

IN THE CARIBBEAN COURT OF JUSTICE
Appellate Jurisdiction
ON APPEAL FROM THE COURT OF APPEAL OF BARBADOS

CCJ Application BBCR2013/002
BB Criminal Appeal No 1 of 2011

BETWEEN

JEFFREY RAY BURTON

**APPLICANT/
INTENDED APPELLANT**

AND

THE QUEEN

RESPONDENT

CCJ Application BBCR2013/003
BB Criminal Appeal No 4 of 2011

BETWEEN

KEMAR ANDERSON NURSE

**APPLICANT/
INTENDED APPELLANT**

AND

THE QUEEN

RESPONDENT

[Consolidated by Order of the Court dated 12th day of December 2013]

EXECUTIVE SUMMARY

- [1] On 6 October 2006 Burton, aged 15 years, and Nurse, aged 17 years, boarded a school bus on their way home. While on the bus a flight began between Burton and Averell Wright, aged 15 years, which continued through the front door of the vehicle and then onto the pavement of the road. Nurse joined this scuffle. Burton drew a knife from his school bag and stabbed Wright in the chest. Wright collapsed and died.
- [2] Both Burton and Nurse were arrested and on 9 October 2006 were charged with murder. They were remanded but Nurse was granted bail in July 2009. On 8 March 2010, they pleaded not guilty to murder but guilty to manslaughter and were, on 20 January 2011, sentenced to seven and five years in prison, respectively. The sentencing judge indicated that he took into consideration the time which they spent on remand but his judgment did not reflect a specific deduction.

- [3] Three months after the imposition of the sentences, the CCJ set out the approach to be followed by judges when imposing sentences on persons who had already spent time on remand. The Court held in *Romeo Hall v R* that normally a judge is to give full credit for an accused's time spent on remand. Burton and Nurse appealed to the Court of Appeal of Barbados on the basis that their sentences were excessive because the decision in *Romeo Hall* required that each of them should be given a full discount for time spent on remand and that the sentences were not in accordance with the judicial guidelines on sentencing. The Court of Appeal dismissed their appeals holding that *Romeo Hall* did not apply retroactively and that the guidelines did not take away the discretion of the sentencing judge.
- [4] Burton and Nurse applied for and received special leave to appeal the Court of Appeal's decision before the CCJ. They contended that the Court of Appeal erred when it affirmed their sentences because that court did not have proper regard to the decision in *Romeo Hall* and the relevant judicial guidelines.
- [5] The Court acknowledged that the exercise of judicial discretion is at the heart of the sentencing process. It also indicated that guidelines provide assistance to the sentencing judge but are not to be viewed as rules from which there can be no departure. Even with guidelines, it stated, the discretion of the sentencing judge is still preserved because the guidelines indicate a range of sentences appropriate for specific offences and a sentencing judge is free to depart from the guidelines with reasons for so departing. The Court did not find that learned trial judge departed from the guidelines.
- [6] The Court agreed with the trial judge that the case did not fall squarely within any of the formal categories described in the guidelines in *Pierre Lorde v R*. However, other statements of the court in that case indicated accepted sentencing practice and precedents within which the present sentences fell. Consequently, the Court held that the Court of Appeal was correct in finding that there was no basis for disturbing the trial judge's sentences in relation to his adherence to judicial guidelines.
- [7] Further on the issue of guidelines, the Court acknowledged the impossibility of guidelines to address every circumstance. It also indicated that guidelines are creatures of the Court of Appeal and that revisions should be done in the first instance by that court. For these reasons the Court declined to revise the judicial guidelines set out in *Pierre Lorde*.
- [8] On the question of the applicability of *Romeo Hall*, the Court clarified the issue to be whether the Court of Appeal having been seised of the decision in *Romeo Hall* ought to have applied the principle of full credit for time served on remand. It decided that the Court of Appeal should have applied *Romeo Hall* because once this Court has

pronounced on the law, the law so stated applies to all cases subsequently coming before the courts for decision.

- [9] The Court turned its attention to the Court of Appeal's reliance, to support its determination of the non-retroactive nature of *Romeo Hall*, on a comment by Mr Justice Nelson JCCJ in an exchange with counsel in the matter of *Jerry Anderson Weekes v The Queen*. The Court found this reliance to be misplaced as the comment was made in an entirely different context and that, in any event, statements or observations of members of the Court speaking extemporaneously do not have binding effect.
- [10] Acknowledging the difficulty that may arise in defining the circumstances in which the ruling in *Romeo Hall* would apply, the Court outlined the basic principles to be followed. Prisoners whose cases or appeals are pending and those for whom the statutory period to appeal has not expired are entitled to benefit from the ruling. Where the period for appealing has long expired, the Court stated, a prisoner may apply for an extension of time but will only be granted such in exceptional circumstances.
- [11] While the Court is competent to depart from its previous decision, it will only do so in exceptional circumstances. Consequently, it declined to adopt the approach to sentencing advanced by Mr Justice Wit JCCJ in his minority decision in *Romeo Hall* where the trial judge would impose the appropriate sentence while declaring that the time spent in custody will count as time served under the sentence. The Court stated that recurrent reversals could weaken respect for the rule of law and are ideally undertaken by the Full Bench sitting en banc.
- [12] The Court found that the trial judge did not adhere to the principle of granting to Burton and Nurse full credit for the time they spent in pre-trial custody. The trial judge treated the time spent on remand as a factor in mitigation and only gave partial credit owing to what he called an 'in-built gestation period' of two years. The Court found that that it was wrong to have given no credit for the two-year 'gestation period'.
- [13] As a result, the Court concluded that the sentence for Burton should have been 5 years imprisonment and that of Nurse should have been 3 years imprisonment, both from 20 January 2011. Both sentences were ordered to be varied accordingly. It pointed out that since Nurse would have served the sentence of three years by the time of the hearing before the CCJ, his immediate release should be ordered.

This summary is not intended to be a substitute for the reasons of the Caribbean Court of Justice or to be used in any later consideration of the Court's reasons.