[2023] JMCA Crim 60

JAMAICA

IN THE COURT OF APPEAL

BEFORE: THE HON MR JUSTICE F WILLIAMS JA
THE HON MRS JUSTICE FOSTER-PUSEY JA
THE HON MRS JUSTICE DUNBAR GREEN JA

SUPREME COURT CRIMINAL APPEAL NOS 52 & 55/2019

JAVONE LESLIE
JAMELIA LESLIE v R

Sanjay Smith for Javone Leslie

Mrs Andria Whyte-Walters for Jamelia Leslie

Jeremy Taylor KC and Ms Kathrina Watson for the Crown

5, 6, 8 June and 15 December 2023

Criminal Law – Sentencing – Three counts of murder –One count of arson- Guilty plea discounts– Clarification of sentences -Sentences of life imprisonment – Consideration of the stipulation of pre-parole periods – The Offences Against the Person Act, sections 2(1)(a), 2(2), 3(1), 3(1A) and 3(1C) – The Criminal Justice (Administration) Act, sections 42C and 42F

FOSTER-PUSEY JA

[1] Mr Javone Leslie and Miss Jamelia Leslie were charged on an indictment containing three counts for the murder of 29-year-old Kashief Jackson, her 23-month old son Aviere Williams, and her seven-day old daughter, Aranza Williams. The indictment also included one count of arson as the applicants had set fire to a dwelling house with Ms Jackson and her two children inside. On 21 March 2019, in the Home Circuit Court, both applicants pleaded guilty to all four counts on the indictment.

[2] On 31 May and 7 June 2019, the sentencing judge imposed the following sentences on both applicants: count one - the murder of Kashief Jackson- life imprisonment with

the stipulation that they each serve 36 years' imprisonment before they are eligible for parole, count two - the murder of Aviere Williams - life imprisonment with the stipulation that they each serve 21 years' imprisonment before they are eligible for parole, count three - the murder of Aranza Williams - life imprisonment with the stipulation that they each serve 21 years' imprisonment before they are eligible for parole, and count four - arson - 10 years' imprisonment. All the sentences were to run concurrently.

The grounds of appeal

[3] Mr Leslie and Miss Leslie applied for leave to appeal their sentences on various grounds. For Mr Leslie's part, the original grounds were:

> "**Unfair Trial:** That the court did not temper justice with mercy as the sentences are harsh and excessive and cannot be justified in law.
>
> **Unfair Trial:** That the learned trial judge did not temper justice with mercy as my guilty plead [sic] was not taken into consideration.
>
> **Unfair Trial:** That based on the facts as presented the sentence [sic] are harsh and excessive and cannot be justified when taken into consideration."

[4] Miss Leslie, on the other hand, outlined as her grounds of appeal:

> "a) The judge did not take into consideration my side of the argument, as in my opinion the sentence is excessive.
>
> b) The judge should take the SER into account when handing down the sentence.
>
> c) The judge should take the emotional trauma I suffered into consideration."

[5] A single judge of appeal refused the applicants' applications on the basis that the overall sentences did not appear to be manifestly excessive for a triple murder and for the offence of arson.

[6] The applicants renewed their applications for leave to appeal before this court. Their counsel did not seek leave to amend the grounds of appeal that were originally filed but focussed their submissions on the question as to whether the sentences imposed were manifestly excessive.

The facts outlined by the prosecution

[7] It is difficult to find adequate words to describe the events of 18 July 2018. This was a horrifying incident that ended with three lives lost in what must have been terrifying circumstances for the now deceased. The applicants are brother and sister. Miss Leslie had a child for and a relationship with a man who will be referred to as "AW". The deceased Ms Jackson bore two children, Aviere and Aranza, for AW.

[8] Miss Leslie received information that AW was having an affair with Ms Jackson, who moved into AW's home along with the two children after giving birth to Aranza. On 18 July 2018, the applicants left their homes and went to AW's home for which Miss Leslie had a key. Miss Leslie and her brother entered the house and attacked Ms Jackson, stabbing her with a knife several times. They then set ablaze a bed in the house, left the two children in the house and returned to their home. Ms Jackson and the two children died. The postmortem reports reflected how their deaths came about.

The postmortem reports from Dr Althea Neblett

[9] Ms Jackson's body was found on the floor at the entrance of the bedroom. There was a partially burnt mattress in the room. There was "a cluster of haemorrhagic stab and incised wounds (18 wounds) on the neck", as well as numerous others on her cheek, in her chest wall and abdominal walls, on her left arm, left hand and palm. The summary of opinion as to the cause of death read as follows:

> "Postmortem examination of the body revealed an adult woman who was covered lightly with soot. She had multiple sharp force injuries to the neck with injury to the trachea. She also had multiple, non-fatal, sharp force injuries of the face, torso and the upper limbs. There was soot in the mouth and soot, admixed with blood in the larger and smaller airways.

> Postmortem toxicology revealed non-fatal concentration of carbon monoxide. The presence of soot in the airway, along with carbon monoxide in the blood, infer that she was alive at the start of the fire. Death is due to sharp force injuries of the neck and smoke inhalation."

[10] Aviere was found on the floor of the bedroom and then taken outside to the veranda, while Aranza was found in a bath pan on top of clothing in the bedroom. There was no obvious external trauma to either Aviere's or Aranza's bodies, however, they were covered with soot and had soot in their mouths, stomachs and airways. The postmortem toxicology revealed fatal concentration of carbon monoxide. Death for both children was due to "smoke inhalation and carbon monoxide toxicity".

The submissions

The initial submissions for the applicants

[11] Mr Smith and Mrs Whyte Walters filed joint submissions, however, Mr Smith summarized them orally. The applicants' attorneys submitted that the sentences could not be seen as manifestly excessive having regard to "the gruesome nature of the crime". Counsel referred to **Jowayne Alexander v R** [2022] JMCA Crim 64 in which it was indicated that a person convicted of another murder committed on the same occasion could be sentenced to death or imprisonment for life. Counsel submitted that it was appropriate for the pre-parole period determined in the case at bar to be higher than that imposed in that case. Counsel also referred to **Tyrone Gillard v R** [2019] JMCA Crim 42 in which this court allowed the appeal on a sentence for murder and imposed a pre-parole period of 20 years' imprisonment for a single count of murder on a guilty plea. Counsel noted, however, that the usual practice was to impose a higher sentence on the subsequent counts instead of the highest sentence on the first count of murder. No issue was taken with the sentence handed down for arson.

