

COURT OF APPEAL SITTING
SAINT VINCENT AND THE GRENADINES
[29th June to 3rd July 2015]

STATUS HEARING

Case Name:

**Garth Oliver
v
Beulah Phillips**

[SVGHCVAP2013/0008]

Date:

Monday, 29th June 2015

Coram:

**The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Paul Webster, QC, Justice of Appeal [Ag.]**

Appearances:

Appellant: Mr. Stephen Williams holding for Ms. Samantha Robertson

Respondent: Mr. Duane Daniel holding a watching brief on behalf of the respondent

Issue:

Status of matter

Result / Order:

**[Oral delivery]
The matter is adjourned to the next sitting of the Court of Appeal in Saint Vincent and the Grenadines during the week which commences 23rd November 2015 for further status report.**

Reason:

The transcript of proceedings was incomplete.

Case Name:

**Velda Charles
v
Elizabeth Cain
Adina Latham
By their Attorney on Record Elmore Cain**

[SVGHCVAP2013/0010]

Date: **Monday, 29th June 2015**

Coram: **The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Paul Webster, QC, Justice of Appeal [Ag.]**

Appearances:

Appellant: Ms. Patricia Marks

Respondents: Mr. Elvis Cain

Issue: **Status of matter**

Result / Order: **[Oral delivery]
The matter is adjourned for further status report to the next sitting of the Court of Appeal in Saint Vincent and the Grenadines during the week which commences 23rd November 2015.**

Reason: **The transcript of proceedings was incomplete.**

Case Name:

**Recardo Roberts
v
Gene Hamilton

[1] Javan Mc Intosh
[2] Nellie Roberts
[3] Nella Lule
(By their Attorney-on-Record Leonard De Roche)**

SVGHCVAP2013/0011

Date: Monday, 29th June 2015

Coram: The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Paul Webster, QC, Justice of Appeal [Ag.]

Appearances:

Appellant: Mr. Stephen Williams

Respondents: No appearance

Issue: Status of matter

Result / Order: [Oral delivery]
The matter is adjourned for further status report to the next sitting of the Court of Appeal in Saint Vincent and the Grenadines during the week which commences 23rd November 2015.

Reason: The transcript of proceedings was incomplete.

Case Name:

Stanley Defreitas
(trading as DeFreitas and Associates)
v
[1] Transglobal Inc (In Liquidation)
[2] International Financial Service Authority

SVGHCVAP2013/0007

Date: Monday, 29th June 2015

Coram: The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Paul Webster, QC, Justice of Appeal [Ag.]

Appearances:

Appellant: Mr. Joseph A. Delves holding for Ms. Nicole Sylvester

Respondents: No appearance

Issue:

Status of matter

Result / Order:

[Oral delivery]

The matter is adjourned for further status report to the next sitting of the Court of Appeal in Saint Vincent and the Grenadines during the week which commences 23rd November 2015.

Reason:

The transcript of proceedings was incomplete.

Case Name:

Marie Lewis
Attorney-on-record for Enid Santaris Henville a.k.a. Sentaria
Henville nee Lewis deceased
Administratrix of the Estate of Isabelle Henville nee Lewis
Zoe Anna Lewis
Marie Lewis
Teresa Morgan nee Lewis
Phillip Lewis
Herbert Lewis
v
Sylvester Simmons

[SVGHCVAP2012/0006]

Date:

Monday, 29th June 2015

Coram:

The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Paul Webster, QC, Justice of Appeal [Ag.]

Appearances:

Appellants: No appearance

Respondent: Ms. Zhing Horne-Edwards

Issues: Status of matter

Result / Order: [Oral delivery]
The matter is adjourned for further status report to the next sitting of the Court of Appeal in Saint Vincent and the Grenadines during the week which commences 23rd November 2015.

Reason: The transcript of proceedings was incomplete.

APPLICATIONS AND APPEALS

Case Name: [1] Gregory Browne
[2] Shelly-Ann Sutherland
v
Pomme-Grante Ltd. formerly CPCTI (SVG) Ltd.
(acting through its director, Ingrid Punnett)

[SVGHCVAP2015/0006]

Date: Monday, 29th June 2015

Coram: The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Paul Webster, QC, Justice of Appeal [Ag.]

Appearances:

Appellants: Mr. Andreas Coombs

Respondent: Ms. Patricia Marks

Issue: Application for reconsideration of order of single judge

Result / Order: [Oral delivery]
The matter is adjourned to Wednesday, 1st July 2015.

Reason: The Court adjourned the matter so that it could be heard before a differently constituted panel of judges.

Case Name: Westmore Gaymes
v
Davina Shallow
[SVGMCVAP2014/0002]

Date: Monday, 29th June 2015

Coram: The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Paul Webster, QC, Justice of Appeal [Ag.]

Appearances:
Appellant: In person
Respondent: In person

Issues: Application for leave to appeal to Her Majesty in Council –
Application for adjournment to retain counsel

Result / Order: [Oral delivery]
The hearing of the application for leave to appeal is adjourned to the next sitting of the Court of Appeal in Saint Vincent and the Grenadines during the week which commences 23rd November 2015.

Reason	The Court adjourned the matter on the application of the appellant to allow him to retain counsel.
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Case Name: CCYY Limited
v
[1] Garfdon Adams
[2] Annette Stephens

[SVGHCVAP2015/0009]

Date: **Monday, 29th June 2015**

Coram: The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Paul Webster, QC, Justice of Appeal [Ag.]

Applicant: Mr. Stephen Williams holding for Mr. Richard Williams

Respondents: No appearance

Issues: **Application for leave to appeal**

[Oral delivery]
The application for leave to appeal is adjourned to the next sitting of the Court of Appeal in Saint Vincent and the Grenadines during the week commencing 23rd November 2015.

