

COURT OF APPEAL SITTING
SAINT VINCENT AND THE GRENADINES
30th September to 2nd October 2013

APPLICATIONS AND APPEALS

Case Name: [1] McConnie Yammie and Company
Limited
V
[1] Richard Williams
[2] Lexart Inc.
[3] Olin J.B. Dennie
[SVGHCVAP2010/0003]

Date: Monday, 30th September 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. Emery Robertson

Respondent: Mr. Parnel R. Campbell, QC for the first and second respondents
Mrs. Kay Bacchus-Browne for the third respondent

Issues: Application for extension of time to file notice of appeal – Directions

Result / Order: [Oral delivery]
1. Respondents to file and serve skeleton submissions and/or authorities on or before

- 14th October 2013.
2. Appellant to file and serve skeleton submissions and/or authorities on or before 28th October 2013.
 3. Hearing of the application is adjourned to the next sitting of the Court of Appeal in this jurisdiction during the week commencing 27th January 2014.

Case Name:

Ollie Clarke

v

The Queen

[SVGHCRA2013/0005]

Date:

Monday, 30th September 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 Mr. Colin John

Issue:

Application for leave to appeal to Her Majesty in Council

Result / Order:

[Oral delivery]

Application for leave to Her Majesty in Council is dismissed.

Reason:

The Court had no jurisdiction to grant the application.

Case Name:

**Azari Ash
v
The Queen**

[SVGHCRAP2011/0006]

**Che Bute
v
The Queen**

[SVGHCRAP2011/0009]

Date:

Monday, 30th September 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 for Azari Ash

Mr. Jomo Thomas, with him, Ms. Shirlan Barnwell for Che Bute

Respondent:

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

Issue:

Application for leave to adduce hearsay evidence

Result / Order:

[Oral delivery]

- 1. Application to receive evidence of Maurice Clifton by Skype is denied.**
- 2. The application to adduce the hearsay evidence of Maurice Clifton and the**

deceased, Uroy Robinson, is denied.

Reason:

The evidence sought to be elicited by the appellants did not fall within the perimeters of admissible hearsay evidence. It was inadmissible hearsay as its purpose was clearly to establish the truth of its contents. There was also no authority given by statutes for admitting the evidence.

Case Name:

[1] Emmanuel Johnson Chijioke

[2] Benjamin Fiifi Danquah

V

[1] The Commissioner of Police

[2] The Superintendent of Prisons

[3] The Attorney General

[SVGHCVAP2010/0013]

Date:

Monday, 30th September 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. Jomo Thomas

Respondent:

Mr. Richard Williams

Issue:

Application for adjournment of appeal

Result / Order:

[Oral delivery]

Matter is adjourned to the next sitting of the Court of Appeal in this jurisdiction during the

week commencing 27th January 2014.

Reason: The parties needed time to consult with each other on the completion of the record of appeal.

Case Name: **Newton George**
V
The Commissioner of Police
[SVGMCRAP2013/0023]

Date: Monday, 30th September 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: Ms. Ruth-Ann Richards

Respondent: Mrs. Ayanna Baptiste-Dabreo

Issues: Criminal appeal against conviction and sentence of 2 years imprisonment – Intercourse with a girl under fifteen

Result / Order / Reason:

[Oral delivery]

1. Leave to amend appeal grounds as prayed in draft order is approved.
2. Hearing of the appeal is adjourned to the next sitting of the Court of Appeal in this jurisdiction during the week commencing 27th January 2014.

Case Name: **Kimron Neverson**
v
The Queen
[SVGHCRAP2012/0007]

Date: **Monday, 30th September 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. Carl Williams**

Issues: **Criminal appeal against sentence of three years imprisonment – Robbery**

Result / Order: **[Oral delivery]**
Appeal against sentence is dismissed.

Reason: **The Court found that there was no basis to upset the sentence imposed by the learned trial judge. The judge considered the aggravating and mitigating factors and arrived at the appropriate sentence.**

Case Name: **Atiba Bess**
v
The Queen

Date: Monday, 30th September 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. Stephen Williams

Respondent: Mrs. Ayanna Baptiste-Dabreo

Issues: Criminal appeal against sentence of 20 years imprisonment – Manslaughter

Result / Order: [Oral delivery]
The appeal in relation to sentence is allowed and a sentence of fifteen years is substituted for that of twenty years.

Reason: The Court was of the view that the appeal against sentence should be allowed insofar as the learned trial judge, in imposing the sentence of 20 years, failed to properly take into consideration the relevant legal principles that should be applied in determining what was the appropriate sentence in circumstances where the appellant, who was at a tender age at the time of the commission of the offence, pled guilty and had no previous convictions of a similar nature. As a matter of fact, he had a clean record.