[12] Noting that the learned judge sentenced the applicants on 31 May 2019 and recalled them for clarification on 7 June 2019, counsel submitted that, on 7 June 2019, the sentencing judge was merely clarifying the sentences that she had handed down and

was not varying them. As a consequence, no issue arose as to whether she was *functus officio* on 7 June 2019. Reference was made to **Beswick v R** (1987) 36 WIR 318 and again to **Tyrone Gillard v R**.

The initial submissions made by the Crown

[13] The Crown, in its written submissions, highlighted that, notwithstanding the enormity of the crime perpetrated by the applicants, the Crown did not seek the imposition of the death penalty and the applicants were indicted on a 'non capital' indictment, the governing provisions being section 2(2) of the Offences Against the Person Act ('OAPA'). Counsel for the Crown emphasized that the Crown could have indicted the applicants for murder committed in the course or furtherance of arson contrary to section 2(1)(a) of the OAPA.

[14] Mr Taylor KC submitted that offences falling under section 2(2) of the OAPA were dealt with under section 42E of the Criminal Justice Administration Act ('CJAA') and that section 42F of the CJAA mandated a statutory fiction that for the purposes of the legislation life imprisonment is deemed to be a term of 30 years.

[15] Referring to **Meisha Clement v R** [2016] JMCA Crim 26 and **Daniel Roulston v R** [2018] JMCA Crim 20 King's Counsel highlighted the principles guiding judges as they impose sentences. King's Counsel also submitted that the objectives of sentencing are retribution, deterrence, prosecution, and rehabilitation, however, the appropriate overriding principles to be applied in the case at bar ought to be retribution, denunciation and deterrence. He relied on **R v Sydney Beckford and David Lewis** (1980) 17 JLR 202 in which this court endorsed the principles laid down in **James Sargeant v R** (1974) 60 Cr App R 74 and commended **Her Majesty the Queen v M** (CA) [1996] 1 SCR 500 and **Furman v Georgia** 408 US 238 (1971) as justifying retribution as a sentencing principle of our law.

[16] King's Counsel referred to a number of cases in which sentences were imposed for the offence of arson: **R v Errol Hylton** (unreported), Court of Appeal, Jamaica, Supreme

Court Criminal Appeal No 40/1991, judgment delivered 11 November 1991 - a 10-year sentence was affirmed on appeal; **Anthony Atkinson and Paulston Mairs v R** [2016] JMCA Crim 4, two counts of arson, four-year and five-year sentences were imposed and affirmed on appeal; and **Lindell Howell v R** [2017] JMCA Crim 9, where a sentence of 18 years was imposed but was reduced to 10 years on appeal. After reviewing the sentencing judge's approach, King's Counsel submitted that the sentence for arson was within the prescribed range although, given the appalling features of the case at bar, it could have been higher.

[17] Turning to the judge's approach to sentencing on counts two and three, Mr Taylor submitted that the sentences imposed were 'unobjectionable and entirely reasonable'.

[18] In contrast to the submissions on behalf of the applicants, King's Counsel stated that it could not be denied that the learned judge erred in sentencing the applicants on count one as she chose a starting point of 50 years. Counsel referred to **Quacie Hart v R** [2022] JMCA Crim 70 in which this court held that a starting point of 40 years in determining the minimum pre-parole period was erroneous in principle and manifestly excessive. King's Counsel stated that the life imprisonment imposed by the learned judge should have been deemed to be 30 years for the purpose of determining the minimum pre-parole period to which her consideration would have been applied in light of the guilty plea. Mr Taylor submitted that the aggravating factors outweigh the mitigating factors in the case at bar and proposed that the pre-parole period be 29 years calculating it as follows - beginning at 21 years after mitigating factors were taken into account and adding eight years for the following aggravating factors: Ms Jackson, to whom count one related, had to face two attackers, in a home invasion, received 11 sharp force injuries and was alive when fire was set to the house but was left unable to rescue the infants. King's Counsel also referred to **Garland Marriott v R** [2012] JMCA Crim 9, **Jeffrey Perry v R** [2012] JMCA Crim 17, **Briston Scarlett v R** [2012] JMCA Crim 37, **Calvin Powell and Lennox Swaby** [2013] JMCA Crim 28, and **Christopher Locke v R** [2021]

JMCA Crim 13, cases in which sentences were imposed on applicants convicted of murdering single or multiple victims.

[19] In concluding, King's Counsel urged that the appeal against sentence on count one be adjusted to life imprisonment with parole after 29 years have been served and that the sentences on counts two, three and four be affirmed.

Additional submissions concerning the sentences on counts two and three

[20] In the course of the submissions, the court asked counsel to address the question as to whether, bearing in mind section 42C(b) of the CJAA and section 3(1A) of the OAPA the judge was empowered to give discounts on the sentences imposed for counts two and three. We invited Mr Taylor to first make submissions for the Crown.

[21] Mr Taylor submitted that in light of section 42C of the CJAA and section 3(1A) of the OAPA the murders outlined in counts two and three were not covered by the sentencing regime outlined in the guilty plea discount regime in the CJAA. King's Counsel stated that the learned judge erred when she applied discounts to and applied the CJAA statutory fiction in respect of the sentences imposed for the murders reflected in counts two and three as that fiction ought to have only been applied in arriving at the sentence to be imposed in respect of count one. Relying on **Jowayne Alexander v R**, Mr Taylor submitted that the correct approach would have been for the sentence for count two to be higher than that imposed for count one and the sentence for count three higher than that imposed for count two. He submitted that **Jowayne Alexander v R** is precedent that the court can increase the sentences in the case at bar. King's Counsel also referred to **Nario Allen v R** [2018] JMCA Crim 37.

[22] King's Counsel urged that the 36-year pre-parole period that the learned judge imposed for count one should instead be imposed for count three with pre-parole periods of 23 years and 33 years for counts one and two respectively.

[23] On behalf of the applicants, Mr Smith, after referring to the relevant legislative provisions and **The Sussex Peerage Case** (1844) 11 Cl and Fin 85, agreed with the

submissions made by the Crown that the discount regime under the CJAA does not apply to counts two and three, they being two of three murders committed on the same occasion. Counsel also submitted that no discounts at all could be applied to the sentences imposed for counts two and three.

