

COURT OF APPEAL SITTING

SAINT CHRISTOPHER AND NEVIS

14th – 18th October 2013

STATUS HEARING

Case Name: **Glenville Isaac**
v
The Director of Public Prosecutions
[SKBHCRAP2011/0029]

Date: **Monday, 14th October 2013**

Coram: **The Hon. Mr. Mario Michel, Justice of Appeal**

Appearances:
Appellant: **No appearance**
Respondent: **Ms. Rhonda Nisbett-Browne**

Issues: **Appeal against conviction and sentence – Robbery**

Result / Order: **[Oral delivery]**
The appeal is dismissed for want of prosecution, the appellant having not appeared after being notified of the proceedings today.

Reason: **Mr. Alton Liburd (Chief Prison Officer) informed the Court that the appellant was discharged on Saturday, 12th October 2013, and that he had been informed of the day's proceedings.**

Case Name: **Jamie Wilkinson**

V
The Director of Public Prosecutions

[SKBHCRAP2011/0013]

Date: Monday, 14th October 2013

Coram: The Hon. Mr. Mario Michel, Justice of Appeal

Appearances:

Appellant: Mr. John Cato

Respondent: Ms. Rhonda Nisbett-Browne

Issues: Appeal against conviction and sentence – Indecent assault

Result / Order: [Oral delivery]

1. A copy of the record of appeal shall be served on the office of the Director of Public Prosecutions by 4:00 p.m. today, 14th October 2013;
2. The appeal is fixed for hearing at the next sitting of Court of Appeal in the Federation of St. Christopher and Nevis in the week of 10th to 14th February 2014.

Reason: The record of appeal was complete.

Case Name:

Cavin Grant

V

Commissioner of Police

[SKBMCRAP2007/0001]

Date: Monday, 14th October 2013

Coram: The Hon. Mr. Mario Michel, Justice of Appeal

Appearances:

Appellant: In person

Respondent: Ms. Rhonda Nisbett-Browne

Ms. Josephine Mallalieu (Chief Magistrate) also present

Issues: Request for administrative directions

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

Reason: The appellant informed the Court that he no longer wished to proceed with the appeal and that he had already served the sentence which was appealed against.

Case Name: Keon Fyfield
v
The Chief of Police

[SKBMCRAP2013/0025]

Date: Monday, 14th October 2013

Coram: The Hon. Mr. Mario Michel, Justice of Appeal

Appearances:

Appellant: In person

Respondent: Ms. Rhonda Nisbett-Browne

Ms. Josephine Mallalieu (Chief Magistrate) also present

Issues: Request for administrative directions

Result / Order: [Oral delivery]
1. The appellant shall appear before the magistrate to sign his recognizance to prosecute his appeal;
2. The transcript of proceedings shall be prepared and

- served on parties to the appeal in order that the hearing may be held in February 2014;
3. Hearing of the appeal to be fixed for the next sitting of the Court of Appeal in Federation of St. Christopher and Nevis from 10th to 14th February 2014.

Reason: No recognizance was signed, but the appellant wished to proceed with his appeal.

Case Name: Clement Thomas
v
Chief of Police
[SKBMCRAP2013/0027]

Date: Monday, 14th October 2013

Coram: The Hon. Mr. Mario Michel, Justice of Appeal

Appearances:

Appellant: No appearance

Respondent: Ms. Rhonda Nisbett-Browne

Ms. Josephine Mallalieu (Chief Magistrate) also present

Issues: Request for administrative directions

Result / Order: [Oral delivery]
The appellant has completed his term of imprisonment and apparently is not interested in pursuing this appeal; the appeal is accordingly dismissed for want of prosecution.

Reason: Mr. Alton Liburd (Chief Prison Officer) informed the Court that the appellant had served his sentence and was discharged from Her Majesty's Prison. The notice of appeal and recognizance were never signed.

Case Name:

**Walter Parris
v
The Chief of Police**

[SKBMCRAP2013/0028]

Date:

Monday, 14th October 2013

Coram:

The Hon. Mr. Mario Michel, Justice of Appeal

Appearances:

Appellant: No appearance

Respondent: Ms. Rhonda Nisbett-Browne

Ms. Josephine Mallalieu (Chief Magistrate) also present

Issues:

Request for administrative directions

Result / Order:

[Oral delivery]

The appellant has completed his term of imprisonment and apparently is not interested in pursuing this appeal; the appeal is accordingly dismissed for want of prosecution.

Reason:

Mr. Alton Liburd (Chief Prison Officer) informed the Court that the appellant had served his sentence and was discharged. No recognizance to prosecute the appeal was ever signed by the appellant.

Case Name:

**Monica Lawrence
v
Comptroller of Customs**

[SKBMCRAP2013/0022]

Date: Monday, 14th October 2013

Coram: The Hon. Mr. Mario Michel, Justice of Appeal

Appearances:

Appellant: Ms. Miselle O'Brien-Norton holding papers for Mr. Anthony Johnson

Respondent: Ms. Rhonda Nisbett-Browne

Ms. Josephine Mallalieu (Chief Magistrate) also present

Issues: Request for administrative directions – Withdrawal of appeal

Result / Order & Reason: [Oral delivery]
Counsel for the appellant having sought the leave of the Court to withdraw the appeal, the appeal is hereby dismissed.

Case Name: Larrier Greaux
v
Licensing Authority

[SKBMCRAP2013/0023]

Date: Monday, 14th October 2013

Coram: The Hon. Mr. Mario Michel, Justice of Appeal

Appearances:

Appellant: Ms. Miselle O'Brien-Norton holding papers for Mr. Anthony Johnson

Respondent: Ms. Rhonda Nisbett-Browne

Ms. Josephine Mallalieu (Chief Magistrate) also present

Issues: Request for administrative directions – Withdrawal of appeal

Result / Order & Reason: [Oral delivery]
Counsel for the appellant having sought the leave of the Court to withdraw the appeal, the appeal is hereby dismissed.

