[2019] JMCA Crim 24

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NOS 16, 17 & 18/2014

BEFORE: THE HON MISS JUSTICE PHILLIPS JA
THE HON MISS JUSTICE STRAW JA
THE HON MR JUSTICE FRASER JA (AG)

JUNIOR MAXWELL v R
REYNALDO PALMER
OMAR TAYLOR

Linton Gordon and Obiko Gordon for Junior Maxwell

Ravil Golding for Reynaldo Palmer

Dwight Reece for Omar Taylor

Miss Sophia A Thomas and Miss Shanique Farquharson for the Crown

22, 31 May, 10 and 21 June 2019

STRAW JA

[1] The applicants, Messrs Junior Maxwell, Reynaldo Palmer and Omar Taylor, were convicted and sentenced on 25 February 2014 by Pusey J in the High Court Division of the Gun Court sitting in the parish of Manchester, of all nine counts contained in the indictment as set out below:

	Junior Maxwell	**Reynaldo Palmer**	**Omar Taylor**
Count 1: Illegal Possession of Firearm	15 years	15 years	10 years
Count 2: Abduction	8 years	8 years	8 years
Count 3: Rape	15 years	15 years	10 years
Count 4: Indecent Assault	3 years	3 years	3 years
Count 5: Rape	Life imprisonment	Life imprisonment	Life imprisonment
Count 6: Indecent Assault	3 years	3 years	3 years
Count 7: Rape	Life imprisonment (30 years before parole)	Life imprisonment (30 years before parole)	Life imprisonment (25 years before parole)
Count 8: Indecent Assault	3 years	3 years	3 years
Count 9: Robbery with aggravation	5 years	5 years	5 years

[2] These sentences were ordered to run concurrently. As reflected in the table above, Mr Omar Taylor received lesser terms of imprisonment than his co-defendants in relation to counts one and three for illegal possession of firearm and rape, respectively, in which he was given 10 years for each; as well as count seven for rape in which he received life imprisonment with 25 years before parole.

[3] On 7 March 2014, the applicants sought leave to appeal against their convictions and sentences. All three applicants cited identical grounds, which were (a) unfair trial, (b) insufficient evidence to warrant conviction, and (c) sentence manifestly excessive. It was indicated by all that further grounds would be filed by their attorneys upon receipt

of the transcript. The applications for leave to appeal against conviction and sentence first came before a single judge of this court on 29 December 2017 and all three applications were refused.

Junior Maxwell

[4] At the renewal of his application before this court, Mr Linton Gordon, who appeared for Mr Junior Maxwell ('Mr Maxwell'), commendably and candidly submitted that there was no basis on which the conviction or sentence could be properly challenged.

[5] With regard to the conviction, he conceded that the evidence adduced by the prosecution was strong and that the complainant's identification of Mr Maxwell was reliable.

[6] In relation to the sentence, he submitted that, generally, the sentences imposed could not be said to be excessive. Counsel did however acknowledge that it was unusual to see a sentence of life imprisonment with no parole before 30 years for the offence of rape (count seven); but he went on to reflect on the brutal and dehumanising circumstances of the instant case. Namely, that on 17 June 2009 the complainant (a school teacher) was abducted, assaulted and sexually assaulted multiple times by three men starting from the night she was on her way from school at 7:30 pm to 10:00 am the following day. He pointed out that the complainant was the neighbour of his client and a productive member of society.

[7] In response to the court's query about the five years spent in custody pending trial, Mr Gordon submitted that the learned trial judge did not specify that the time spent

in custody had been taken into consideration when imposing the various sentences. However, when considered globally, Mr Gordon was of the view that the imposition of 30 years pre-parole embraced the five years in custody before sentence.

