

COURT OF APPEAL SITTING
SAINT VINCENT AND THE GRENADINES
16TH – 20TH JULY 2018

STATUS HEARING

Case Name: Kentish Campbell
v
The Queen
[SVGHCRA2008/0014]

Date: Monday, 16th July 2018

Coram: The Hon. Mr. Davidson K. Baptiste, Justice of Appeal

Appearances:

Appellant:	In person
Respondent:	No appearance

Issues: Status of the matter

Type of Oral Result / Order Delivered: N/A

Result / Order: [Oral delivery]
Matter stood down.

Reason: The matter was stood down to give the Crown time to appear.

Case Name: Brandon Lynch
v
Kenrick Ricardo Issacs

[SVGHCVAP2016/0030]

Date: Monday, 16th July 2018

Coram: The Hon. Mr. Davidson K. Baptiste, Justice of Appeal

Appearances:

Appellant: In person

Respondent: Ms. Vynnette Fredericks

Issues: Status of the matter

Type of Oral Result / Order Delivered: Adjournment

Result / Order: [Oral delivery]
The matter is adjourned to the next status hearing to be held in St. Vincent and the Grenadines during the week commencing 10th December 2018.

Reason: The appellant made an oral application for an adjournment due to his counsel becoming Attorney General and his mother's passing. There was no objection by the respondent.

Case Name: Kentish Campbell
v
The Queen

[SVGHCRAP2008/0014]

Date: Monday, 16th July 2018

Coram: The Hon. Mr. Davidson K. Baptiste, Justice of Appeal

Appearances:

Appellant:	In person
Respondent:	Ms. Sejilla McDowall, Director of Public Prosecutions [Ag.] with Mrs. Tamika DaSilva McKenzie, Crown Counsel

Issues: Status of the matter

Type of Oral Result / Order Delivered: Oral Judgment or Decision

Result / Order: [Oral delivery]
The application to petition Her Majesty's Privy Council against a decision made in the Court of Appeal in 2008 is dismissed for want of jurisdiction.

Reason: The Court of Appeal has no power, authority or jurisdiction to entertain the application because the appellant is out of time. The Court noted that 10 years have elapsed.

Case Name:

Augustine J. C. Miguel
v
Natalie Miguel nee Sardine
Jason Sardine
Noel Sardine
Magdaline Sardine

[SVGHCVAP2015/0012]

Date: Monday, 16th July 2018

Coram: The Hon. Mr. Davidson K. Baptiste, Justice of Appeal

Appearances:

Appellant: Mr. Lyndon George

Respondents: Mr. Duane Daniel holding a watching brief for the respondents

Issues: Status of the matter

Type of Oral Result / Order Delivered: Adjournment

Result / Order: [Oral delivery]
The matter is adjourned to the next Status Hearing in St. Vincent and the Grenadines during the week commencing 10th December 2018 for report.

Reason: The respondents have not been served despite an order in February 2018 directing service out of the jurisdiction.

The appellant made an oral application for an adjournment to the next status hearing to enable service on the respondents.

Case Name:

Hagar Miller
v
Daniel Nichols

[SVGHCVP2016/0028]

Date: Monday, 16th July 2018

Coram: The Hon. Mr. Davidson K. Baptiste, Justice of Appeal

Appearances:

Appellant: Ms. Ashelle Morgan

Respondent: Ms. Jenell Gibson holding papers for Mrs. Euchrista

St. Hilaire Bruce-Lyle

Issues:

Status of the matter

**Type of Oral
Result / Order
Delivered:**

Adjournment

Result / Order:

[Oral delivery]

The matter is adjourned to the next status hearing in St. Vincent and the Grenadines during the week commencing 10th December 2018.

Reason:

Counsel for the appellant made an oral application for the Court of Appeal to order the High Court to produce the transcript due to the lack of means of the appellant. The Court requested counsel for the appellant to show the statutory authority for that request.

Case Name:

**Lorraine Cato
v
Gracelyn Cato nee Peters
[SVGHCVP2015/0019]**

Date:

Monday, 16th July 2018

Coram:

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

Appearances:

Appellant:

Mr. Roderick Jones holding a watch brief for the appellant

Respondent:

Ms. Paula David

Issues:

Status of the matter

Type of Oral Result / Order Delivered:	Directions
Result / Order:	[Oral delivery] The matter is removed from status list and is to follow CPR 2000.
Reason:	The transcript has been completed and the appeal is ready to proceed.
Case Name:	Julian Clarke v Veronica Haynes [SVGHCVAP2016/0008]
Date:	Monday, 16th July 2018
Coram:	The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
Appearances:	
Appellant:	In person
Respondent:	Ms. Moureeze Franklyn
Issues:	Status of the matter
Type of Oral Result / Order Delivered:	Adjournment
Result / Order:	[Oral delivery] The matter is adjourned to the next sitting of Court of Appeal in St. Vincent and the Grenadines during the week commencing 10th December 2018.

Reason: The appellant stated that he had almost satisfied judgment against him as he had been making regular payments to the respondent.

APPLICATIONS AND APPEALS

Case Name: Keron Bowens
V
Commissioner of Police

[SVGMCRAP2018/0007]

Date: Monday, 16th July 2018

Coram: The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]

Appearances:

Appellant:	In person
Respondent:	Ms. Sejilla McDowall, Director of Public Prosecutions [Ag.] with her Ms. Jimesha Prince, Crown Counsel

Issue: Application for legal aid

**Type of Oral
Result / Order
Delivered:** Adjournment

**Result / Order
& Reason:** [Oral delivery]
The application by way of letter is adjourned to the next sitting of the Court of Appeal in the State of St. Vincent and the Grenadines during the week commencing 10th December 2018 to enable the record of appeal to be prepared.

Case Name:

**Noel Franklyn Browne
Alistair Gould
Bernardo Barbour
v
The Queen**

[SVGHCRAP2017/0007]

Date:

Monday, 16th July 2018

Coram:

**The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]**

Appearances:

Applicants:

All applicants in person

Respondent:

**Ms. Sejilla McDowall, Director of Public Prosecutions
[Ag.] with Mr. Karim Nelson, Crown Counsel**

Issue:

**Application for leave to call witness and add new
grounds of appeal**

**Type of Oral
Result / Order
Delivered:**

Adjournment

Result / Order:

**[Oral delivery]
There being no record of appeal, the application by
way of letter is adjourned for consideration to the
next sitting of the Court of Appeal in the State of St.
Vincent and the Grenadines during the week which
commences 10th December 2018, in order for the
Court to have sight of the record of appeal.**

Reason:

The record of appeal was not yet prepared.

Case Name:

Emerson Delpliche

v

The Queen

[SVGHCRAP2018/0006]

Date:

Monday, 16th July 2018

Coram:

The Hon. Mde. Louise E. Blenman, Justice of Appeal

The Hon. Mde. Gertel Thom, Justice of Appeal

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

Appearances:

Appellant:

In person

Respondent:

**Ms. Sejilla McDowall, Director of Public Prosecutions
[Ag.]**

Issue:

Application for bail

Type of Oral

Result / Order

Delivered:

Oral Judgment or Decision

Result / Order:

[Oral delivery]

- 1. The application for bail is refused.**
- 2. The Court directs that Mr. Delpliche's trial be given an expedited hearing in the month of September 2018 by the Hon. Justice Henry who has indicated her willingness to hear and try the matter.**
- 3. The matter is to be prosecuted by counsel in the Office of the Director of Public Prosecutions other than Mr. Karim Nelson.**

Reason:

The Court was of the view that the applicant had not satisfied the requirements for the grant of bail bearing in mind the serious nature of the allegations made against him. The Court noted that the applicant was granted bail on two (2) previous occasions and

that bail was revoked because he allegedly committed very serious offences while on bail. The Court also noted that that Justice Henry is ready to hear the matter, and that the matter will be dealt with in the month of September 2018.

The appellant requested that Mr. Karim Nelson, Crown Counsel recuse himself from prosecuting the matter. The Court acceded to that request.

Case Name:

**Tadius Mc Allister
v
Gregory DeCaul
Attorney General of St. Vincent and the
Grenadines**

[SVGHCVAP2018/0001]

Date:

Monday, 16th July 2018

Coram:

**The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]**

Appearances:

Appellant:

Mr. Ronald Marks

Respondents:

**Ms. Shirlan Barnwell holding for Mr. Jomo Thomas for
the 1st respondent
Mr. Kezron Walters for the 2nd respondent**

Issue:

**Application for stay of execution and all further
proceedings**

**Type of Oral
Result / Order
Delivered:**

Oral Judgment or Decision

Result / Order:

[Oral delivery]

A stay of execution is granted pending the hearing and determination of the appeal.

Reason: There was no objection by the 1st and 2nd respondents to the application for a stay of execution. The Court was satisfied that the applicant had met the requirements for the grant of a stay.

Case Name: The Personal Representative of the Estate of
Winston Richard Knights
v
Leroy Knights
[SVGHCVP2018/0002]

Date: Monday, 16th July 2018

Coram: The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]

Appearances:
Appellant: Mr. Emery Robertson Snr.
Respondent: Mrs. Rochelle Forde Duncan with Mr. Duane Daniel

Issue: Application for extension of time for leave to appeal –
Application for extension of time to file notice of appeal

**Type of Oral
Result / Order
Delivered:** Oral Judgment or Decision

Result / Order: [Oral delivery]
1. An extension of time of seven (7) days is granted to the appellant to file its notice of appeal.
2. Thereafter, the appeal shall proceed in accordance

with the Civil Procedure Rules.

Reason: The Court was of the view that the applicant had met the requirements for the grant of an extension of time.

