

COURT OF APPEAL SITTING
SAINT VINCENT AND THE GRENADINES
27th to 28th May 2013

JUDGMENTS

Case Name: [1] The Prime Minister
[2] Juno Samuel
V
[1] Sir Gerald Watt, KCN, QC

[ANUHCVAP2012/0005]
(Antigua and Barbuda)

Date: Monday, 27th May 2013

Coram: The Hon. Dame Janice M. Pereira, Chief Justice
The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mr. Don Mitchell, Justice of Appeal
[Ag.]

Appearances:

Appellant:	Ms. Kezi Francis holding papers for Ms. Sherri-Ann Bradshaw
Respondent:	Mr. L. A. Douglas Williams holding papers for Mr. David Dorsett

Issues: Civil appeal – Constitutional Law – Whether Governor-General ought to have been joined as party to proceedings – Representation of the People (Amendment) Act 2001 – Electoral Commission – Whether Prime Minister had authority to advise removal of Chairman – Judicial review proceedings – Whether Prime Minister’s action amenable to judicial review – Damages in breach of fundamental rights – Administrative orders – Costs

Result & Held: dismissing the appeal; allowing the cross-

Reason:

appeal and varying the orders as to costs and damages, that:

- 1. Whenever the validity of any act of state done by the Governor-General is being called in question, the Attorney-General is the proper party to be named in the litigation. In the instant case, the Governor-General was properly joined as a party when the Attorney-General was named in her place in accordance with the recommended constitutional procedure.**

Hochoy v NUGE and Others (1964) 7 WIR 174 followed.

- 2. The RPA 2001 makes provisions for the different political interests to be represented in the formation of the Commission. However, in light of the fact that the mischief which the RPA 2001 was designed to avoid was political interference in the functioning of the Commission after it was appointed, it could only mean that the office of Chairman or the office of an ordinary Member is not susceptible to the direction or control of any other person or authority. Dismissal from office is perhaps the ultimate form of control. Thus, the RPA 2001 must be read to reflect that once the members have received their instruments of appointment, there is to be no further political interference in the functioning of the Commission. Therefore, the learned trial judge was correct to find that none of the five members, the Chairman, Vice Chairman or the three Members may be removed from office except on the recommendation of the Tribunal.**

Sections 3, 4 and 6 of the RPA 2001 applied.

- 3. The recommendation of the Prime Minister was not merely a preparatory step on the way to the making of a formal legally binding decision. The body authorised to take the preparatory step was the Tribunal, and the**

Prime Minister had usurped the authority of the Tribunal in purporting to make the recommendation to the Governor-General. Consequently, his decision was amenable to judicial review.

4. Irrationality, or unreasonableness, takes into account decisions reached in the exercise of a statutory discretion that are unlawful because it can be shown that in reaching the decision the body exercising the discretion has acted on an erroneous view of the applicable law. The Prime Minister's recommendation to dismiss Sir Gerald had been clearly irrational and misdirected in law in view of the Tribunal's Report stating the contrary.

Bromley London Borough Council v Greater London Council and Another [1983] 1 AC 768 applied; Council of Civil Service Unions and Others v Minister for the Civil Service [1985] AC 374 applied.

5. The Civil Procedure Rules 2000 do provide that a court may at the trial of a claim make a direction for the assessment of the quantum of damages and may give directions for the service of witness statements relating to this issue.

Rule 16.4 of the Civil Procedure Rules 2000 applied.

6. Despite there being no suggestion that any constitutional right had been infringed, Sir Gerald held a statutorily entrenched position of Chairman of the Commission from which he was summarily dismissed on the basis that the Prime Minister had lost confidence in his performance. The learned trial judge ought to have granted Sir Gerald substantial damages as opposed to nominal damages, for the purpose of the award of damages is to vindicate the right. Vindication involves an assertion that the right is a valuable one.

In this case, the right violated was in the nature of a constitutional right. Any award of damages for its contravention is bound, to some extent at least, to act as a deterrent against further breaches.

Inniss v Attorney General of Saint Christopher and Nevis [2008] UKPC 42 applied.

7. On the hearing of an application for an administrative order, the learned judge ought to have assessed the costs rather than make an order for prescribed costs.

Rule 56.13(5) of the Civil Procedure Rules 2000 applied.