[8] It is to be noted that Mr Maxwell had two previous convictions for receiving stolen property and illegal possession of ammunition. It should also be noted that the learned trial judge demonstrated that he considered the fact that all three applicants had spent some time in custody, when at page 225 of the transcript, lines 7 – 10, he stated, "[i]n terms of count 1 which, charges all three of you with Illegal Possession of Firearm, I have also considered in terms of all the time spent in custody".[1]

[9] This court, having reviewed the notes of evidence together with the learned trial judge's summation, agrees entirely with counsel that there is no reason to disturb the conviction of Mr Maxwell. As it relates to the matter of sentence, this will be discussed in more detail subsequently, as this was initially challenged by counsel for Mr Reynaldo Palmer.

Reynaldo Palmer

[10] Counsel, Mr Ravil Golding, who appeared for Mr Reynaldo Palmer ('Mr Palmer'), made a similar concession in relation to the conviction which he regarded as proper. He described the case as a horrific one and submitted that the learned trial judge was correct

[1] Also at page 225 of the transcript, lines 12-20

in arriving at his decision of finding Mr Palmer guilty on all nine counts of the indictment. Again this court also agrees with counsel that there is no reason to disturb the conviction.

[11] The following supplemental ground of appeal was filed on 21 May 2019:

> "1. The learned Trial Judge erred when sentencing the Applicant **REYNALDO PALMER** to life imprisonment and requiring him to serve 30 years in prison before being eligible for parole in that the said sentence is manifestly excessive and out of line with decided cases and the sentencing guide lines [sic]."

[12] Mr Golding contended that the only issue for this court is whether the learned trial judge erred in law in terms of the sentences imposed for the counts of the indictment relating to rape, in particular count seven, for which Mr Palmer received life imprisonment with a requirement to serve 30 years before being eligible for parole.

[13] The court was referred to the principles relevant to sentencing. The case of **Meisha Clement v R**[2] as well as the Sentencing Guidelines[3] were cited. Both the decision of **Meisha Clement** and the publication of the Sentencing Guidelines post-dated the sentencing in the case at bar. Mr Golding dutifully acknowledged this to the court in respect of the Sentencing Guidelines. He also referred to **R v Evrald Dunkley**[4] and went on to urge this court that the usual range of sentence for rape was 15 to 25 years and

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[2] [2016] JMCA Crim 26

[3] Sentencing Guidelines for use by Judges of the Supreme Court of Jamaica and the Parish Courts, December 2017

[4] (unreported), Court of Appeal, Jamaica, Resident Magistrates Criminal Appeal No 55/2001, judgment delivered 5 July 2002

that the starting point for consideration by the sentencing judge in a case like this should be 20 years, which he considered to be the upper end of the sentencing scale.

[14] Having used 20 years as the starting point, Mr Golding submitted that when regard was had to the aggravating factors, which he enumerated as humiliation, torture and mental distress inflicted on the complainant as well as Mr Palmer's lack of remorse, (demonstrated by his escaping custody) another 10 years could be added to the sentence. Counsel also mentioned that at the time of the commission of the offences, Mr Palmer had no convictions, save and except the conviction for the said offence of escaping custody. In his written submissions, Mr Golding had requested that this court should therefore reduce the sentence by 5 years to reflect time spent in custody prior to trial and then by a further year in view of the lack of previous convictions. Mr Palmer would therefore be ordered to serve 24 years before parole could be considered.

[15] In relation to whether the time spent in custody was actually taken into consideration by the learned trial judge, Mr Golding did admit that this submission may lack cogency and referred the court to page 225 of the transcript, lines 12 – 14. He recognised that, although the learned judge did not conduct a mathematical calculation of subtracting five years from the term of 30 years imposed, it did not escape the learned judge that Mr Palmer had spent considerable time in custody. As such, Mr Golding conceded that it had been taken into consideration, although there was no mathematical demonstration that it had been.

[16] Counsel also eventually acknowledged that there was no proper basis to seek a reduction based on the fact that Mr Palmer had no previous conviction (apart from escaping custody in relation to the same offences). Ultimately, Mr Golding conceded that there was not much merit in Mr Palmer's renewed application for leave to appeal before this court.