[24] Mr Smith submitted, in agreement with the submissions on behalf of the Crown, that the correct sentencing principle is to sentence progressively higher on subsequent counts of murder.

[25] In respect of the sentence for count one, Mr Smith submitted that the applicants, having pleaded guilty on the first relevant date ought to be granted a discount of 33⅓% with the applicable aggravating and mitigating factors, resulting in a pre-parole period of 21 years. In respect of counts two and three, counsel submitted that the applicants could be sentenced to a pre-parole period of 36 years.

The issues on appeal

[26] The critical question in the case at bar is, what is the impact of the statutory framework outlined in the CJAA in respect of discounts for guilty pleas where more than one count of murder is involved? In order to answer the question, it is necessary to examine, among other things, the indictment, the statutory framework in respect of murder sentences, guilty plea discounts, and case law. Then, having answered that question, we will follow the appropriate sentencing processes in respect of the murder convictions.

The indictment

[27] The statements of offences are crucial to our consideration of the issues in this matter. They are outlined below:

"**STATEMENT OF OFFENCE: -Count 1**

Murder

PARTICULARS OF OFFENCE

JAMELIA LESLIE AND JAVONE LESLIE on the 18th day of July, 2018 in the parish of St. Andrew murdered Kashief Jackson.

STATEMENT OF OFFENCE: -Count 2

Murder

PARTICULARS OF OFFENCE

JAMELIA LESLIE AND JAVONE LESLIE on the 18th day of July, 2018 in the parish of St. Andrew murdered Aviere Williams.

STATEMENT OF OFFENCE: -Count 3

Murder

PARTICULARS OF OFFENCE

JAMELIA LESLIE AND JAVONE LESLIE on the 18th day of July, 2018 in the parish of St. Andrew murdered Aranza Williams.

STATEMENT OF OFFENCE: -Count 4

Arson, contrary to Section 3 of the Malicious Injuries to Property Act

PARTICULARS OF OFFENCE

JAMELIA LESLIE AND JAVONE LESLIE on the 18th day of July, 2018 in the parish of St. Andrew unlawfully and maliciously set fire to a dwelling house with Kashief Jackson, Aviere Williams and Aranza Williams being therein."

[28] It is now important to examine the applicable statutory framework.

The statutory framework

[29] Section 2(1)(a) of the OAPA states:

> "(1) Subject to subsection (3), **every person to whom section 3(1A) applies** or **who is convicted of murder committed in any of the following circumstances** shall be sentenced in accordance with section 3(1)(a), that is to say-
> (a) any murder-

(i) committed by a person if, in the course or furtherance of, arising out of, or ancillary to, that murder, the person commits an offence referred to in subsection (1A); or

(ii) committed by a person in the course or furtherance of, arising out of, or ancillary to, an offence referred to in subsection (1A),

whether or not the individual murdered was an individual that the offender intended to murder in committing the offence;"

The provisions of subparas. (b)-(f) are summarized below:

(b) (murder of a member of the security forces, a correctional officer, a judicial officer or member of the Jamaica Constabulary Force for reasons attributable to their duties/occupation)

(c) (murder of witness or juror)

(d) (murder of Justice of the Peace in the execution of his judicial duties)

(e) (contract killings) and

(f) (murder to create a state of fear in the public or any section of the public).

[30] Sections 2(1A) and 2(2) of the OAPA are of interest. They state:

"(1A) For the purposes of subsection (1)(a), the offences referred to in this subsection are-

(a) burglary or housebreaking;
(b) arson in relation to a dwelling house;
(c) robbery; or
(d) any sexual offence.

(2) **Subject to subsection (3), every person convicted of murder other than a person-**

(a) convicted of murder in the circumstances specified in subsection (1)(a) to (f); or

(b) to whom section 3(1A) applies,

shall be sentenced in accordance with section 3(1)(b)." (Emphasis supplied)

[31] The sentences to be imposed on conviction for murder are outlined in section 3 of the OAPA, which provides, in part:

"(1) **Every person who is convicted of murder falling within**-

(a) section 2(1)(a) to (f) **or to whom subsection (1A) applies, shall be sentenced to death or to imprisonment for life;**

(b) section 2(2), shall be sentenced to imprisonment for life or such other term as the court considers appropriate, not being less than fifteen years.

(1A) **This subsection applies to a person who is convicted of murder and who, before that conviction, has been convicted in Jamaica-**

(a) whether before or after the 14th October, 1992, of another murder done on a different occasion; or

(b) **<u>of another murder</u> done on the same occasion.**

(1B) …..

(1C) In the case of a person convicted of murder, the following provisions shall have effect with regard to that person's eligibility for parole, as if those provisions had been substituted for section 6(1) to (4) of the Parole Act-

(a) where a court imposes a sentence of imprisonment for life pursuant to subsection (1)(a), the court shall specify a period, being not less than twenty years, which that person should serve before becoming eligible for parole; or

(b) where, pursuant to subsection (1)(b), a court imposes-

(i) a sentence of imprisonment for life, the court shall specify a period, being not less than fifteen years; or

(ii) any other sentence of imprisonment, the court shall specify a period, being not less than ten years, which that person should serve before becoming eligible for parole."

[32] Upon a review of the statutory provisions outlined above the following is evident:

i. Section 2(1) of the OAPA speaks to persons to whom section 3(1A) of the OAPA **applies** or to persons convicted within the circumstances outlined in section 2 of the OAPA.

ii. Section 2(1) of the OAPA refers to two different sets of circumstances. It refers to where section 3(1A) **applies** in contrast to "murder committed in any of the following circumstances".

iii. Where a murder is committed within the circumstances outlined in section 2(1)(a)-(f) or where section 3(1A) is **applicable**, the offender may be sentenced to death or to imprisonment for life with a minimum pre-parole period of 20 years.

iv. Section 2(2) of the OAPA utilises similar wording to section 2(1) of the OAPA and distinguishes the scenario of section 3(1A) of the OAPA, from persons convicted of murder **in** the circumstances specified in section 2(1)(a)-(f) of the OAPA. In the latter scenario, it is understood that the indictment must specifically refer to the relevant circumstances for example if the murder is committed in the course of robbery or rape or if a member of the security forces is murdered in the execution of his duties. On the other hand, section 3(1A) **applies** where a person was previously convicted of murder and is again (subsequently) convicted of murder, or is convicted of another murder committed on the same occasion. There is no need for the indictment to refer to section 3(1A), it automatically applies when there is a subsequent conviction of murder or another murder committed on the same occasion.

v. For the first murder conviction or the first count of murder committed on the same occasion, the offender is subject to be sentenced in accordance with section 3(1)(b) of the OAPA - that is, imprisonment for life or such other term as the court sees as appropriate, not being

> less than 15 years. If the court imposes a life sentence the pre-parole period must be a minimum of 15 years, while if a fixed term is imposed, the pre-parole period must not be less than 10 years.