The Court noted that learned counsel for the applicant, Mr. Richard Williams, was ill and adjourned the matter as a result.

Case Name:

Jasper Charles

v

The Queen

[SVGHCRA2011/0011]

Date:

Monday, 29th June 2015

Coram:

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

The Hon. Mde. Gertel Thom, Justice of Appeal

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

Appearances:

Appellant: In person

**Respondent: Mr. Colin Williams, Director of Public Prosecutions, with him,
Mr. Carl Williams, Crown Counsel and Ms. Tameka
McKenzie, Crown Counsel**

Issue:

**Application for time spent on remand to be taken into
account**

Result / Order:

[Oral delivery]

The application is dismissed.

Reason:

**The Court noted that the time spent by the applicant on
remand had already been taken into account by a previous
order of the Court.**

Case Name:

Carl Pope

v

The Queen

[SVGHCRA2013/0022]

Date:

Monday, 29th June 2015

Coram: The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Paul Webster, QC, Justice of Appeal [Ag.]

Appearances:

Appellant: In person

Respondent: Mr. Colin Williams, Director of Public Prosecutions, with him,
Mr. Carl Williams, Crown Counsel and Ms. Tameka
McKenzie, Crown Counsel

Issue: Application for legal aid to be assigned

Result / Order: [Oral delivery]
The applicant's application for legal aid is granted.
Attorney-at-Law, Mr. Jomo Thomas, is assigned to represent
the applicant.

Reason: The Court was satisfied that the applicant did not have the
means to finance his appeal.

Case Name: **Jolan Hepburn**
v
The Queen

[SVGHCRAP2012/0023]

Date: Monday, 29th June 2015

Coram: The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Paul Webster, QC, Justice of Appeal [Ag.]

Appearances:

Appellant: Mr. Ronald Marks

Respondent: Mr. Colin Williams, Director of Public Prosecutions, with him,
Ms. Sejilla McDowall, Crown Counsel

Issues: Criminal appeal against conviction – Aggravated burglary,
Rape, Wounding – Application for legal aid

Result / Order: [Oral delivery]
The matter is adjourned to 1st July 2015.

Case Name: Owyn Jackson
v
The Queen

[SVGHCRAP2013/0003]

Date: Monday, 29th June 2015

Coram: The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Paul Webster, QC, Justice of Appeal [Ag.]

Appearances:

Appellant: Ms. Patricia Marks

Respondent: Mr. Colin Williams, Director of Public Prosecutions, with him,
Ms. Tameka McKenzie, Crown Counsel

Issue: Criminal appeal against conviction – Rape – Application for
legal aid

Result / Order:

[Oral delivery]

- 1. The appellant is assigned legal aid to prosecute his Appeal. Mr. Stephen Williams is assigned to represent the appellant.**
- 2. Counsel is granted leave to amend the grounds of appeal if necessary.**
- 3. The appellant is to file and serve skeleton submissions on or before 15th September 2015.**
- 4. The respondent is to file and serve skeleton submissions on or before 13th October 2015.**
- 5. The hearing of the matter is adjourned to the next sitting of the Court of Appeal in Saint Vincent and the Grenadines during the week which commences 23rd November 2015.**

Reason:

The Court was satisfied that the Applicant did not have the means to finance his appeal.

Case Name:

Colly Lowman

v

The Queen

[SVGHCRAP2012/0028]

Date:

Monday, 29th June 2015

Coram:

**The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Paul Webster, QC, Justice of Appeal [Ag.]**

Appearances:

Appellant: Ms. Euchrista St. Hilaire Bruce-Lyle

**Respondent: Mr. Colin Williams, Director of Public Prosecutions, with him,
Mr. Carl Williams, Crown Counsel**

Issue:

Appeal against conviction - Robbery, wounding

Result / Order:

[Oral delivery]

- 1. The hearing of the appeal is adjourned to the next sitting of the Court of Appeal in Saint Vincent and the Grenadines during the week commencing 23rd November 2015.**
- 2. The applicant is to serve submissions on the respondent on or before 10th July, 2015.**

Reason:

The respondent made an oral application for an adjournment because the submissions of the appellant had not been served.

Case Name:

**Deswayne Williams
v
The Commissioner of Police**

[SVGMCRAP2014/0031]

Date:

Monday, 29th June 2015

Coram:

**The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Paul Webster, QC, Justice of Appeal [Ag.]**

Appearances:

Appellant: No appearance

Respondent: Mr. Karim Nelson, Crown Counsel

Issue:

Criminal appeal against sentence – Possession of a controlled drug with intent to supply

Result / Order:

[Oral delivery]

The appeal is dismissed.

Reason:

The Court noted that the appellant had already served his sentence.

Case Name:

Ewan Guy
v
The Commissioner of Police
[SVGMCRAP2015/0014]

Date:

Monday, 29th June 2015

Coram:

The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Paul Webster Q.C, Justice of Appeal [Ag.]

Appearances:

Appellant: **In person**

Respondents: **Mr. Colin Williams, Director of Public Prosecutions, with him,**
Ms. Tameka McKenzie, Crown Counsel

Issue:

Criminal appeal – Compel by force – Trespassing – Appeal
against sentence of 1 year imprisonment on each count to
run consecutively

Result / Order:

[Oral delivery]
The appeal against sentence is allowed to the extent that the
consecutive 1 year prison sentence is varied to run
concurrently.

Reason:

The Court was of the view that both offences arose out of
the same incident, therefore, the sentences should run
concurrently.