Omar Taylor

[17] Counsel, Mr Dwight Reece, who represented Mr Omar Taylor ('Mr Taylor'), was unable to attend the hearing before this court on the first hearing date due to illness. However, he indicated through counsel Mr Golding, that, having consulted his client, the renewed application for leave to appeal against conviction and sentence was not being pursued and that these instructions would be formalized at a later date. Subsequently, Mr Reece filed skeleton submissions on 30 May 2019. These submissions, similarly to Mr Gordon's, conceded that there was no basis to appeal conviction and sentence as the identification evidence was strong and the sentences imposed could not be said to be excessive.

Response by Crown Counsel

[18] In light of the concessions made by counsel for the applicants, Crown Counsel Miss Sophia Thomas was of the view that it was unnecessary for her to make any extensive submissions. She contended that the sentences were appropriate in all the circumstances and commended to the court the approach taken in the case of **Neville Barnes v R**[5].

[5] [2019] JMCA Crim 12

[19] Miss Thomas submitted that in **Neville Barnes** the offence being considered was the same, and, in particular, she made reference to the Offences against the Person Act (which was the legislation in force as in the present case, when the offence was committed). Although the sentence of 40 years was ultimately reduced in **Neville Barnes**, she submitted that 40 years was recognised by the court as falling within the broad permissible sentencing range. She pointed out that the learned judge in **Neville Barnes** did not indicate the time before parole, whereas this was done by the learned judge in the case at bar. In concluding, Miss Thomas reminded this court that the circumstances in **Neville Barnes**, though horrible, were not as egregious as those in the instant case and as such the sentence imposed was appropriate.

[20] Bearing in mind the concessions made by counsel for the applicants that there was no basis to disturb the convictions, this court refuses the applications for leave to appeal against conviction. Notwithstanding the concessions also made in relation to the sentences, due to the exceptional nature of the instant case and in particular the issues that impact sentencing, this court had deemed it appropriate to make some observations. However, during the period of reflection, the court realised that the sentences imposed by the learned trial judge in relation to count seven were irregular as he had stipulated the periods that each applicant should serve before being eligible for parole. The sentences were imposed on 25 February 2014 but the offences were committed in June 2009 so they were not charged pursuant to the Sexual Offences Act which came into force on 30 June 2011.

[21] Section 6(1)(a) of that Act carries a statutory maximum of life imprisonment and a mandatory minimum of 15 years for the offence of rape. Section 6(2) provides that where a person is sentenced for rape, the court is to specify a period of not less than 10 years to be served by that person before he becomes eligible for parole. It is to be noted that the provisions of this section are in substitution for sections 6 (1) to (4) of the Parole Act. However, as the offences predated the Sexual Offences Act, the applicants were sentenced pursuant to section 44 of the Offences Against the Persons Act. Under that Act, where a sentence of life imprisonment is imposed for any offence other than murder, a trial judge has no power to stipulate the time a defendant should serve before becoming eligible for parole. By virtue of section 6(4) of the Parole Act, where no time is stipulated, a defendant will become eligible for parole after seven years. As a result, the court considered it necessary to have counsel in the matter make further submissions in relation to the issue of the sentences imposed in relation to count 7.

Further submissions of counsel

[22] On 10 June 2019, the court reconvened. Mr Linton Gordon submitted that neither the Sentencing Guidelines nor the Sexual Offences Act could override the provisions of the applicable statute at the time of sentencing. He stated that the judge appeared to have been guided by the guidelines but the applicants were entitled to be sentenced pursuant to the Offences Against the Persons Act and the stipulation that 30 years (Maxwell and Palmer) and 25 years (Taylor) respectively were to be served before a consideration of parole would be in conflict with section 6(1) of the Parole Act. He said that this court would therefore have the authority to conduct a re-sentencing hearing in

the matter and could do so using the existing materials that would have been before the learned trial judge. He submitted also that he could not advance any further mitigating factors that should be taken into consideration in this exercise and repeated that the facts of the case were quite egregious and could be likened to activities described as war crimes.