Case Name: Valencia Cannonier
v
Trevaughn Joseph
[SKBMCRAP2013/0021]

Date: Monday, 14th October 2013

Coram: The Hon. Mr. Mario Michel, Justice of Appeal

Appearances:
Appellant: Mr. Hesketh Benjamin
Respondent: Ms. Miselle O'Brien-Norton holding papers for Ms. Patricia Dublin-Lewis

Issues: Request for administrative directions

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

Reason: No recognizance was ever filed and counsel for the appellant had been unable to contact his client.

APPLICATIONS AND APPEALS

Case Name: Reginald Anthony Hull
v
[1] The Attorney General of St. Christopher and Nevis
[2] The Social Security Board
[SKBHCVAP2012/0029]

Date: Monday, 14th October 2013

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

Appearances:
Appellant: Mr. Damian Kelsick, with him, Mr. Garth Wilkin
Respondents: Mr. O'Neil Simpson for the 1st respondent
Mr. Leon Charles for the 2nd respondent

Issues: Application to vary order of single judge – Whether or not a bailiff can be held personally responsible and the Crown vicariously liable for unlawful imprisonment in pursuit of the execution of an order of the magistrate to imprison a debtor – Jurisdiction of full Court to review decision of single judge – Whether order made by single judge in a procedural/interlocutory appeal reviewable by full Court – Applicability of rule 62.16(A) and rule 62.10 of the Civil Procedure Rules 2000 to an interlocutory appeal – Applicability of s. 10.3 of the Windward Islands and Leeward Islands (Courts) Order in Council

Result / Order & Reason: [Oral delivery]
Parties are required to file submissions addressing the point as to whether CPR 62.16(A) permits the full Court to review a decision given by a single judge of this Court in an interlocutory appeal which is governed by CPR 62.10. Accordingly:

1. The applicant shall file and serve written submissions addressing this issue no later than Monday, 28th October 2013.
2. The respondents shall file and serve written submissions addressing the said point no later than Monday, 11th November 2013.
3. The appellant shall be at liberty to file and serve submissions in reply no later than 18th November 2013.
4. The matter will come on for hearing at next sitting of the Court in St. Kitts and Nevis.

Case Name:

**Kareem Vinton né Glasford
v
[1] First Caribbean International Bank
(Barbados) Limited
[2] Bronwen Glasford**

[SKBHCVAP2012/0024]

Date:

Monday, 14th October 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: Mr. Terence Byron

**Respondents: Mr. Damian Kelsick, with him, Ms. Keisha Spence for the
1st respondent
Mr. Jonel Powell holding papers for Mr. Lindsay Grant,
counsel for the 2nd respondent**

Issues:

**Application for leave to appeal – Applicant's application
for declaration that he had beneficial interest in property
dismissed – Respondents' defence struck out in court
below**

Result / Order:

[Oral delivery]

The application for leave to appeal being discontinued, the application for a stay is hereby dismissed with costs to the 1st respondent, First Caribbean International Bank (Barbados) Limited in sum of \$750.00 and costs to 2nd respondent in sum of \$750.00. Costs to be paid by 29th October 2013.

Reason: A notice of discontinuance was filed on behalf of the applicant on 14th October 2013.

Case Name: [1] Kareem Vinton né Glasford
v
[1] First Caribbean International Bank (Barbados) Limited
[2] Bronwen Glasford
[SKBHVAP2013/0012]

Date: Monday, 14th October 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: Mr. Terence Byron (appearing amicus curiae) for the applicant
No appearance of Kareem Vinton

Respondents: Mr. Emile Ferdinand, QC, with him, Ms. Keisha Spence for the 1st respondent
Mr. Jonel Powell holding papers for Mr. Lindsay Grant, counsel for the 2nd respondent

Issues: Application for leave to appeal – Applicant failed to appear at hearing before learned master – Whether learned master erred in ordering that applicant pay EC\$500.00 costs

Result / Order: [Oral delivery]
The application is struck out. No order as to costs.

Reason: The application for leave to appeal was filed out of time.

Case Name: [1] Trans-Americainvest (St. Kitts) Ltd.
[2] Natalia Bitton
[3] John Zuliani
v
[1] Susan Dodge
[2] Anthony Zapparoli
[SKBHCVAP2013/0001]

Date: Monday, 14th October 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:
Applicants: Ms. M. Angela Cozier
Respondents: Ms. Camilla Cato

Issues: Application for conditional leave to appeal to Her Majesty in Council – Applicant to satisfy criteria for grant of leave set out in ss. 99(1)(a) and 99(2)(a) of the Constitution of Saint Christopher and Nevis – What constitutes final decision as opposed to interlocutory decision – Application test – What constitutes question of “great general or public importance” – Whether the applicability of the CPR and natural justice are matters of great public importance thus satisfying the criteria under section 99(2)(a)

Result / Order: [Oral delivery]

The application for conditional leave to appeal to Her Majesty in Council is refused. No order as to costs

Reason:

In an application for conditional leave to appeal an interlocutory order to Her Majesty in Council the Court must be satisfied that the application meets the threshold test set down in section 99(1)(a) or section 99(2)(a) of the Constitution of Saint Christopher and Nevis. The applicants failed to satisfy the requirements set out in both of these sections.

Applying the Application test, the Order of the Court of Appeal was not a final order but an interlocutory order. The Court relied on its decision in the case of *Gregory Bowen et al v Dipcon Engineering Services Limited* (Grenada High Court Civil Appeal GDAHCVAP2004/0002 (delivered 8th December 2005, unreported)) and the Court was guided by its previous decision in *Martinus Francois v The Attorney General* (Saint Lucia High Court Civil Appeal SLUHCVP2003/0037 (delivered 7th June 2004, unreported)).

The application for conditional leave to appeal disclosed no area of law which was in dispute, nor any issue of great general or public importance, nor any novel or complex question of law, nor a constitutional provision which had not been settled, nor any area of law which was in dispute or gave rise to a legal question the resolution of which raised dire consequences for the public. Accordingly, the test which could trigger leave under section 99(2)(a) of the Constitution was not met.