Case Name:

Rendrick Williams
v

The Commissioner of Police

[SVGMCRAP2015/0002]

Date: Monday, 29th June 2015

Coram: The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Paul Webster, QC, Justice of Appeal [Ag.]

Appearances:

Appellant: In person.

Respondent: Mr. Colin Williams, Director of Public Prosecutions, with him,
Mr. Carl Williams, Crown Counsel

Issue: Criminal appeal against sentence – Driving without relevant
license/without motor insurance

**Result / Order &
Reason:** [Oral delivery]
The appeal having been withdrawn, the appeal against
sentence is accordingly dismissed.

Case Name:

**Andrew Sam
v
The Commissioner of Police**

[SVGMCRAP2014/0035]

Date: Monday, 29th June 2015

Coram: The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Paul Webster, QC, Justice of Appeal [Ag.]

Appearances:

Appellant: No appearance

Respondent: Mr. Colin Williams, Director of Public Prosecutions, with him,
Mr. Carl Williams, Crown Counsel

Issue: Criminal appeal against sentence - Causing actual bodily harm

Result / Order: The appeal is dismissed.

Reason: The Court noted that the appellant had already served his sentence.

Case Name:

Alex Cupid

v

The Commissioner of Police

[SVGMCRAP2014/0026]

Date: Monday, 29th June 2015

Coram: The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Paul Webster, QC, Justice of Appeal [Ag.]

Appearances:

Appellant: In person

Respondent: Mr. Colin Williams, Director of Public Prosecutions, with him,
Ms. Sejilia McDowall, Crown Counsel

Issue: Criminal appeal against sentence – Two counts of trespass and stealing – Sentence of 1 year imprisonment and 18 months imprisonment on each count respectively – Damaging property – Sentence of 18 months imprisonment – Breaking suspended sentence of 1 year- Default sentence of 5 months imprisonment – Handling stolen goods – 1 year imprisonment – Guilty plea on each count – Sentences to run consecutively – Whether consecutive sentences

excessive

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

Reason: The Court considered all the facts and circumstances of the case and determined that the sentence imposed by the learned magistrate was not excessive.

Case Name: Denis Niles
v
The Commissioner of Police
[SVGMCRAP2014/0062]

Date: Monday, 29th June 2015

Coram: The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Paul Webster, QC, Justice of Appeal [Ag.]

Appearances:

Appellant:	No appearance
Respondent:	Mr. Colin Williams, Director of Public Prosecutions, with him, Mr. Karim Nelson, Crown Counsel

Issue: Criminal appeal against conviction – Assault causing actual bodily harm, possession of an offensive weapon

Result / Order & Reason: [Oral delivery]
The appellant having served his sentence, the appeal is accordingly dismissed.

Case Name:

Iraul Murray
v
The Commissioner of Police
[SVGMCRAP2015/0007]

Date: Monday, 29th June 2015

Coram: The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Paul Webster, QC, Justice of Appeal [Ag.]

Appearances:

Appellant: In person

Respondent: Mr. Colin Williams, Director of Public Prosecutions, with him,
Mr. Karim Nelson, Crown Counsel

Issue: Criminal appeal against conviction – Possession of controlled drug, possession of a controlled firearm – Application for adjournment

Result/Order: [Oral delivery]

1. The application by the respondent to adjourn the matter is granted.
2. The appellant is to file and serve written submissions and authorities on or before 7th September 2015.
3. The respondent is to file and serve submissions and authorities on or before 30th October 2015.
4. The hearing of the appeal is adjourned to the next sitting of the Court of Appeal in Saint Vincent and the Grenadines during the week which commences 23rd November 2015.

Reason: The respondent made an oral application for the adjournment of the hearing of the appeal as no submissions had been filed by the appellant.

Case Name:

**Sylvester Nanton
v
The Commissioner of Police**

[SVGMCRAP2015/0012]

Date:

Monday, 29th June 2015

Coram:

**The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Paul Webster, QC, Justice of Appeal [Ag.]**

Appearances:

Appellant: Ms. Patricia Marks holding for Mr. Ronald Marks

Respondent: Mr. Karim Nelson, Crown Counsel

Issues:

Criminal appeal against conviction – Dishonestly receiving stolen goods – Application for adjournment

Result / Order:

[Oral delivery]

- 1. The application for an adjournment is granted in order for the appellant to properly instruct counsel.**
- 2. The hearing of the matter is adjourned to the next sitting of the Court of Appeal in Saint Vincent and the Grenadines during the week which commences 23rd November 2015.**
- 3. The appellant is to file and serve skeleton submissions and authorities on or before 7th September 2015.**
- 4. The respondent is to file and serve skeleton submissions and authorities on or before 30th October 2015.**

Reason:

The appellant applied for an adjournment of the hearing of the appeal in order to properly instruct counsel.

Case Name:

**Meshach Lewis
v**

The Commissioner of Police

[SVGMCRAP2015/0011]

Date: Monday, 29th June 2015

Coram: The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Paul Webster, QC, Justice of Appeal [Ag.]

Appearances:

Appellant: Ms. Patricia Marks holding for Mr. Ronald Marks

Respondent: Mr. Colin Williams, Director of Public Prosecutions, with him,
Ms. Tameka McKenzie, Crown Counsel

Issue: Criminal appeal against conviction – Unlawful and malicious wounding – Application for adjournment

Result / Order: [Oral delivery]
1. The application to adjourn the matter to instruct counsel is granted.
2. The appellant is to file and serve skeleton submissions and authorities on or before 7th September 2015.
3. The respondent is to file and serve skeleton submissions and authorities in response on or before 30th October 2015.
4. The hearing of the appeal is traversed to the next sitting of the Court of Appeal in Saint Vincent and the Grenadines during the week commencing 23rd November 2015.