Case Name:

[1] Sir Gerald Watt, KCN, QC

v

[1] The Prime Minister

[2] Juno Samuel

[ANUHCVAP2012/0042]

(Antigua and Barbuda)

Date:

Monday, 27th May 2013

Coram:

**The Hon. Dame Janice M. Pereira, Chief Justice
The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mr. Don Mitchell, Justice of Appeal
[Ag.]**

Appearances:

Appellant:

Mr. L. A. Douglas Williams holding papers for Mr. David Dorsett

Respondent:

Ms. Kezi Francis holding papers for Ms. Sherri-Ann Bradshaw

Issues:

Civil appeal – Constitutional law – Antigua and Barbuda Constitution Order 1981 – Representation of the People (Amendment) Act 2011 – Whether Prime Minister had lawful authority to give retroactive effect to Act – Representation of the People Order, 2012 – Whether Order was invalid – Electoral Commission – Judicial review – Retroactive orders

**Result &
Reason:**

Held: allowing the appeal; setting aside the order of the learned trial judge; and ordering that the Prime Minister pay the costs of the application in the court below and in the appeal to be assessed if not agreed, that:

1. A Minister who has the responsibility of selecting a date upon which an Act is to come into force is expected to exercise his discretion within the law. If a Minister to whom Parliament has delegated a discretion to bring an Act into force acts outside of the law, then the citizen is entitled in a suitable case to expect that the court will exercise its jurisdiction to grant a party such remedies as he or she appears entitled to so that all matters in controversy between them may be completely and finally determined, and a multiplicity of legal proceedings avoided. That principle would apply even though the trial court had just delivered a final judgment in the case. In the event that it is found that a Minister has acted illegally to interfere with a duly delivered High Court judgment, it is appropriate that interim relief be sought in the same case rather than the commencing of a new law suit.

Section 20 of the Eastern Caribbean Supreme Court Act Cap. 143, Revised Laws of Antigua and Barbuda 1992 applied; Rule 17.2(1)(a) of the Civil Procedure Rules 2000 applied.

2. In exercising his discretion as to the date on which the 2011 Amendment Act came into effect, the Prime Minister was required to act fairly and to determine objectively an appropriate date for the law to come into effect. He was entrusted with a discretion and ought to have directed himself properly in law, and factor into the exercise of his discretion only those considerations which were relevant and material for that purpose. An abuse of discretion is a wrongful exercise of the discretion conferred and may be held to be ultra vires. In this case, the Prime Minister chose a date that was clearly designed to undermine or undercut the judgment of Remy J that was given in Sir Gerald's favour. It was a wrongful exercise of the discretion given to him and an encroachment on the principles of the separation of powers that Parliament, the Executive and the Courts each have their distinct and largely exclusive domain; in essence, it was an exercise of executive power. The Prime Minister not having lived up to the standard of fairness expected of him, his selection of the date he chose was ultra vires the discretion given to him.

Padfield and Others v Minister of Agriculture, Fisheries and Food and Others [1968] AC 997 applied; Calder v Bull (1798) 1 Curtis 269 applied; Regina v Secretary of State for the Home Department, Ex parte Fire Brigades Union and Others [1995] 2 AC 513 applied.

3. Parliament may intend an Act to have retrospective effect. What must be done is an objective examination of the language of the Act to determine whether Parliament intended the Act to have such an effect. If the retrospectivity would have an effect that is unfair, the court must look very hard to see if it can be sure that this is what Parliament really intended. Once the unfair effect is clearly what Parliament intended,

then the court will not hesitate to give effect to the intention of Parliament. Once such an intent is not clear, then the court may presume that the statute was not intended to have retrospective effect. In this case, the wording of section 1(1) and (2) of the 2011 Amendment Act does not suggest any intention of Parliament to give the Prime Minister power to give retrospective effect to his 2012 Order bringing the Act into force. The section is entirely devoid of any suggestion that he was empowered to give it such an effect. Given the injustice of interfering with the rights of Sir Gerald then subject to litigation before the court, the language of the section would have had to have been a great deal more compelling to drive this Court to the conclusion that there could have been no other intention of the legislature than to empower the Prime Minister to give retrospective effect to the Act.

L'Office Chefifien des Phosphates and Another v Yamashita-Shinnihon Steamship Co. Ltd. [1994] 1 AC 486 applied.