Case Name:

Joshua Roach

v

Director of Public Prosecutions

[SKBHCRAP2008/0029]

Date:

Monday, 14th October 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: Dr. Henry Browne, QC, with him, Mr. Hesketh Benjamin
Respondent: Mr. O'Neil Simpson

Issues:

Criminal appeal against sentence – Request for reduction of sentence by 2 years – Evidence of unblemished record and youth not taken into account – Trial judge used benchmark of 20 years instead of benchmark of 15 years – Benchmark of 15 years established by Court of Appeal for offence of manslaughter

Result / Order:

[Oral delivery]

- 1. The appellant is to file and serve skeleton submissions no later than Wednesday, October 16th 2013 by 2:00 p.m.**
- 2. The respondent is to file and serve any further submissions by Thursday, 17th October 2013 no later than 3:00 p.m.**
- 3. The hearing of the appeal is fixed for Friday, 18th October 2013.**

Reason:

It was necessary for the Court to give the parties directions for filing and serving skeleton submissions so that the appeal could be heard later on in the week.

Case Name:

Craig Bradshaw

v

The Director of Public Prosecutions

[SKBHCRA2011/0009]

Date:

Monday, 14th October 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. John Cato

Respondent: Ms. Greatess Gordon

Issues: Criminal appeal against sentence – Unlawful carnal knowledge

Result / Order: The matter is stood down until 1:30 p.m.

Reason: To allow for the disposition of a preliminary matter.

Case Name:

Gibson Blake

v

The Director of Public Prosecutions

[SKBHCRA2011/0015]

Date: Monday, 14th October 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: Ms. Greatess Gordon

Issues: Status of matter – Appeal against sentence – Housebreaking and larceny

Result / Order: [Oral delivery]
1. The respondent is to serve a copy of the filed submissions on the appellant in person forthwith.

2. The matter is adjourned to Friday, 18th October 2013.

Reason: The appellant had not been served with the submissions of the respondent. The matter was stood down in the interest of fairness to give the appellant an opportunity to have sight of the submissions.

Case Name: Craig Bradshaw
v
The Director of Public Prosecutions

[SKBHCRAP2011/0009]

Date: Monday 14th October 2013. Matter recalled at 1:30 pm

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. Craig Bradshaw (unrepresented)
Respondent: Mr. Travers Sinanan, Director of Public Prosecutions

Issues: Criminal appeal against sentence – Unlawful carnal knowledge

Result / Order: [Oral delivery]
The matter is adjourned to the next sitting of the Court in St. Kitts and Nevis.

Reason: To allow the appellant to obtain legal representation.

Case Name: Keithley Griffin
v
The Director of Public Prosecutions
[SKBHCRAP2011/0010]

Date: Monday, 14th October 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: Dr. Henry Browne, QC, with him, Mr. Hesketh Benjamin
Respondent: No appearance

Issues: Appeal against conviction and sentence – Unlawful carnal knowledge

Result / Order: The matter is stood down to Wednesday, the day set at Case Management for the hearing of this appeal.

Case Name: [1] Alexter Amory
[2] Leon Phillip
v
The Director of Public Prosecutions
[SKBHCRAP2010/0013]
[SKBHCRAP2010/0015]

Date: Tuesday, 15th October 2013

Coram: The Hon. Dame Janice M. Pereira, Chief Justice
The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal

Appearances:

Appellants: Dr. Henry Browne, QC, with him, Mr. Hesketh Benjamin

Respondent: Ms. Rhonda Nisbett-Browne

Issues: Criminal appeal against conviction – Armed Robbery – Application for leave to amend grounds of appeal – Alibi – Identification – Joint enterprise – Whether learned trial judge misdirected jury on evidence of alibi, identification and joint enterprise – Whether learned trial judge failed to give sufficient direction to jury on evidence of alibi, identification and joint enterprise – Whether evidence showed two separate incidents or two separate versions of a single incident

Result / Order: [Oral delivery]
1. The application for leave to amend grounds of appeal is granted.
2. The appeal against conviction is dismissed and the conviction is affirmed.
3. There being no appeal against sentence, sentence remains.

Reason: The Court was satisfied that no issue of alibi arose in the case as the appellants confirmed that they were in the same area that the incident occurred, that they knew the virtual complainant, and that they had an encounter with him. The only difference in the stories of the virtual complainant and the appellants was the nature and subject of the encounter.

The Court held that the evidence amounted to two versions of a single incident not two incidents, and that the appellants' evidence on alibi was clearly put to the jury by the trial judge.

There was no merit in the argument against the directions of learned judge in relation to identification where the virtual complainant stated how well he had known the appellants and because of the appellants' own evidence that they knew the virtual complainant. Further, pages 148-150 of the record of appeal showed that the judge adequately put the evidence of identification to the jury, mentioning the evidence in relation to lighting, proximity

of the parties, that the virtual complainant and the appellants knew each other well (even referring to pseudonyms by which the virtual complainant knew the appellants), the duration of the incident, that the appellants wore no masks and there was nothing blocking the view of their faces.

It was the Court's view that the directions adequately assisted the jury and warned them in the usual manner about how to approach evidence of identification. Additionally, the issue of joint enterprise was adequately put to the jury.

Case Name: **The Director of Public Prosecutions**
v
Kenrick Hendrickson
[SKBHCRA2011/0002]

Date: **Tuesday, 15th October 2013**

Coram: **The Hon. Dame Janice M. Pereira, Chief Justice**
The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal

Appearances:

Appellant: **Ms. Rhonda Nisbett-Browne**

Respondent: **In person**

Issues: **Criminal appeal against sentence – Indecent assault – Whether sentence imposed by learned judge was extremely lenient – Incomplete transcript – Facts of case not in record of appeal – Withdrawal of appeal**

Result / Order: **[Oral delivery]**
The Court allows the withdrawal of the appeal but only in the peculiar circumstances of this particular case. The sentence imposed by the learned trial judge is not to be used as any sort of precedent in any other case relating to

a matter of this nature and is not to be taken as a benchmark for sentencing in cases of this nature.