Reason: An oral application was made by the appellant for an adjournment to allow him to retain counsel.

Case Name:

Austin McDowald
v
The Queen

Date: Tuesday, 30th June 2015

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

Appearances:

Appellant: In person

Respondent: Mr. Colin Williams, Director of Public Prosecutions, with him,
Mr. Carl Williams, Crown Counsel

Issues: Criminal appeal against conviction – Robbery – Appeal against sentence of 12 years imprisonment – Sentence to run after expiration of current sentence of 8 years served for previous conviction - Whether the learned judge erred in exercise of discretion in sentencing

Result / Order: [Oral delivery]
1. The appeal against conviction having been withdrawn, the appeal is accordingly dismissed and the conviction affirmed.
2. The appeal against sentence is also dismissed. The sentence is affirmed.

Reason: The Court in considering all the circumstances of the case, found that there were no mitigating factors which could lead to a reduction in the sentence imposed on the appellant by the trial judge. Conversely, the Court found that there had been many aggravating factors which warranted the sentence imposed. The Court noted the antecedents of the appellant and the fact that the appellant was sentenced to 8 years imprisonment in 2012 for the offence of robbery. The Court was of the view that the appellant had a propensity to commit violent crimes. Accordingly, the Court found no grounds to upset the sentence imposed by the learned trial judge on the appellant.

To the extent that the appellant took issue with the learned judge's order that his current 12 year sentence was to take effect from the expiration of the 8 years currently being served, the Court, taking into account the antecedents of the appellant, was not of the view that the learned judge wrongly exercised his discretion in so doing.

Case Name:

Eric Hackshaw

v

The Queen

[SVGHCRA2013/0002]

Date:

Tuesday, 30th June 2015

Coram:

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

Appearances:

Appellant: Mr. Stephen Williams

Respondent: Mr. Colin Williams, Director of Public Prosecutions, with him, Mr. Karim Nelson, Crown Counsel

Issues:

Criminal appeal against conviction and sentence – Intercourse with a girl under the age of 13 – Whether verdict unsafe – Whether the learned trial judge ought to have withdrawn the case from the jury on a no case submission at the close of the prosecution's case – Appeal against sentence of 6 years imprisonment

Result / Order:

[Oral delivery]

The appeal is allowed and the conviction is quashed. There is no order for retrial.

Reason :

The Court noted that during the Crown's reply, the Crown had quite properly conceded the appeal. The Court also noted that it was clear from the summation and from the transcript of the trial proceedings that highly prejudicial evidence was allowed which would have undermined the safety of the conviction of the appellant. The evidence was in the form of a comment by the mother of the complainant: "that I know why I am here today. I am here because my daughter was raped by Hackshaw, Rodney Lewis has a son who told me so".

The Court was of the view that the evidence at trial also revealed certain inconsistencies and the trial judge did not direct the jury properly on how to deal with such inconsistencies. The Court noted that the trial judge himself said that there were material inconsistencies in the evidence. However, the trial judge should not make such a finding. His role was to give adequate directions to the jury as to how they must treat the inconsistencies if they found they existed.

The Court also noted that the trial judge also made a finding that there was prejudicial evidence in respect of Rodney Lewis and told the jury that they may accept or reject it. Again, the Court found that this was not an adequate way to deal with the issue.

In respect of a retrial, the Crown suggested that the appellant should be retried. This was resisted by the counsel for the appellant. The appellant had been given a 6 year sentence and had served 2 years and 4 months of his prison term. The Court, having heard arguments from both counsel, and having regard to the nature of the evidence against the appellant and the length of time which he has served in the prison, was of the view that, it would not be in the interest of justice to order a retrial of the appellant.

Case Name:

Ronald Douglas
v
The Commissioner of Police
[SVGMCRAP2014/0034]

Date:

Tuesday, 30th June 2015

Coram:

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

Appearances:

Appellant: In person

Respondent: Mr. Colin Williams, Director of Public of Prosecutions

Issues:

**Appeal against sentence – Trespassing and stealing –
Sentence of 3 years imprisonment in default of payment of
compensation of \$18,871.00**

Result / Order:

[Oral delivery]

- 1. The appeal against sentence is allowed to the extent that the term of 3 years imprisonment imposed on the appellant in default of payment of compensation of \$18,871.00 is varied in light of section 29(1) of the Criminal Code, to 1 year imprisonment.**
- 2. Having regard to the fact that the appellant has served 1 year imprisonment for breach of the 3 year bond and having regard to the imprisonment of the appellant from 20th May 2014 consequent upon the execution of a committal warrant issued for non-payment of the compensation award, the appellant is to be discharged from prison forthwith.**

Reason:

The appellant was convicted on his plea of guilty for the offence of burglary contrary to section 217(1)(b) of the *Criminal Code*, Cap. 171, Revised Laws of Saint Vincent and

the Grenadines 2009. On 16th April, 2010 the appellant was sentenced by the Senior Magistrate as follows:

1. Bonded for 3 years in the sum of \$5,000, in breach of which bond the appellant to pay \$5,000 forthwith, in default, 1 year imprisonment.
2. Compensation of \$18,871.00 to be paid in 2 years, in default, 3 years imprisonment.
3. Surrender travel documents until the compensation is paid.

On 9th June, 2014, the appellant appealed against his sentence on the following grounds:

1. The appellant be given additional time to pay the compensation awarded.
2. The Appellant pleaded guilty and did not waste the court's time.
3. The punishment is excessive in all the circumstances.

