

EASTERN CARIBBEAN SUPREME COURT
COURT OF APPEAL SITTING

SAINT VINCENT AND THE GRENADINES
24 – 28 FEBRUARY 2020

JUDGMENT

Case Name:

**Clement Lawrence
Cleopatra Ballantyne**

V

First St. Vincent Bank Limited

**[SVGHCVAP2014/0016]
[St. Vincent and the Grenadines]**

Date:

Monday, 24th February, 2020

**Coram for delivery
of judgment:**

**The Hon. Mr. Davidson Kelvin Baptiste, Justice of
Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Paul Webster QC, Justice of Appeal (Ag.)**

Appearances:

Appellant:	Mrs. Kay Bacchus-Baptiste, Counsel for the Appellants
Respondent:	Mr. Akin John, Counsel for the Respondent

Issues:

Civil appeal –The tort of negligence –Whether the bank owed a duty of care to the appellants– Whether the bank was negligent in the preparation of the mortgage –Undue influence –Whether the appellant entered into the mortgage as a result of presumed undue influence –Whether the finding of negligence or undue influence entitles the appellant to an order setting aside the mortgage

**Result and
Reason**

Held: Allowing the appeal; declaring the mortgage invalid; setting aside the orders made by the learned trial judge; and making an award of costs to the

appellants, that:

- 1. The test to determine whether a duty of care exists in negligence is a three-way test. There must be (i) reasonable foreseeability of damage; (ii) a relationship characterised by proximity or neighbourhood between the wrongdoer and the person damaged; and (iii) that the law would consider it fair, just and reasonable to impose a duty of care. On the facts and circumstances of this case, it was foreseeable that the Bank, in allowing Mr. Lawrence to mortgage his property to secure Mr. McBarnett's loan, was likely to suffer damage if and when Mr. McBarnett defaulted on the loan.**

Karak Rubber Company Limited v Burden and Others (No. 2) [1972] 1 All ER 1210 applied; National Commercial Bank (Jamaica) Limited v Hew and Others [2003] UKPC 51 applied; Donoghue v Stevenson [1932] AC 562 considered; Caparo Industries Plc v Dickman and Others [1990] 2 AC 605 applied.

- 2. The relationship of mortgagor and mortgagee between the Bank and Mr. Lawrence was "equivalent" to contract or "only just short of a direct contractual relationship". Mr. Lawrence was a person so closely and directly affected by the conduct of the Bank in taking a mortgage over his property, that the parties were in a sufficiently proximate relationship to result in the Bank owing a duty of care to Mr. Lawrence.**

Donoghue v Stevenson [1932] AC 562 applied; Hedley Byrne & Co. Ltd v Heller & Partners Ltd [1964] AC 465 considered; Junior Books Ltd v Veitchi Co. Ltd [1983] 1 AC 520 considered.

- 3. In determining whether it is fair, just and reasonable for the court to impose a duty of care, the question is largely a matter of public policy. The taking of a mortgage over Mr. Lawrence's property was entirely in the interest of the Bank with no benefit to Mr. Lawrence. Having regard to the reasonable foreseeability**

of damage to Mr. Lawrence, as well as, his proximity to the Bank, it is fair and reasonable to impose a duty of care on the Bank in relation to Mr. Lawrence. The Bank acted negligently by failing to discharge its duty in that it allowed Mr. Lawrence to mortgage his property without obtaining written authorisation from him, failed to inform him that Mr. McBarnett was not in a financial position to service the loan, failed to ensure that Mr. Lawrence obtained independent legal advice and failed to promptly inform Mr. Lawrence that the loan was in default.

Osman and Another v Ferguson and Another [1993] 4 All ER 344 considered; *Hill v Chief Constable of West Yorkshire* [1988] 2 WLR 1049 considered.

4. Where the entire pleaded case discloses circumstances that are sufficient to raise the issue of presumed undue influence it should be considered by the trial judge. Mr. Lawrence's claim form and statement of claim raised sufficient issues to alert the Bank that Mr. Lawrence could have been acting under influence. Therefore, the learned judge should have considered the evidence of the possibility that Mr. Lawrence was acting under presumed undue influence.

Desir and Another v Alcide [2015] UKPC 24 considered; Section 20 of the Eastern Caribbean Supreme Court (Saint Vincent and the Grenadines) Act, Cap. 24 Revised Laws of Saint Vincent and the Grenadines 2009 considered.

5. In cases of class 2B presumed undue influence the complainant will succeed in setting aside the impugned transaction by proof that he or she reposed trust and confidence in the wrongdoer without having to prove that the wrongdoer exerted actual undue influence or otherwise abused such trust and confidence in relation to the transaction impugned. On the facts, it is reasonable to infer that Mr. Lawrence reposed trust and confidence in his relationship

with his granddaughter and her fiancé, so much so that he allowed them to make the arrangements for mortgaging his home to the Bank. The presumption of undue influence therefore arose and could have been rebutted by the Bank proving that Mr. Lawrence had obtained independent legal advice before signing the mortgage. There is no such evidence and therefore the Bank has not rebutted the presumption of undue influence. Accordingly, the Bank is fixed with constructive notice of the existence of presumed undue influence.