Reason:

The transcript of proceedings was incomplete and the facts of the case were not contained in the record of appeal. There was no evidence as to the facts that were available to the judge in the court below, upon which his sentence was based. Additionally, the suspended sentence had expired nearly two years before, in December 2011, and the respondent had not been charged with any infraction since. The Court held that in the circumstances, the justice of the matter supported allowing the withdrawal of the appeal.

Case Name:

**Troy Francis
v
Director of Public Prosecutions
[SKBHCRAP2008/0023]**

Date:

Tuesday, 15th October 2013

Coram:

**The Hon. Dame Janice M. Pereira, Chief Justice
The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal**

Appearances:

**Appellant: In person
Respondent: Ms. Greatess Gordon**

Issues:

Criminal appeal against sentence – Rape – Time spent on remand not taken into account

Result / Order:

**[Oral delivery]
Correction of the approach of the trial judge: Sentence is 10 years with the appellant being credited for time spent on remand.**

Reason	The learned trial judge indicated a sentence of 10 years but rather than credit the time on remand in computation of the ten year term, the learned trial judge reduced the sentence to take account of the time spent on remand.
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The learned trial judge indicated a sentence of 10 years but rather than credit the time on remand in computation of the ten year term, the learned trial judge reduced the sentence to take account of the time spent on remand.

Case Name: Mario Harvey
v
The Director of Public Prosecutions
[SKBHCRAP2011/0016]

Mario Harvey

V

The Director of Public Prosecutions

[SKBHCRAP2011/0016]

Date: Tuesday, 15th October 2013

Tuesday, 15th October 2013

Coram: The Hon. Dame Janice M. Pereira, Chief Justice
The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal

The Hon. Dame Janice M. Pereira, Chief Justice
The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal

Appearances:

Appellant: In person

Respondent: Ms. Rhonda Nisbett-Browne

Issues: Criminal appeal against sentence – Buggery

Criminal appeal against sentence – Buggery

Result / Order: [Oral delivery]
The appeal is dismissed and the sentence is affirmed.

[Oral delivery]
The appeal is dismissed and the sentence is affirmed.

Reason: No grounds were advanced to alter the appellant's sentence. The Court was satisfied that the trial judge took into consideration the type of offence, the appellant's previous convictions, the nature and severity of appellant's conduct, and the circumstances surrounding the commission of the offence.

No grounds were advanced to alter the appellant's sentence. The Court was satisfied that the trial judge took into consideration the type of offence, the appellant's previous convictions, the nature and severity of appellant's conduct, and the circumstances surrounding the commission of the offence.

Case Name:

Vincent Clerice
v
[1] The Chief of Police
[2] The Director of Public Prosecutions

[SKBMCRAP2012/0005]

Date:

Wednesday, 16th October 2013

Coram:

The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal

Appearances:

Appellant: Dr. Henry Browne, QC

Respondent: Mr. O'Neil Simpson

Issues:

Appeal against conviction and sentence – Possession of controlled drug with intent to supply – Plea of “guilty with explanation” – Whether such plea exists in law – Accused unrepresented in court below – Whether learned magistrate had jurisdiction to impose default term of 4 years – Whether sentence imposed was unreasonably harsh and unduly severe – ss. 77, 78, 79, 83 and 115 of the Magistrate’s Code of Procedure Act, Cap 3.17 (Revised Laws of Saint Christopher and Nevis 2002) – s. 26(6) of the Drugs (Prevention and Abatement of the Misuse and Abuse of Drugs) Act, Cap. 9.08 – Natural justice and due process of law – Whether appellant denied opportunity to instruct counsel or his Embassy as foreign national – Whether forfeiture ordered pursuant to s. 27 of the Drugs (Prevention and Abatement of the Misuse and Abuse of Drugs) Act was in violation of appellant’s right to natural justice and due process of law

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 default term of 4 years is set aside and in its place, a default term of 12 months is substituted, the 12 month term to commence on expiration of the 2 year sentence.**

Reason

A review of the “explanation” given by the appellant showed clearly that he was, in essence, giving reasons for committing the offence. There was nothing in the explanation which was inconsistent with or jeopardized his plea of guilty.

The prosecution in the Magistrates’ Court supplied relevant facts supportive of the guilty plea. There was no evidence before the magistrate to contest what was stated.

Further, there was nothing in the record to show that appellant was denied the opportunity to instruct counsel. The appellant pleaded to the charge and gave an explanation not inconsistent with his plea. There was nothing before the Court to indicate that the appellant requested counsel and was somehow barred or refused the opportunity of obtaining legal representation.

The Court was not of the view that sentence was unduly severe or unreasonably harsh. The main point that arose concerned the default provision of the sentence. The appellant was given a 2-year sentence and fined EC\$1 million, payable in 9 months in default of which, he was to serve a further 4 years. However, section 115 of the Magistrate’s Code of Procedure Act (Cap 3.17, Revised Laws of Saint Christopher and Nevis 2002) provides a maximum term of 12 months in default of payment of a fine. Consequently, the magistrate erred where she imposed a penalty which provided a further 4 years in default of payment of the appellant’s fine.

Finally, the Court pointed out that the Drugs (Prevention and Abatement of the Misuse and Abuse of Drugs) Act (Cap. 9.08, Revised Laws of Saint Christopher and Nevis 2002) makes provision for forfeiture. The Court was not of the view that any violation of due process took place or that the appellant’s right to natural justice was impaired.

Case Name:

Keithley Griffin

V
The Director of Public Prosecutions

[SKBHCRAP2011/0010]

Date: Wednesday, 16th October 2013

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

Appearances:

Appellant: Dr. Henry Browne, QC

Respondent: Mr. O'Neil Simpson

Issue: Criminal appeal against conviction and sentence –
Unlawful carnal knowledge

Result / Order: [Oral delivery]
The matter is traversed to the next sitting of the Court in
the Federation of St. Kitts and Nevis.

Reason: Queen's Counsel had only recently been instructed and as
a result, needed some time to prepare.