[33] **Jowayne Alexander v R** is helpful in our examination of the legislative framework. The appellant was charged on an indictment that contained two counts for the murders of a husband and wife, and was sentenced to life imprisonment with the stipulation that he serve 26 years' imprisonment on both counts before he could become eligible for parole. Importantly, the sentences were ordered to run consecutively with the result that he would have had to serve 52 years before becoming eligible for parole. At paras. [31]-[33], McDonald-Bishop JA referred to certain principles that applied in the case of a double murder:

> "[31]…We cannot lose sight of the fact that this was a double murder, and pursuant to the provisions of the…OAPA, the prosecution could have asked for the death penalty with respect to the second murder, but they did not do so. The appellant was thus spared from having the death penalty considered as a sentencing option with respect to the second murder. We, therefore, reject the argument that the same pre-parole period should be given on both counts. The court must ensure that the punishment is proportionate to the overall criminality, having regard to similar cases in similar circumstances and the personal characteristics of this offender."

[34] Later in the judgment, McDonald-Bishop JA, at para. [32], noted that the statutory minimum of 15 years is used as the guide in selecting the starting point for the pre-parole period in relation to count one. In respect of count two, however, the learned judge of appeal stated at para. [33]:

> "However, concerning count two, which relates to the killing of Mrs Hall, a more substantial punishment must be imposed. We find that the overall criminality warrants a minimum pre-parole period in excess of 26 years on count two, particularly in light of the fact that a subsequent murder conviction is

> treated differently, pursuant to section 3(1A)(b) of the OAPA. This section allows for a person convicted of another murder done on the same occasion to be sentenced to death or imprisonment for life. We have borne in mind the statutory minimum pre-parole period in respect of murder committed in circumstances to which section 3(1)(a) of the OAPA applies. In those circumstances, the statutory minimum pre-parole period is a term of 20 years' imprisonment (see section 3(1C)(a) of the OAPA). This statutory minimum is used as a guide."

[35] In **Passmore Millings and Andre Ennis v R** [2021] JMCA Crim 6, the applicants were convicted for the murder of a couple. They applied for leave to appeal their convictions and sentences. Brooks P, at paras. [79]-[81], indicated that a different sentencing framework applied to the first murder conviction in contrast with the scenario where an applicant is convicted of more than one murder.

[36] Jowayne Alexander, Passmore Millings and Andre Ennis did not, however, plead guilty to the murder charges.

[37] The crux of the issue is whether section 42C of the CJAA applies in these circumstances. It states:

> "42C **The provisions of this Part shall not apply to defendant who pleads guilty to-**
>
> (a) the offence of murder falling within section 2(1) of the Offences Against the Person Act;
>
> (b) **the offence of murder, in circumstances where section 3(1A) of the Offences Against the Person Act applies**; or
>
> (c) an offence following plea negotiations and the conclusion of a plea agreement pursuant to the provisions of the Criminal Justice (Plea Negotiations and Agreements) Act." (Emphasis supplied)

[38] In light of section 42C(b) of the CJAA, the submissions of counsel are indeed correct, that the statutory framework outlined in the CJAA for guilty pleas would not apply

to convictions for the second and third murders committed on the same occasion and outlined in counts two and three of the indictment.

[39] The CJAA framework would, however, impact the applicants' guilty plea to murder as outlined in count one of the indictment.

[40] But what of the joint position taken by counsel that no discount would be available in respect of the guilty pleas for counts two and three? In our view, counsel are not on good ground in this regard, as discounts for guilty pleas are recognised as appropriate in case law.

[41] In **Meisha Clement v R** the applicant pleaded guilty to the offence of possessing access devices contrary to section 8(2) of the Law Reform (Fraudulent Transactions) (Special Provisions) Act and was sentenced to eight years' imprisonment. On appeal, the applicant challenged the sentence imposed as being manifestly excessive. Morrison P examined a number of aspects of modern sentencing doctrine including the classical principles of retribution, deterrence, prevention and rehabilitation and outlined the now well utilised formula for arriving at sentences. For the purposes of the discussion on the question of discounts for guilty pleas paras. [36]-[40] of the judgment are particularly helpful, bearing in mind that the statutory provisions of the CJAA had no relevance to the case (see para. [40]). At para. [36] Morrison P wrote:

> "Next, as regards the plea of guilty, such a plea must, as P Harrison JA stated in **R v Collin Gordon,** 'attract a specific consideration by a court'. The rationale for this has been variously explained. In **Keith Smith v R**, for instance, a decision of the Court of Appeal of Barbados, Sir Denys Williams CJ observed that '[i]t is accepted that a plea of 'Guilty' may properly be treated as a mitigating factor in sentencing as an indication that the offender feels remorse for what he has done'. And in **R v Collin Gordon**, P Harrison JA said this:
>
> > 'The rationale in affording to an offender the consideration of discounting the sentence because of a guilty plea on the first opportunity is based on the conduct of the offender. He has thereby frankly admitted

> his wrong, has not wasted the court's time, thereby saving valuable judicial time and expense, has thrown himself on the mercy of the court and may be seen as expressing some degree of remorse'."