[23] Mr Ravil Golding, who held for Mr Reece, adopted and endorsed the submissions of Mr Gordon on behalf of both Mr Palmer and Mr Taylor. He acknowledged that section 6(4)(2) of the Parole Act stated that where a term of life imprisonment is imposed in circumstances such as these, the applicants would be entitled to be eligible for parole after they have served a term of seven years. He reiterated therefore that this court would have to embark on the resentencing exercise.

[24] Ms Thomas endorsed the submissions of both Mr Gordon and Mr Golding and stated that she would leave the matter in the hands of the court for their consideration.

[25] Based on all the above circumstances, we granted leave to all three applicants to appeal against sentence and treated the hearing of the application as the hearing of the appeal.

Discussion and analysis

[26] F Williams JA at paragraph [84] of his judgment in **Neville Barnes**, citing **R v Kenneth John Ball**,[6] stated that where the sentence reflects an error in principle, this

[6] (1952) 35 Cr App R 164, 165

court is entitled to intervene. As stated previously, the trial judge erred when he stipulated that the applicants should serve 25 and 30 years respectively before being eligible for parole.

[27] The relevant section for the purpose of sentencing for the appellants was section 44(1) of the Offences Against the Persons Act (now repealed), which provided:

> "44. –(1) Whosoever shall be convicted of the crime of rape shall be guilty of felony, and being convicted thereof, shall be liable to imprisonment for life."

[28] Section 6 of the Parole Act makes the following provision in relation to the eligibility for parole:

> "6.—(1) Subject to the provisions of this section, every inmate serving a sentence of more than twelve months shall be eligible for parole after having served a period of one-third of such sentence or twelve months, whichever is the greater.
>
> (2) Where concurrent sentences have been imposed on an inmate, such inmate shall be eligible for parole in respect of the longest of such sentences, after having served one-third of the period of that sentence or twelve months, whichever is the greater.
>
> (3) Where consecutive sentences have been imposed on an inmate, such inmate shall be eligible for parole after having served one-third of the aggregate of such sentences or twelve months, whichever is the greater.
>
> (4) Subject to subsections (4A) and (5), an inmate –
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> (a) who has been sentenced to imprisonment for life; or
>
> (b) in respect of whom –
>
> (i) a sentence of death has been commuted to life imprisonment; and

(ii) no period has been specified pursuant to section 5A,

shall be eligible for parole after having served a period of not less than seven years."

[29] Although a term of life imprisonment is the statutory maximum for rape by virtue of section 44 of Offences Against the Persons Act, trial judges usually apply a term of years of imprisonment as the statutory maximum should normally be reserved for the most serious examples of the offence (see Harrison JA in **Evrald Dunkley** reiterating this principle as expressed in Archbold Criminal Pleading Evidence & Practice[7]). The term of life imprisonment was available to the learned trial judge and is available to this court pursuant to section 44 of Offences Against the Persons Act.

[30] It is useful to set out the circumstances of the offences in the case at bar as the complainant was made to suffer abhorrent indignities which the learned trial judge aptly described as "domestic terrorism". The complainant was abducted as she was walking home some minutes to 8:00 pm. This abduction lasted about 14 hours (from 8:00 pm to 10:00 am) and involved being grabbed and pulled into a motor vehicle with four men. She was made to sit on the floor of the vehicle and a gun she described as a "long gun" was pointed at her. The complainant was taken to three different locations where she was forced to have vaginal and oral sex with three of the men.

[31] The first location was a lonely grass road. The complainant was ordered at gun point to take off her clothes and was threatened that she would be killed. She was

[7] (1992) paragraph 5-115; restated in 2003 edition paragraph 5-91

accused of being stubborn and her blouse was torn off. The three men had oral and vaginal sex with the complainant. At some point, they had her perform oral sex while another was having vaginal sex with her from behind. At one point, during this ordeal, she was accused of being responsible for their prior episode of detention by the police.