4. Furthermore, legislation generally does not apply to actions which are pending at the time when it comes into force unless the language of the Act compels the conclusion that Parliament intended that it should. The language of the enactment must be such that no other conclusion is possible than that that was the intention of the legislature. Sir Gerald's action for judicial review was pending when the 2011 Amendment Act was passed. In light of that, the language of the enactment had to have been such that no other conclusion was possible than that that was the intention of the legislature.

Wilson v First County Trust Ltd (No. 2) [2004] 1 AC 816 applied.

STATUS HEARING

Case Name:

[1] Eldreta Williams

[2] Michael Williams

v

**[1] Beresford Williams (by his next friend
and administrator of the Estate of Neil
Williams deceased) Felix Lewis and
Richard Lewis**

**[2] Josh Williams ((by his next friend and
administrator of the Estate of Neil
Williams deceased) Felix Lewis and
Richard Lewis**

[SVGHCVAP2008/0014]

Date:

Monday, 27th May 2013

Coram:

**The Hon. Dame Janice M. Pereira, Chief Justice
The Hon. Mde. Louise E. Blenman, Justice of
Appeal
The Hon. Mr. Don Mitchell, Justice of Appeal
[Ag.]**

Appearances:

Appellant:

**Ms. Nicole Sylvester with her Ms. Patina
Knights**

Respondent:

**Mr. Joseph Delves holding papers for Mr.
Stephen Huggins**

Issue:

Status of the matter

Result / Order /

Reason:

[Oral hearing]

**No order made given that a notice of
discontinuance was filed and served.**

Case Name: [1] The Attorney General of St. Vincent
and the Grenadines
[2] The Minister of Finance
v
[1] Frank Da Silva
[2] Venold Coombs
[3] Margaret London
[4] Earl Alexander suing in their
individual capacity and as members
[SVGHCVAP2011/0007]

Date: Monday, 27th May 2013

Coram: The Hon. Dame Janice M. Pereira, Chief Justice
The Hon. Mde. Louise E. Blenman, Justice of
Appeal
The Hon. Mr. Don Mitchell, Justice of Appeal
[Ag.]

Appearances:
Appellant: Mr. Parnel R. Campbell, QC
Respondent: Ms. Nicole Sylvester with her Ms. Patina
Knights

Issue: Status of the matter

Result / Order: [Oral delivery]
1. Leave is hereby granted to discontinue the
appeal in Civil Appeal No. 7 of 2011.
2. The matter is to proceed to trial in the court
below.
3. There shall be no order as to costs in this
appeal.

Reason: The appellants filed a notice of discontinuance
of the appeal.

Case Name:

**[1] Dexter Chance
[2] Gareth Mc. Dowall
[3] Carlos Sutherland**

V

**[1] Superintendent of Prisons
[2] The Attorney General
[3] The Director of Public Prosecutions**

[SVGMCRAP2009/0015]

Date:

Tuesday, 28th May 2013

Before:

The Hon. Dame Janice M. Pereira, Chief Justice

Appearances:

Appellant:

No appearance

Respondent:

Mr. Carl Williams with him Ms. Sejilla McDowall

Issue:

Status of the matter

Result / Order:

Matter stood down.

Reason:

Counsel for the appellants was before another court.

Case Name:

Kenis Weekes

V

The Commissioner of Police

[SVGMCRAP2011/0019]

Date:

Tuesday, 28th May 2013

Before:	The Hon. Dame Janice M. Pereira, Chief Justice
Appearances:	
Appellant:	No appearance
Respondent:	Mr. Carl Williams with him Ms. Sejilla McDowall
Issue:	Status of the matter
Result / Order:	Matter stood down.
Reason:	To ascertain whether the appellant has served his sentence.
Case Name:	Stanley Constantine v The Commissioner of Police [SVGMCRAP2011/0020]
Date:	Tuesday, 28th May 2013
Before:	The Hon. Dame Janice M. Pereira, Chief Justice
Appearances:	
Appellant:	In person
Respondent:	Mr. Colin Williams, Director of Public Prosecutions with him Mr. Carl Williams
Issue:	Status of the matter
Result / Order:	No order was made.
Reason:	The appeal was heard and disposed of on 21st November 2011.

Case Name: **David Scott**
v
The Commissioner of Police
[SVGMCRAP2011/0029]

Date: **Tuesday, 28th May 2013**

Before: **The Hon. Dame Janice M. Pereira, Chief Justice**

Appearances:
Appellant: **No appearance**
Respondent: **Mr. Carl Williams**

Issue: **Status of the matter**

Result / Order / Reason: **[Oral delivery]**
Time having been served, the appeal is dismissed for want of prosecution.