Murray v Deubery and Another; (1996) 52 WIR 147 applied; Barclays Bank plc v O'Brien and another [1993] 4 All ER 417 applied; Hilda Elisabeth Stoutt et al v FirstBank Puerto Rico BVIHCVAP2010/016 (delivered 13th February 2012, unreported) considered.

6. When a trial judge does not make findings on an important issue in the trial, the appellate court has the option of remitting the case to the trial judge to make the necessary finding and/or re-try the entire case, or review the material that was before the trial judge and make the findings. This is not a suitable case to remit to the lower court because the main witness, Mr. Lawrence, is now deceased and the claim relates to facts that occurred over 15 years ago.

Kathryn Ma Wai Fong v Wong Kie Yik et al BVIHCMAP2018/0001 and BVIHCMAP2018/0002 (delivered 27th March 2019, unreported).

Case Name:

Selvin Chinnery
v
The Commissioner of Police

[BVIMCRAP2018/0002]
[Territory of The Virgin Islands]

Date:

Monday, 24th February, 2020

**Coram for delivery
of judgment:**

**The Hon. Mr. Davidson Kelvin Baptiste, Justice of
Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Paul Webster QC, Justice of Appeal (Ag.)**

Appearances:

**Appellant: Mrs. Kay Bacchus-Baptiste, Counsel holding for the
Appellant**

**Respondent: Ms. Sejilla McDowall, Director of Public Prosecutions
holding for the Respondent**

Issues:

**Criminal appeal – Illegal possession of firearm and
ammunition - Appeal against conviction – Statutory
interpretation – Section 2 of the Firearms and Air Guns
Ordinance – Definition of firearm – Whether corroded
firearm is a firearm within meaning of the Firearms
Ordinance – Whether learned Chief Magistrate erred in
accepting guilty plea for illegal possession of firearm
– Ejusdem generis principle – Definition of explosive –
Section 2 of Explosives Ordinance - Whether definition
of explosive in Explosives Ordinance includes
ammunition – Whether learned Chief Magistrate erred
in accepting guilty plea for illegal possession of
explosives**

**Result and
Reason**

**Held: allowing the appeal in part; setting aside the
conviction for illegal possession of ammunition; and
affirming the conviction for illegal possession of
firearm, that:**

- 1. The courts have moved away from adopting a
strict constructionist view of interpretation
which required them to adopt the literal
meaning of the language to a purposive
construction when interpreting statutes. Since
the meaning of words take their colour from the
context in which they appear, the Court, in
ascertaining Parliament’s intention, has to
consider not only the section in which the
words under consideration appear but also the
enactment as a whole.**

Pepper (Inspector of Taxes) v Hart [1993] A.C.

593 applied; *Asiyah Grant v Javier Maduro* BVIHCVAP2019/0001 (delivered 13th November 2019, unreported) followed; *Telecommunications Regulatory Commission v Cable & Wireless (BVI) Limited* BVIHCVAP2016/0013 (delivered 30th May 2018, unreported) followed; *R v Secretary of State for the Environment, Transport and the Regions, ex parte Spath Holme Ltd* [2001] 2 AC 349 applied.

2. On any reading of the Firearms Ordinance, it is clear that Parliament's intention is to exercise control over and regulate the sale, purchase, importation, exportation, use, disposal and possession of firearms and provide for and/or improve transparency. The appellant's fundamental argument that the firearm, in its corroded state, was not a firearm within meaning of the Firearms Ordinance is flawed. This interpretation does not accord with the context and overall framework of the legislation and would lead to the absurd result that the weapon, in its existing state, was not a firearm but after being properly soaked, would fall squarely within the statutory definition. Accordingly, the learned Chief 3 Magistrate did not err in accepting the appellant's guilty plea for illegal possession of firearm.

Section 2 of the Firearms and Air Guns Ordinance, Cap. 126, of the Revised Laws of the Virgin Islands 1991 applied; *R v Bewley* [2013] 1 All ER 1 distinguished; *Cafferata v Wilson* [1936] 3 All ER 149 applied; *Kashorn John v Commissioner of Police* SVGMCRAP2007/0086 (delivered 16th September 2008, unreported) followed; *Telecommunications Regulatory Commission v Cable & Wireless (BVI) Limited* BVIHCVAP2016/0013 (delivered 30th May 2018, unreported) followed; *R v Secretary of State for the Environment, Transport and the Regions, ex parte Spath Holme Ltd* [2001] 2 AC 349 applied.