[42] But how was the question of the allowable discount addressed? Morrison P stated at para. [38]:

> "The extent of the allowable discount for a guilty plea has never been fixed. But the authorities make it clear that all will depend on the circumstances of the particular case. So in **Joel Deer v R**, Phillips JA stated that '[t]he amount of credit to be given for a guilty plea is at the discretion of the judge'. Phillips JA went on to refer to **R v Buffrey**, in which Lord Taylor CJ stated that, as a general rule 'something of the order of one-third would very often be an appropriate discount from the sentence which would otherwise be imposed on a contested trial'. The editors of Archbold stated that English Court of Appeal cases suggest that 'it is normally between one-fifth and one-third of the sentence which would be imposed on a conviction by a jury'. Among the relevant considerations for the sentencing judge will be the strength of the case against the offender ('an offender who pleads guilty in the face of overwhelming evidence may not receive the same discount as one who has a plausible defence'), as well as the timing of the plea. As regards the latter a plea offered on the first opportunity which presented itself to do so before the court may qualify the offender for the maximum allowable discount, while a plea offered at some later stage during the prosecution might attract some lesser discount."

[43] Morrison P, at para. [39] of the judgment, gave examples of levels of discount applied or approved by the court such as 50%, 33⅓% and 25%.

[44] At common law a discount was also offered on guilty pleas to murder. In **Demar Shortridge v R** [2018] JMCA Crim 30, the appellant pleaded guilty to the offence of murder on 30 September 2013 and, on 11 October 2013, was sentenced to imprisonment for life with a stipulation that he should serve a minimum of 25 years in prison before becoming eligible for parole. This court allowed the appeal against sentence in part by varying the period of 25 years to be served before eligibility for parole to 24 years. In

considering the submissions of counsel, Morrison P stated at paras. [15]-[16] of the judgment:

> "[15] So the question is whether the judge's order that the appellant should serve at least 25 years before parole in this case incorporated a sufficient discount for his plea of guilty. The extent of the allowable discount for a guilty plea is now governed by the Criminal Justice (Administration)(Amendment) Act, 2015, which provides for a reduction in sentence of up to 50%, depending on the stage of the proceedings at which the plea is offered and the nature of the offence with which the defendant is charged (see sections 42D and 42E).
>
> [16] **But when the appellant was sentenced in 2013, the matter was entirely governed by the common law, in accordance with which the amount of credit which a guilty plea should attract was a matter for the discretion of the trial judge** (see **Joel Deer v R** [2014] JMCA Crim 33, per Phillips JA at paragraph [8]). In discussing this question in **Meisha Clement v R** …the court referred to previous decisions in which discounts ranging from 25%-50%, depending on the circumstances of the particular case, had been approved." (Emphasis supplied).

[45] The court ultimately did not disturb the 17% discount that the first instance judge granted for the guilty plea on the basis that although that percentage was somewhat below the usual range of discount sanctioned by this court in comparable circumstances, each case was to be judged on its own facts and "ultimately the period of imprisonment to be specified for service before parole and allowed for a guilty plea are matters for the discretion of the sentencing judge" (para. [18]). The appellant was, however, given full credit for the time he spent in custody as a result of which his pre-parole period was reduced to 24 years.

[46] While it is clear that discounts for a guilty plea to murder were available at common law, one of the issues that has been raised is whether a judge may grant a discount on a guilty plea for a second murder, in light of the provisions of section 42C of the CJAA.

[47] For ease of reference we again outline it below:

> "42C **The provisions of <u>this Part</u> shall not apply to a defendant who pleads guilty to-**
>
> (a) the offence of murder falling within section 2(1) of the Offences Against the Person Act;
>
> (b) **the offence of murder, in circumstances where section 3(1A) of the Offences Against the Person Act applies**; or
>
> (c) an offence following plea negotiations and the conclusion of a plea agreement pursuant to the provisions of the Criminal Justice (Plea Negotiations and Agreements) Act." (Emphasis supplied)

[48] The highlighted words make it clear that the particular provisions in Part 1A of the CJAA do not apply to a guilty plea to murder in circumstances where section 3(1A) applies. This is because it is a specific statutory regime that is being created in respect of particular offences including murder pursuant to section 2(2) of the OAPA.

[49] The fact that a specific statutory regime has been introduced by Parliament is reflected by a number of features of the legislation. These include the percentage discounts that are available depending on the stage of the proceedings when the guilty plea is made as well as the criteria to be taken into account, pursuant to section 42H of the CJAA in determining the level of discount that the court decides to grant.

[50] Another important feature of the regime is section 42F of the CJAA which states:

> "Where the offence to which a defendant pleads guilty is one for which the Court may impose a sentence of life imprisonment, and the Court would have imposed that sentence had the defendant been tried and convicted for the offence, then, for the purpose of calculating a reduction of sentence in accordance with the provisions of this Part, a term

> of life imprisonment shall be deemed to be a term of thirty years."

[51] Parliament was careful to ensure that a provision such as section 42F of the CJAA could only apply to certain categories of murder. (It also applies to other offences for which life imprisonment may be imposed.) We note, however, that section 42E of the CJAA in respect of guilty pleas to murder pursuant to section 2(2) of the OAPA, makes it clear that the discounted sentence cannot be below the prescribed minimum penalty in the OAPA.

[52] The prescribed minimum sentence for a murder falling within section 3(1A) of the OAPA is life imprisonment with a minimum pre-parole period of 20 years. What this means is that section 42F could never have been brought into play had the statutory regime applied. It is a similar situation for murders falling within section 2(1) of the OAPA.

[53] Section 42F is an element in the statutory regime that was clearly meant to encourage guilty pleas in cases where a judge may have contemplated giving a life imprisonment sentence but for the guilty plea. Thus, the statutory regime applies to guilty pleas to murders pursuant to section 2(2) of the OAPA where the prescribed minimum sentence includes a 15-year fixed term of imprisonment with a minimum pre-parole period of 10 years.

[54] In our view there is nothing in Part 1A of the CJAA forbidding discounts at common law for the murders to which its provisions **do not apply**. For this to occur we would have needed express statutory prohibition. As has been demonstrated, discounts for guilty pleas to murder were available before the passage of the amendment to the CJAA in 2015.