The Court considered the mitigating factors namely (1) his age; (2) he was a good candidate for rehabilitation; (3) he pled guilty; (4) he was remorseful; and (5) the positive comments from the community. The Court balanced those mitigating factors against the proven

aggravating factors, which were of a serious nature, namely (1) that a firearm was used; (2) that the appellant had left his home to actually meet the difficult situation; and (3) that a person lost her life as a consequence of that, and concluded that at its highest the aggravating and mitigating factors balanced out each other.

Specifically relating to the sentence, the Court held that there was no basis on which the learned trial judge could have properly moved from the benchmark of 15 years and increased the sentence to one of 20 years, even taking into consideration the principles of sentencing, namely, the need to deter other persons from committing crimes of a similar nature. The Court noted that in this particular matter there was no need to specifically deter the appellant.

Case Name:

Jahbarry Charles

v

The Queen

[SVGHCRAP2012/0022]

Romano Pompey

v

The Queen

[SVGHCRAP2012/0021]

Date:

Monday, 30th September 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: Jahbarry Charles in person
Mr. Jomo Thomas for Romano Pompey

Respondent: Mr. Colin John

Issues: Criminal appeal against sentence –
Manslaughter – Wounding with intent

Result / Order: [Oral delivery]
1. In relation to Jahbarry Charles, the appeal against sentence is allowed and a sentence of 10 years is substituted for the sentence of 20 years.
2. In relation to Romano Pompey, the appeal is allowed and a sentence of 18 years is substituted to that of 20 years.

Reason: JAHBARRY CHARLES

The Court found that the sentence of 20 years imposed by the learned trial judge in the circumstances where the appellant pleaded guilty to the offence of wounding with intent was unduly harsh. Further, the Court took into consideration the appellant's previous convictions and all the mitigating and aggravating factors which balanced out each other, and utilized the benchmark of 10 years, and held that the appropriate sentence that should have been imposed was a sentence of 10 years.

ROMANO POMPEY

The Court was of the view that the sentence of 20 years that was imposed by the learned trial judge was excessive. The Court opined that the learned trial judge applied his mind correctly to the relevant sentencing principles. Nevertheless, it was inappropriate for the judge to have stated his views regarding the benchmark, whatsoever his views were,

because it might have influenced the way in which he dealt with the matter.

The Court then considered the particular circumstances in this matter. It took into account the fact that the appellant pled guilty to the offence of manslaughter, the characteristics and circumstances of the offence and the offender, the mitigating and aggravating factors and utilized a benchmark of 15 years and held that albeit this was a serious offence, the appropriate sentence was a sentence of 18 years.

The Court was of the view that the aggravating factors slightly outweighed the mitigating factors and justified a slight movement from the benchmark of 15 years.

Case Name:

Bilton Primus

v

The Queen

[SVGHCRAP2011/0015]

Date:

Monday, 30th September 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:

Ms. Mira Commissiong

Respondent:

Mr. Colin John

Issues:

Criminal appeal against conviction and sentence of 15 years imprisonment – Wounding

with intent

Result / Order:

[Oral delivery]

Hearing of the appeal is adjourned to the next sitting of the Court of Appeal in this jurisdiction during the week commencing 27th January 2014.

Reason:

Counsel for the appellant requested an adjournment as she was newly retained by the appellant.

Case Name:

Shannon Richards

v

The Queen

[SVGHCRAP2012/0010]

Date:

Monday, 30th September 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. Kareem Nelson

Issues:

Criminal appeal against conviction and sentence of four years imprisonment with hard labour – Theft

Result / Order / Reason:

[Oral delivery]

1. The appeal against conviction is withdrawn

- and accordingly dismissed.
2. The appeal against sentence is dismissed.
 3. The sentence of four (4) years is affirmed.

Case Name:

**Andrew Pereira
v
Allison Balcombe**

[SVGMCVAP2012/0006]

Date:

Monday, 30th September 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:	No appearance
Respondent:	No appearance

Issues:

Civil appeal – Liability in debt matter

**Result / Order /
Reason:**

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

Case Name:

**Azari Ash
v
The Queen**

[SVGHCRA2011/0006]

**Che Bute
v
The Queen**

[SVGHCRAP2011/0009]

Date: Monday, 30th September 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 for Azari Ash

Mr. Jomo Thomas, with him, Ms. Shirlan Barnwell for Che Bute

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

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

Result / Order: [Oral delivery]

1. Leave is given to both appellants to file and serve an amended notice of appeal to add a ground in relation to sentence, together with submissions and authorities on sentence on or before 30th October 2013.
2. The appellant, Azari Ash, to file and serve any submissions and authorities in relation to any grounds of appeal withdrawn by the appellant Che Bute and which appellant, Azari Ash, wishes to pursue on or before the 30th October 2013.
3. The respondent to file and serve any submissions and authorities in response on

or before the 29th November 2013.