The Crown conceded in its skeleton arguments that the Senior Magistrate erred in ordering a 3 year term of imprisonment in default of payment of the compensation award. However, it was submitted that the appellant's sentence was otherwise both lawful and lenient. The Court accepted the concession and submission of the respondent having regard to the provisions of section 217(1)(b) of the *Criminal Code*. In addition, the Court noted that the appellant had served 1 year imprisonment for breach of the 3 year bond and had been imprisoned since May 2014 for non-payment of the compensation award. Accordingly, in the circumstances the Court was of the view that the appellant should be discharged from prison.

Case Name:

Uranus Cabrol
v
The Commissioner of Police
[SVGMCRAP2015/0009]

Date:

Tuesday, 30th June 2015

Coram:

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

The Hon. Mde. Gertel Thom, Justice of Appeal

Appearances:

Appellant: In person

Respondent: Mr. Colin Williams, Director of Public of Prosecutions

Issues:

Criminal appeal – Possession of firearm without license/Possession of ammunition without license – Appeal against sentence of 5 years imprisonment

Result / Order:

[Oral delivery]

The appeal is allowed to the extent that the sentence imposed by the learned magistrate of 6 years imprisonment is varied to 5 years imprisonment.

Reason:

The Court found that given that the maximum sentence for the offence was 7 years imprisonment, the sentence of 6 years imprisonment imposed on the appellant by the learned magistrate was excessive in the circumstances of the case. Consequently, the Court was of the view that a sentence of 5 years imprisonment was more appropriate.

Case Name:

Odanno Frederick
v
The Commissioner of Police
[SVGMCRAP2015/0010]

Date:

Tuesday, 30th June 2015

Coram:

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

Appearances:

Appellant: In person

Respondent: Mr. Colin Williams, Director of Public of Prosecutions

Issue: Criminal appeal – Possession of Firearm without license/possession of ammunition without license – Appeal against sentence of 3 years imprisonment

Result / Order: [Oral delivery]
The appeal against sentence is dismissed and the sentence of 3 years imprisonment imposed by the learned magistrate is affirmed.

Reason: The Court was of the view that a notional sentence of 5 years imprisonment is appropriate for firearm offences and having regard to the fact that the appellant in this case was sentenced to 3 years imprisonment on a delayed plea of guilty, and having regard also to a number of cases determined in this jurisdiction where sentences of 3 years, 3 ½ years and 4 years were imposed in respect of guilty pleas on a similar offence, the Court considered that the sentence of 3 years imprisonment imposed by the magistrate for the possession of a firearm was not unreasonable and was not unlawful. Accordingly, the Court found no basis to disturb the sentence of the learned magistrate.

Case Name: Kenroy Baptiste
v
The Commissioner of Police
[SVGMCRAP2015/0003]

Date: Tuesday, 30th June 2015

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

Appearances:
Appellant: In person

Respondent: Mr. Colin Williams, Director of Public of Prosecutions

Issue: Criminal appeal against sentence – Causing actual bodily harm

Result / Order: The appeal against sentence having been withdrawn, the appeal is accordingly dismissed.

Reason: The appellant withdrew his appeal against sentence.

Case Name: The Commissioner of Police

v

Edwin Butler
Jeromie Jordan

[SVGMCRAP2014/0055]

Date: Tuesday, 30th June 2015

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

Appearances:

Appellant: Mr. Colin Williams, Director of Public of Prosecutions, with him, Mr. Colin John, Assistant Director of Public Prosecutions

Respondent: Mr. Edwin Butler in person; no appearance by Mr. Jeromie Jordan

Issues: Criminal appeal – Appeal against upholding of no case to answer submission

Result / Order: [Oral delivery]
The appeal is allowed and it is ordered that the matter is

remitted to be tried by a different magistrate.

Reason:

The Crown appealed against the decision of the learned magistrate who held that there was no case to answer at the close of the case for the prosecution. The magistrate used the test that the prosecution had failed to prove its case beyond a reasonable doubt. The Court was of the view that this was clearly not the appropriate test to employ with respect to a no case submission.

The prosecution had tendered in evidence the caution statement of each accused person wherein they indicated their respective roles in the commission of the offence. The Court noted that, whilst it is true that the out of court statement of one co-accused is not evidence against the other, in this case, each accused gave a statement indicating his role. Accordingly, the Court was of the view that the learned magistrate had adequate evidence before her and ought not to have stopped the case at that point in time.

Case Name:

Ralton Roberts
v
The Commissioner of Police
[SVGMCRAP2014/0061]

Date:

Tuesday, 30th June 2015

Coram:

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

Appearances:

Appellant: **Mr. Ronald Marks, appellant in person**
Respondent: **Mr. Colin Williams, Director of Public of Prosecutions**

Issue:

Criminal appeal– Trespass – Assault – appeal against sentence of 4 months imprisonment on each count to run

concurrently

Result / Order:

[Oral delivery]

The appeal against sentence is dismissed. The sentence imposed by the learned magistrate is affirmed. Time served to be taken into account.

Reason:

The appellant was charged with the offence of trespass and the offence of assault. He pleaded guilty to both offences and was sentenced to 4 months imprisonment on each offence to run concurrently. He appealed against his sentence.

Learned counsel for the appellant, Mr. Marks, submitted that the sentence was excessive. Mr. Marks pointed out to the Court that the learned magistrate, in imposing the custodial sentence, erred in principle in that the magistrate took into account facts and circumstances which were not disclosed in the evidence that was present before her and in so doing, the learned magistrate erred in the exercise of her discretion.

The Court agreed with the submission of learned counsel, Mr. Marks, that the magistrate did err in those circumstances, however, having regard to the facts that were before the learned magistrate, the Court was of the view that the sentence which the magistrate imposed was appropriate in the circumstances. The offence, as the learned magistrate indicated, was a serious offence relating to domestic violence. The appellant admitted in his guilty plea that he was abusive in the relationship. This was a situation where the appellant went armed with a knife and indicated that his intention was really to kill the virtual complainant but that since he loved her he would not do so. The Court found that in those circumstances, this was not a case of simple assault and having regard to all those circumstances, the sentence imposed by the magistrate was appropriate.