3. In relation to the possession of explosives conviction, this Court applies the principle of *eiusdem generis*. The definition of explosive in

the Explosives Ordinance cannot be expanded to include ammunition. Furthermore, in the absence of the Explosives Ordinance and the Firearms Ordinance being in pari materia or the Firearms Ordinance providing for cross-reference when interpreting any word, phrase or part thereof. Accordingly, this Court cannot unilaterally seek refuge in the definition of ammunition, in the Firearms Ordinance. In view of the totality of the circumstances, Mr. Chinnery could not have been properly charged and convicted of illegal possession of ammunition contrary to section 26 of the Explosives Ordinance. The learned Chief Magistrate therefore erred in accepting a guilty plea in relation to this offence.

Section 12(2) of the Interpretation (Amendment) Act, 2014 considered; Section 2 of the Firearms and Air Guns (Amendment) Act 2015 applied; Section 2 of the Explosives Ordinance, Cap. 124, of the Revised Laws of the Virgin Islands 1991 applied.

APPLICATIONS AND APPEALS

Case Name:

Fay-Ann Durham

v

Brian Davis

[SVGHCVAP2015/0015]

[St. Vincent and the Grenadines]

Date:

Monday, 24th February, 2020

Coram:

The Hon. Mr. Mario Michel, Justice of Appeal

The Hon. Mr. Paul Webster, Justice of Appeal (Ag.)

The Hon. Mde. Esco Henry, Justice of Appeal (Ag.)

Appearances:

Appellant:

Mrs. Ronnia Durham-Balcombe, Counsel for the Appellant

Ms. Fay-Ann Durham, the Appellant present

Respondent: Mr. Brian Davis, absent

**Issues: Application to Discharge order of Webster, JA
Extension of Time, to Deem Documents Properly Filed**

**Type of Order
Delivered: Oral Decision**

Result / Order:

IT IS HEREBY ORDERED THAT:

The application is dismissed.

**Reasons: This is a matter which came before the Court on 30th
May 2014 by Claim Form and Statement of Claim.**

**On 1st September 2014, Default Judgment was granted
by the Court against the Defendant for failure to file a
defence within the prescribed time.**

**On 8th September 2014 the Appellant filed an
application to set aside the Default Judgment.**

**The Appellant was unsuccessful. The Default
Judgment was not set aside. The Appellant then
applied for Leave to Appeal.**

**On 29th June 2015, Blenman JA granted leave to
appeal and directed that Notice of Appeal be filed
within 21 days.**

**The Notice of Appeal was filed on 14th August 2015.
The Appellant therefore failed to file the Notice of
Appeal within the time directed by the Court.**

**The matter came before Webster JA on an application
to strike out the Appeal for failure to comply with the
order of Court dated 29th June 2015 and for want of
prosecution.**

Webster JA noted that Notice of Appeal was filed out

of time and the Appellant had taken no further steps since filing the Notice of Appeal in order to advance the matter. The matter was now before Webster JA some four (4) years later.

Webster JA noted further that the delay was inordinate and that the reasons advanced for the delay were unsatisfactory. Webster JA struck out the Notice of Appeal for non compliance with the order of Blenman JA and for want of prosecution.

On 18th December 2019, the Appellant made an application to discharge the order of Webster JA supported by Affidavit.

The Court found no good reason to discharge the order of Webster JA to strike out the claim. The application was dismissed.

Case Name:

Carlos Penniston

v

The Queen

[SVGHCRA2016/0016]

[St. Vincent and the Grenadines]

Date:

Monday, 24th February, 2020

Coram:

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

The Hon. Mr. Mario Michel, Justice of Appeal

The Hon. Mr. Paul Webster, Justice of Appeal (Ag.)

Appearances:

Appellant: Mr. Carlos Penniston, present unrepresented

Respondent: Ms. Sejilla McDowall, Director of Public Prosecutions and Ms. Renee Simmons, Crown Counsel

Issues:

Leave to Appeal against Sentence

**Type of Order
Delivered:**

Oral Decision

Result / Order:

IT IS HEREBY ORDERED THAT:

1. In relation to the offence of wounding with intent, the appeal against sentence is allowed to the extent that the sentence of a term of 9 years 4 months imprisonment is substituted with a sentence of 9 years 4 months less 2 years 2 months and 22 days which represents time spent on remand.
2. In relation to the offence of burglary, the appeal against sentence is allowed to the extent that the sentence of a term of 8 years imprisonment is substituted with a sentence of 8 years less 2 years 2 months and 22 days which represents time spent on remand.
3. Sentences to run concurrently.

Reasons:

The Appellant pleaded guilty to the following offences and was sentenced as follows:

- Wounding - sentenced to 14 years imprisonment
- Burglary – sentenced to 12 years imprisonment

A 1/3 discount was to be applied for the early guilty plea and time spent on remand, that is, 2 years, 2 months and 22 days was to be deducted from both offences. Sentences to run concurrently.

This was an appeal against sentence by the Appellant in which he complained that time spent on remand was not taken into account and that his sentence was not calculated correctly.

The error arose from the manner in which the sentence was stated by the Learned Trial Judge.

The Court noted that the authorities establish the manner in which the sentence should be set out. The Court referred to Romeo Da Costa Hall v The Queen [2011] CCJ 6 (AJ).