[32] The complainant was ordered back into the vehicle and taken to a second location. When she was ordered out of the vehicle, she was dragged into the bushes and forced to take off her clothes and to spread them on the ground. She was again forced to have oral and vaginal sex with the three men. This incident lasted about two hours. After this, the complainant was forcibly taken to a nearby hut where she was again ordered to take off her clothes and was forced to have oral and vaginal sex with the three men multiple times. The following morning, the complainant was forced from the hut to return to the previous location. She recalls one of the men had a sword and another had the gun. She begged the men not to kill her as she had a son. Eventually, a taxi was called and the complainant was allowed to leave with $500.00, which was a portion of the money that was taken from her. It is to be noted that the applicants were neighbours of the complainant and hence well known to her. This, in all likelihood, would have increased her fear of being killed, leaving her son motherless, a fear she expressed while giving evidence. Needless to say, the court is appalled at the inhumane and degrading treatment endured by this complainant.

[33] It is noted that the learned judge did not formally follow the route to sentencing as set out by Harrison JA in **R v Evrald Dunkley**[8] which would have been enunciated prior to the trial of the appellants in the present case. At page 4, Harrison JA stated:

> "If therefore the sentencer considers that the 'best possible sentence' is a term of imprisonment, he should again make a determination, as an initial step, of the length of the sentence, as a starting point, and then go on to consider any factors that will serve to influence the length of the sentence, whether in mitigation or otherwise. The factors to be considered in mitigation of a sentence of imprisonment are, whether or not the offender has:
>
> (a) pleaded guilty;
>
> (b) made restitution or
>
> (c) has any previous conviction.
>
> These factors must be considered by the sentencer in every case before a sentence of imprisonment is imposed."

[34] The learned trial judge, however, took into consideration that the appellant, Mr Palmer, has no previous conviction, save for escaping custody. Mr Palmer's attorney has stressed that although this is a conviction relevant to the offence, as he escaped custody while in prison awaiting trial, it ought not to be considered as a previous conviction. Mr Taylor has no previous convictions. Mr Maxwell has two: (1) receiving stolen property and (2) illegal possession of ammunition. None reflect previous convictions relating to violence or similar offences of a sexual nature.

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[8] (unreported), Court of Appeal, Jamaica, Resident Magistrates Criminal Appeal No 55/2001, judgment delivered 5 July 2002. See also Morrison P in **Meisha Clement v R** at paragraph [26]

[35] In determining whether the ultimate sanction of life imprisonment, which had been applied by the learned trial judge, would be appropriate, the court has regard to the sentencing range applied in prior cases.

[36] Morrison JA (as he then was) in **Oneil Murray v R**[9] reviewed a wide range of cases and concluded that 15 to 25 years is the sentencing range with 20 years "perhaps most closely approximating the norm"[10] for the offence of rape. The range of 15 to 25 years is reflected in the Sentencing Guidelines as the normal range with 15 years as the usual starting point.

[37] In **Paul Maitland v R**[11], a term of 30 years was reduced to 23 years by this court in circumstances where two men armed with a knife had forced the complainant into an open lot where they raped her. She was forced at knife-point, to perform oral sex on one of the men who thereafter had sexual intercourse with her from behind without her consent. When he was done, the second man also had his way with her. Brooks JA, in reviewing similar cases where the terms of 20 years were imposed, stated that the additional 10 years imposed on Mr Maitland could not be warranted. However, he stated that the fact of multiple rapes warrants a greater sentence than that imposed on a man who acts alone.[12]

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[9] [2014] JMCA Crim 25
[10] See paragraph [23]
[11] [2013] JMCA Crim 7

[12] See paragraph [35]

[38] In **Neville Barnes**, a sentence of 40 years' imprisonment was imposed for the offence of rape. In that case the defendant had broken into the complainant's home and had sexual intercourse with her without her consent three times. On appeal, a term of 23 years and 10 months' imprisonment was substituted on the basis of deductions made for good character (no previous convictions) and time spent in custody. F Williams JA at paragraph [84] stated:

> "It must be observed that the sentence for the offence of rape that was imposed in this case, does not satisfy the criteria set out at paragraph [43] of **Meisha Clement v R** in that, the sentencing process, on the face of it, does not reveal an application of the relevant principles of sentencing; and the sentence appears to fall way outside the normal range of sentences imposed for this offence. Additionally, the learned trial judge, in sentencing the applicant, failed to identify either a sentencing range or a starting point. The sentence therefore reflects an error in principle, entitling this court to intervene (see **R v Kenneth John Ball** (1952) 35 Cr App R 164 at page 165, per Hilbery J)."