Case Name: **Ulrick James**
v
The Queen

[SVGHCRAP2017/0010]

Date: **Monday, 16th July 2018**

Coram: **The Hon. Mde. Louise E. Blenman, Justice of Appeal**
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]

Appearances:

Appellant:	In person
Respondent:	Ms. Sejilla McDowall, Director of Public Prosecutions [Ag.] with Mrs. Tamika DaSilva McKenzie, Crown Counsel

Issue: **Application for legal aid – Application to add additional grounds of appeal**

Type of Oral Result / Order Delivered: **Oral Judgment or Decision**

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

- 1. The application for the grant of legal aid is refused.**
- 2. The application to amend the grounds of appeal is granted. The appellant shall file his amended grounds of appeal on or before 28th September 2018.**

3. On receipt of the amended grounds of appeal, the Registrar of the High Court shall forthwith serve a copy on the Director of Public Prosecutions.
4. The Registrar shall cause the record of appeal to be prepared as soon as possible.

Reason:

The Court noted that the appellant pleaded guilty to rape. In the Court's view, there was no requirement to grant legal aid in this case. The appellant ought to prosecute his appeal or to make other arrangements.

The Crown did not object to the application to amend the grounds of appeal.

Case Name:

Glenford Jacobs

v

The Queen

[SVGHCRA2016/0002]

Date:

Monday, 16th July 2018

Coram:

**The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]**

Appearances:

Appellant:

In person

Respondent:

**Ms. Sejilla McDowall, Director of Public Prosecutions
[Ag.] with Ms. Jimesha Prince, Crown Counsel**

Issue:

Application for bail pending appeal

**Type of Oral
Result / Order
Delivered:**

Oral Judgment or Decision

Result / Order:

[Oral delivery]

The application for bail is refused.

Reason:

The appellant indicated to the Court that he could not afford a lawyer and he required bail to deal with this matter. The Court noted that once an appellant has been convicted, the appellant must prove that there are exceptional circumstances in order to be admitted to bail. The fact that the appellant cannot afford a lawyer is not an exceptional circumstance. The Court was not of the view that where the appellant cannot afford to pay, that the matter cannot proceed.

Case Name:

**Jaleel Smith
v
The Commissioner of Police
[SVGMCRAP2017/0041]**

Date:

Monday, 16th July 2018

Coram:

**The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]**

Appearances:

Appellant:

In person

Respondent:

**Ms. Sejilla McDowall, Director of Public Prosecutions
[Ag.] with Mr. Carl Williams, Crown Counsel**

Issue:

Application for legal aid – Application for reduction in sentence

**Type of Oral
Result / Order
Delivered:**

Oral judgment or decision and directions

Result / Order:

**[Oral delivery]
1. The application for legal aid is refused.**

2. The application for reduction of sentence is adjourned to be dealt with in the substantive appeal that is scheduled to be heard on Thursday, 19th July 2018. The issues of conviction and sentence will be addressed on Thursday.
3. The appellant is granted leave to file written submissions in relation to his appeal against conviction.

Reason:

The Court was not of the view that this was an appropriate case for the grant of legal aid.

The appellant indicated that his appeal was against sentence, but he also wished to appeal his conviction. The appellant was granted leave to file written submissions in relation to his appeal against conviction.

Case Name:

**Humphrey Michael Blackburn
v
Liat (1974)**

**[ANULTAP2017/0001]
(Antigua and Barbuda)**

Date:

Monday, 16th July 2018

Coram:

**The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]**

Appearances:

**Appellant: Mr. Ruggles Fergusson with Mr. Septimus Rhudd and
Ms. Margaret Blackburn**

Respondent: Mr. Douglas Mendes, SC with Ms. Bellina Barrow

Issues:

**Labour Tribunal appeal – Employment – Unfair
dismissal – Reasonableness of dismissal – Test for**

determining whether dismissal is unfair – Misconduct – Statements made publicly about employer – Antigua and Barbuda Labour Code – Whether court erred in finding that employee was unfairly dismissed – Compensation – Reduction of compensation – Court relying on transcripts and audio recordings which were not in evidence to reduce compensation – Whether court erred in so doing

Type of Oral
Result / Order
Delivered:

N/A

Result / Order:

[Oral delivery]
Decision reserved.

Case Name:

**Milad Sassine
v
Lady Gloria Antrobus
[SVGHCVAP2015/0014]**

Date:

Tuesday, 17th July 2018

Coram:

The Hon. Dame Janice Pereira, DBE, Chief Justice
The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mde. Louise E. Blenman, Justice of Appeal

Appearances:

Appellant:

Mr. Richard Williams

Respondent:

Mr. Joseph Delves

Issues:

High Court civil appeal – Possessory title – Whether the appellant’s failure to comply with the procedural requirements set out in sections 7 and 8 of the Possessory Titles Act, CAP 328, rendered his application for a declaration of Possessory Title null and void – Whether the learned trial judge erred in

finding that time does not run against a trustee.

**Type of Oral
Result / Order
Delivered:**

Oral Judgment or Decision

Result / Order:

[Oral delivery]

- 1. The appeal is allowed.**
- 2. The matter is remitted to the Court below for full case management of the proceedings subject to CPR 2000 under the Possessory Titles Act, CAP 328 Section 19 and for the Court to treat with the matters raised in the claim on the trial of the claim.**
- 3. The costs order made by the learned trial judge in the sum of \$7,500.00 is set aside.**
- 4. The costs of this appeal shall be paid by the respondent to the appellant in the sum of two thirds of the costs below, that is, two thirds of \$7,500.00, in accordance with CPR 65, to be paid within 21 days of today's date.**

Reason:

In relation to the first issue of non-compliance with the procedural requirements of sections 7 and 8 of the Possessory Titles Act CAP 328, the Court noted that had the matter been case managed, the issue of non-compliance could have been addressed.

The Court found that there was nothing which limited the Court's case management power to deal with this issue. The Court observed that the opportunity to address the issue of non-compliance with the procedural requirements was not granted and it was not indicated that this would be a basis on which the learned trial judge will rest. The Court found that this was in breach of the fundamental principles of procedural fairness which must run through every trial.

The statement of law at paragraph 9 of the judgment of Henry J that "the law clearly is that time will not run against a trustee of a trust for sale of the lands or the proceeds", was found by the Court not to be an accurate statement of the law.

The Court went on to find that the following statement was also not an accurate statement of the law: “similarly, no right of action will accrue to any of the beneficiaries of such a trust”. The Court noted that the application of section 20 is elucidated by the text of Cheshire and Burn’s, Modern Law of Real Property as indicated by counsel for the respondent. The learning set out under subparagraph b at page 900 which deals with adverse possession by a stranger is as follows:

“...Where possession of land has been held for twelve (12) years adversely to the trustee (i.e adversely to a tenant for life or statutory owner of settled (and or to trustees for sale) the legal estate shall not be extinguished so long as the right of a beneficiary to recover the land has not accrued or has not been barred”.

The Court found that this aspect of the matter was not examined, and the learned trial judge seems to have erred in that general statement of the law. The Court opined that the law is not as simplified as stated in paragraph 9 of the judgment of the learned trial judge. It was incumbent to delve into the issue of whether there was a cause of action and if so when did the cause of action accrue. The Court therefore remitted the matter for that purpose.

Case Name:

Recardo Roberts

v

Gene Hamilton

Javan McIntosh

Nellie Roberts

Nella Luke

[SVGHCVAP2013/0011]

Date:

Tuesday, 17th July 2018

Coram:

The Hon. Dame Janice Pereira, DBE, Chief Justice

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

The Hon. Mde. Louise E. Blenman, Justice of Appeal

Appearances:

Appellant:

Mr. Sten Sargeant

Respondents:

Mrs. Kay Bacchus Baptiste, Counsel for the 1st and 2nd respondents

Issues:

High Court civil appeal – Application to adduce fresh evidence – Oral application to withdraw appeal

**Type of Oral
Result / Order
Delivered:**

Oral Judgment or Decision

Result / Order:

[Oral delivery]

- 1. The application to adduce fresh evidence is dismissed.**
- 2. Leave is granted to the appellant to withdraw his appeal and the costs occasioned by the appeal shall be borne by the appellant and shall be prescribed costs, treating the claim as a claim for \$50,000.00, pursuant to CPR 65.5(2)(b) and two thirds of that sum shall be costs on the appeal pursuant to CPR 65.13.**

Reason:

In relation to the application to adduce fresh evidence, the Court considered that the appellant failed on the very first limb of the well-recognized principles enunciated in *Ladd v Marshall [1954] 3 All ER 745*. The appellant failed to persuade the Court that the fresh evidence could not have been discovered before or even during the trial. It would be against the principles of natural justice to allow the appellant to take two bites of the proverbial cherry.

In relation to the substantive appeal, counsel for the appellant made an oral application to withdraw the appeal. There was no objection by counsel for the respondent.

Case Name:

**Attorney General
v
Collingford John
Gleanor John
D'Andre Kingsley Luc John**

[SVGHCVAP2017/0006]

Date:

Tuesday, 17th July 2018

Coram:

**The Hon. Dame Janice Pereira, DBE, Chief Justice
The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mde. Louise E. Blenman, Justice of Appeal**

Appearances:

Appellant:

Mr. Kezron Walters

Respondents:

**Ms. Mandella Campbell for the 1st and 2nd
respondents
Mr. Duane Daniel with Ms. Jenell Gibson for the 3rd
respondent**

Issues:

**Civil appeal – Negligence – Wrongful death –
Vicarious liability – Whether the learned judge erred
in finding that the Crown was vicariously liable –
Contributory negligence – Whether the learned judge
erred in finding contributory negligence –
Apportionment of liability on the basis of contributory
negligence**

**Type of Oral
Result / Order
Delivered:**

N/A

Result / Order:

**[Oral delivery]
Decision reserved.**

Case Name: **Browne's Construction Limited**
v
First Caribbean International Bank Limited
[SVGHCVPAP2015/0008]

Date: **Wednesday, 18th July 2018**

Coram: **The Hon. Dame Janice Pereira, DBE, Chief Justice**
The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]

Appearances:

Appellant: **Mr. Stanley John, QC with Ms. Keisal Peters**
instructed by Mr. Richard Williams

Respondent: **Mr. Roger C. Forde, QC with Mr. Jadric Cummings**

Issues: **High Court civil appeal – Quantum of damages for**
breach of contract – Whether learned judge erred in
assessment

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

Result / Order: **[Oral delivery]**
Oral decision to be delivered on Friday, 20th July
2018.