The Court further noted that the sentencing judge should state what the sentence is and exactly what

remand time was to be deducted.

The sentencing judge must then embark on an actual arithmetical calculation of the sentence.

The Court advised that if this is done, there would be no difficulty in calculating the sentence.

Case Name: **Sturnimus Wiseman**
v
Marva Bushay
(The Legal Personal Representative of the
Estate of Aaron Bushay, deceased)

[SVGMCVAP2018/0016]
[St. Vincent and the Grenadines]

Date: **Monday, 24th February, 2020**

Coram: **The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal**
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal (Ag.)

Appearances:

Appellant: **Mr. Sturnimus Wiseman, present unrepresented**

Respondent: **Ms. Samantha Robertson, Counsel for the Respondent**
Ms. Marva Bushay, present

Issues: **Application to strike out Notice of Appeal**

Type of Order Delivered: **Oral Decision**

Result / Order:

IT IS HEREBY ORDERED THAT:

- 1. The application to dismiss the appeal as a nullity is refused.**

2. 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 15th September, 2020.

Reasons:

Counsel for the respondent submitted that the Notice of Appeal should be struck out as a nullity.

The Court did not agree that the Notice of Appeal should be struck out.

The respondent then made an oral application for an adjournment in order to retain the services of a lawyer.

The Court granted this application.

Case Name:

Brennon Roberts

V

The Queen

[SVGHCRA2015/0001]

[St. Vincent and the Grenadines]

Date:

Monday, 24th February, 2020

Coram:

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

The Hon. Mr. Mario Michel, Justice of Appeal

The Hon. Mr. Paul Webster QC, Justice of Appeal (Ag.)

Appearances:

Appellant:

**Mrs. Kay Bacchus-Baptiste, Counsel for the Appellant
Mr. Brennon Roberts, present**

Respondent:

**Ms. Sejilla McDowall, Director of Public Prosecutions
and Mr. Karim Nelson, Crown Counsel for the
Respondent**

Issues:

Appeal against Sentence – Attempted Murder

**Type of Order
Delivered:**

Oral Judgment

Result / Order:

IT IS HEREBY ORDERED THAT:

- 1. The appeal against conviction having been withdrawn is dismissed.**
- 2. The appeal against sentence is dismissed.**
- 3. The sentence of 20 years is affirmed.**

Reasons:

The appellant was found guilty of the following offences and was sentenced as follows:

- Attempted Murder - sentenced to 20 years imprisonment**
- Disobedience of lawful orders – 18 months imprisonment**

Both sentences to run concurrently.

This was an appeal against sentence which the appellant submitted was manifestly excessive.

The appellant pleaded not guilty and maintained that position until a recent letter.

The Court found no mitigating factors which the trial judge could have taken into consideration. However, there were several aggravating factors:

- 1. a cutlass was used.**
- 2. severity of the Attack.**
- 3. seriousness of the lasting physical and psychological harm suffered by the victim.**
- 4. the financial impact.**
- 5. significant convictions for wounding the same victim.**
- 6. previous convictions for wounding the same victim.**
- 7. utter lack of remorse.**

The Court opined that offences of violence against women is now a serious problem in St. Vincent and the Grenadines and the Court must not condone such conduct. The Court must send a very strong message that the Court rejects this conduct and signify by its sentence, a strong deterrent factor. There was no basis to overturn the sentence.

Case Name:

Austin McDowall

v

The Queen

[SVGHCRAP2014/0004]

[St. Vincent and the Grenadines]

Date:

Monday, 24th February, 2020

Coram:

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

The Hon. Mr. Mario Michel, Justice of Appeal

The Hon. Mr. Paul Webster, Justice of Appeal (Ag.)

Appearances:

Appellant:

**Ms. Michelle Fife, Counsel for the Appellant
Mr. Austin McDowall, present**

Respondent:

**Ms. Sejilla McDowall, Director of Public Prosecutions
and Mr. Karim Nelson, Crown Counsel for the
Respondent**

Issues:

**Appeal against Conviction – Aggravated, Wounding
with Intent, Possession of Firearm without Licence**

**Type of Order
Delivered:**

Adjournment

Result / Order:

[Oral Delivery]

IT IS HEREBY ORDERED THAT:

- 1. The matter is adjourned to Wednesday
26th February, 2020 at 10:00 a.m.**
- 2. Application for leave to file Further Submissions
and Authorities is granted. The Further
Submissions and Authorities filed on 7th February
2020 are deemed properly filed.**

Reasons:

**Counsel for the Appellant requested an adjournment
to consider submissions filed by the Respondent on
the 7th February, 2020. There was no objection by the**

Respondent.

Counsel for the Respondent made an oral for leave to file Further Submissions and Authorities and that the Further Submissions and Authorities filed on 7th February, 2020 be deemed properly filed. There was no objection by Counsel for the Appellant.