[39] The court in **Neville Barnes**, determined an appropriate starting point of 18 years and increased it by 15 years to 33 years based on the aggravating factors present in the case. The court was of the view that the learned judge was therefore correct in going beyond the usual upper limit of 25 years but that 40 years was manifestly excessive. The term of 33 years was further reduced by two years because the applicant had no relevant previous convictions and by a further seven years and seven months for time spent in custody. Thus, though the true sentence was 31 years because it would have necessarily incorporated time spent in custody, the remainder of that term, which was 23 years and 10 months was the sentence imposed on the appellant.

[40] In **R v Lynden Levy et al**,[13] in respect of the two counts relating to rape, a sentence of 50 years was given to the first named appellant, who was described by the trial judge as the "ring master", and 40 years for the other appellants. On appeal these sentences were reduced to a total of 30 years and 20 years, respectively. In that case, the complainants were two sisters, aged 15 and 16 years. Each of them was repeatedly raped and forced to perform oral sex and various other acts, described by the trial judge as "utterly disgusting, degrading and repulsive", with a group of about 11 men. The appellants threatened the complainants with ratchet knives as well as a gun. Some of what took place was videotaped on the instructions of the "ring master".

[41] In **Charley Junior v R**[14], a term of 25 years was imposed in circumstances where the accused pleaded guilty. This was not interfered with by this court as the horrors suffered by the complainant were egregious. The appellant forcibly abducted the physically impaired complainant (she had a missing foot). The complainant was taken to a hut where she was kept for several days. During this time the appellant had sexual intercourse with her without her consent.

[42] From the review of previous cases conducted, it seems that a term of 25 years and upwards will not necessarily be considered inappropriate as the court will have to weigh the circumstances of each case.

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[13] (unreported), Court of Appeal, Jamaica, Supreme Court Criminal Appeal Nos 152, 155, 156, 157 and 158/1999, judgment delivered 16 May 2002

[14] [2019] JMCA Crim 16

[43] Having regard to all the above comparisons, we consider that the aggravating factors in this case, especially after a contested trial, were such that required consideration of the highest level beyond the normal range. This complainant was subjected to multiple degrading acts of sexual assault by three men over a period of approximately 14 hours, during which she also feared for her very life.

[44] In considering the existing aggravating factors, it is useful to have regard to the observations of F Williams JA in **Neville Barnes**:

> "[91] Support for considering at least some of these matters as being of an aggravating nature may be found in the case of **Milberry, Morgan and Lackenby v R** [2002] EWCA Crim 2891. In that matter, the English Court of Appeal considered advice given to it by the Sentencing Advisory Panel ('the Panel') proposing a revision of the then-current sentencing practice in respect of the offence of rape. In endorsing that advice, the court considered the case of **R v Billam** [1986] 1 All ER 985 (cited by Mr Taylor). The court gave guidance that lower courts may properly consider the following factors, among others, to be aggravating factors in rape cases,:
>
> > 'Aggravating Factors
> >
> > 31. The Panel identify nine aggravating factors, the first five of which are the same as those identified in Billam. ...
> >
> > 32. The nine factors which the Panel identifies with which we agree are as follows:
> >
> > 'i. the use of violence over and above the force necessary to commit the rape
> >
> > ii. use of a weapon to frighten or injure the victim
> >
> > iii. **the offence was planned**
> >
> > iv. an especially serious physical or mental effect on the victim; this would include, for example, a rape