Case Name: **Elvis Daniel**
Addison Thomas
Kenroy Johnson
Oswald Robinson
v
Public Service Commission
Attorney General

[SVGHCVAP2016/0007]

Date: Wednesday, 18th July 2018

Coram: The Hon. Dame Janice Pereira, DBE, Chief Justice
The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal

Appearances:

Appellants: Mr. Ruggles Fergusson with Ms. Shirlan Barnwell for the 1st, 2nd & 3rd appellants

Respondent: Mr. Richard Williams with Ms. Dannielle France

Issues: High Court civil appeal – Section 26(1)(d) of Constitution of St. Vincent and the Grenadines – Collective Agreement between Government of St. Vincent and St. Vincent and the Grenadines Union of Teachers – Whether article 16 of the Collective Agreement offends section 26(1)(d) of the Constitution – Whether article 16 gave rise to a legitimate expectation on the part of the appellants – Whether the respondents acted in bad faith – Whether the continued refusal of the first respondent to restore the appellants to their teaching posts or to posts of equivalent status within the public service amounted to a deprivation of the appellants fundamental right not to be deprived of property as guaranteed by section 6 of the Constitution – Whether appellants entitled to damages

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

Result / Order: [Oral delivery]
Decision is reserved.

Case Name: Kymron Thomas
v

The Commissioner of Police

[SVGMCRAP2017/0067]

Date: Wednesday, 18th July 2018

Coram: The Hon. Dame Janice Pereira, DBE, Chief Justice
The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal

Appearances:

Appellant: In person

Respondent: Ms. Sejilla McDowall, Director of Public Prosecutions
[Ag.]

Issues: Magisterial criminal appeal against sentence –
Possession of unlicensed firearm and ammunition –
Whether sentence excessive

**Type of Oral
Result / Order
Delivered:** Oral Judgment or Decision

Result / Order: [Oral delivery]
1. The appeal is allowed.
2. The sentence of a term of imprisonment of 5 years
is varied to a term of imprisonment of 3 ½ years.

Reason: This was an appeal against sentence.

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

- Possession of six (6) rounds of 9mm ammunition
without a licence – 2 years’ imprisonment
- Possession of one (1) 9mm Luzar Semi-automatic
Pistol without a licence – 5 years’ imprisonment

Sentences to run concurrently.

The appellant submitted that the sentence was harsh;
that this was his first offence and that he pleaded
guilty at the first opportunity.

The Court noted that the maximum sentence is a term of imprisonment of 7 years and that in all the circumstances of the case the appellant was entitled to a 1/3 discount.

The Court determined that the sentence should be varied on the basis that the learned magistrate did not take all the relevant factors into account. The appellant had previous convictions, but these convictions were spent.

The Court noted that while persons must be dissuaded from committing such offences, the well-established sentencing principles must be followed.

Case Name:

**Ricardo McFee
v
The Commissioner of Police
[SVGMCRAP2017/0068]**

Date:

Wednesday, 18th July 2018

Coram:

**The Hon. Dame Janice Pereira, DBE, Chief Justice
The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal**

Appearances:

Appellant:

In person

Respondent:

**Ms. Sejilla McDowall, Director of Public Prosecutions
[Ag.]**

Issues:

**Magisterial criminal appeal against sentence –
Possession of unlicensed ammunition**

**Type of Oral
Result / Order
Delivered:**

Oral Judgment or Decision

Result / Order: [Oral delivery]
The appeal is dismissed.

Reason: The appellant has served his full sentence.

Case Name: Akeem Ferdinand
v
The Commissioner of Police
[SVGMCRAP2017/0059]

Date: Wednesday, 18th July 2018

Coram: The Hon. Dame Janice Pereira, DBE, Chief Justice
The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal

Appearances:
Appellant: In person
Respondent: Ms. Sejilla McDowall, Director of Public Prosecutions
[Ag.] with Mr. Karim Nelson, Crown Counsel

Issues: Magisterial criminal appeal against sentence –
Possession of unlicensed ammunition and a
prohibited weapon – Whether sentence excessive

**Type of Oral
Result / Order
Delivered:** Oral Judgment or Decision

Result / Order: [Oral delivery]
1. The appeal is allowed.
2. The sentence is reduced from a term of
imprisonment of 6 years to a term of imprisonment
of 5 years.

Reason: This was an appeal against sentence.

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

- Possession of a prohibited weapon to wit “one (1) 9mm UZI – 6 years imprisonment
- Possession of 12 rounds of .9mm ammunition without a licence – 2 years imprisonment.

Sentences to run currently.

The appellant appealed against his sentence on the ground that the sentence was excessive. The Court observed that the appellant was found in possession of a very serious firearm, which was in the category of a prohibited weapon.

The Court took into account, the sheer danger to the society and the community that such weapons pose. However, the Court accepted that the appellant had no previous convictions and was entitled to a discount. The Court was therefore reduced the appellant’s sentence.

Case Name:

**Alban Williams
v
The Commissioner of Police
[SVGMCRAP2017/0064]**

Date:

Wednesday, 18th July 2018

Coram:

**The Hon. Dame Janice Pereira, DBE, Chief Justice
The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal**

Appearances:

Appellant:

In person

Respondent:

**Ms. Sejilla McDowall, Director of Public Prosecutions
[Ag.] with Mr. Carl Williams, Crown Counsel**

Issues: Magisterial criminal appeal against sentence – Assault – Whether sentence excessive in the circumstances

Type of Oral Result / Order Delivered: Oral Judgment or Decision

Result / Order: [Oral delivery]
The sentence is varied to a fine of \$750.00, payable by 18th October 2018, in default; the appellant is sentenced to a term of imprisonment for 2 months.

Reason: This was an appeal against sentence. The appellant was found guilty of assault and was sentenced to 12 months' imprisonment.

The appellant indicated to the Court that it was the first time that he got into any sort of trouble, but the Court observed that the appellant had a previous conviction. The Court considered the age of the appellant (44 years old), the sentencing principles and the fact that the appellant was not entitled to a guilty plea discount as there was a full trial of the matter.

The appellant asked that a fine be imposed instead of a custodial sentence. He stated that he has one child who is now 10 years old. The appellant at this stage had spent 4 months in prison.

Case Name: Cecelia Richards
v
The Commissioner of Police
[SVGMCRAP2017/0062]

Date: Wednesday, 18th July 2018

Coram: The Hon. Dame Janice Pereira, DBE, Chief Justice

**The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal**

Appearances:

Appellant: Mr. Roderick Jones

Respondent: Ms. Sejilla McDowall, Director of Public Prosecutions
[Ag.]

Issues:

**Magisterial criminal appeal against sentence –
Unlawful and malicious wounding – Oral application
for an adjournment and to add additional grounds of
appeal**

**Type of Oral
Result / Order
Delivered:**

Directions

Result / Order:

[Oral delivery]

- 1. At the request of the appellant the hearing of the appeal is adjourned to allow time for counsel to file arguments in support of the appeal and for amending the grounds of appeal.**
- 2. The appellant is granted leave to file and serve amended grounds of appeal on or before 15th August 2018 and to file and serve written submissions on or before 20th September 2018.**
- 3. The respondent shall be at liberty to file written submissions in reply by 19th October 2018.**
- 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 which commences 10th December 2018.**

Reason:

Counsel for the appellant made an oral application for an adjournment. Counsel for the respondent had no objection to the application although she indicated that she was ready to proceed.

Counsel for the appellant also made an oral application to add additional grounds of appeal. There was also no objection by the respondent.

Case Name:	Devorn Baptiste v The Commissioner of Police [SVGMCRAP2017/0065]
Date:	Wednesday, 18th July 2018
Coram:	The Hon. Dame Janice Pereira, DBE, Chief Justice The Hon. Mr. Davidson K. Baptiste, Justice of Appeal The Hon. Mde. Gertel Thom, Justice of Appeal
Appearances:	
Appellant:	In person
Respondent:	Ms. Sejilla McDowall, Director of Public Prosecutions [Ag.] with Ms. Jimesha Prince, Crown Counsel
Issues:	Magisterial criminal appeal against sentence – Trespass – Theft – Whether sentence excessive in the circumstances
Type of Oral Result / Order Delivered:	Oral Judgment or Decision
Result / Order:	[Oral delivery] 1. The appeal against sentence is dismissed. 2. The sentence imposed by the learned magistrate of a term of imprisonment for 5 years is affirmed.
Reason:	This was an appeal against sentence. The appellant pleaded guilty to burglary and was sentenced to a term of imprisonment of 5 years. The Court noted the appellant's guilty plea but also noted his previous convictions for similar offences and which were quite recent. The Court having

balanced the mitigating and aggravating factors found no reason to disturb the sentence of the learned magistrate.

Case Name:

**Elvette Maloney
V
The Commissioner of Police
[SVGMCRAP2017/0058]**

Date:

Wednesday, 18th July 2018

Coram:

**The Hon. Dame Janice Pereira, DBE, Chief Justice
The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal**

Appearances:

Appellant:

Mr. Elvette Maloney

Respondent:

**Ms. Sejilla McDowall, Director of Public Prosecutions
[Ag.] with Ms. Jimesha Prince, Crown Counsel**

Issues:

**Magisterial criminal appeal against sentence –
Trespass – Theft**

**Type of Oral
Result / Order
Delivered:**

Oral Judgment or Decision

Result / Order:

**[Oral delivery]
The appeal is dismissed, the sentence having been
served and the appellant discharged.**

Reason:

**The appellant was discharged on 16th March 2018,
having served his sentence.**

Case Name: Aurendo Dasent by his mother and next friend
Erica Dasent
v
Ike Williams

[SVGMCVAP2017/0007]

Date: Wednesday, 18th July 2018

Coram: The Hon. Dame Janice Pereira, DBE, Chief Justice
The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal

Appearances:
Appellant: No appearance
Respondent: In person

Issues: Magisterial civil appeal – notice of discontinuance
filed

**Type of Oral
Result / Order
Delivered:** Oral Judgment or Decision

Result / Order: [Oral delivery]
The appeal is dismissed.