Case Name:

Austin McDowall

v

The Queen

[SVGHCRA2014/0004]

[St. Vincent and the Grenadines]

Date:

Monday, 24th February, 2020

Coram:

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

The Hon. Mr. Mario Michel, Justice of Appeal

The Hon. Mr. Paul Webster, Justice of Appeal (Ag.)

Appearances:

Appellant:

Ms. Michelle Fife, Counsel for the Appellant

Mr. Austin McDowall, present

Respondent:

Mr. Karim Nelson, Crown Counsel for the Respondent

Issues:

Appeal against Conviction – Aggravated, Wounding with Intent, Possession of Firearm without Licence

**Type of Order
Delivered:**

Oral Judgment

Result / Order:

IT IS HEREBY ORDERED THAT:

- 1. Based on the concession of counsel on behalf of the appellant, the appeal is dismissed.**
- 2. The conviction is affirmed.**
- 3. The sentence of fifteen (15) years imprisonment**

is affirmed.

Case Name:

Ivan O'Neal
V
St. Vincent Electricity Services Limited

[SVGHCVAP2015/0004]
[St. Vincent and the Grenadines]

Date:

Monday, 24th February, 2020

Coram:

The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal (Ag.)

Appearances:

Appellant: **Mr. Ivan O'Neal, present unrepresented**
Respondent: **Ms. Paul David, Counsel for the Respondent**

Issues:

Application for Relief from Sanction

**Type of Order
Delivered:**

Oral Decision

Result / Order:

IT IS HEREBY ORDERED THAT:

- 1. The time for filing Written Submissions with Authorities is extended to 4th February 2020.**
- 2. The Written Submissions with Authorities filed on the 4th February 2020 is deemed properly filed.**
- 3. Costs to the appellant in the sum of \$500.00 to be paid on or before 2nd March 2020.**

Reasons:

There was a Case Management Conference on 8th October 2019 when the Court gave certain

directions as follows:

- 1. Appellant to file and serve Written Submissions with Authorities on or before 11 November 2019.**

The Appellant complied with this order.

- 2. Respondent to file and serve Written Submissions with Authorities on or before 12 December 2019.**

The Respondent did not comply with this order in a timely manner.

The Written Submissions with Authorities were in fact filed on 4th February, 2020.

On 7th February, 2020 the Appellant applied for Relief of Sanctions and for an order to deem the Written Submissions with Authorities filed on 4 February, 2020, properly filed.

The application was opposed by the Appellant on the ground that the application was made 57 days out of time and that there was another Counsel in the Chambers who could have dealt with the matter.

The Respondent gave certain reasons for the delay.

The Court noted that there was no need to apply for Relief from Sanctions as no sanction was attached to the order.

The application therefore was to deem the Submissions filed on 4th February 2020 properly filed.

By the time the Order was made, Saunders & Huggins were on record as Counsel for the Respondent. The order for filing Written Submissions was not served on Counsel for the Respondent but rather on the St. Vincent Electricity Services Limited, the Respondent.

There was another delay as Counsel with conduct for the matter was ill.

The entire delay amounted to 57 days.

In all the circumstances, where there was a delay there was an explanation. The Court found that the late filing did not cause any prejudice to the Appellant. Written Submissions are mainly for the benefit of the Court.

In all the circumstances and taking into account the overriding objectives, the Court made the order as stated above.

Case Name: **Ivan O’Neal**
V
St. Vincent Electricity Services Limited
[SVGHCVAP2015/0004]
[St. Vincent and the Grenadines]

Date: **Monday, 24th February, 2020**

Coram: **The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal**
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal (Ag.)

Appearances:

Appellant:	Mr. Ivan O’Neal, present unrepresented
Respondent:	Ms. Paul David, Counsel for the Respondent

Issues: **Application for Relief from Sanction**

Type of Order
Delivered: **N/A**

Result / Order: **[Oral delivery]**

IT IS HEREBY ORDERED THAT:

Decision reserved.

Reasons:

Case Name:

Laurel Phillips

v

David Gopaul

**[SVGMCVAP2018/0005]
[St. Vincent and the Grenadines]**

Date:

Monday, 24th February, 2020

Coram:

**The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal (Ag.)**

Appearances:

Appellant:

**Mr. Ronald Marks, Counsel for the Appellant
Ms. Laurel Phillips, absent**

Respondent:

**Mr. Duane Daniel, Counsel for the Respondent
Mr. David Gopaul, present**

Issues:

**Type of Order
Delivered:**

Oral Judgment

Result / Order:

IT IS HEREBY ORDERED THAT:

The appeal having been withdrawn, the appeal is dismissed.

Reasons:

Counsel for the Appellant made an oral application to withdraw the appeal. There was no objection by Counsel for the Respondent.

Case Name:

Calvert Hinds

V
Joyce Byron

[SVGMCVAP2019/0008]
[St. Vincent and the Grenadines]

Date: Monday, 24th February, 2020

Coram: The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal (Ag.)