Case Name: Toussaint Tatem
V
Ingrid Bailey

[SKBMCVAP2013/0008]

Date: Wednesday, 16th October 2013

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

Appearances:

Appellant: Dr. Henry Browne, QC
Mr. Toussaint Tatem also present

Respondent: Ms. Sherry-Ann Liburd-Charles
Ms. Ingrid Bailey also present

Issues:

Quantum of damages awarded by learned magistrate –
Whether there was evidence to support factual findings
giving rise to the damages awarded – Whether \$700.00
reasonable damages for repair of fence – Whether there
was sufficient evidence to justify award of 30 days loss of
use of motor vehicle

Result/Order:

[Oral delivery]
1. The appeal is dismissed.
2. The appellant is to pay the respondent costs of
EC\$800.00 being 2/3 of the costs awarded in court
below.

Reason

The Court could find no basis to interfere with the
magistrate's exercise of discretion.

Case Name:

[1] Vernon S. Veira
[2] Vernon S. Veira & Associates
v
[1] Guy Mitchell
[2] Amy Mitchell

[SKBHCVAP2010/0021]

Date:

Wednesday, 16th October 2013

Coram:

The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mde. Louise E. Blenman, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal

Appearances:

Appellants: Dr. Henry Browne, QC
Mr. Vernon Veira also present

Respondents: No appearance

Issues: Whether learned trial judge erred in deciding that special damages could be assessed under Part 12 of the Civil Procedure Rules 2000 which damages were never pleaded or proved – Whether learned trial judge erred in deciding that damages for economic loss (which were not pleaded) could be assessed after judgment for a specific sum which was admitted by the appellant and entered by the respondent

Result / Order: [Oral delivery]
1. The appeal is allowed.
2. The order of Mr. Justice Belle dated 9th July 2010 and entered 13th December 2010 is set aside.
3. Also, the order of Mr. Justice Errol Thomas dated 31st January 2011 and entered 11th February 2011 is set aside.

Reason The Court was of the opinion that the appeal did have merit. The application by the respondents to assess damages was filed on 8th April 2010 and the appellants were not present at this assessment. It was clear that the assessment referred to specific items of special damages when no special damages had been pleaded in the statement of claim. As such, there was no proper basis on which such assessment could be conducted.

With only an oral judgment, there was no reasoned decision given to show how the assessment sum was arrived at.

Case Name: **Glenville Maynard**
v
The Director of Public Prosecutions

Date: Wednesday, 16th October 2013

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

Appearances:

Appellant: In person

Respondent: Mr. Garth Wilkin

Issues: Criminal appeal against conviction and sentence – Robbery – Whether evidence at trial was insufficient – Omission of certain warnings – Prejudicial statement made by judge – Mistaken identity – Whether sentence was harsh

Result/Order [Oral delivery]

1. The appeal against conviction is dismissed and the conviction is affirmed.
2. The appeal against sentence is allowed. A sentence of 13 years is substituted for the sentence of 15 years and the sentence is to take effect from the date the appellant went on remand.

Reason: There was strong and compelling evidence to support the finding of guilt. Based on the evidence of police officers Charles Smithen and Roosevelt Leader, the appellant fitted the description given by the virtual complainant, the appellant and his accomplice were discovered 40 minutes after the incident occurred wearing clothing fitting the description given to police, and the appellant's accomplice was caught with the stolen items. Any inconsistencies in the evidence were miniscule compared to magnitude of evidence against the appellant.

The learned trial judge correctly directed jury on discrepancies. The jury was told how to assess the evidence so as to make them clear as to what to do.

Having regard to all the circumstances, the mitigating

factors (the appellant's youthful age, financial circumstances and economic background) balanced out the aggravating factors (the nature of the crime, the appellant's previous convictions, the opinion expressed in the Social Enquiry Report that the appellant showed no remorse).

Had the learned trial judge properly weighed the mitigating and aggravating factors, he would have realised that the two balanced out each other. The Court held that using a notional starting point of a sentence of 13 years, the appropriate sentence in all the circumstances would be 13 years. There was no basis for increasing the notional sentence.

Case Name: **Rawle Benjamin**
v
The Director of Public Prosecutions
[HCRAP2010/0024]

Date: **Wednesday, 16th October 2013**

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

Appearances:
Appellant: **In person**
Respondent: **Mr. Garth Wilkin**

Issues: **Criminal appeal against conviction and sentence – Robbery – Whether evidence at trial was insufficient – Omission of certain warnings – Prejudicial statement made by judge – Mistaken identity – Whether sentence was harsh**

Result / Order: **[Oral delivery]**
1. The appeal against conviction is dismissed and the

conviction is affirmed.

2. The appeal against sentence is upheld. A sentence of 13 years substituted for the sentence of 15 years and the sentence is to take effect from the date the appellant went on remand.

Reason:

There was strong and compelling evidence to support the finding of guilt. Based on the evidence of police officers Charles Smithen and Roosevelt Leader, the appellant fitted the description given by the virtual complainant, the appellant and his accomplice were discovered 40 minutes after the incident occurred wearing clothing fitting the description given to police, and the appellant was caught with the stolen items. Any inconsistencies in the evidence were miniscule compared to magnitude of evidence against the appellant.

The Court held that the learned trial judge had correctly directed jury on the evidence.

Having regard to all the circumstances, the mitigating factors (the appellant's youthful age, financial circumstances and economic background) balanced out the aggravating factors (the nature of crime, the appellant's previous convictions, and the opinions expressed in the Social Enquiry Report).

Had the learned trial judge properly weighed the mitigating and aggravating factors, he would have realised that the two balanced out each other. The Court held that using a notional starting point of a sentence of 13 years, the appropriate sentence in all the circumstances would be 13 years. There was no basis for increasing the notional sentence.

Case Name:

Joseph Herbert

v

The Director of Public Prosecutions

[SKBHCRAP2011/0014]

Date: Wednesday, 16th October 2013

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

Appearances:

Appellant: In person

Respondent: Ms. Greatess Gordon

Issues: Criminal appeal against conviction and sentence – Buggery

Result / Order: [Oral delivery]
The matter is traversed to the next sitting of the Court of Appeal in St. Kitts during the week commencing 10th February 2014.