Reason: The Court noted that a notice of discontinuance was
filed on 13th July 2018.

Case Name: Masheiar Charles
v
Elizabeth Loebman

[SVGMCVAP2017/0008]

Date: Wednesday, 18th July 2018

Coram: The Hon. Dame Janice Pereira, DBE, Chief Justice
The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal

Appearances:

Appellant: Mr. Israel Bruce

Respondent: No appearance

Issues: Magisterial civil appeal

Type of Oral Result / Order Delivered: Oral Judgment or Decision

Result / Order: [Oral delivery]
The appeal is withdrawn with the leave of the Court.

Reason: The Court noted that a notice of withdrawal dated 16th July 2018 was filed on 18th July 2018.

Case Name: David Dennie
v
Lloyd Dennie

[SVGMCVAP2017/0004]

Date: Wednesday, 18th July 2018

Coram: The Hon. Dame Janice Pereira, DBE, Chief Justice
The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal

Appearances:

Appellant: In person

Respondent: Mr. Roderick Jones

Issues:	Magisterial civil appeal – Land dispute
Type of Oral Result / Order Delivered:	Adjournment
Result / Order:	[Oral delivery] 1. The parties are required to attend a mediation session with Mrs. Euchrista St. Hilaire Bruce-Lyle, the agreed Mediator, and to report to this Court at the next sitting which commences 10th December 2018. 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 which commences 10th December 2018.
Reason:	The Court noted that this matter was essentially a family dispute. The parties were cousins and the Court urged the parties to consider whether the matter could be settled in a non-litigious manner. The Court was of the view that this was a matter which was ripe for mediation and that all efforts should be made to restore family relations.
Case Name:	The Commissioner of Police v Akeem Yearwood [SVGMCRAP2017/0022]
Date:	Thursday, 19th July 2018
Coram:	The Hon. Mde. Louise E. Blenman, Justice of Appeal The Hon. Mde. Gertel Thom, Justice of Appeal The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]
Appearances:	
Appellant:	Ms. Sejilla McDowall, Director of Public Prosecutions

[Ag.]

Respondent: No appearance

Issues: Magisterial criminal appeal against sentence – Possession of a controlled drug

Type of Oral Result / Order Delivered: Adjournment

Result / Order & Reason: [Oral delivery]
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 which commences 10th December 2018 in order for the respondent to be served.

Note: The matter was called again after this order was given. See page 62.

Case Name: The Commissioner of Police
v
Michelle Davis
[SVGMCRAP2017/0025]

Date: Thursday, 19th July 2018

Coram: The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]

Appearances:
Appellant: Ms. Sejilla McDowall, Director of Public Prosecutions
[Ag.] with Mr. Karim Nelson, Crown Counsel
Respondent: Mr. Ronald Marks

Issues: **Magisterial Criminal Appeal against conviction and sentence– Possession of a controlled drug**

**Type of Oral
Result / Order
Delivered:** **Directions**

Result / Order: **[Oral delivery]**
1. The appellant shall file and serve further written submissions on or before 15th September 2018.
2. The respondent shall file and serve written submissions on or before 15th October 2018.
3. 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 which commences 10th December 2018.

Reason: **This appeal concerns the issue of whether the appellant was in “possession” of a controlled drug given the facts of the case. The Court requested counsel on both sides to file further submissions on the issue.**

Case Name: **Kelson Archibald
v
The Commissioner of Police
[SVGMCRAP2017/0008]**

Date: **Thursday, 19th July 2018**

Coram: **The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]**

Appearances:
Appellant: **No appearance**
Respondent: **Ms. Sejilla McDowall, Director of Public Prosecutions [Ag.] with Ms. Jimesha Prince, Crown Counsel**

Issues: Magisterial criminal appeal against sentence – Trespass – Theft

Type of Oral Result / Order Delivered: Adjournment

Result / Order: [Oral delivery]
1. The Court being satisfied that the appellant was served by Bailiff Mulcaire on 19 June 2018 at 6:25 pm, in view of his absence, his bail is revoked.
2. The hearing of the appeal is adjourned and traversed to the next sitting of the Court of Appeal in the State of St. Vincent and the Grenadines during the week which commences 10th December 2018.
3. This is the final adjournment.

Reason: The appellant was served but failed to appear before the Court.

Note: The matter was called again after this order was given. See page 63.

Case Name: Kenneth Davis
v
The Commissioner of Police

[SVGMCRAP2018/0015]

Date: Thursday, 19th July 2018

Coram: The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]

Appearances:
Appellant: In person

Respondent: Ms. Sejilla McDowall, Director of Public Prosecutions
[Ag.] with Ms. Jimesha Prince, Crown Counsel

Issues: Magisterial criminal appeal against sentence –
Unlawful and malicious wounding – Oral application
for an adjournment to retain counsel

**Type of Oral
Result / Order
Delivered:** Adjournment

**Result / Order
& Reason:** [Oral delivery]
Based on the application of the appellant for an
adjournment in order to be able to retain the services
of a lawyer and the Court noting that there is no
objection by the Crown, and that this is the first
hearing of the appeal, it is hereby ordered as follows:

1. The adjournment of the matter is granted in order
to enable the appellant to retain the services of a
lawyer.
2. The hearing of the appeal is adjourned and
traversed to the next sitting of the Court of Appeal
in the State of St. Vincent and the Grenadines
during the week which commences 10th December
2018.

Case Name: **Kavin Edwards**
v
The Commissioner of Police
[SVGMCRAP2018/0017]

Date: Thursday, 19th July 2018

Coram: The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]

Appearances:	Appellant: No appearance Respondent: Ms. Sejilla McDowall, Director of Public Prosecutions [Ag.] with Mr. Carl Williams, Crown Counsel
Issues:	Magisterial criminal appeal against sentence – Assault
Type of Oral Result / Order Delivered:	Directions
Result / Order & Reason:	[Oral delivery] The appellant not having been served with notice of hearing, it is hereby directed as follows: 1. The Registrar of the High Court shall cause the notice of hearing to be served on the appellant and to provide proof of service. 2. The hearing of the appeal is adjourned and traversed to the next sitting of the Court of Appeal in the State of St. Vincent and the Grenadines during the week which commences 10 th December 2018.
Case Name:	McArthur Leach v The Commissioner of Police [SVGMCRAP2018/0018]
Date:	Thursday, 19 th July 2018
Coram:	The Hon. Mde. Louise E. Blenman, Justice of Appeal The Hon. Mde. Gertel Thom, Justice of Appeal The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]
Appearances:	Appellant: In person

Respondent:	Ms. Sejilla McDowall, Director of Public Prosecutions [Ag.] with Ms. Jimesha Prince, Crown Counsel
Issues:	Magisterial criminal appeal against sentence – Possession of a controlled drug with intent to supply Oral application to withdraw appeal
Type of Oral Result / Order Delivered:	Oral Judgment or Decision
Result / Order:	[Oral delivery] Leave to withdraw the appeal is granted, there being no objection by the Crown.
Reason:	The appellant has served his sentence and made an oral application to withdraw his appeal. There was no objection by the Crown.
Case Name:	Michael Wilson v The Commissioner of Police [SVGMCRAP2018/0010]
Date:	Thursday, 19th July 2018
Coram:	The Hon. Mde. Louise E. Blenman, Justice of Appeal The Hon. Mde. Gertel Thom, Justice of Appeal The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]
Appearances:	
Appellant:	In person
Respondent:	Ms. Sejilla McDowall, Director of Public Prosecutions [Ag.] with Ms. Jimesha Prince, Crown Counsel

Issues: Magisterial criminal appeal against sentence – Theft – Application for reduction in sentence

Type of Oral Result / Order Delivered: Oral Judgment or Decision

Result / Order: [Oral delivery]
The appeal is allowed. The sentence is varied to time served.

Reason: This appeal was heard on 19th July 2018. The appellant indicated that he was scheduled to be released from prison the next day, i.e 20th July 2018. The appellant made an application for his sentence to be reduced to time served.

In the circumstances, the Court allowed the appeal and varied the sentence to time served.

Case Name: Ulric Hanson
Grenville Harry
v
The Commissioner of Police
[SVGMCRAP2018/0022]

Date: Thursday, 19th July 2018

Coram: The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]

Appearances:
Appellants: No appearance
Respondent: Ms. Sejilla McDowall, Director of Public Prosecutions [Ag.] with Mrs. Tamika DaSilva McKenzie, Crown Counsel

Issues: Magisterial criminal appeal against sentence – Possession of articles to commit theft

Type of Oral Result / Order Delivered: Oral Judgment or Decision

Result / Order: [Oral delivery]
The appeals against sentence are dismissed.

Reason: The appellants have served their sentences.

Case Name: Brian Samuel
v
The Commissioner of Police
[SVGMCRAP2018/0003]

Date: Thursday, 19th July 2018

Coram: The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]

Appearances:
Appellant: No appearance
Respondent: Ms. Sejilla McDowall, Director of Public Prosecutions [Ag.] with Mr. Karim Nelson, Crown Counsel

Issues: Magisterial criminal appeal against sentence – Possession of unlicensed firearm

Type of Oral Result / Order Delivered: Directions

**Result / Order
& Reason:**

[Oral delivery]

- 1. The Registrar of the High Court shall cause a notice of hearing to be served on the appellant by 30th October 2018 and shall provide proof of service.**
- 2. The hearing of the appeal is adjourned and traversed to the next sitting of the Court of Appeal in St. Vincent and the Grenadines during the week which commences 10th December 2018, the Court having noted that this is the first hearing of the appeal.**

Note:

The matter was called again after this order was given. See page 64.