[55] It is a principle of statutory interpretation that Parliament knows the law, and if it is intended to override the common law this must be done in express terms. This is demonstrated in **Leach v Rex** [1912] AC 305. In that case the appellant was tried for an offence under the Incest Act. At the trial, the wife of the appellant was called by the

prosecution, but she objected contending that under section 4 of the Criminal Evidence Act, 1898 she could not be compelled to give evidence against her husband. At first instance and at the Court of Appeal it was determined that the wife was a compellable witness and she was directed to give evidence. The appellant appealed to the House of Lords. It is important to note the provisions of section 4 Criminal Evidence Act, 1898 which provides:

> "The wife or husband of the person charged with an offence under any enactment mentioned in the schedule to this Act may be called as a witness either for the prosecution or defence and without the consent of the person charged."

[56] Their Lordships opined that the wife or husband was not compellable to give evidence. As Lord Atkinson succinctly stated at page 311:

> "My Lords, I concur. The principle that a wife is not to be compelled to give evidence against her husband is deep seated in the common law of this country, and I think if it is to be overturned it must be overturned by a clear, definite, and positive enactment, not by an ambiguous one such as the section relied upon in this case."

[57] While it is clear that the provisions of Part 1A of the CJAA do not apply to guilty pleas to second and third counts of murder, the legislation does not prohibit the giving of discounts in circumstances when its provisions do not apply. All that would occur, is that the statutory regime would be inapplicable and the common law principles that recognise the value of guilty pleas would come into play.

[58] Why give a discount in such cases? It is still the case that reduction on account of a guilty plea to murder, even where it falls within section 3(1A) of the OAPA, "obviates the need for a trial, saves considerable costs and resources and, in the case of an early plea, saves victims and witnesses from the ordeal of giving evidence. It also serves to encourage others to plead guilty where appropriate" (para 10.6 of the Sentencing Guidelines for Use by Judges of the Supreme Court of Jamaica and the Parish Courts, December 2017).

[59] If it is that a person who pleads guilty to second and third counts of murder cannot get a discount, why would they choose to plead guilty? The discount on the first murder count would not help them because, in any event, the sentences for the second and third counts would exceed that imposed for the first which falls within the statutory discount regime.

[60] **Lindell Powell v R** [2022] JMCA Crim 53 concerned a guilty plea to two counts of murder. Although section 3(1A) of the OAPA was not discussed, there was no doubt expressed that a discount could have been granted for the second count of murder.

[61] It is also useful to note that the common law approach to considering discounts has also been acknowledged as relevant and applicable even in respect of guilty pleas to murder pursuant to section 2(2) of the OAPA. In **Stephen Blake v R** [2023] JMCA Crim 45, Brooks P opined that the **Meisha Clement** (common law) approach is useful in determining the pre-parole period in cases where a sentence of life imprisonment is imposed despite a guilty plea to murder (see para. [39]).

[62] Therefore, while the guilty plea discount regime under the CJAA did not apply to the second and third counts of murder, the learned judge was nevertheless empowered to grant discounts at common law.

The learned judge's sentencing process

[63] In light of the issues to be addressed it is necessary for us to set out the sentencing remarks of the learned judge in full. On 31 May 2019 (see pages 28-31 of the transcript) the learned judge stated:

> "Stand up for me. In relation to this case, I think it's one of the worst I have ever seen, not only since I have been on the Bench but since I started my legal career. Both of you, went into a house, a house that is occupied by a woman and her two children, one three year old [sic] and one 17 days old; you open the door, you stab the woman to death, you light the mattress on fire that she is on, and you lock the door and leave the two children inside causing them to die from smoke.

Maybe it's a good thing they died from smoke, because they would have burnt to death, I don't know which one is worst [sic]. You lock the door with a three year old and seventeen days old child, and you light the mattress a fire. I don't think I have ever seen anything worst [sic] since my legal career, and all because she is your rival.

The gentleman you are with, has two children with her and they are in the house and you are not, you go and kill her and kill the two children, I don't know if I have ever seen anything so horrendous in a long time.

I can assure you, you are not getting the minimum, as your lawyer had asked for, I can assure you of that.

My starting point is fifty years. I give you a 20 percent discount because of your guilty plea which takes you down to 40 years. You are in custody, I am going to round it up to one year, you say ten months, for calculation, I take it down to 39. Because of the good Social Enquiry Report, Miss Jamelia, especially the community report, you have no previous conviction, because of your age and your remorse, I am taking off another three years in relation to count one, in relation to count one you get 36 years.

In relation to count two, I am starting with this because not only did you kill the woman, you set the mattress on fire that she was on. So for count two, it deals with Avia Williams, that's one of the children that died in relation to the fire, start at 30 years. You get the 20 percent discount, six years, that is 24 years. You have been in custody one year, that's 23 years; and you get two years [sic] discount for your good Social Enquiry Report; no previous conviction, so you get 21 years in relation to count two.

Count three you get the same 21 years with the same calculation.

Count four arson, in relation to the arson I start at 15 years, you get the twenty percent discount, that is three years, 12 years. You have been in custody one year, that's 11 years; and you get one year discount for no previous conviction, that gives you ten years, so for the arson ten years. Thirty-six

years for count one, 21 years for count two, 21 years for count three, ten years for count four. Have a seat, ma'am.

In relation to Javone Leslie, you get the same 36 years for count one. I know you have a previous conviction but it's an unrelated offence so you get the same 36 years.

Count two 21 years; starting at 30, twenty percent discount, one year discount for time in custody, two for good Social Enquiry Report and no previous conviction.

For count three, same twenty one years, started at 30, 20 percent discount, one year in custody, two years for no previous conviction, when I say no previous conviction I mean no related previous conviction, remorse, and your age.

Count four, arson, ten years imprisonment. Again starting at 15 years, twenty percent discount, one year discount for time in custody, one year for Social Enquiry Report, and the no previous conviction.

Sentences to run concurrently."

[64] The learned judge dealt with the matter again on 7 June 2019 (see pages 32-34 of the transcript) where she stated:

"HER LADYSHIP: …I am just – I am not making any changes to the sentence I already handed down. I just want it to be clear for the purpose of the commitment, what it is. It is just to note what I am saying. I am not making any changes whatsoever.
MR. CARTER: He had indicated the circumstances to me.
HER LADYSHIP: Yes.
MISS ROBINSON: I am Ruth-Ann Robinson, for the Crown. The matter before you is the Queen and Jamelia Leslie and Javone Leslie, charged on an indictment containing four counts. The first three counts for the offence of Murder, and the fourth count for the offence of Arson. Both Mr. Leslie and Miss Leslie were arraigned on the 21st day of March, 2019. They both entered a plea of guilty on all four counts and were sentenced on the 31st of May, 2019. And Your Ladyship wished for it to be rolled for today for certain things to be clarified for the sentence.

