of the Judicial Committee (Appellate Jurisdiction) Rules Order 2009 and its practice directions 4 and 5 and the record shall be transmitted to the Registrar of the Judicial Committee of the Privy Council without delay once final permission to appeal has been granted.

(iv) The Applicants /Appellants shall, within 14 days from the date on which the record is filed with the Registrar of the Court of Appeal, make application to the Court for final leave to appeal to Her Majesty in Council supported by the certificate of the Registrar that the payment for security for costs of the prosecution of the appeal as described in this order has been given to the satisfaction of the Registrar.

2. A stay of execution of the said judgments of the Court of Appeal dated 31st October, 2019 and the court below dated 16th October 2018, until

hearing and determination of the Appeal to Her Majesty in Council is hereby ordered.

3. The costs occasioned by this application shall be costs in the appeal to Her Majesty in Council.

Reason:

The Court was satisfied that leave to appeal to Her Majesty in Council was of right and the appeal satisfied the monetary threshold set out in section 104(1)(a) of the Constitution of Grenada.

Case Name:

[1] Choo Loi Poi

[2] Choo Liu Xin

v

Donald Frederick

**[GDAHCVAP2016/0026]
(Grenada)**

Date:

Wednesday, 29th April 2020

Coram:

The Hon. Dame Janice M. Pereira, DBE, Chief Justice

The Hon. Mde. Gertel Thom, Justice of Appeal

**The Hon. Mr. Paul Webster, Justice of Appeal
[Ag.]**

Appearances:

Appellant:

Ms. Celia Edwards, QC with her, Mr. Deloni Edwards

Respondent:

Mr. John Carrington, QC with him, Ms. Winnifred Duncan Phillip

Issue:

Civil appeal – Contract law – Specific performance – Part performance – Whether there was a concluded agreement between the parties between November 2004 and January 2005 based on the offer contained in the letter of November 2004 and the acceptance of the cheque – Right-of-way – Whether the parties made an agreement between 2005 and 2008 for the grant of reciprocal rights-of-way over their respective properties – Damages – Trespass – The appellants' liability for trespass and the quantum of damages

Type of Order:

N/A

Result / Order:

Judgment is reserved.