Case Name: **Kenneth Davis**
v
The Commissioner of Police
[SVGMCRAP2011/0049]

Date: **Tuesday, 28th May 2013**

Before: **The Hon. Dame Janice M. Pereira, Chief Justice**

Appearances:
Appellant: **No appearance**

Respondent: Mr. Colin John

Issue: Status of the matter

Result / Order: Matter stood down.

Reason: To ascertain whether the appellant has served his sentence.

Case Name: Alijay Douglas
v
The Commissioner of Police
[SVGMCRAP2011/0039]

Date: Tuesday, 28th May 2013

Before: The Hon. Dame Janice M. Pereira, Chief Justice

Appearances:

Appellant: No appearance

Respondent: Mr. Carl Williams with him Ms. Sejilla McDowall

Issue: Status of the matter

Result / Order / Reason: [Oral delivery]
Time having been served, the appeal is dismissed for want of prosecution.

Case Name: Bernard Roberts
v

The Commissioner of Police

[SVGMCRAP2011/0046]

Date: Tuesday, 28th May 2013

Before: The Hon. Dame Janice M. Pereira, Chief Justice

Appearances:

Appellant:	No appearance
Respondent:	Mr. Colin John with him Mr. Carl Williams and Ms. Sejilla McDowall

Issue: Status of the matter

Result / Order: Matter stood down.

Reason: To secure the attendance of the appellant.

Case Name:

Kenis Weekes
V
The Commissioner of Police

[SVGMCRAP2011/0019]

Date: Tuesday, 28th May 2013

Before: The Hon. Dame Janice M. Pereira, Chief Justice

Appearances:

Appellant:	No appearance
Respondent:	Mr. Colin John with him Mr. Carl Williams and Ms. Sejilla McDowall

Issue: Status of the matter

Result / Order: No order was made.

Reason: There was no appeal pending before the Court as the order of the Court granting leave for extension of time within which to appeal was not complied with.

Case Name: Bernard Roberts
V
The Commissioner of Police
[SVGMCRAP2011/0046]

Date: Tuesday, 28th May 2013

Before: The Hon. Dame Janice M. Pereira, Chief Justice

Appearances:

Appellant: No appearance

Respondent: Mr. Colin John with him Mr. Carl Williams and Ms. Sejilla McDowall

Issue: Status of the matter

Result / Order: [Oral delivery]
1. The Registrar of the High Court shall serve on the magistrate a request for the preparation of the transcript of proceedings in the above, together with the minute of conviction and reasons for sentence imposed, the said record to be furnished to the Registrar of the High Court as a matter of urgency so as to enable the hearing of this appeal at the next sitting of the Court in September 2013.
2. The Registrar shall also serve upon the

magistrate a copy of the Court order made on 6th October 2011.

Reason:

An order was given by the Court since 2011 granting the appellant time within which to appeal. However to date no record has been produced by the magistrate's court.

Case Name:

[1] Dexter Chance
[2] Gareth Mc. Dowall
[3] Carlos Sutherland

V

[1] Superintendent of Prisons
[2] The Attorney General
[3] The Director of Public Prosecutions

[SVGHCRAP2009/0015]

Date:

Tuesday, 28th May 2013

Before:

The Hon. Dame Janice M. Pereira, Chief Justice

Appearances:

Appellant:

Mrs. Kay Bacchus-Browne

Respondent:

Mr. Colin John with him Mr. Carl Williams and Ms. Sejilla McDowall

Issue:

Status of the matter

**Result / Order /
Reason:**

[Oral delivery]
The appeal is withdrawn and accordingly dismissed.

Case Name:

**Kenneth Davis
v
The Commissioner of Police**

[SVGMCRAP2011/0049]

Date:

Tuesday, 28th May 2013

Before:

The Hon. Dame Janice M. Pereira, Chief Justice

Appearances:

Appellant:

No appearance

Respondent:

Mr. Colin John

Issue:

Status of the matter

**Result / Order /
Reason:**

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

APPLICATIONS AND APPEALS

Case Name:

**Sir James Mitchell
v
Ephraim Georges**

[SVGHCVAP2011/0014]

Date:

Monday, 27th May 2013

Coram:

**The Hon. Dame Janice M. Pereira, Chief Justice
The Hon. Mde. Louise E. Blenman, Justice of
Appeal
The Hon. Mr. Don Mitchell, Justice of Appeal**

[Ag.]