Appearances:

Appellant: Mr. Calvert Hinds, present unrepresented

Respondent: Ms. Joyce Byron, present unrepresented

Issues: Appeal against the sum of \$2,000.00

**Type of Order
Delivered:** Oral Judgment

Result / Order:

IT IS HEREBY ORDERED THAT:

- 1. The sum of \$2,000.00 ordered by the Learned Magistrate is to be paid in 6 payments of \$300.00 per month commencing 9th March 2020 and thereafter on the second Monday of each month with a final payment on 8th September, 2020.**
- 2. In default of any payment for a period of 7 days, the full amount shall become due.**
- 3. Payments are to be made to the office of Attorney at Law, Mr. Roderick Jones at Sprott Brothers Building, Bay Street, Kingstown.**

Reasons: The appellant indicated that he had lost his job since the judgment was awarded against him and as such, he was unable to make any payments. The appellant indicated that he is now employed as a driver earning \$300.00 per week. The Court then considered his ability to make payments towards the outstanding

judgment debt, noting that since the date of the judgment, no payments had been made.

Case Name:

**[1] Nigel Morgan
[2] Althia Morgan
[3] Crystal Morgan**

V

The Commissioner of Police

**[SVGMCRAP2019/0026]
[St. Vincent and the Grenadines]**

Date:

Tuesday, 25th February, 2020

Coram:

**The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal (Ag.)**

Appearances:

Appellant:

**Mrs. Kay Bacchus-Baptiste, Counsel for the Appellants
Mr. Nigel Morgan, present
Mrs. Alethia Morgan, present
Ms. Crystal Morgan, present**

Respondent:

Ms. Sejilla McDowall, Director of Public Prosecutions and Mr. Karim Nelson, Crown Counsel for the Respondent

Issues:

Appeal against Conviction – Unlawful and Malicious Wounding

**Type of Order
Delivered:**

Oral Judgment

Result / Order:

IT IS HEREBY ORDERED THAT:

1. In relation to the first and second Appellants, Nigel

Morgan and Althia Morgan, the appeal against conviction and sentence is allowed.

- 2. In relation to the first and second Appellants, Nigel Morgan and Althia Morgan, the conviction and sentence are set aside.**
- 3. In relation to the third Appellant, Crystal Morgan, the appeal against conviction is dismissed.**
- 4. The conviction of the third Appellant, Crystal Morgan is affirmed.**
- 5. In relation to the third Appellant, Crystal Morgan, the appeal against sentence is allowed to the extent that the sentence of a term of four (4) imprisonment is substituted with a term of three (3) years imprisonment.**

Reasons:

The appellants were found guilty of the offence of unlawful and malicious infliction of grievous bodily harm and were each sentenced to 4 years imprisonment.

Having heard oral submissions by counsel for the appellants and counsel for the Respondent and having considered the Written Submissions with Authorities of both the Appellants and the Respondent, the Court accepted the submissions of counsel for the appellants that there was no evidence on which the Learned Magistrate could have found beyond reasonable doubt, that the first and second appellants Nigel Morgan and Althia Morgan intentionally assisted the third appellant, Crystal Morgan, in the commission of the offence of unlawfully and maliciously inflicting grievous bodily harm on Cuthbert Victory.

The Court noted in particular the evidence where the learned magistrate indicated that he believed the evidence of Clint Antoine.

The learned magistrate noted that the first and second appellants Nigel Morgan and Althia Morgan were not holding on to the virtual complainant to restrain him. The first and second appellants, Nigel Morgan and Althia Morgan were lashing out at the virtual complainant.

These findings by the learned magistrate and his finding that he believed the evidence of Clint Antoine, are inconsistent with the submissions of the Respondent that the first and second appellants, Nigel Morgan and Althia Morgan intentionally aided and abetted the third appellant, Crystal Morgan, by holding the virtual complainant while the third appellant, Crystal Morgan poured hot water on the Virtual Complainant.

The Court found in the circumstances that the conviction of the first and second appellants, Nigel Morgan and Althia Morgan, ought to be set aside.

The Court found that the conviction of the third appellant, Crystal Morgan was fully justified on the findings of facts by the learned magistrate.

Concerning the appeal against the sentence of the third appellant Crystal Morgan, the Court accepted the submissions made on behalf of the appellant that the sentence imposed was excessive in all the circumstances.

The Court noted that counsel for the respondent conceded that the sentence was excessive and suggested a reduction of no less than 3 years imprisonment.

Counsel for the appellant suggested a sentence of 2 ½ - 3 years imprisonment.

The Court, considering all the factors of this case and all submissions, found that the sentence of 4 years was excessive and the appropriate sentence should be 3 years.

Case Name:

Kenneth Davis
V
The Commissioner of Police

[SVGMCRAP2019/0046]
[St. Vincent and the Grenadines]

Date: Tuesday, 25th February, 2020

Coram: The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal (Ag.)