> Counsel, Mr. Hayles for Miss Jamelia Leslie and counsel, Mr. Hamilton, for Mr. Javone Leslie.
> HER LADYSHIP: Just to make it very clear, I am not making any changes whatsoever to the sentencing. I am clarifying for the purposes of the commitment.
> In relationship to Miss Jamelia Leslie as per law, it is a case of Murder, so it is life, thirty-six years before possibility of parole.
> For Count 2: It is life, twenty-one years before possibility of parole.
> Count 3: Life, twenty-one years before possibility of parole.
> And, of course, Count 4 was ten years as per what was there before. And the sentences were to run concurrently.
> In relation to Mr. Javone Leslie; Count 1: Life, thirty-six years before possibility of parol.
> Count 2: Life, twenty-one years before possibility of parole.
> Count 3: Life, twenty-one years before possibility of parole.
> Of course, Count 4 had been ten years. And sentences to run concurrently.
> No changes whatsoever in relation to the sentences. Thank you."

The social enquiry reports

Miss Jamelia Leslie

[65] Up to the time of her arrest Miss Leslie worked as a laboratory technician and supervisor for approximately seven years. She told the probation officer that she passed seven Caribbean Examination Council subjects. She was in a visiting relationship with AW, with whom she shared a son, for six years prior to the incident.

[66] Miss Leslie explained that the victims were her boyfriend (AW's) "baby mother" and their two children. She shared that she and AW were having problems in their relationship due to AW's ongoing relationship with the deceased Ms Jackson, and AW kept denying the relationship that he had with Ms Jackson even after he had fathered two children with her. He eventually accepted that Ms Jackson's son was his but denied that her daughter was his child. Miss Leslie stated that AW was unemployed for most of the duration of the relationship and she financially supported him, even with the son he had with Ms Jackson and an older daughter that AW had. Ms Jackson even stayed with

AW at times and helped to physically care for AW's son. She was frustrated with the ongoing situation and was taunted by community members about the outright infidelity of AW in the midst of his consistent denial of his relationship with Ms Jackson.

[67] On the night in question, Miss Leslie went to AW's house with her brother Mr Leslie, whom she asked to accompany her because it was late. She stated that she went to AW's house to see for herself whether Ms Jackson was there as alleged by members of the community. On entering the house, she noticed that AW was absent, however, Ms Jackson was sleeping on the bed with her two young children. She went over to where Ms Jackson was sleeping under a sheet and stabbed her at a point that she felt was below Ms Jackson's waist. She used a knife that she found in the house. Miss Leslie stated that a fight ensued with Ms Jackson and during the fight, her brother suggested that she cut Ms Jackson's throat. She hesitated, but her brother took the knife from her and stabbed Ms Jackson in the throat while she looked away. Thereafter, Miss Leslie took the children from the bed, placed the younger one in a bath that was filled with clothes, and the other on the floor to sit. She told her brother to set the mattress afire. Miss Leslie stated that she wanted to burn the mattress because she was upset, but did not wish to burn the house down. In addition, she took the children from the bed as she did not wish to burn them in the fire. She and her brother left after the mattress was set ablaze.

[68] Miss Leslie stated that she assumed that persons residing on the other side of the house would have smelt the smoke and gone to save the children. She explained that she targeted Ms Jackson and not AW as Ms Jackson had sent threats to her through AW, had posted degrading things about her on social media, and had told her that she, Ms Jackson, would not stop doing so as someone had destroyed her (Ms Jackson's) family.

[69] Miss Leslie expressed remorse and admitted that her anger blinded her. She stated that she knew that the alternative was for her to leave the relationship but claimed that AW stopped her once before when she tried to do so. She wished that she could change everything.

[70] Members of the community stated that Miss Leslie was a quiet person who was not known to be a troublemaker in any way. They were aware of AW's infidelity.

Mr Javone Leslie

[71] At the time of the murder Mr Leslie was unemployed. However, he was previously employed in a variety of roles including as a receptionist, a construction worker and a coffee picker. He was literate. Before his remand, he smoked at least five to six ganja 'spliffs' a day and drank alcohol occasionally. Mr Leslie stated that his aunt, who raised him, exposed him to the Christian faith and provided him with the guidance he needed to make good decisions. His aunt stated, however, that since he became an adult he had been smoking ganja, and she believed that this led him to behave aggressively.

[72] Mr Leslie expressed disgust at his own behaviour and stated that if he could turn back the hands of time he would have tried to dissuade his sister from going to the location of the murder. Explaining how he came to be involved, he stated that his sister woke him that night and asked him to accompany her to the victims' home. She only revealed that she wanted to kill the mother of the deceased children when she arrived at the location, as the victim had threatened her. After they entered the house Miss Leslie took the children off the bed and put them aside and he, Mr Leslie, held the deceased woman while Miss Leslie stabbed her to death. Mr Leslie said that since he committed the murder he has been perturbed and was experiencing insomnia and crying spells. He asked the court to have mercy on him and not to sentence him to spend the rest of his life incarcerated.

[73] Members of the community stated that Mr Leslie smoked ganja and was sometimes aggressive, however, they were shocked when they heard about the gruesome killing as they did not expect such behaviour from him.

Examining the sentencing process

[74] We have established that the sentence to be imposed consequent on the applicants' guilty plea to count one of the indictment, for the murder of Ms Jackson, can be considered against the backdrop of the provisions of Part 1A of the CJAA.

[75] On the other hand, the sentences to be imposed consequent on the applicants' guilty plea to counts two and three of the indictment (the murders of Aviere Williams and Aranza Williams), must be considered in accordance with case law/common law and the provisions of the OAPA, as Part 1A of the CJAA does not apply to the second and other murders committed on the same occasion.

[76] In the case at bar, counsel for the applicants did not challenge the imposition of the sentences of life imprisonment. Their submissions centred on the correct legal approach to arriving at the pre-parole periods and the ultimate pre-parole periods that would be required. We agree that a sentence of life imprisonment was appropriate for each charge of murder in these circumstances.