Case Name:

**Jaleel Smith
v
The Commissioner of Police
[SVGMCRAP2017/0041]**

Date:

Thursday, 19th July 2018

Coram:

**The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]**

Appearances:

Appellant:

In person

Respondent:

**Ms. Sejilla McDowall, Director of Public Prosecutions
[Ag.] with Mr. Carl Williams, Crown Counsel**

Issues:

Magisterial criminal appeal against conviction and sentence – Possession of firearm without licence

**Type of Oral
Result / Order
Delivered:**

Oral Judgment or Decision

Result / Order:

[Oral delivery]

- 1. The appeal against conviction is dismissed.**
- 2. The appeal against sentence is dismissed.**
- 3. The conviction and sentence are affirmed.**

Reason:

This was an appeal against conviction and sentence.

The appellant pleaded guilty to possession of one (1) homemade firearm, make and serial number unknown, without a licence and was sentenced to 3 years' imprisonment.

The appellant challenged his conviction on the basis that he was forced to plead guilty. He said a Police Officer told him to plead guilty and he was frightened. The appellant stated that he did not raise this issue at the Magistrate's Court. The Court noted that the appellant raised this issue too late.

Concerning the appeal against Sentence, the Court noted that gun crimes are too prevalent in St. Vincent and the Grenadines and that the learned magistrate did not err in sentencing the appellant.

Case Name:

**Lenron George
v
The Commissioner of Police**

[SVGMCRAP2017/0063]

Date:

Thursday, 19th July 2018

Coram:

**The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]**

Appearances:

Appellant:

In person

Respondent: Ms. Sejilla McDowall, Director of Public Prosecutions
[Ag.]

Issues: Magisterial criminal appeal against conviction –
Damage to property – Theft

**Type of Oral
Result / Order
Delivered:** Oral Judgment or Decision

Result / Order: [Oral delivery]
1. The appeal against conviction is dismissed.
2. The appeal against sentence is dismissed.
3. The conviction and sentence are affirmed.

Reason: This was an appeal against conviction and sentence.

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

- Burglary – 4 years’ imprisonment
 - Damage to Property – 6 months’ imprisonment.
- Sentences to run concurrently.

In relation to the appeal against conviction, the Court indicated that it considered the evidence that was before the learned magistrate and saw no basis to conclude that the learned magistrate came to the wrong conclusion.

In relation to the appeal against sentence the appellant submitted that the sentence was too harsh.

The Court took cognisance of the appellant’s previous convictions, one of which was for rape and the aggravating and mitigating factors of the case and found that there was no reason to disturb the sentence.

Case Name: Delano McDonald

V
The Commissioner of Police
[SVGMCRAP2017/0060]

Date: Thursday, 19th July 2018

Coram: The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]

Appearances:

Appellant: In person

Respondent: Ms. Sejilla McDowall, Director of Public Prosecutions
[Ag.] with Ms. Jimesha Prince, Crown Counsel

Issues: Magisterial criminal appeal against conviction –
Possession of unlicensed firearm – Whether
conviction unsafe and cannot be supported by
evidence

**Type of Oral
Result / Order
Delivered:** Oral Judgment or Decision

Result / Order: [Oral delivery]
1. The appeal against conviction is dismissed.
2. The appeal against sentence is dismissed.
3. The conviction and sentence are affirmed.

Reason: This was an appeal against conviction.

The appellant pleaded guilty to possession of a
firearm without a licence and was sentenced to 4
years' imprisonment.

The appellant submitted that the conviction was
unsafe and cannot be supported by the evidence.
The appellant stated that the police statements were
false.

The Court found that the learned magistrate heard the

evidence and came to the conclusion that the appellant was in possession of the gun. The learned magistrate was entitled to come to that conclusion on the evidence. The Court noted that the police officers gave consistent evidence which the learned magistrate believed. There was no reason to disturb the findings of the learned magistrate.

Case Name: Cleferin Wyllie
v
The Commissioner of Police
[SVGMCRAP2017/0069]

Date: Thursday, 19th July 2018

Coram: The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]

Appearances:

Appellant:	In person
Respondent:	Ms. Sejilla McDowall, Director of Public Prosecutions [Ag.]

Issues: Magisterial criminal appeal against conviction – Unlawful and malicious wounding

Type of Oral Result / Order Delivered: Oral Judgment or Decision

Result / Order: [Oral delivery]
The appeal against conviction is dismissed.

Reason: This was an appeal against conviction.
The appellant was found guilty of the following

offences and was sentenced as follows:

- Wounding – reprimanded and discharged
- Assault occasioning actual bodily harm – reprimanded and discharged

The appellant challenged his conviction saying that this was a false case and that the virtual complainant was not honest with the court. The Court found that the learned magistrate heard and believed the Prosecution witnesses. The Court saw nothing on the record that suggested that the learned magistrate was not entitled to come to the conclusion to which she arrived. The Court noted that the prosecution's case was strong and there was no reason to disturb the findings of the learned magistrate.

Case Name:

The Commissioner of Police

v

Luzette King

[SVGMCRAP2017/0026]

Date:

Thursday, 19th July 2018

Coram:

**The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]**

Appearances:

Appellant:

**Ms. Sejilla McDowall, Director of Public Prosecutions
[Ag.]**

Respondent:

In person

Issues:

**Magisterial criminal appeal against conviction –
Common nuisance**

**Type of Oral
Result / Order**

Oral Judgment or Decision

Delivered:

Result / Order:

[Oral delivery]

Leave to discontinue the appeal against an order for disclosure made by the learned magistrate, is granted, based on the application of the Crown.

Reason:

A notice of discontinuance was filed by the Crown on 12th July 2018.

Case Name:

**Everist Bynoe
v
The Commissioner of Police
[SVGMCRAP2017/0042]**

Date:

Thursday, 19th July 2018

Coram:

**The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]**

Appearances:

Appellant:

In person

Respondent:

**Ms. Sejilla McDowall, Director of Public Prosecutions
[Ag.] with Mr. Carl Williams, Crown Counsel**

Issues:

**Magisterial criminal appeal against conviction –
Possession of unlicensed firearm and ammunition –
Application to withdraw appeal against conviction –
Magisterial criminal appeal against sentence –
Whether sentence harsh and excessive**

**Type of Oral
Result / Order
Delivered:**

Oral Judgment or Decision

Result / Order:

[Oral delivery]

- 1. The appeal against conviction is dismissed.**
- 2. The appeal against sentence is allowed and the sentence of a term of imprisonment of 5 years is varied to a term of imprisonment of 4 years.**
- 3. This sentence to run concurrently with the sentence of 18 months imprisonment for the possession of 5 rounds of .38 special revolver ammunition without a licence.**

Reason:

This was an appeal against conviction and sentence.

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

- Possession of 1 Transcomban .38 special revolver without a licence – 5 years' imprisonment**
- Possession of 5 rounds of .38 special revolver ammunition without a licence – 1 ½ years' imprisonment.**

Sentences to run concurrently.

In relation to the appeal against conviction, the appellant made an oral application to withdraw the appeal against conviction.

In relation to the appeal against sentence, the appellant stated that the sentence was excessive and harsh. The appellant further stated that he was a prosecution witness in a murder case and ought to be given credit. He said that he had changed his life since being imprisoned.

Counsel for the respondent stated that the only mitigating factor was that the gun was not found in a public place. However, the serious nature of the offence was an aggravating factor.

The Court noted that the appellant had previous convictions, but they were spent and the appellant was to be treated as one with no previous convictions.

The Crown conceded that there were sentences less than 5 years in cases where there was a full trial e.g. *Delano McDonald v the Commissioner of Police [SVGMCRAP2017/0060]*. The Court considered the

case of *Delano McDonald*, where there was a full trial and the appellant was sentenced to a term of imprisonment for 4 years for a similar offence and accordingly varied the sentence from a term of imprisonment for 5 years to a term of imprisonment for 4 years.

Case Name:

**Ari Shaw
v
The Commissioner of Police
[SVGMCRAP2017/0012]**

Date:

Thursday, 19th July 2018

Coram:

**The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]**

Appearances:

Appellant:

Mr. Grant Connell

Respondent:

**Ms. Sejilla McDowall, Director of Public Prosecutions
[Ag.] with Mr. Karim Nelson, Crown Counsel**

Issues:

**Magisterial criminal appeal against conviction –
Violence in public – Oral application to withdraw
appeal**

**Type of Oral
Result / Order
Delivered:**

Oral Judgment or Decision

**Result / Order
& Reason:**

**[Oral delivery]
There being an oral application by learned counsel
Mr. Grant Connell, appearing on behalf of the
appellant, Mr. Ari Shaw, to withdraw the appeal, leave
to withdraw the appeal is granted and accordingly the
appeal stands dismissed.**

Case Name:

Elron Lewis
V
The Commissioner of Police
[SVGMCRAP2017/0037]

Date:

Thursday, 19th July 2018

Coram:

The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]

Appearances:

Appellant:

In person

Respondent:

Ms. Sejilla McDowall, Director of Public Prosecutions
[Ag.] with Ms. Jimesha Prince, Crown Counsel

Issues:

Magisterial criminal appeal against conviction –
Stealing

Type of Oral
Result / Order
Delivered:

Directions

Result / Order:

[Oral delivery]
1. The appellant is granted leave to file and serve
written submissions on or before 30th September
2018.
2. The respondent shall file and serve written
submissions in response, if necessary, on or
before 30th October 2018.
3. The hearing of the appeal is adjourned to the next
sitting of Court of Appeal in the State of St.
Vincent and the Grenadines during the week
commencing 10th December 2018.

Reason:

The appellant stated that he has a lawyer but his
lawyer, Mr. Andreas Coombs was overseas. The

appellant stated that he wished to proceed with the appeal.

The Court noted that the appellant did not file any written submissions and indicated that written submissions are required to be filed so that both the Court and the counsel for the respondent are aware of the appellant's case. The Court directed accordingly.