Appearances:

Appellant: Mrs. Louise Mitchell-Joseph with her Ms. Kezi Francis

Respondent: Mr. Joseph Delves

Issue:

Application for final leave to appeal to Her Majesty in Council

**Result / Order /
Reason:**

[Oral delivery]

1. Being satisfied that all the conditions imposed by the Court in the order granting conditional leave to appeal made on 30th October 2012 have been satisfied, final leave to appeal to Her Majesty in Council is hereby granted.
2. Costs of the application shall be costs of the appeal to Her Majesty in Council.

Case Name:

Ivan O'Neal
v
Central Water & Sewerage
Authority

[SVGHCVAP2012/0005]

Date:

Monday, 27th May 2013

Coram:

The Hon. Dame Janice M. Pereira, Chief Justice
The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mr. Don Mitchell, Justice of Appeal
[Ag.]

Appearances:

Appellant: Mr. Emery Robertson

Respondent: Mr. Richard Williams with him Mr. Sten Sergeant

Issue: Application to discharge order of a single judge

Result / Order / Reason: [Oral delivery]
With leave of the Court, the application to discharge order of a single judge is withdrawn with no order as to costs.

Case Name: [1] Bradley Davis
[2] Lex Clayton Davis
v
[1] Doreen Leslie
[SVGHCVAP2013/0002]

Date: Monday, 27th May 2013

Coram: The Hon. Dame Janice M. Pereira, Chief Justice
The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mr. Don Mitchell, Justice of Appeal
[Ag.]

Appearances:

Applicant / Intended Appellant: Mr. Emery Robertson

Respondent: Mr. Richard Williams with him Mr. Sten Sergeant

Issues: Application to review orders of Court –
Application for extension of time to file submissions

Result / Order: [Oral delivery]
1. Leave is granted to withdraw the application for review of an order of the Court of Appeal

made on 29th January 2007 and in respect of the default judgment entered on 21st September 2006.

2. The applicant shall bear the costs of the application, due to the circumstances as stated by the Court orally in the sum of \$2,500.00 to be paid by 28th June 2013.

Reason: The applicant applied to the Court to withdraw the application.

Case Name: Ollie Clarke
v
The Queen

[SVGHCRAP2013/0005]

Date: Monday, 27th May 2013

Coram: The Hon. Dame Janice M. Pereira, Chief Justice
The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mr. Don Mitchell, Justice of Appeal
[Ag.]

Appearances:

Appellant:	No appearance
Respondent:	Mr. Colin John

Issue: Application for extension of time to appeal

Result / Order: Matter stood down.

Reason: The prisoner was not yet present in Court.

Case Name:

Kamal Garraway

v

The Queen

[SVGHCRAP2012/0017]

Date:

Monday, 27th May 2013

Coram:

**The Hon. Dame Janice M. Pereira, Chief Justice
The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mr. Don Mitchell, Justice of Appeal
[Ag.]**

Appearances:

Appellant:

Mr. Lyndon George

Respondent:

**Mr. Colin John with him Ms. Sejilla McDowall
and Mr. Carl Williams**

Issues:

Criminal appeal against sentence of payment of compensation in the sum of \$2,200.00 by 15th May 2012 and a sentence of 3 years imprisonment – Possession of firearm

Result / Order:

[Oral delivery]

The appeal against sentence is allowed and the sentence is varied to time served.

Reason:

The Court was of the opinion that the sentence was excessive in the circumstances. The Court noted the fact that the appellant plead guilty and that he had no prior convictions. Taking into account the mitigating factors and the circumstances of the offence, the Court concluded that the appellant should have received a lesser sentence.