Appearances:

Appellant: Mr. Kenneth Davis, present unrepresented

Respondent: Ms. Sejilla McDowall, Director of Public Prosecutions with Ms. Rose-Ann Richardson, Crown Counsel for the Respondent

Issues: Appeal against Sentence – Theft

Type of Order Delivered: Oral Judgment

Result / Order:

IT IS HEREBY ORDERED THAT:

1. The appeal against sentence is dismissed.
2. The sentence of a term of 18 months imprisonment is affirmed.

Reasons:

The appellant was found guilty of the offence of theft and was sentenced to 18 months imprisonment.

The Court examined the record and the evidence which was before the learned magistrate and his findings based on that evidence. The learned magistrate decided that he believed the virtual complainant and the prosecution's witness. The learned magistrate on this basis made a finding of guilty.

Having regard to the previous convictions of the appellant, the learned magistrate sentenced the appellant to 18 months imprisonment where the maximum was two (2) years imprisonment.

The Court found no reason to disturb the sentence.

Case Name:

Allister Smith
V
The Commissioner of Police

[SVGMCRAP2016/0036]
[St. Vincent and the Grenadines]

Date:

Tuesday, 25th February, 2020

Coram:

The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal (Ag.)

Appearances:

Appellant: **Mrs. Kay Bacchus-Baptiste, Counsel for the Appellant**
Mr. Allister Smith, present

Respondent: **Ms. Sejilla McDowall, Director of Public Prosecutions**
and Mrs. Tammika McKenzie, Crown Counsel for the
Respondent

Issues:

Appeal against Sentence – Obtaining Property by Deception

Type of Order
Delivered:

Oral Judgment

Result / Order:

IT IS HEREBY ORDERED THAT:

- 1. The appeal against conviction having been withdrawn is dismissed.**
- 2. The appeal against sentence is allowed to the extent that the sentence of a term of 8 years 6 months imprisonment is substituted with a sentence of 6 years imprisonment.**

Reasons:

The appellant was found guilty of the offence of 29 counts of deception and was sentenced to 8 years and

6 months imprisonment for each count. Sentences to run concurrently. Time spent on remand to be deducted.

At the hearing of the appeal, counsel for the appellant made an oral application to withdraw the appeal against conviction.

There was no objection by counsel for the respondent.

The matter then proceeded only as an appeal against the sentence of 8½ years imprisonment imposed on the appellant upon his conviction for several offences of deception and kindred offences.

The learned trial judge did not determine a notional sentence on the basis of which, a balancing of all relevant sentencing factors could have been considered.

The Court noted that the maximum sentence is 10 years and determined that an appropriate benchmark sentence is 5 years.

The Court noted the significant criminal record of the appellant which would cause the notional sentence of 5 years to spiral upwards.

Against this aggravating factor, the Court noted that the appellant had made full compensation to the persons whom he had deceived. This was a major mitigating factor to which the Court found that the learned trial judge had only paid scant regard.

In all the circumstances and taking into account the aggravating factor, the mitigating factor, the maximum sentence of 10 years and the notional sentence, the court held that a sentence of 6 years imprisonment was sufficient to meet the justice of the case.

Case Name:

Raymond Ryan
v
The Commissioner of Police

[SVGMCRAP2019/0048]

[St. Vincent and the Grenadines]

Date: Tuesday, 25th February, 2020

Coram: The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Paul Webster QC, Justice of Appeal (Ag.)

Appearances:

Appellant: Mr. Raymond Ryan, present unrepresented

Respondent: Ms. Sejilla McDowall, Director of Public Prosecutions
with Ms. Rose-Ann Richardson, Crown Counsel for the Respondent

Issues: Appeal against Sentence – Theft

Type of Order Delivered: Oral Judgment

Result / Order:

IT IS HEREBY ORDERED THAT:

1. The appeal against conviction is dismissed.
2. The appeal against sentence is dismissed.
3. The conviction is affirmed.
4. The sentence of twelve (12) months imprisonment is affirmed.

Reasons: The appellant was found guilty of the offence of theft and was sentenced to 12 months imprisonment.

The appellant argued that this was a case of mistaken identity. The Court pointed out however that the appellant was known by the virtual complainant all his life.

The appellant submitted that his sentence was excessive.

Counsel for the respondent submitted that the learned

magistrate took into account all relevant factors. The learned magistrate had evidence on which to convict the Appellant and the sentence was not excessive.

The Court noted that the learned magistrate expressed the court's concern about the theft of livestock and the fact that the rearing of livestock provided an important source of income to persons in the area where this offence was committed.

Case Name: **Doane Seales**
V
The Commissioner of Police
[SVGMCRAP2019/0022]
[St. Vincent and the Grenadines]

Date: **Tuesday, 25th February, 2020**

Coram: **The Hon. Mr. Mario Michel, Justice of Appeal**
The Hon. Mr. Paul Webster, Justice of Appeal (Ag.)

Appearances:

Appellant:	Mr. Doane Seales, present unrepresented
Respondent:	Ms. Sejilla McDowall, Director of Public Prosecutions and Mr. John Ballah, Counsel for the Respondent

Issues: **Application for Legal Practitioner to be removed from the Record**

Type of Order Delivered: **Oral Judgment**

Result / Order:

IT IS HEREBY ORDERED THAT:

- 1. The appeal against sentence having been withdrawn is dismissed.**
- 2. The sentence of two (2) years imprisonment is affirmed.**

Reasons: The appellant made an oral application to withdraw his appeal. There was no objection by counsel for the respondent.