Case Name:

**Deno Walker
v
The Commissioner of Police
[SVGMCRAP2017/0057]**

Date:

Thursday, 19th July 2018

Coram:

**The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]**

Appearances:

Appellant:

Ms. Vynnette Frederick

Respondent:

**Ms. Sejilla McDowall, Director of Public Prosecutions
[Ag.] with Ms. Jamesha Prince, Crown Counsel**

Issues:

**Magisterial criminal appeal against conviction –
Possession of offensive weapon – Application for
adjournment**

**Type of Oral
Result / Order
Delivered:**

Directions

**Result / Order
& Reason:**

[Oral delivery]

**1. The appellant is granted leave to file and serve
written submissions with authorities on or before
30th September 2018.**

2. The respondent is granted leave to file and serve written submissions in response with authorities, if necessary on or before 30th October 2018.
3. Based on the application for an adjournment by counsel for the appellant who indicated to the Court that she has been recently retained by the appellant and there being no objection by the Crown, 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 which commences 10th December 2018.

Case Name:

**Kyle Thomas
v
The Commissioner of Police
[SVGMCRAP2017/0049]**

Date:

Thursday, 19th July 2018

Coram:

**The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal[Ag.]**

Appearances:

Appellant:

Ms. Samantha Robertson

Respondent:

**Ms. Sejilla McDowall, Director of Public Prosecutions
[Ag.] with Mr. Carl Williams, Crown Counsel**

Issues:

Magisterial criminal appeal against conviction and sentence – Wounding – Jurisdiction of magistrate

**Type of Oral
Result / Order
Delivered:**

Oral Judgment or Decision

Result / Order:

- [Oral delivery]**
1. The appeal against conviction is dismissed.
 2. The appeal against sentence is allowed.

3. The appellant is ordered to pay compensation of \$750.00 within 4 months from today's date, in default, 4 months' imprisonment.

Reason:

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

- Unlawful Wounding – Bonded for 1 year in the sum of \$750.00 in default six (6) months' imprisonment.
- Damage to Property – Compensation of \$750.00 to be paid in three (3) months in default four (4) months' imprisonment.

Counsel for the appellant stated that she was challenging the jurisdiction of the learned magistrate to hear the matter. The Court indicated that magistrate had jurisdiction to hear the matter.

In relation to the appeal against sentence, counsel for the appellant argued that the learned magistrate failed to take into account the means of the appellant to pay a fine. Counsel for the appellant requested six (6) months for the appellant to pay the fine.

Case Name:

**The Commissioner of Police
v
Jahvorn John**

[SVGMCRAP2017/0052]

Date:

Thursday, 19th July 2018

Coram:

**The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]**

Appearances:

Appellant:

**Ms. Sejilla McDowall, Director of Public Prosecutions
[Ag.]**

Respondent:

Ms. Ashelle Morgan

Issues: Magisterial criminal appeal against conviction – Assault causing actual bodily harm – Oral application for an adjournment

Type of Oral Result / Order Delivered: Directions

Result / Order: [Oral delivery]
Upon noting that the respondent has raised a preliminary issue and filed written submissions and noting further that the appellant has not filed written submissions in response, it is hereby ordered as follows:

1. The appellant is directed to file and serve written submissions with authorities on or before 30th September 2018.
2. The respondent, if necessary, shall file and serve written submissions with authorities in response on or before 30th October 2018.
3. 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 which commences 10th December 2018.

Reason: Counsel for the appellant made an oral application for an adjournment to respond to the written submissions filed by the respondent.

Case Name: Duran Gerald
v
The Commissioner of Police
[SVGMCRAP2016/0066]

Date: Thursday, 19th July 2018

Coram: The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal

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

Appearances:

Appellant: In person

Respondent: Ms. Sejilla McDowall, Director of Public Prosecutions [Ag.] with Mr. Carl Williams, Crown Counsel

Issues: Magisterial criminal appeal against conviction and sentence – Possession of unlicensed firearm and ammunition – Application to withdraw appeal against conviction

Type of Oral Result / Order Delivered: Oral Judgment or Decision

Result / Order: [Oral delivery]
1. The appeal against conviction is dismissed.
2. The appeal against sentence is dismissed.
3. The conviction and sentence are affirmed.

Reason: The appellant indicated to the Court that he wished to appeal against sentence in addition to his appeal against conviction.

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

- Possession of firearm without a licence – five (5) years' imprisonment
- Possession of ammunition without a licence – eight (8) months' imprisonment.

In relation to the appeal against conviction, the appellant indicated that he wished to withdraw his appeal against conviction.

In relation to the appeal against sentence, the Court took note of the numerous gun related offences in St. Vincent and the Grenadines, the serious nature of these offences and the previous convictions of the appellant which included a conviction for assault, which is a crime of violence.

The Court considered the maximum sentence for possession of a firearm and the aggravating factors of this case and concluded that the learned magistrate did not err.

It should be noted that the Court distinguished the case of *Everist Bynoe v the Queen* [SVGMCRAP2017/0042] from the instant case as in that case, the previous convictions were spent.

Case Name:

**Glenroy Providence
v
The Commissioner of Police
[SVGMCRAP2018/0021]**

Date:

Thursday, 19th July 2018

Coram:

**The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]**

Appearances:

Appellant:

In person

Respondent:

**Ms. Sejilla McDowall, Director of Public Prosecutions
[Ag.] with Ms. Jimesha Prince, Crown Counsel**

Issues:

Magisterial criminal appeal against conviction and sentence – Possession of unlicensed firearm – Whether decision of magistrate supported by evidence – Whether sentence unduly harsh

**Type of Oral
Result / Order
Delivered:**

Oral Judgment or Decision

Result / Order:

**[Oral delivery]
1. The appeal against conviction is dismissed.**

2. The appeal against sentence is dismissed.
3. The conviction and sentence are affirmed.

Reason:

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

- Possession of firearm without a licence – five (5) years' imprisonment
- Possession of ammunition without a licence (1 round of 12 gauge ammunition) – three (3) months' imprisonment.
- Two (2) counts of Assault with intent to commit the offence of wounding – 6 months' imprisonment each on both counts.

In relation to the appeal against sentence, the appellant submitted that the sentence was too harsh and stated that he had previous convictions, but that they were not for similar offences.

The Court noted however that the appellant had a previous conviction for assault and that assault is to be considered an offence of a like kind. In addition, this conviction was quite recent.

The Court noted that it could only interfere with the magistrate's decision if on the evidence it appears to the Court that the learned magistrate could not have come to the particular conclusion based on the evidence. Considering the record, the evidence before the learned magistrate and the reasons for decision, the Court found no error on the part of the learned magistrate and no basis to interfere with the conviction and sentence.

Case Name:

Carlos Lewis
v
The Commissioner of Police
[SVGMCRAP2018/0019]

Date: Thursday, 19th July 2018

Coram: The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]

Appearances:

Appellant: Mr. Grant Connell

Respondent: Ms. Sejilla McDowall, Director of Public Prosecutions [Ag.] with Mrs. Tamika DaSilva McKenzie

Issues: Magisterial criminal appeal against conviction –
Possession of unlicensed firearm and ammunition –
Oral application to add additional grounds of appeal –
Oral application for adjournment

Type of Oral Result / Order Delivered: Directions

Result / Order: [Oral delivery]

1. On application of the appellant and there being no objection by the respondent, leave is granted to the appellant to file and serve additional grounds of appeal on or before 6th August 2018.
2. The appellant shall file and serve written submissions with authorities on or before 13th August 2018.
3. The respondent shall file and serve written submissions with authorities on or before 13th September 2018.
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 which commences 10th December 2018.

Reason: Counsel for the appellant made an oral application to add additional grounds of appeal. There was no objection by the Crown. Counsel for the appellant also made an oral application for an adjournment and there was no objection by the Crown.

Case Name:

**Barry Antoine
v
The Commissioner of Police
[SVGMCRAP2018/0020]**

Date:

Thursday, 19th July 2018

Coram:

**The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]**

Appearances:

Appellant:

Mr. Grant Connell

Respondent:

**Ms. Sejilla McDowall, Director of Public Prosecutions
[Ag.] with Mr. Karim Nelson, Crown Counsel**

Issues:

**Magisterial criminal appeal against conviction –
Possession of unlicensed firearm and ammunition –
Oral application for an adjournment**

**Type of Oral
Result / Order
Delivered:**

Directions

Result / Order:

[Oral delivery]

- 1. The Court noting that the written submissions for the appellant were filed and served today, 19th July 2018 and considering the application of the Crown for an adjournment to be given an opportunity to file written submissions in response, the application for an adjournment is granted.**
- 2. The respondent shall file and serve written submissions with authorities on or before 19th August 2018.**
- 3. 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 which commences 10th December 2018.**

Reason: Counsel for the respondent made an oral application for an adjournment on the ground that she was just served with the appellant's written submissions on the morning of the hearing.

Case Name: The Commissioner of Police
v
Akeem Yearwood
[SVGMCRAP2017/0022]

Date: Thursday, 19th July 2018

Coram: The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]

Appearances:
Appellant: Ms. Sejilla McDowall, Director of Public Prosecutions [Ag.]

Respondent: In person

Issues: Magisterial criminal appeal against sentence – Possession of a controlled drug

Type of Oral Result / Order Delivered: Directions

Result / Order: [Oral delivery]
1. The respondent is granted leave to file and serve written submissions on or before 30th September 2018.
2. The appellant is granted leave to file and serve written submissions on or before 30th October 2018.
3. 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 which commences 10th December 2018.

Reason:

When this matter was first heard, the appellant was absent. The Court called the matter again after the appellant arrived. The appellant indicated that he was late for Court because he had to take the ferry from Bequia.

The Court noted that submissions had not been filed by the parties and accordingly gave directions.