Case Name:

Ollie Clarke

V

The Queen

[SVGHCRAP2013/0005]

Date:

Monday, 27th May 2013

Coram:

**The Hon. Dame Janice M. Pereira, Chief Justice
The Hon. Mde. Louise E. Blenman, Justice of
Appeal
The Hon. Mr. Don Mitchell, Justice of Appeal
[Ag.]**

Appearances:

Appellant:

In person

Respondent:

**Mr. Colin John with him Ms. Sejilla McDowall
and Mr. Carl Williams**

Issue:

Application for extension of time to appeal

Result / Order:

**[Oral delivery]
Matter adjourned to Tuesday, 28th May 2013.**

Reason:

**To ascertain some information regarding the
matter.**

Case Name:

Maurice Primus

V

The Commissioner of Police

[SVGMCRAP2013/0003]

Date:

Monday, 27th May 2013

Coram:

The Hon. Dame Janice M. Pereira, Chief Justice

The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mr. Don Mitchell, Justice of Appeal
[Ag.]

Appearances:

Appellant: In person

Respondent: Mr. Colin John with him Ms. Sejilla McDowall
and Mr. Carl Williams

Issues: Criminal appeal against sentence of 1 year imprisonment – Stealing

Result / Order: [Oral delivery]
Time having been served, the appeal is withdrawn and hereby dismissed.

Case Name: David Frederick
V
The Commissioner of Police
[SVGMCRAP2012/0001]

Date: Monday, 27th May 2013

Coram: The Hon. Dame Janice M. Pereira, Chief Justice
The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mr. Don Mitchell, Justice of Appeal
[Ag.]

Appearances:

Appellant: In person

Respondent: Mr. Colin John with him Ms. Sejilla McDowall
and Mr. Carl Williams

Issues: Criminal appeal against conviction and

sentence of 5 years imprisonment – Possession of a controlled drug with intent to supply

Result / Order:

[Oral delivery]

- 1. The appeal against conviction is withdrawn with leave and dismissed.**
- 2. The appeal against sentence is dismissed.**

Reason:

The Court held that the offence was a very serious one taking into account the high quantity of drugs that was involved. The Court concluded that the sentence was reasonable in all the circumstances.

Case Name:

**Meshack Lewis
V
The Commissioner of Police
[SVGMCRAP2012/0035]**

Date:

Monday, 27th May 2013

Coram:

**The Hon. Dame Janice M. Pereira, Chief Justice
The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mr. Don Mitchell, Justice of Appeal
[Ag.]**

Appearances:

Appellant:

Mr. Ronald Marks

Respondent:

Mr. Colin John with him Ms. Sejilla McDowall and Mr. Carl Williams

Issues:

Criminal appeal against conviction and sentence of 18 months imprisonment – Malicious wounding

**Result / Order /
Reason:**

[Oral delivery]

- 1. The hearing of the appeal in this matter is adjourned at the request of counsel for the appellant to the next sitting of the Court of Appeal in this jurisdiction.**
- 2. The appellant shall file and serve skeleton arguments in relation to this appeal no later than Friday, 28th June 2013.**
- 3. The Crown shall have until 18th July 2013 for filing and service of skeleton arguments in response.**

Case Name:

**Venus Pitt
v
Koleen Thomas**

[SVGMCVAP2012/0002]

Date:

Monday, 27th May 2013

Coram:

**The Hon. Dame Janice M. Pereira, Chief Justice
The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mr. Don Mitchell, Justice of Appeal
[Ag.]**

Appearances:

Appellant:

Mrs. Kay Bacchus-Browne

Respondent:

Mr. Stephen Williams

Issue:

Appeal against decision of magistrate in damages awarded

**Result / Order /
Reason:**

[Oral delivery]

With leave of the Court, the appeal is withdrawn with costs to the respondent in the sum of \$650.00 to be paid by Friday, 26th July 2013.

Case Name:

Howards Driving School

V

Ismay Dennie

[SVGMCVAP2010/0001]

Date:

Monday, 27th May 2013

Coram:

**The Hon. Dame Janice M. Pereira, Chief Justice
The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mr. Don Mitchell, Justice of Appeal
[Ag.]**

Appearances:

Appellant:

Ms. Patina Knights

Respondent:

In person

Issue:

Appeal against the decision of the magistrate on liability

Result / Order:

[Oral delivery]

- 1. The appeal is allowed.**
- 2. The matter is remitted for trial before a different magistrate.**

Reason:

The Court was of the view that the magistrate in giving his reasons for decision appeared to have disregarded the evidence without giving any reasons for so doing and then entered into conjecture based on facts and matters which were not before him. Accordingly, the decision he arrived at cannot be sustained in the circumstances.