4. Hearing of this appeal is adjourned to the next sitting of the Court of Appeal in this jurisdiction the week commencing 27th January 2014.

Case Name:

Michael Wilson

v

The Queen

[SVGHCRAP2012/0009]

Date:

Tuesday, 1st October 2013

Coram:

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

The Hon. Mr. Mario Michel, Justice of Appeal

The Hon. Mr. Tyrone Chong, Justice of Appeal [Ag.]

Appearances:

Appellant:

In person

Respondent:

Mr. Carl Williams

Issues:

Criminal appeal against conviction and sentence of 10 years imprisonment – Aggravated burglary and damage to property

Result / Order:

[Oral delivery]

- 1. The appeal is allowed and the conviction and sentence quashed.**
- 2. A retrial ordered to take place at the next assizes.**
- 3. Bail is granted in the sum of \$8,000.00 with one surety.**

Reason:

The Court was of the view that the accused was effectively denied his rights to cross-examine

the witness. The accused had a right given by law to challenge the complainant and he was denied that right. In light of this it would be unfair to uphold the conviction of the accused.

Case Name: **Walter Saunders**
V
The Commissioner of Police
[SVGMCRAP2013/0017]

Date: **Tuesday, 1st October 2013**

Coram: **The Hon. Mr. Davidson K. Baptiste, Justice of Appeal**
The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Tyrone Chong, Justice of Appeal
[Ag.]

Appearances:
Appellant: **In person**
Respondent: **Mr. Colin John holding for Mr. Kareem Nelson**

Issues: **Criminal appeal against sentence – Stealing**

Result / Order: **Matter stood down.**

Reason: **Counsel who had conduct of the matter was not yet present in Court.**

Case Name: **Akeem Cambridge**
V
The Commissioner of Police

[SVGMCRAP2013/0018]

Date: Tuesday, 1st October 2013

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

Appearances:

Appellant: In person

Respondent: Ms. Ayanna Baptiste-Dabreo

Issues: Criminal appeal against sentence of two years imprisonment – Trespassing and stealing

Result / Order: [Oral delivery]
Appeal is dismissed and the sentence of 2 years affirmed.

Reason: The Court was of the view that there was no basis to disturb the sentence imposed. The magistrate considered that the accused had two previous convictions for the same offence.

Case Name: Walter Saunders
v
The Commissioner of Police

[SVGMCRAP2013/0017]

Date: Tuesday, 1st October 2013

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

The Hon. Mr. Mario Michel, Justice of Appeal
The Hon. Mr. Tyrone Chong, Justice of Appeal
[Ag.]

Appearances:

Appellant: In person
Respondent: Mr. Kareem Nelson

Issues: Criminal appeal against sentence – Stealing

Result / Order: [Oral delivery]
The hearing of this appeal is adjourned to the next sitting of the Court of Appeal in this jurisdiction during the week commencing 27th January 2014.

Reason: There was no evidence that the appellant was served with a notice of hearing.

Case Name: Lenroy McPhy
v
The Commissioner of Police
[SVGMCRAP2013/0020]

Date: Tuesday, 1st October 2013

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

Appearances:
Appellant: In person
Respondent: Mr. Kareem Nelson

Issues: Criminal appeal against sentence of 18 months imprisonment – Trespassing and stealing

Result / Order: [Oral delivery]
The hearing of this appeal is adjourned to the next sitting of the Court of Appeal in this jurisdiction during the week commencing 27th January 2014.

Reason: There was no evidence that the appellant was served with a notice of hearing.

Case Name: Meshack Lewis
v
The Commissioner of Police
[SVGMCRAP2012/0035]

Date: Tuesday, 1st October 2013

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

Appearances:
Appellant: Mr. Ronald Marks
Respondent: Mr. Colin John

Issues: Criminal appeal against conviction and sentence of eighteen months imprisonment – Malicious Wounding

Result / Order: [Oral delivery]
Matter is struck off the list.

Reason: Counsel for the appellant, Mr. Marks, informed the Court that on 2nd August 2013 the matter was withdrawn and dismissed before the Deputy Chief Registrar.

Case Name: Eckron Jacobs
V
The Commissioner of Police
[SVGMCRAP2013/0015]

Date: Tuesday, 1st October 2013

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

Appearances:
Appellant: In person
Respondent: Mr. Carl Williams

Issues: Criminal appeal against conviction and sentence of a fine in the sum of \$750.00 to be paid in one month, in default six months imprisonment – Compensation to be paid in the sum of \$1,500.00 in one month, in default six months imprisonment – Unlawful and malicious wounding

Result / Order: [Oral delivery]
1. Appeal is allowed and the conviction is quashed.
2. A retrial is ordered before a different magistrate.