Case Name:

**Kelson Archibald
v
The Commissioner of Police
[SVGMCRAP2017/0008]**

Date:

Thursday, 19th July 2018

Coram:

**The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]**

Appearances:

Appellant:

In person

Respondent:

**Ms. Sejilla McDowall, Director of Public Prosecutions
[Ag.] with Ms. Jimesha Prince, Crown Counsel**

Issues:

**Magisterial criminal appeal against sentence –
Trespass/theft**

**Type of Oral
Result / Order
Delivered:**

Oral Judgment or Decision

Result / Order:

[Oral delivery]

1. The appellant is granted bail on the same terms and conditions which were fixed by the Court prior to bail being revoked by this Court.
2. The hearing of the appeal is adjourned and traversed to the next sitting of the Court of Appeal in the State of St. Vincent and the Grenadines during the week which commences 10 December 2018.
3. This is the final adjournment.

Reason:

When the matter first came on for hearing the appellant was absent and bail was revoked. He indicated to the Court that he was at Court but left to use the washroom. The appellant, having appeared, the Court granted bail.

Case Name:

**Brian Samuel
v
The Commissioner of Police
[SVGMCRAP2018/0003]**

Date:

Thursday, 19th July 2018

Coram:

The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]

Appearances:

Appellant:

In person

Respondent:

Ms. Sejilla McDowall, Director of Public Prosecutions [g.] with Mr. Karim Nelson, Crown Counsel for the Respondent

Issues:

Magisterial criminal appeal against sentence – Possession of unlicensed firearm

Type of Oral

Adjournment

**Result / Order
Delivered:**

Result / Order:

[Oral delivery]

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 which commences 10th December 2018.

Reason:

When the matter was first called up the appellant was absent. The appellant indicated that he was not brought to Court by the Prison Authorities, despite telling them that his appeal was set down for hearing.

Case Name:

**Sheldon Hooper
Shelton Hooper
Roland Hooper**

v

The Queen

[SVGHCRA2012/0030]

[SVGHCRA2012/0031]

[SVGHCRA2012/0032]

Date:

Friday, 20th July 2018

Coram:

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

The Hon. Mr. Mario Michel, Justice of Appeal

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

Appearances:

Appellants:

Ms. Patina Knights for the 1st and 2nd appellants

Mr. Ronald Marks for the 3rd appellant

Respondent:

**Ms. Sejilla McDowall, Director of Public Prosecutions
[Ag.] with Mrs. Tamika DaSilva McKenzie, Crown
Counsel**

Issue:

High Court criminal appeal against conviction and

sentence – Attempted Murder

**Type of Oral
Result / Order
Delivered:**

Oral Judgment or Decision

Result / Order:

[Oral delivery]

- 1. The appeal against conviction is allowed. The conviction is quashed and sentence is set aside.**
- 2. The appellants be retried at the next Assizes.**

Reason:

The appellants appealed against conviction and sentence. The respondents conceded that the conviction was unsafe.

The appeal having been conceded and allowed, the only live issue was whether the appellants should be retried.

Counsel for the Crown submitted that it was in the public interest that persons accused of serious crimes be tried. In this case, the Crown urged the Court to consider the serious nature of the offences and that the public interest required a retrial.

Counsel for the appellants opposed a retrial pointing to the time period which has elapsed since the crimes were committed (8 years) and the length of time the appellants were in prison. The Court noted the earliest and latest dates that the appellants could be released.

Counsel for the appellants submitted that the Crown conceded the appeal because the appellants did not get a fair trial and suggested that there may be difficulty in securing the witnesses for a retrial. The Court however noted that there was no evidence before the Court to suggest that it would be difficult to secure witnesses for a retrial.

The Court observed that the public interest is generally served by the prosecution of persons who have been charged with the commission of serious crimes, if the prosecution can be conducted without unfairness to the appellants. Further, the interest of

the appellants will often call for consideration of the time which has passed since the offence and any penalty the appellants would have served.

The Court noted that the issue of whether a retrial should be ordered is a balancing act taking into account the public interest and the interest of the appellants

The Court having considered the matter in the round and taking into account the time period served and the submissions by counsel for the appellants and the Crown, concluded that the public interest is better served by a retrial.

Case Name:

**Keston Mieres
David Sammy
Ronald Burnley
James Gordon
Adrian Clement
Nigel Octave
Mark Corbie
v
The Queen**

**[SVGHCRAP2013/0007]
[SVGHCRAP2013/0008]
[SVGHCRAP2013/0009]
[SVGHCRAP2013/0010]
[SVGHCRAP2013/0011]
[SVGHCRAP2013/0012]
[SVGHCRAP2013/0013]**

Date:

Friday, 20th July 2018

Coram:

**The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]**

Appearances:

Appellants: Mrs. Kay Bacchus Baptiste, Counsel for the Appellants

Respondent: Ms. Sejilla McDowall, Director of Public Prosecutions [Ag.]

Issues: High Court criminal appeal – Drug Trafficking – Oral application to withdraw appeal against conviction – Appeal against sentence

Type of Oral Result / Order Delivered: Oral Judgment or Decision

Result / Order: [Oral delivery]
1. The appeal against conviction having been withdrawn by the appellants, is accordingly dismissed.
2. The appeal against sentence is allowed to the extent that the appellants are sentenced to time served.

Reason: Counsel for the appellant made an oral application to withdraw the appeal against Conviction, citing the delay in the preparation of record of appeal.

In relation to the appeal against sentence, counsel requested the Court to grant time served. Counsel submitted that the appellants were incarcerated since 11th November 2010 and have substantially served a 12-year sentence. Counsel also submitted that the appellants did not have previous convictions.

As a result of the delay in preparing the record of appeal, the Court noted that the appeal turned on post-conviction matters and acceded to the appellants request that their sentence be varied to time served.

Case Name:

Maurice Francis

v

The Queen

[SVGHCRA2015/0016]

Date:

Friday, 20th July 2018

Coram:

**The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]**

Appearances:

Appellant:

In person

Respondent:

**Ms. Sejilla McDowall, Director of Public Prosecutions
[Ag.] with Mr. Karim Nelson, Crown Counsel**

Issues:

**High Court criminal appeal – Appeal against sentence
– Oral application for remand time to be considered**

**Type of Oral
Result / Order
Delivered:**

Oral Judgment or Decision

Result / Order:

[Oral delivery]

- 1. The appeal is allowed.**
- 2. The sentence imposed by the learned trial judge is varied to the extent that the appellant is credited with the five (5) months he served on remand.**
- 3. The appellant is discharged forthwith.**

Reason:

This was an appeal against sentence, the appellant was convicted on 12th February 2014 for the offence of wounding with intent and sentenced to 7 years' imprisonment. The appellant appealed on 25th February 2014 on four (4) grounds of appeal, the main grounds being that

- Time on remand to be considered (5 months)**

The appellant requested the Court to take into account his remand time. The Crown did not object and conceded on this issue.

In light of the indication by learned counsel that

crediting the appellant with the 5 months he served on remand will cause the sentence to be served in full, the Court allowed the appeal.

Case Name:

Austin McDowall

V

The Queen

[SVGHCRAP2014/0003]

Date:

Friday, 20th July 2018

Coram:

**The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]**

Appearances:

Appellant:

In person

Respondent:

**Ms. Sejilla McDowall, Director of Public Prosecutions
[Ag.] with Mr. Karim Nelson, Crown Counsel**

Issues:

**High Court criminal appeal – Aggravated Burglary,
Wounding with Intent, Possession of Firearm without
licence – Oral application for an adjournment to retain
counsel**

**Type of Oral
Result / Order
Delivered:**

Directions

Result / Order:

[Oral delivery]

- 1. The respondent is to file and serve written submissions with authorities on or before 31st October 2018.**
- 2. Leave is granted to the appellant to file and serve written submissions with authorities.**
- 3. 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**

which commences 10th December 2018.

Reason: The appellant made an oral application for an adjournment to retain a lawyer. There was no objection by counsel for the respondent.

Case Name: Carlos Penniston
v
The Queen

[SVGHCRAP2016/0016]

Date: Friday, 20th July 2018

Coram: The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]

Appearances:

Appellant: No appearance

Respondent: Ms. Sejilla McDowall, Director of Public Prosecutions
[Ag.] with Mr. Karim Nelson, Crown Counsel

Issues: High Court criminal appeal – Burglary and wounding with intent – Adjournment

Type of Oral Result / Order Delivered: Adjournment

Result / Order: [Oral delivery]
The hearing of the appeal is adjourned to the next status hearing of the Court of Appeal in the State of St. Vincent and the Grenadines during the week which commences 10th December 2018.

Reason: The Court received information that the appellant was hospitalized. The record of appeal was not yet ready.

Case Name: **Browne's Construction Limited**
V
First Caribbean International Bank Limited
[SVGHCVP2015/0008]

Date: Friday, 20th July 2018

Coram: The Hon. Dame Janice Pereira, DBE, Chief Justice
The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mr. Paul Webster, Justice of Appeal [Ag.]

Appearances:

Appellant:	Mr. Stanley John, QC with Ms. Keisal Peters instructed by Mr. Richard Williams
Respondent:	Mr. Roger C. Forde, QC with Mr. Jadric Cummings

Issues: High court civil appeal – Whether the learned trial Judge erred in her findings of facts in relation to the quantum of damages and accepting the evidence of one expert over the evidence of another expert.

Type of Oral Result / Order Delivered: Oral Judgment or Decision

Result / Order: [Oral delivery]
1. The appeal is dismissed.
2. The appellant shall bear the respondent's costs in this appeal, fixed at two thirds of the prescribed costs in the Court below in accordance with CPR 65.13.

Reason: This appeal arises from the decision of the trial judge in which she found the respondent, First Caribbean

International Bank Limited (“the Bank”), in breach of the terms of a Loan Agreement entered into between the appellant company, Browne’s Construction Limited (“Browne’s”), and the Bank in respect of a housing project being 2 undertaken by Browne’s. The breach was occasioned by the Bank, without notice, unilaterally accelerating the installment payments on the loan. In addition to the loan facility, an overdraft facility was also provided by the Bank initially at a limit of \$250,000.00 but which the learned trial judge found was later set at \$450,000.00. In addition to claiming damages for breach of the Loan Agreement, Browne’s sought damages for defamation in respect of cheques issued to various third parties which were returned by the Bank with the notation “refer to drawer”.