> resulting in pregnancy, or in transmission of a life-threatening or serious disease
>
> v. **further degradation of the victim, e.g. by forced oral sex or urination on the victim (referred to in Billam as 'further sexual indignities or perversions')**
>
> vi. **the offender has broken into or otherwise gained access to the place where the victim is living** (mentioned in Billam as a factor attracting the 8 year starting point)
>
> vii. the presence of children when the offence is committed (cf. Collier (1992) 13 Cr App R (S) 33)
>
> viii. the covert use of a drug to overcome the victim's resistance and / or obliterate his or her memory of the offence
>
> ix. a history of sexual assaults or violence by the offender against the victim'…" (Emphasis [supplied])

[45] While all the aggravating factors as outlined in **Neville Barnes** were not present in the instant case, the court considers the cumulative effect of the entire ordeal suffered by the complainant over the period of time. The aggravating factors are identified as multiple sexual assaults including forced oral sex by the three appellants, the use of a gun and a sword to frighten the complainant, as well as the threat to kill her. She would have endured serious mental and emotional agony, humiliation as well as the physical trauma visited upon her.

[46] We acknowledge that the usual formula was not applied by the learned trial judge, as referred to in **Evrald Dunkley** (see also the dictum of Morrison P in **Meisha Clement**), in the application of the mathematical calculation for reducing the sentence based on time already spent in custody. However, it is clear that the trial judge did take

into account the time spent in custody by all the appellants and saw it fit to impose terms of life imprisonment in relation to both counts 5 and 7. This court has also taken into account the time spent in custody by the three appellants in determining an appropriate sentence.

[47] We do not consider that there should be any further reduction on the basis of the good character of Mr Palmer as originally submitted by Mr Golding, nor indeed for Mr Taylor. In that regard, we consider the observations made by Edwards JA in **Worrell Wint v R**[15], a decision of this court. She stated that, "[i]n general, the previous good character of the offender carries little weight in sentencing, in very serious cases (see Blackstone's Criminal Practice 2002, paragraph B2.42, at page 181)".[16] In reviewing the excerpt from Blackstone's, it is observed that the appeal courts, in considering circumstances where violence was used on complainants, did not necessarily reduce sentences as a result of previous good character.

[48] As was indicated, Mr Taylor received lesser terms on some of the counts. It appears that the learned trial judge made this distinction because Mr Taylor had no previous convictions. We would however comment that the lesser sentences for Mr Taylor do not appear to be warranted based on the egregious circumstances of the case.

[49] Even if the learned trial judge considered that there should be a reduction of the sentence imposed on Mr Taylor due to the fact that he had no previous convictions, it

[15] [2019] JMCA Crim 11
[16] See paragraph [61]

appears to us that the reduction of five years was somewhat excessive. The usual range of reduction for lack of previous convictions would be one to two years (see the application of this principle in **Neville Barnes**).

[50] Having considered all of the above, the court is not minded to substitute a specified term of years instead of the term of life imprisonment imposed by the learned trial judge in relation to count 7 for all three appellants. We recognise that this will result in an inability to apply the mathematical calculation required in relation to the period of time spent in custody (see authorities referred to at paragraph [46] of this judgment). However, both the members of the presiding panel and counsel at the bar, in their collective experience, were unanimous in the view that the circumstances as existed can be classified as one of the worst cases that has come before the court. As such, the appellants will attract the maximum penalty under the Offences Against the Persons Act and this court does not have the authority to specify a term of imprisonment pre-parole in order to apply the time spent in custody. The learned trial judge demonstrated by his comments and the sentences imposed the fact that this case involved monstrous cruelty which he also described as "domestic terrorism". In fact, the effect of the comments of the learned judge at page 228 of the transcript disclose, that had the serial brutality meted out to the complainant not been a part of one ongoing transaction, he would have been authorised and possibly minded to impose consecutive life sentences on the appellants. We do not harbour any concerns therefore, that there is any inconsistency in the sentences of life imprisonment imposed on these appellants in comparison to other cases of rape.