Reason: The Court was not satisfied that due process was observed in this case as there was no indication on the record that the appellant was apprised of his right to call a witness. Moreover, the magistrate failed to adjourn the matter to allow the appellant to call a witness.

Case Name: [1] Isaiah King
[2] Orando Browne
V
[1] The Commissioner of Police
[SVGMCRAP2013/0016]

Date: Tuesday, 1st October 2013

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

Appearances:
Appellant: Mr. Jomo Thomas
Respondent: Mr. Carl Williams

Issues: Criminal appeal against conviction and sentence of compensation to be paid in the sum of \$500.00, in default three months imprisonment – Damage of property

Result / Order: [Oral delivery]
1. The appeal is allowed and the conviction and sentence set aside.
2. A retrial is ordered.

Reason:

The Court had concerns about the conduct of the matter in the court below and had doubts as to whether the proceedings, in the way in which they were conducted, were fair to the appellants. In particular, the Court criticized the denial by the magistrate of a lawyer's attempt to intervene as amicus curiae and found that it was not proper for the magistrate to deny the appellants the right of counsel whether expressly or by implication.

The Court had regard to (1) the youthfulness of the appellants (one aged 16 and the other aged 19 at the time of the offence); (2) the appellants being unrepresented; (3) the fact that the appellants had been brought to court the morning following their arrest and the likelihood that they may not have had any opportunity to consult with anyone between the time of their arrest and them being brought to court; (4) the appellants' guilty plea; and (5) the fact that counsel present in court sought to intervene as amicus and the magistrate's failure to facilitate counsel in doing such, and held that the conviction of the appellants was unfair and should not be allowed to stand as there was undoubtedly a lack of due process.

Case Name:

Mwata Henry

v

The Queen

[SVGHCRAP2012/0013]

Date:

Wednesday, 2nd October 2013

Coram:

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

The Hon. Mr. Mario Michel, Justice of Appeal

**The Hon. Mr. Don Mitchell, Justice of Appeal
[Ag.]**

Appearances:

Appellant: In person

Respondent: Mr. Carl Williams

Issues: Criminal appeal against conviction and sentence – Robbery

Result / Order /

Reason:

[Oral delivery]

1. Leave to withdraw and discontinue the appeal is granted.
2. The appeal stands dismissed.

Case Name:

Urlon Frederick

v

The Queen

[SVGHCRA2012/0014]

Zelroy Joseph

v

The Queen

[SVGHCRA2012/0015]

Date:

Wednesday, 2nd October 2013

Coram:

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

The Hon. Mr. Mario Michel, Justice of Appeal

The Hon. Mr. Don Mitchell, Justice of Appeal
[Ag.]

Appearances:

Appellant: Mrs. Kay Bacchus-Browne

Respondent: Ms. Ayanna Baptiste-Dabreo

Issues:

Criminal appeal against conviction and sentence – Robbery – Directions

Result / Order:

[Oral delivery]

- 1. Leave is granted to the appellants to amend the grounds of appeal by substituting the following grounds for those that were indicated in the notice of appeal and the grounds of appeal that are substituted are:
 - (i) The conviction is unsafe and ought to be set aside.**
 - (ii) The learned trial judge erred in cutting off the witness, Zelda Joseph, thereby rejecting her testimony as hearsay instead of evidence of inconsistency of the virtual complainant, Oscar Nanton, without infringing the hearsay rule.**
 - (iii) The learned trial judge failed to give an adequate good character direction especially as the defendants were unrepresented.**
 - (iv) The sentence is too excessive.****
- 2. The submissions that were filed by the appellants were deemed properly filed and served and they were filed on the 31st July 2013.**
- 3. The respondents are granted leave to file and serve written submissions together with authorities on or before 4th November 2013.**
- 4. If necessary the appellants are granted 30 days leave thereafter to file and serve further submissions in reply.**
- 5. The matter is adjourned to the next sitting of the Court of Appeal in this jurisdiction during the week commencing 27th January 2014.**

Case Name:

Vernette Skerrit

v

Nicole Patterson

[SVGHCVAP2010/0005]

Date: Wednesday, 2nd October 2013

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

Appearances:

Appellant: Ms. Patina Knights

Respondent: Mr. Ronald Marks

Issues: Civil appeal – Assessment of damages

Result / Order: [Oral delivery]

By consent:

The appeal be allowed and the assessment of damages be remitted to be heard by a different master of the court.

Reason: The Court invited counsel to reconsider their positions in light of the decision of the Court of Appeal in the case of George Blaize v Bernard La Mothe (GDAHCVAP2012/0004, delivered 9th October 2012, unreported). In that case, the Court held that where there is an assessment of damages it is unconstitutional not to allow the respondent to cross-examine the witnesses.

The parties thereafter consented to the order.