Case Name:

[1] Gregory Browne

[2] Shelly-Ann Sutherland
v
Pomme-Grante Ltd. formerly CPCTI (SVG) Ltd.
(acting through its director, Ingrid Punnett)

[SVGHCVAP2015/0006]

Date: Wednesday, 1st July, 2015

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

Appearances:

Appellants: Mr. Andreas Coombs

Respondent: Ms. Patricia Marks

Issue: Reconsideration of order of a single judge

Result / Order: Judgment is reserved.

Case Name: **[1] The Chairman and Members of the Public**
Service Board of Appeal
[2] The Attorney General of Saint Vincent and the
Grenadines
v
Joseph DaSilva
[SVGHCVAP2014/0012]

Date: Wednesday, 1st July 2015

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

Appearances:

Appellant: Mr. Kezron Walters

Respondent: Mr. Joseph Delves and Ms. Heidi Badenock

Issues:

Civil appeal – Whether the learned trial judge erred in finding that the appeal had been conducted in circumstances where the Board had material before it which was not in the possession of the respondent or his counsel and to which the respondent could not respond

Result / Order:

[Oral delivery]

1. The appeal is dismissed.
2. The order of the trial judge is affirmed.
3. Costs to respondent in the sum of \$4,666.66.

Reason:

The Court found that there was ample evidence before the court that the Chairman of the Board made a statement that he had seen the personal file of the respondent and that he had seen some interesting things and which he shared with the Members of the Board. The respondent was not privy to this material. The Court was of the view that, in the circumstances, this operated to the unfairness of the respondent.

Case Name:

Jolan Hepburn

v

The Queen

[SVGHCRAP2012/0023]

Date:

Wednesday, 1st July 2015

Coram:

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

Appearances:

Appellant: Ms. Patricia Marks

Respondent: Ms. Sejilia McDowall, Crown Counsel

Issues:

Criminal appeal against conviction – Aggravated burglary, rape, wounding – Oral application for legal aid

Result/Order:

**[Oral delivery]
The application for legal aid is granted. Counsel, Ms. Patricia Marks, is assigned to the applicant to prosecute his appeal.**

Reason:

The Court was satisfied that the applicant did not have the means to finance his appeal.

Case Name:

Kimani Joe

v

The Commissioner of Police

[SVGMCRAP2014/0057]

Date:

Wednesday, 1st July 2015

Coram:

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

Appearances:

Appellant: In person

Respondent: Mr. Carl Williams, Crown Counsel

Issues:

Criminal appeal against conviction – Unlawful and malicious wounding

Result / Order: [Oral delivery]
The appeal against conviction having been withdrawn, the appeal is accordingly dismissed. The appeal against sentence is also dismissed.

Reason: The Court was of the view that the appellant had a propensity to commit violent crimes.

Case Name: Enrico Johnny
v
The Commissioner of Police
[SVGMCRAP2014/0014]

Date: Wednesday, 1st July 2015

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

Appearances:
Appellant: In person
Respondent: Mr. Carl Williams, Crown Counsel

Issues: Criminal appeal – Possession of firearm – Appeal against sentence of 5 years imprisonment

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

Reason: The Court did not discern any error in principle in the magistrate arriving at the sentence of 5 years imprisonment.

Case Name:

Kyle Simon
v
The Commissioner of Police

Akeem Bynoe
v
The Commissioner of Police

SVGMCRAP2013/0055

Date:

Wednesday, 1st July, 2015

Coram:

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

Appearances:

Appellants: No appearance

Respondents: Mr. Colin John, Assistant Director of Public Prosecutions

Issue:

Criminal appeal against conviction – Trespassing, stealing

Result/Order:

[Oral delivery]
The appeal of both appellants is dismissed.

Reason:

The appellant, Mr. Kyle Simon was absent, however he had served his prison term.

The appellant, Mr. Akeem Bynoe was served with the notice of hearing of the appeal but was absent without any explanation.

Case Name:

Deshorn Dembar
v
The Commissioner of Police

[SVGMCRAP2014/0023]

Date: Wednesday, 1st July 2015

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

Appearances:

Appellant: No appearance

Respondent: Mr. Karim Nelson, Crown Counsel

Issues: Criminal appeal against conviction – Use of indecent language

Result/Order: [Oral delivery]
The hearing of the appeal is traversed to the next sitting of the Court of Appeal in Saint Vincent and the Grenadines during the week commencing 23rd November, 2015. The appellant is to be served for the next sitting.

Reason: The appellant was not served with the notice of hearing of the appeal.

Case Name: Kershnia Matthias
v
The Commissioner of Police

[SVGMCRAP2015/0019]

Date: Wednesday, 1st July 2015

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

Appearances:

Appellant: Mr. Stephen Williams

Respondent: Mr. Carl Williams, Crown Counsel

Issues: Criminal appeal – Causing actual bodily harm – Appeal against sentence of 3 months imprisonment

Result / Order: [Oral delivery]
The appeal against conviction is dismissed. The appeal against sentence is allowed. The Court will order a variation of the sentence as follows:

1. A compensation order in the sum of \$150.00 to be paid to the virtual complainant, Ms. Bernie Shasha Daniel, to be paid in 1 week, in default, 1 month in prison.
2. The appellant is placed on a bond for 1 year for good behavior, failing which, the appellant will serve a term of 3 months in prison.