[51] The court is aware that based on the Parole Act, the three appellants, being sentenced to life imprisonment, could be considered eligible for parole after seven years (pursuant to section 6(4) of the Parole Act). That is no doubt why the Legislature in its wisdom, under sections 6(2) and 10(5) of the Sexual Offences Act, gave trial judges the power, nay the responsibility, to specify a period of not of less than 10 years, that a person convicted of rape, grievous sexual assault tried in the Circuit Court or sexual intercourse with a person under the age of 16 committed by a person in authority, must serve before becoming eligible for parole. This indicates a policy shift that accords great significance to the assessment of the trial judge in relation to considerations of parole. It is however this power which has been applicable since 2012, which no doubt led the learned trial judge into error in relation to the offences in this matter which predated the change in the law.

[52] Although, under the pre-existing law, the court did not have the authority in cases other than murder to stipulate the time a convicted person should serve before becoming eligible to be considered for parole, the law did not leave the court without a voice. Section 7(6)(b) of the Parole Act stipulates that one of the factors that the Parole Board **shall** consider for the purpose of deciding whether or not to grant parole to an applicant is, "remarks (if any) made by the Judge at the time of sentencing". It is also worth noting that the first consideration that the Parole Board should take into account pursuant to section 7(6)(a) when deciding whether or not to grant parole to an applicant, is the "nature and circumstances of the offence for which the applicant was convicted and sentenced".

[53] Accordingly, we wish to make it clear that while the learned trial judge did not have the authority to stipulate the time the appellants should serve before becoming eligible before parole, prior to that jurisdictional lack becoming evident, the collective experience of counsel and the bench on appeal, dictated the view that a period of 30 years before parole could not be seen as excessive. As such, we find also that there was no proper basis for Mr Taylor to serve a shorter time than his co-appellants.

[54] We recognise that we cannot bind the Parole Board since these offences were committed prior to the passage of the Sexual Offences Act. However, we consider it our responsibility in such a case where the learned trial judge referred to the conduct of the appellants as "domestic terrorism" and the offences have been likened by counsel to "war crimes", to unambiguously record our sentiments in order to provide the greatest assistance to the Parole Board.

[55] In any event Parliament has now decided, by virtue of the enactment of the Sexual Offences Act, that trial judges should be able to recommend the period which persons being sentenced for rape shall serve before becoming eligible for parole, and that the minimum period is 10 years. This indicates a policy shift that accords great significance to the assessment of the trial judge in relation to any consideration of parole. We are using this medium to urge that the Parole Board will accord the utmost respect to the learned judge as well as this court in the sentiments expressed concerning 30 years. It is our fervent hope that these matters will be considered seriously by the relevant authorities.

[56] We also wish to remind trial judges of the need to pay due attention to the dates charged on indictments in order to ensure that sentencing is done in accordance with the relevant legislation.

Conclusion

[57] We have concluded that the trial judge erred in stipulating a period of years that the appellants should serve in relation to count 7 before being eligible for parole. However, in the round, we are satisfied that the term of life imprisonment for all the appellants is appropriate in all the circumstances. Again, it bears repeating that the court is horrified at the treatment that was endured by the complainant in this matter and is of the view that defendants who act in this way, at the edge of humanity, must prepare themselves for long terms of imprisonment, even for life.

[58] Accordingly, the court makes the following orders:

1. The applications of Junior Maxwell, Reynaldo Palmer and Omar Taylor for leave to appeal against conviction are refused.

2. The applications of Junior Maxwell, Reynaldo Palmer and Omar Taylor for leave to appeal against the sentences imposed in relation to count 7 are granted.

3. The hearing of the applications for leave to appeal against the sentences imposed in relation to count 7 for the offence of rape is treated as the hearing of the appeal.

4. The appeals against sentence for all three appellants in relation to count 7 for rape is allowed.

5. In relation to the appellants Junior Maxwell and Reynaldo Palmer the sentences of life imprisonment with the stipulation of 30 years before parole are set aside. In relation to the appellant Omar Taylor, the sentence of life imprisonment with the stipulation of 25 years before parole is set aside. Substituted therefore for each appellant on count 7 is the sentence of life imprisonment.

6. The sentences are to be reckoned as having commenced on 25 February 2014.

7. The sentences in relation to counts 1 to 6, 8 and 9 are affirmed.