Case Name:

**Ollie Clarke
v
The Queen**

[SVGHCRA2013/0005]

Date:

Tuesday, 28th May 2013

Coram:

**The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mr. Don Mitchell, Justice of Appeal
[Ag.]**

Appearances:

Appellant:

In person

Respondent:

Mr. Colin Williams, Director of Public Prosecutions with him Ms. Sejilla McDowall

Issues:

Criminal appeal against conviction and sentence of 20 years imprisonment – Unlawful sexual intercourse – Application for extension of time to appeal

Result / Order:

No order was made.

Reason:

The Court noted that the appeal was previously dismissed on 3rd June 2010 as per digest of decisions.

Case Name:

**Hezron Cuffy
v
The Queen**

[SVGHCRA2012/0001]

Date: Tuesday, 28th May 2013

Coram: The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mr. Don Mitchell, Justice of Appeal [Ag.]

Appearances:

Appellant: In person

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

Issues: Criminal appeal against conviction and sentence of 10 years imprisonment – Armed robbery

Result / Order: [Oral delivery]
1. The appeal against conviction is dismissed and the conviction is affirmed.
2. The appeal against sentence is allowed to the extent that the sentence imposed is varied to eight years imprisonment.

Reason: Detailed and cogent evidence against the appellant was given by the accomplice, Jeroy Phillips. The judge properly directed the jury on the treatment of accomplice evidence and on the issue of corroboration.

Robbery is undoubtedly a serious offence. However, the Court was of the view that in imposing a ten-year sentence the fact that a fake firearm was used, did not appear to have been considered.

Case Name: Letting Patterson

V
The Queen

[SVGHCRA2010/0008]

Dale Quashie
V
The Queen

[SVGHCRA2010/0009]

Date: **Tuesday, 28th May 2013**

Coram: **The Hon. Mr. Davidson K. Baptiste, Justice of Appeal**
The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mr. Don Mitchell, Justice of Appeal [Ag.]

Appearances:

Appellant: **Mrs. Kay Bacchus-Browne for the first-named appellant**

Ms. Samantha Robertson for the second-named appellant

Respondent: **Mr. Colin Williams, Director of Public Prosecutions with him Mr. Kareem Nelson and Ms. Sejilla McDowall**

Issues: **Criminal appeal against conviction and sentence of 15 and 10 years imprisonment respectively – Robbery**

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

- 1. The appeals against conviction are dismissed.**
- 2. The appeal against sentence by the first-named appellant is allowed and the sentence imposed is varied to 12 years imprisonment.**
- 3. The appeal against sentence by the**

second-named appellant is allowed to the extent that the sentence of 10 years is varied to 9 years.

Reason:

The Court held that despite the non-disclosure by the Crown of witness statements, that did not affect the safety of the appellants' conviction and did not deny the appellants the real possibility of securing a different outcome. The Court concluded that the verdict of the jury was entirely supported by evidence.

With respect to the sentence of the first-named appellant the Court noted that the range in respect of the offence is 10 to 15 years imprisonment. The Court agreed with counsel that there were no factors of aggravation beyond what was necessary in the commission of the offence and the judge erred in imposing the 15-year sentence, being the maximum sentence for that particular offence.

With regard to the second-named appellant the Court found that a sentence of 9 years would be more appropriate taking into account all the circumstances of the matter including that at the time of the offence, the second-named appellant was 18 years old and had no prior convictions.

Case Name:

Azari Ash

v

The Queen

[SVGHCRAP2011/0006]

Che Bute

v

The Queen

Date: Tuesday, 28th May 2013

Coram: The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mr. Don Mitchell, Justice of Appeal [Ag.]

Appearances:

Appellant: Mr. Carlyle Dougan, QC
Mr. Jomo Thomas with him Ms. Shirlan Barnwell

Respondent: Mr. Colin Williams, Director of Public Prosecutions with him Mr. Kareem Nelson

Issues: Criminal appeal against conviction and sentence of life imprisonment – Murder

Result / Order: [Oral delivery]
1. Leave is granted to the appellants to file an application to rely on hearsay evidence supported by any affidavit evidence and submissions in writing to be filed and served on the Crown on or before 25th June 2013.
2. Any affidavit evidence and submissions in response to be filed and served by the Director of Public Prosecution's Office on or before 23rd July 2013.
3. The matter is traversed to the next sitting of the Court of Appeal in this jurisdiction commencing the week of 30th September 2013.

Reason: The appellants filed to a notice to introduce hearsay evidence on 22nd May 2013.