Reason: The Court dismissed the appeal against conviction based on its withdrawal by the appellant. With respect to the appeal against sentence, the Court considered that the learned magistrate ought to have given an opportunity to the appellant to mitigate the intended punishment. Accordingly, the sentence was varied by the Court.

Case Name:

[1] Gregory Browne

[2] Shelly-Ann Sutherland

v

Pomme-Grante Ltd. formerly CPCTI (SVG) Ltd.
(acting through its director, Ingrid Punnett)

[SVGHCVAP2015/0006]

Date: Wednesday, 1st July 2015

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

Appearances:

Applicants: Mr. Andreas Coombs

Respondent: Ms. Patricia Marks

Issues:

Reconsideration of order of a single judge – Application for leave to appeal – Appeal against decision of learned judge to enter judgment on fixed date claim on the basis that the defence was struck out

Result/Order:

[Oral delivery

1. The order of Madame Justice of Appeal Blenman is revoked.
2. The applicants' application for leave to appeal against the order of Madame Justice Lanns entering judgment on a fixed date claim is granted.
3. The appeal against the judgment of Madame Justice Lanns is allowed and the judgment is set aside.
4. The fixed date claim is remitted to the High Court to be dealt with in accordance with rule 27.2.3 of the Civil Procedure Rules 2000.
5. Each party will bear his or her own costs of this application.

Reasons:

The application for leave to appeal against the order of the learned judge was treated by the Court as the hearing of the appeal itself. The Court was of the view that the learned judge erred when judgment was entered on the fixed date claim on the basis that the defence was struck out. The Court also noted that the learned judge did not take evidence from the respondent or allow the appellants to cross-examine the respondent's witnesses.

Case Name:

Tyrone Burke (Chief Personnel Officer)

v

Otto Sam

[SVGHCVAP2014/0002]

Date: Wednesday, 1st July 2015

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

Appearances:

Appellant: Mr. Grahame Bollers

Respondent: Mr. Jomo Thomas

Issues: Civil appeal – Whether the learned trial judge erred in finding that the decision of the Chief Personnel Officer was illegal and irrational

Result / Order: [Oral delivery]
Decision reserved.

Case Name:

**Dr. Eric Audain
Dr. Sims Audain
v
Cauldric Fraser**

[SVGHCVAP2013/0001]

Date: Thursday, 2nd July 2015

Coram: The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Paul Webster, QC, Justice of Appeal [Ag.]

Appearances:

Appellant: Mr. Joseph Delves and Ms. Heidi Badnock

Respondent: Mr. Jomo Thomas

Issues: Civil appeal – Damages for breach of contract – Loss of profits – Whether the learned trial judge ought to have made an award for loss of profits

Result / Order: [Oral delivery]
Decision to be delivered at 2:00 pm.

Case Name: Philbert Warrican
v
Elsworth Richards
[SVGMCVAP2014/0015]

Date: Thursday, 2nd July 2015

Coram: The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Paul Webster, QC, Justice of Appeal [Ag.]

Appearances:

Appellant: Mr. Andreas Coombs

Respondent: No appearance

Issue: Oral application for adjournment

Result / Order & Reason: [Oral delivery]
The respondent not having been served with the notice of hearing of the appeal, the hearing of the appeal is adjourned to the next sitting of the Court of Appeal in Saint Vincent and the Grenadines during the week commencing 23rd November 2015.

Case Name:

**Naomi Browne
v
Juliet Horne-DeFreitas
[SVGMCVAP2015/0001]**

Date:

Thursday, 2nd July 2015

Coram:

**The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Paul Webster, QC, Justice of Appeal [Ag.]**

Appearances:

Appellant: No appearance

Respondent: In person

Issue:

Appeal against decision of magistrate

Result / Order:

**[Oral delivery]
The appeal is dismissed for want of prosecution.**

Reason:

The appellant was served with the notice of hearing of the appeal but was not present to prosecute her appeal.

Case Name:

**Andrel John
v
The Commissioner of Police
[SVGMCRAP2015/0020]**

Date: Thursday, 2nd July 2015

Coram: The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Paul Webster, QC, Justice of Appeal [Ag.]

Appearances:

Appellant: Mr. Jaundy Martin

Respondent: Mr. Carl Williams, Crown Counsel

Issues: Criminal appeal against conviction – Causing actual bodily harm – Oral application for adjournment

Result / Order & Reason: [Oral delivery]
On application by the appellant and there being no objection by the respondent, the hearing of this appeal is adjourned to the next sitting of the Court of Appeal in Saint Vincent and the Grenadines during the week commencing 23rd November 2015.

Case Name:

Kelroy Mason
v
The Commissioner of Police
[SVGMCRAP2014/0054]

Date: Thursday, 2nd July 2015

Coram: The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Paul Webster, QC, Justice of Appeal [Ag.]

Appearances:

Appellant: Mr. Ronald Marks

Respondent: Mr. Carl Williams, Crown Counsel

Issues: Criminal appeal against conviction – Criminal trespass –

**Assault, threatening language – Appeal against sentence of
– Oral application to withdraw appeal against conviction**

Result / Order:

[Oral delivery]

- 1. The appeal against conviction having been withdrawn, the appeal is accordingly dismissed.**
- 2. With respect to the charge of criminal trespass, the appellant is sentenced to 1 month imprisonment which, considering that he has served a period of some 21 days in prison, would amount to time already served.**
- 3. With respect to the charge of assault, the appellant is fined \$750.00 to be paid in 2 months, in default, 3 months in prison. The appellant is also placed on a bond for a period of 6 months, in breach of which, the appellant will serve a term of 6 months imprisonment.**
- 4. With respect to the conviction for using threatening language, the appellant is cautioned, reprimanded and discharged.**

Reason:

The Court was of the view that the learned magistrate erred in not eliciting from the appellant information about himself which could have served to mitigate the sentence. The learned magistrate only took into consideration the aggravating factors and in so doing the learned magistrate erred and the sentence of the appellant was flawed.