Reason: To allow the appellant to retain another attorney.

Case Name: Otis French
v
Licensing Authority
[SKBMCRAP2013/0005]

Date: Thursday, 17th October 2013

Coram: The Hon. Mde. Louise Blenman, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal

Appearances:

Appellant: No appearance

Respondent: Ms. Greatess Gordon

Issues: Magisterial traffic appeal – Road traffic accident

Result / Order: [Oral delivery]
The matter is adjourned in order to enable the appellant to retain new counsel. The matter is traversed to the next sitting of the Court in the Federation of St. Kitts and Nevis in the month of February 2014.

Reason: Counsel who appeared on the appellant's behalf at the case management conference was indisposed.

Case Name: Maria Walwyn
v
Bank of Nova Scotia
[SKBMCRAP2013/0002]

Date: Thursday, 17th October 2013

Coram: The Hon. Mde. Louise Blenman, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal

Appearances:
Appellant: In person
Respondent: Ms. Keisha Spence

Issues: Debts owed by appellant to respondent bank – Whether there was agreement between appellant and respondent to waive interest and late fees in relation to debts – Whether learned magistrate erred in finding that no such agreement existed – Challenge to findings of fact made by learned magistrate

Result / Order: [Oral delivery]
1. Leave is granted to the appellant to file and serve skeleton arguments within 28 days of this order.
2. If necessary, the respondent is granted 14 days leave thereafter to file and serve further skeleton

submissions.

3. The appellant is to pay the respondent the sum of EC\$500.00 as costs and this sum is to be paid before the hearing of this appeal.
4. The appeal is adjourned and is traversed to the next sitting of the Court in the Federation of St. Kitts and Nevis commencing 10th February 2014.
5. The respondent has carriage of the order.

Reason

This matter was engaging the attention of the Court for the first time after case management. The Court was of the view that the justice of the matter required that the appellant be given a final opportunity to file skeleton submissions and retain counsel.

Case Name:

Winsroy Duporte

v

Fiona Halliday

[SKBMCVAP2008/0001]

Date:

Thursday, 17th October 2013

Coram:

**The Hon. Mde. Louise Blenman, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal**

Appearances:

Appellant: In person

Respondent: No appearance

Issues:

Payment of judgment debt – Whether learned magistrate erred in ordering appellant to pay judgment debt – Jurisdiction of learned magistrate to order that appellant be imprisoned in default of payment of debt before further hearing for committal for being in contempt of court

Result / Order:

[Oral delivery]

1. The matter is adjourned to the next sitting of the Court in the Federation of St. Kitts and Nevis commencing 10th February 2014.
2. The Registrar of the High Court is to effect service of the notice of the adjourned hearing on the respondent within 28 days of this order.
3. Proof of service by the Registrar of the adjourned hearing to be placed on the file.

Reason

There was no evidence of service of the notice of the day's hearing on the respondent.

Case Name:

**Nigel Carty
v
Alston Williams**

**[SKBMCVAP2013/0004]
[SKBMCVAP2013/0005]**

Date:

Thursday, 17th October 2013

Coram:

The Hon. Mde. Louise Blenman, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal

Appearances:

Appellant: Ms. Angelina Gracy Sookoo

Respondent: In person

Issues:

Agreement between appellant and respondent for excavation and trucking services to be provided by respondent – Payment of outstanding sums

Result / Order:

[Oral delivery]

1. Final leave is granted to the appellant to file and serve skeleton arguments within 28 days of this order.
2. The appellant is to pay the respondent costs in sum of \$500.00. Costs are to be paid before the hearing of this appeal.

3. The respondent is granted 28 days leave thereafter to file and serve skeleton submissions in reply.
4. The appellant is granted 14 days leave thereafter, if necessary, to file and serve submissions in response.
5. The appeal is adjourned to the next sitting of the Court in the Federation of St. Kitts and Nevis commencing 10th February 2014.
6. The appellant has carriage of the order.

Reason: No skeleton arguments had been filed as yet. The appeal was not ready to be heard.

Case Name: Linden Mercurius
v
Donna Lybert
[SKBMCRAP2013/0004]

Date: Thursday, 17th October 2013

Coram: The Hon. Mde. Louise Blenman, Justice of Appeal
The Hon. Mr. Mario Michel, Justice of Appeal

Appearances:

Appellant:	Ms. Natasha Grey Mr. Linden Mercurius also present
Respondent:	Ms. Stacey Ann Aberdeen Ms. Donna Lybert also present

Issues: Whether maintenance order had any standing in law – Whether decision of learned magistrate not to discharge maintenance order was reasonable having regard to evidence – Jurisdiction of magistrate to discharge order on basis that at time order was granted respondent was not a single woman – s. 124 of the Magistrate's Code of Procedure Act, Cap 3.17 (Revised Laws of Saint Christopher and Nevis 2002) – s. 10 of Maintenance of Children Act, 2012 (Act No. 42 of 2012, Laws of Saint Christopher and Nevis)

Result / Order:

[Oral delivery]

- 1. The appeal is allowed.**
- 2. The decision of the learned magistrate given on 8th April 2013 is set aside.**
- 3. The Court will also quash the decision and set aside the maintenance order of learned magistrate made on 24th July 2012.**
- 4. No order as to costs.**

Reason:

The Court held that the learned magistrate failed to properly apply the law and as a consequence, erred.

A magistrate cannot exercise any power that is not conferred by statute. Section 124 of the Magistrate's Code of Procedure Act (Cap 3.17, Revised Laws of Saint Christopher and Nevis 2002) prohibits a married woman from getting a maintenance order against a single man.

The learned magistrate had no jurisdiction to entertain the respondent's application for maintenance due to section 124, and the respondent had no competence to make the application under that section as she was not a single woman at the time of conception or at the time of birth of the child. Additionally, section 10 of the Maintenance of Children's Act, 2012 (Act No. 42 of 2012, Laws of Saint Christopher and Nevis) gives a magistrate jurisdiction to discharge a maintenance order, if the circumstances so warrant. The magistrate did not avert her mind to the provisions of section 10 of the Maintenance of Children's Act, 2012.