Case Name: Dennis Richardson
V
The Commissioner of Police
[SVGMCRAP2018/0043]
[St. Vincent and the Grenadines]

Date: Tuesday, 25th February, 2020

Coram: The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal (Ag.)

Appearances:
Appellant: Mr. Dennis Richardson, Appellant absent
Respondent: Ms. Sejilla McDowall, Director of Public Prosecutions for the Respondent

Issues: Appeal against Conviction - Possession of Firearm without Licence

**Type of Order
Delivered:** Oral Judgment

Result / Order:
IT IS HEREBY ORDERED THAT:
The appeal against conviction is dismissed.

Reasons: The appellant, Dennis Richardson, is now deceased.
The Court having been informed that the appellant is now deceased and having been provided with a Death Certificate to verify that information, dismissed the appeal.

Case Name:

[1] Kimron Thomas

[2] Cardel Jacobs

v

The Commissioner of Police

[SVGMCRAP2019/0028 &

SVGMCRAP2019/0029]

[St. Vincent and the Grenadines]

Date:

Tuesday, 25th February, 2020

Coram:

The Hon. Mr. Mario Michel, Justice of Appeal

The Hon. Mr. Paul Webster, Justice of Appeal (Ag.)

Appearances:

Appellant:

**Mr. Kimron Thomas, First Appellant present
unrepresented**

Mr. Jomo Thomas, Counsel for the Second Appellant

Mr. Cardel Jacobs, Second Appellant present

Respondent:

**Ms. Sejilla McDowall, Director of Public Prosecutions
with Ms. Rose-Ann Richardson, Crown Counsel for the
Respondent**

Issues:

Appeal against Conviction – Trespassing and Stealing

**Type of Order
Delivered:**

Oral Judgment

Result / Order:

IT IS HEREBY ORDERED THAT:

- 1. The first appellant, Mr. Kimron Thomas having informed the Court of his desire to withdraw his appeal, the appeal is accordingly dismissed.**
- 2. Counsel for the second appellant, Cardel Jacobs having sought an adjournment of the hearing of the appeal in order to be properly instructed by the second appellant, 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 15th September, 2020.**

Reasons: Kimron Thomas, the first appellant made an oral application to withdraw the appeal.

Counsel for Cardel Jacobs, the second respondent, indicated that he was only retained this morning and requires time to take proper instructions. Counsel made an oral application for an adjournment.

There was no objection by counsel for the respondent to both applications.

Case Name: Allie Franklyn Providence
V
The Commissioner of Police
[SVGMCRAP2018/0038]
[St. Vincent and the Grenadines]

Date: Tuesday, 25th February, 2020

Coram: The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Paul Webster QC, Justice of Appeal (Ag.)

Appearances:

Appellant:	Mr. Allie Franklyn Providence, present unrepresented
Respondent:	Ms. Sejilla McDowall, Director of Public Prosecutions and Mrs. Tammika McKenzie, Crown Counsel for the Respondent

Issues: Appeal against Conviction – Dishonest Inducement

**Type of Order
Delivered:** Adjournment

Result / Order: [Oral delivery]

1. Upon an application by the appellant for an adjournment of the hearing of the appeal in order that he may retain Counsel, the hearing of this 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
15th September, 2020.

2. This is a final adjournment.

Reasons:

The appellant made an oral application for an adjournment to retain the services of a lawyer.

The Court indicated that it is prepared to grant a final adjournment to September, 2020. If the appellant is not ready to proceed with the appeal, the appeal will be dismissed.

Case Name:

**Antigua and Barbuda Fishermen Cooperative
Society**

v

[1] Phillip Athanze

[2] Garry Gore

[3] Colin Francis

[4] John Browne

[5] John Tomlinson

[ANUHCVP2019/0018]

[Antigua and Barbuda]

Date:

Wednesday, 26th February, 2020

Coram:

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

The Hon. Mr. Mario Michel, Justice of Appeal

The Hon. Mr. Paul Webster QC, Justice of Appeal (Ag.)

Appearances:

Appellant: Dr. David Dorsett

Respondent: Mr. Justin Simon, QC

Issues:

**Application for leave to appeal – Whether judge
should have struck out appellant’s claim—Whether
judge should have applied the principles from
Real Time Systems Limited v Renwar Investments
and Others [2014] UKPC 6**

**Type of Order
Delivered:**

Oral Judgment

Result / Order:

IT IS HEREBY ORDERED THAT:

- 1. The appeal is allowed and the order of the learned judge to strike out the claim is set aside.**
- 2. The case is remitted to the High Court for case management and on an expedited basis.**
- 3. Agreed costs of \$2000 to the appellant as the costs of the appeal and the application in the High Court.**