The trial judge, after conducting a full trial and seeing and hearing witnesses including expert witnesses called by each of the parties, assessed the total loss flowing from the breach of the Loan Agreement under the head “Construction Opportunity Cost” as \$239,649.00 treating the sum of \$14,097.00 as the net profit lost on each of 17 houses under the housing project.

In respect of the claim for defamation, she found that Browne’s had been defamed in respect of two cheques: one in the sum of \$12,417.59 and another in the sum of \$5,000.00. She awarded general damages in the sum of \$10,000.00 in respect of each cheque for a total of \$20,000.00.

Browne’s being dissatisfied with the quantum of the awards in respect of these sums appealed raising some 6 grounds or appeal. Grounds 1 and 2, which challenged the judge’s findings that notice could be given orally under the Loan Agreement and the limit of the overdraft facility respectively, were abandoned. Ground 5, which challenged the judge’s finding on the number of houses which were unable to be constructed as 17 rather than 21, was also abandoned. This left, in essence, three remaining grounds of appeal, namely: (a) whether the judge erred in accepting the evidence of Mr. Stanley Defreitas (“Mr. Defreitas”), the Bank’s expert, to the

effect that “there were 3 administrative expenses and overheads which had to be deducted in computing the net profit”; 1 (b) as a consequence of (a), the judge erred in making a further deduction for the same administrative expenses which on the evidence had already been paid; (c) the judge applied irrelevant considerations in assessing the damages for libel at \$10,000.00 per cheque.

The issues at (a) and (b) were sensibly argued and can conveniently be considered together. They concern the learned judge’s findings at paragraph 55 of her judgment in which she stated:

“I agree with the submissions of Mr. John, Q.C. that the only material difference between Mr. Davis and Mr. Defreitas on the issue of construction opportunity cost is that Mr. DeFreitas contends that Mr. Davis treated the \$55,000.00 average profit per house as net profit but he did not take into account the administrative expenses and overheads. I accept the evidence of Mr. Defreitas. He gave a very detailed analysis of the computation of the profit. He illustrated this using the documentary evidence adduced by Browne's construction. He explained that Mr. Davis confused contribution and net profit. The \$55,000.00 represents contribution and not net profit, there were administrative expenses and overheads which had to be deducted in computing the net profit. In view of the above, I will award damages on the sum of \$14,097.00 as stated by Mr. Defreitas. Also Mr. Defreitas did testify under cross-examination that he had no difficulty with the number of houses being seventeen (17). I therefore find the loss under this head to be \$239,649.00.”

Mr. John, QC on behalf of Browne’s, argues in essence that notwithstanding the learned judge’s agreement with the principles applicable to assessing damages for breach of contract in cases of this nature, she misapplied the principles as set out in *Chitty on Contracts* and such cases as *Barbados Mutual Life Assurance Society v Michael Pigott et al*

ANUHCVAP2004/0012 (delivered 27th June 2005, unreported). In Pigott, Barrow JA, after reviewing a number of authorities, succinctly stated the principle governing the measure of damages this way, “the normal measure of damages for breach of contract to lend money is the higher cost of borrowing from another lender but that there are exceptions to that measure where the lender had it in his contemplation that if he defaulted on his obligation certain losses would follow”. Furthermore, the learned judge referred to the modern statement of the rule as set out by Chitty on Contracts at paragraph 46 of her judgment.

The nub of Browne’s complaint is that, rather than accepting the figure of \$55,000.00 as put forward by Browne’s expert, Mr. Omar L. Davis (“Mr. Davis”), as representing net loss, or, put another way, the net profit that Browne’s would have earned on each house constructed, her acceptance of Mr. Defreitas’ approach and his criticism of Mr. Davis’ approach as not taking into account the administrative expenses and overheads was wrong, and in essence amounted to a double deduction. Counsel sought to establish by answers to questions in cross examination that Mr. Defreitas had agreed that on Mr. Davis’ figure of \$55,000.00 overheads and administrative expenses had already been factored in. However, having reviewed the transcript, we are satisfied that this does not reflect the tenor of his evidence. It is also apparent that the learned judge who saw and heard him did not form that view from his answers.

Counsel placed reliance on the case of *C.C.C. Films (London) Ltd v Impact Quadrant Films Ltd [1984] 3 WLR 245* in which Hutchinson J made the following observation in respect of the terms “loss of profit” and “recovery of expenditure”, “When Lord Denning M.R. speaks in *Anglia Television* of the plaintiffs not having suffered loss of profits ... he is referring, ... to profits after recoupment of expenditure – net profits”.

In our view, that was the exercise undertaken by the judge in light of the evidence before her. She was entitled to reject the approach adopted by Mr. Davis and to accept the approach put forward by Mr.

Defreitas. In paragraph 55, she explained her reasons for so doing. She explained that Mr. Defreitas gave a very detailed analysis of the computation of the profit using the documentary evidence adduced by Browne's. Accordingly, there was evidence before the learned judge on which she could have reasonably come to the conclusion that the average profit per house, or, "average unit profit" as called in the "net profit analysis" contained in the opinion of Mr. Defreitas and part of the evidence, more accurately reflected the loss to Browne's under this head.

Mr. Forde, QC on behalf of the Bank referred to a plethora of authorities which emphasise the caution which must be exercised by an appellate court beginning with the decision of the Privy Council in *Beacon Insurance Company Limited v Maharaj Bookstore Limited* [2014] UKPC 21. That decision reviewed and approved several other authorities in explaining the rule that a Court of Appeal will only rarely even contemplate reversing a trial judge's findings of primary fact. This rule is rightly explained by:

"reference to good sense, namely that the trial judge has the benefit of assessing the witnesses and actually hearing and considering their evidence as it emerges. Consequently, where a trial judge has reached a conclusion on the primary facts, it is only in a rare case, such as where that conclusion was one (i) which there was no evidence to support, (ii) which was based on a misunderstanding of the evidence, or (iii) which no reasonable judge could have reached, that an appellate tribunal will interfere with it. This can also be justified on grounds of policy (parties should put forward their best case on the facts at trial and not regard the potential to appeal as a second chance), cost (appeals can be expensive), delay (appeals on fact often take a long time to get on), and practicality (in many cases, it is very hard to ascertain the facts with confidence, so a second, different, opinion is no more likely to be right than the first)."

As to a Court of Appeal being slow to reverse a trial judge's evaluation of facts, the observation by Lord Hoffman in *Biogen Inc v Medeva PLC* [1996] UKHL 18 is apposite. He said:

“The need for appellate caution in reversing the judge's evaluation of the facts is based upon much more solid grounds than professional courtesy. It is because specific findings of fact, even by the most meticulous judge, are inherently an incomplete statement of the impression which was made upon him by the primary evidence. His expressed findings are always surrounded by a penumbra of imprecision as to emphasis, relative weight, minor qualification and nuance (as Renan said, *la vérité est dans une nuance*), of which time and language do not permit exact expression, but which may play an important part in the judge's overall evaluation.”

Also of similar effect are the cases of *Langsam v Beachcroft LLP* [2012] EWCA Civ 1230 at para. 72 and *FAGE UK Ltd v Chobani UK Ltd* [2014] EWCA Civ 5 at para. 114.

We are unable to say that the judge erred in her findings of fact. On the evaluation of the facts before her, having seen and heard the witnesses, she was entitled, applying the principles in measuring Browne's loss flowing from the breach under this head, to reach the conclusion she did. It has not been shown that the learned judge got it wrong. Her finding is supported by the evidence which she accepted based on her explained preference for accepting the Bank's expert evidence on this issue. No basis has accordingly been established by Browne's warranting interference by this Court.

Damages in Respect of the Dishonoured Cheques

The measure of damages to be awarded here would reflect reputational injury; Browne's being a corporate entity has no feelings which can be hurt. Counsel for Browne's relied on *Carlos Maloney & Company Limited v First Caribbean International*

Bank (Barbados) Limited SVGHCV2007/0356 (delivered 20th August 2009, unreported) in which the trial judge awarded the sum of \$30,000.00 as compensation in respect of the libel committed in respect of each of the 6 dishonoured cheques. There, the Bank had erroneously credited deposits made by the claimant to another's account. Browne's took issue with the fact that the judge took into account that it (Browne's) had developed a reputation for consistently drawing cheques over and above its credit limit and contends that this was an irrelevant consideration. We disagree. Even though the learned judge did not delve into great detail on this issue, she was entitled to take it into account as it was more probable than not that employees of the Bank tasked with handling Browne's account would have been aware of the company's practice of overdrawing its account. Therefore, the dishonouring of the cheques would have had little, if any, impact on their opinion of Browne's. The judge would have also had regard to the extent of the publication. No evidence was put forward showing that publication by the Bank was any wider than perhaps employees of the Bank, and the acceptor of the cheques. Evidence was indeed led showing that one entity in respect of a dishonored cheque placed it on the notice board of its business. But, as counsel for the Bank points out, that is not a publication by the Bank. Additionally, the sting of the words used is also relevant. The notation on the cheques was "refer to drawer". As counsel for the Bank pointed out, and we agree, such a notation, though considered defamatory, is not one with a particularly deep sting. Such a notation can occur for many reasons - one of which may be as simple as an incorrect date or a conflict between words and figures appearing on a cheque.

Similar principles apply in relation to an appellate court's slowness to interfere with a trial judge's award of general damages. Unless it can be shown that the damages awarded bear no relation whatsoever to the injury sustained an appellate court should not interfere. It must be shown that the judge exceeded the generous ambit of her discretion and was plainly wrong. We are unable to say that the judge was plainly wrong and it is not open to this

Court to substitute its view for what one of the judges here may have awarded were he or she sitting as the trial judge on the matter. No basis has been shown for disturbing this award either.

Conclusion

For these reasons the appeal is dismissed. Browne's shall bear the Bank's costs on this appeal fixed at 2/3 of the prescribed costs in the court below in accordance with rule 65.13 of the Civil Procedure Rules 2000.