The Court had no doubt that the conjoined effect of section 124 of the Magistrate's Code of Procedure Act and section 10 of the Maintenance of Children's Act, 2012 would have enabled the magistrate to come to conclusion that she could have discharged the order which ought not to have been made initially.

Case Name:

**Joseph Parry
v**

Mark Brantley

[SKBHCVAP2012/0003]

[1] Leroy Benjamin

[2] Bernadette Lawrence

v

Mark Brantley

[SKBHCVAP2012/0004]

Hensley Daniel

v

Mark Brantley

[SKBHCVAP2012/0005]

Date: Thursday, 17th October 2013

Coram: The Hon. Dame Janice M. Pereira, Chief Justice
The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mr. Don Mitchell, Justice of Appeal [Ag.]

Appearances:

Appellant: Dr. Henry Browne, QC for Mr. Joseph Parry and Mr. Hensley Daniel
Ms. Bernadette Lawrence and Mr. Leroy Benjamin representing themselves

Respondent: Ms. Dahlia Joseph for the respondent

Issues: Review of order made as to costs in Court of Appeal judgment in this matter dated 27th August 2012

Result / Order: [Oral delivery]
1. Paragraph 92 of the judgment of the Court of Appeal in this matter dated 27th August 2012, is amended to delete the order as to costs against Joseph Parry and

Hensley Daniel and thereafter reads as follows:

[92] The normal rule in our jurisdiction in public law matters is that each party bears his own costs unless there is some special cause to order otherwise. The rule is based on the premise that meritorious public interest litigation is not to be unduly restrained by the fear of being burdened personally by an order for costs. The learned trial judge followed that rule in this case, and he ordered each party to bear his own costs. Mr. Brantley appeals this order and asks that he not be made to bear the financial burden of redressing a public wrong that affected many persons. Having found that the learned trial judge, in the light of the facts found by him, was wrong not to have found Mr. Benjamin and Ms. Lawrence guilty of bad faith and misconduct in preparation of the list used for the election, the normal rule should not have applied. The only proper order for him to have made was Mr. Benjamin and Ms. Lawrence should have paid costs in the court below to Mr. Brantley. I would order that Mr. Benjamin and Ms. Lawrence be jointly and severally liable for the costs of Mr. Brantley in the High Court to be assessed if not agreed within 21 days of the date of this decision. As regards costs in the Court of Appeal, I would order that Mr. Benjamin and Ms. Lawrence be jointly and severally liable to pay Mr. Brantley's costs assessed at two thirds of the costs in the court below, as I consider their appeals to have been entirely without merit while Mr. Brantley's cross appeal has succeeded.

2. No order as to costs on this application.

Reason:

By the consent of the parties.

Case Name:

Leonora L. Walwyn

v

[1] Eustace Archibald

[2] RBTT Bank (SKN) Limited

[SKBHCVAP2010/0012]

Date: Thursday, 17th October 2013

Coram: The Hon. Dame Janice M. Pereira, Chief Justice
The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mr. Don Mitchell, Justice of Appeal [Ag.]

Appearances:

Appellant: Mr. Terence Byron

Respondents: Ms. M. Angela Cozier for the Eustace Archibald
Ms. Hazelyn Ross for RBTT Bank (SKN) Limited

Issues: Appeal against findings of fact and law contained in judgment delivered by Belle J on 28th May 2010 – Purchase of land – Loan agreement – Breach of fiduciary duty

Result / Order: [Oral delivery]

1. The appeal is dismissed with costs of \$1,500.00 to Mr. Eustace Archibald against the appellant.
2. The counter appeal having been withdrawn with agreed costs of \$1,500.00 to RBTT Bank, the counter-appeal is dismissed with costs as agreed.

Reason: Considering the clear solicitor-client relationship between Ms. Walwyn and Mr. Archibald, and the conduct of Ms. Walwyn (who could not be treated for these purposes as a mere third party or stranger or person at arm's length) the Court held that that the learned trial judge was right in not giving a remedy to Ms. Walwyn on her counterclaim on the facts of this case, because of the breach of fiduciary duty by her as his solicitor. Ms. Walwyn was the author of her own loss by virtue of her failure to be open and frank with Mr. Archibald about what had transpired and what she had been obliged to do in relation to the Bank. The Court opined that her claim for equitable relief, even if it were properly pleaded (and the Court did not consider it was) would fail on equitable grounds as the Court did not think that, in the circumstances, equity should come to her aid. The case of *Banque Financiere de la Cité v Parc (Battersea) Ltd. and Others* [1999] 1 AC 221 referring to the decision in *Boscawen and Others v Bajwa and Another*

[1996] 1 WLR 328, establishes that subrogation is available as a remedy in a wide variety of different factual situations in which it is required in order to reverse the defendant's unjust enrichment. The equity arises from the conduct of the parties on well-established principles and in defined circumstances which make it unconscionable for the defendant to deny the proprietary interest claimed by the plaintiff. This was not a case where it could be said that the conduct of the parties made it unconscionable for Mr. Archibald to be denied the proprietary interest claimed by him in these circumstances.

Case Name:

Dwight Cozier

v

Mark Brantley

[SKBHCVAP2012/0030]

Date:

Thursday, 17th October 2013

Coram:

**The Hon. Dame Janice M. Pereira, Chief Justice
The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mr. Don Mitchell, Justice of Appeal [Ag.]**

Appearances:

Appellant: Ms. M. Angela Cozier

Respondent: Ms. Dahlia Joseph

Issues:

Whether learned master erred in striking out paragraph 22 of the appellant's statement of claim on ground that it disclosed no reasonable ground for bringing or defending appellant's claim – Whether master erred in staying proceedings pending determination of another matter – Whether learned master erred in ordering that each party bear his own costs

Result / Order:

[Oral delivery]

- 1. The appeal against the striking out of paragraph 22 of the statement of claim is dismissed;**

2. The appeal against the order for a stay is granted; and
3. The appeal against the order for costs is dismissed;
4. No order as to the costs of this application on the basis that there was partial success.
5. The matter will proceed in accordance with Rules of Court.