Case Name:

**Philemon Bobb
v
The Commissioner of Police
[SVGMCRAP2013/0008]**

Date:

Thursday, 2nd July, 2015

Coram:

**The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Paul Webster, QC, Justice of Appeal [Ag.]**

Appearances:

Appellant: No appearance

Respondent: Mr. Carl Williams, Crown Counsel

Issues: Criminal appeal against conviction – Vandalism

Result / Order: Matter is stood down.

Case Name: Lawrence Burke
v
The Commissioner of Police
[SVGMCRAP2015/0001]

Date: Thursday, 2nd July 2015

Coram: The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Paul Webster, QC, Justice of Appeal [Ag.]

Appearances:

Appellant: Mr. Jaundy Martin

Respondent: Mr. Carl Williams, Crown Counsel

Issues: Criminal appeal against conviction – Theft of motor vehicle –
Oral application for adjournment

**Result / Order &
Reason:** [Oral delivery]
Upon the application by counsel for the appellant for an adjournment and there being no objection by counsel for the respondent; the hearing of this appeal is adjourned to the next sitting of the Court of Appeal in Saint Vincent and the Grenadines during the week commencing 23rd November 2015.

Case Name:

Meshach John
v
The Commissioner of Police
[SVGMCRAP2015/0013]

Date:

Thursday, 2nd July 2015

Coram:

The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Paul Webster, QC, Justice of Appeal [Ag.]

Appearances:

Appellant: In person

Respondent: Mr. Carl Williams, Crown Counsel

Issues:

Criminal appeal against conviction – Unlawful and malicious wounding – Oral application for adjournment

**Result / Order &
Reason:**

[Oral delivery]
Upon the application by the appellant in person for an adjournment of this matter on account that his counsel is not now available, and there being no objection by the respondent, the hearing of this Appeal is adjourned to the next sitting of the Court of Appeal in Saint Vincent and the Grenadines during the week which commences 23rd November 2015.

Case Name:

Anton Butler
v
The Commissioner of Police
[SVGMCRAP2015/0015]

Date:

Thursday, 2nd July 2015

Coram: The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Paul Webster, QC, Justice of Appeal [Ag.]

Appearances:

Appellant: No appearance

Respondent: Mr. Carl Williams, Crown Counsel

Issues: Criminal appeal against conviction – Assault

Result / Order & Reason: [Oral delivery]
The appellant not having been served with the notice of hearing of this appeal, the hearing of this appeal is adjourned to the next sitting of the Court of Appeal in Saint Vincent and the Grenadines during the week which commences 23rd November 2015.

Case Name: Edward Daly
v
The Commissioner of Police
[SVGMCRAP2015/0016]

Date: Thursday, 2nd July 2015

Coram: The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Paul Webster, QC, Justice of Appeal [Ag.]

Appearances:

Appellant: Mr. Jaundy Martin

Respondent: Ms. Sejilia McDowall, Crown Counsel

Issues: Criminal appeal against conviction – Unlawful and malicious wounding – Oral application for adjournment.

Result / Order: [Oral application]
Upon the application by counsel on behalf of the appellant for an adjournment, and there being no objection by counsel for the respondent, the hearing of this appeal is adjourned to the next sitting of the Court of Appeal in Saint Vincent and the Grenadines during the week commencing 23rd November, 2015.

Case Name: Philemon Bobb
v
The Commissioner of Police
[SVGMCRAP2013/0008]

Date: Thursday, 2nd July 2015

Coram: The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Paul Webster, QC, Justice of Appeal [Ag.]

Appearances:

Appellant: No appearance

Respondent: Mr. Carl Williams, Crown Counsel

Issues: Criminal appeal against conviction – Vandalism

Result/Order: [Oral delivery]
The appeal is dismissed for want of prosecution.

Reason: The appellant had served his sentence.

Case Name: Dr. Eric Audain

**Dr. Eric Audain
Dr. Sims Audain
v
Cauldric Fraser**

[SVGHCVAP2013/0001]

Date: Thursday, 2nd July 2015

Coram: The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Paul Webster, QC, Justice of Appeal [Ag.]

Appearances:

Appellant: Mr. Joseph Delves and Ms. Heidi Badenock

Respondent: Mr. Jomo Thomas

Issues: Civil appeal – Damages for breach of contract – Loss of profits – Whether the learned trial judge ought to have made an award for loss of profits

Result / Order: [Oral delivery]
1. The award of \$58,611.28 is reduced to \$55,020.23.
2. The claim for loss of profits of \$30,000.00 is set aside.
3. In all other respects the judgment of the learned judge is affirmed.
4. Having regard to the fact that both parties have had success on the appeal, the order for costs of the appeal is that each party will bear their own costs.

Reason:

The Court noted that the object of damages for breach of contract is to put the innocent party in the position he would have been in had the contract been performed. The Court was of the view that the award of \$58,611.28 for the work already done, transport and labor are items that would have been due to the appellant if the contract had been performed and that award was confirmed, subject to the deductions for pest control in the sum of \$1,459.81 and materials supplied in the sum of \$2,071.18. With respect to the award of \$30,000.00 for loss of profits, the Court determined that the respondent should have tendered evidence of the amount of profit he lost on the contract as a result of early termination. He failed to discharge this evidential burden, accordingly, the Court found that he was not entitled to loss of profits. Therefore, the learned judge erred in awarding damages in the sum of \$30,000.00 for loss of profits.