Reason:

The Court did not consider that the striking out of paragraph 22 ought to be disturbed as it was done in the exercise of the master's discretion under Parts 69 and 8 of the Civil Procedure Rules 2000; the paragraph added nothing to the claim. The Court held that the learned master acted within the plenitude of her discretion and there was no reason to disturb her exercise of discretion.

With regard to the order for a stay, we are of the view that the stay ought to be set aside as it was made in breach of CPR 26.2. It was an order made of the master's own initiative, and she ought to have given the parties an opportunity to be heard on the issue, failing which there would be a breach of natural justice principles. There was no application for a stay before her.

With regard to her order as to costs, the master had a broad discretion with regard to the award of costs, and the Court of Appeal will only interfere where it is shown that when acting in the exercise of the discretion given to her, she was blatantly wrong. Here she found that success in the application before her was equal between the two parties and it was within her discretion to order that each party should bear his or her own costs.

Case Name:

Jasper Qvist

v

The Director of Public Prosecutions

[SKBHCRAP2013/0008]

Date:

Friday, 18th October 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: Dr. Henry Browne, QC, with him, Mr. John Cato

Respondent: Mr. Travers Sinanan, Director of Public Prosecutions

Issues:

Criminal appeal against conviction – Rape – Summation of trial judge – Trial judge failed to properly indicate he was arbiter of law – Failure to give direction of previous good character – No direction on corroboration – Insufficient and/or no direction on credibility of virtual complainant

Result / Order:

**[Oral delivery]
The appeal is allowed. The appellant's conviction and sentence are quashed.**

Reason:

The Director of Public Prosecutions conceded that the conviction was unsafe and unsatisfactory, and that the conviction should be quashed. The Court was in agreement with this view.

Case Name:

Louis Richards

v

The Director of Public Prosecutions

[SKBHCRAP2008/0030]

Date:

Friday, 18th October 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: Dr. Henry Browne, QC

Respondent: Mr. Travers Sinanan, Director of Public Prosecutions

Issues:

Criminal appeal against conviction and sentence – Application to amend grounds of appeal – Murder – Whether learned trial judge misdirected jury on issue of self defence – Whether learned trial judge misdirected jury on law in relation to accident in circumstances of the case – Whether the learned trial judge misdirected the jury on issue of provocation – Whether retrial appropriate given the seriousness of the offence and the public interest – Whether the appeal against conviction and sentence should be allowed on the ground that the trial judge erred in directing the jury on provocation

Result / Order:

[Oral delivery]

- 1. The motion to amend is granted.**
- 2. The three grounds appearing in the motion dated 19th August 2013 are substituted for the original three grounds filed by the appellant.**
- 3. The appeal against conviction for murder is allowed. The conviction for murder is quashed and a conviction for manslaughter is substituted.**
- 4. The appeal against sentence is allowed. The sentence of 12 years imprisonment is set aside and the appellant, who has been in custody since August 2007, is sentenced to time served.**

Reason:

The trial judge erred in failing to give proper directions on provocation. This issue loomed large on the facts and had the jury been properly directed, the verdict could have been one of manslaughter as opposed to murder.

The Court held that public interest and fairness to the appellant required that a sentence of time served be substituted for the sentence of 12 years imprisonment.

Case Name:

**Joshua Roach
v
Director of Public Prosecutions**

[SKBHCRAP2008/0029]

Date: Friday, 18th October 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: Dr. Henry Browne, QC

Respondent: Mr. O'Neil Simpson

Issues: Criminal appeal against sentence – Request for reduction of sentence by 2 years – Evidence of unblemished record and youth not taken into account – Trial judge used benchmark of 20 years instead of benchmark of 15 years – Benchmark of 15 years established by Court of Appeal for offence of manslaughter

Result / Order: [Oral delivery]
The appeal is allowed so far as sentence is concerned. The sentence of 16 years is quashed and a sentence of 15 years is substituted therefor. Sentence to take effect from date of remand.

Reason: The learned trial judge should have applied the correct benchmark of 15 years for manslaughter instead of 20 years.

Had the judge applied the correct benchmark and taken into consideration the mitigating factors (i.e. the time spent on remand, the fact that the appellant had pleaded guilty, his socio-economic background, previous unblemished record and youthful age) and weighed these against the aggravating factors, then he would have realised that the mitigating factors balanced out the aggravating factors and that there was no reason to move the sentence from the benchmark and impose a sentence of 16 years.

Case Name:

Gibson Blake
v
The Director of Public Prosecutions
[SKBHCRAP2011/0015]

Date:

Friday, 18th October 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: Ms. Greatess Gordon

Issues:

Criminal appeal against sentence – Appellant sentenced to 2 years imprisonment for abduction and 10 years imprisonment for burglary – Whether too severe

Result / Order:

**[Oral delivery]
The appeal against sentence is allowed. The sentence of 10 years for burglary is quashed and a sentence of 8 years is substituted therefor. Sentence to take effect from the date of remand. Sentence of 2 years for abduction affirmed.**

Reason:

The appropriate sentence in this matter would have involved a benchmark of 10 years. The Court applied the decision in the case of *Desmond Baptiste v the Queen* (Saint Vincent and the Grenadines High Court Criminal Appeal SVGHCRA2003/0008 (delivered 6th December 2004, unreported)) in which the appellant (like the appellant in this case) had antecedent convictions and pleaded guilty, and was sentenced to 8 years imprisonment, which was affirmed on appeal.

In the present case, the mitigating factors balanced out the aggravating factors and this supported a reduction in

the appellant's sentence for burglary to 8 years.

In relation to the sentence for abduction, the Court was of the view that it was not unreasonable in the circumstances. There was no proper basis to interfere with the sentence that was imposed by the learned trial judge.