<u>The approach to establishing the pre-parole periods for the offence of murder</u>

[77] In **Power v The Queen** (1974) 131 CLR 623, the High Court of Australia made statements concerning how the court determines the period during which a prisoner is not eligible for parole. In the written judgments of the majority (Barwick CJ, Menzies, Stephen and Mason JJ), the following principles were highlighted:

a. A judge, in fixing a non-parole period must have regard not to the time within which the paroling authority must consider the prisoner's case but to the time for which the prisoner must remain in confinement. The legislature provided that the trial judge should determine that minimum period for which in his judgment, according to accepted principles of sentencing, the prisoner should be imprisoned (para. 6).
b. During the non-parole period the prisoner cannot be released on the ground that the punishment has served its purpose sufficiently to

warrant release from confinement whereas after the non-parole period he can be (para. 7).

c. The non-parole period is a minimum period of imprisonment to be served because the sentencing judge considers that the crime committed calls for such detention (para. 7).
d. The requirement that a prisoner must stay in confinement for a period seen as appropriate by the judge in all the circumstances operates as a deterrent. Imprisonment without a chance of release is within the objective of deterrence (para. 8)
e. The legislative intention is to provide for mitigation of the punishment of the prisoner "in favour of his rehabilitation through conditional freedom, when appropriate, once the prisoner has served the minimum time that a judge determines justice requires that he must serve having regard to all the circumstances of his offence" (para. 10).
f. In fixing the non-parole period a judge will give weight to his estimate of the capacity of the prisoner for reformation. The Act leaves the fixing of the period to the judge and so long as he proceeds judicially his discretion is not subject to any predetermined limitation (para. 11).

[78] McTiernan J approved of a passage from **Reg v Sloane** (1973) 1 NSWLR 202 at page 208, where the court stated:

> "there is no need to exclude the right of a sentencing judge in particular cases to include a punitive or retributive element when he fixed the non-parole period….Acts of violence and acts against person or property which shows a betrayal of a position of trust are examples which immediately come to mind."

[79] The above excerpts reflect the High Court of Australia's position that a judge ought to consider the following in determining the minimum non-parole period that justice requires the prisoner to serve:

a. the circumstances of the crime;
b. deterrence of the offender;
c. the capacity of the prisoner for reformation;
d. allowing for the prisoner's rehabilitation through conditional freedom; and
e. in particular cases, the punitive or retributive element.

These criteria almost mirror the four classical principles of sentencing "retribution, deterrence, prevention and rehabilitation" (see page 4 of **R v Sydney Beckford and David Lewis** (1980) 17 JLR 202).

[80] It is noteworthy that the court in **Power v The Queen** did not refer to any legislatively established minimum non-parole period. Instead, the court emphasized the full discretion of the court, which discretion is to be exercised "judicially".

[81] The position in Jamaica is different, as Parliament has seen it fit to mandate minimum pre-parole periods for the offence of murder of 10, 15 or 20 years, even where there are guilty pleas. This reflects Parliament's penal policy and can be regarded as a means of ensuring that the offender's punishment is of a certain level of severity. Judges in Jamaica do not, therefore, have full discretion in arriving at the pre-parole periods to impose in murder cases. This is so although the establishment of a pre-parole period ought to take into account the personal characteristics of the offender.

[82] Where an offender has pleaded guilty to murder and a sentence of life imprisonment is imposed, this court has, on the hearing of appeals concerning the length of the pre-parole period, used different approaches to determine the appropriate pre-parole period. In the case at bar, the **Meisha Clement v R** approach, which is extrapolated in **Daniel Roulston v R** is adopted. The **Meisha Clement** approach has been accurately tabulated in **Daniel Roulston v R**, in para. [17], where McDonald-Bishop JA stated:

> "[17] Based on the governing principles, as elicited from the authorities, the correct approach and methodology that ought properly to have been employed is as follows:
>
> a. identify the sentence range;
> b. identify the appropriate starting point within the range;
> c. consider any relevant aggravating factors;
> d. consider any relevant mitigating features (including personal mitigation);
> e. consider, where appropriate, any reduction for a guilty plea;
> f. decide on the appropriate sentence (giving reasons); and
> g. give credit for time spent in custody, awaiting trial for the offence (where applicable)."

[83] We proceeded to review the learned judge's approach to determining the sentence for the first count of murder.

Miss Leslie: count one - the murder of Ms Jackson

[84] The Crown conceded, and correctly so, that the learned judge erred in her approach to establishing the pre-parole period to be served by the applicants for the murder of Ms Jackson (count one). As McDonald-Bishop JA explained in **Quacie Hart v R**, in light of the fact that section 42F of the CJAA states that for the purpose of calculating a reduction in sentence life imprisonment is deemed to be 30 years, "the starting point for the minimum pre-parole period cannot be 30 years or more". In the case at bar, the learned judge, in respect of Miss Leslie, used a starting point of 50 years. The process followed was also incorrect as the learned judge granted a 20% discount on account of the guilty plea, deducted one year for pre-trial custody, and then deducted another three years because the applicant had a good social enquiry report, did not have any previous convictions, was young and was remorseful. As Brooks P indicated in **Stephen Blake v R**, this was a mixture of the statutory approach and the **Meisha Clement** approach, however one or other approach should be adopted.

[85] It is noted that the learned judge arrived at a pre-parole period of 36 years for Miss Leslie as well as Mr Leslie, following the same procedure, as his previous conviction was an unrelated offence.

[86] In light of the erroneous approach, it is therefore necessary to carry out a fresh sentencing exercise.

(a) *The range and starting point*

[87] The range of pre-parole periods established by case law in murders due to stabbing, where one count of murder is being considered, is 15-25 years (see **Quacie Hart v R** para. [33]) and where a sentence of life imprisonment is imposed, Parliament has mandated a minimum pre-parole period of 15 years.

[88] The starting point within the range takes into account the intrinsic seriousness of the offence. An appropriate starting point in the case at bar is 22 years, bearing in mind the applicants' intentions for harm.

(b) *The aggravating circumstances*

[89] The murder was premeditated. Miss Leslie entered AW's home and attacked Ms Jackson while she was in bed (home invasion), engaged in a fight with her and set the mattress on fire. The stab wounds reflected the great ferocity with which the wounds were inflicted. According to the postmortem report, Ms Jackson was alive at the start of the fire and died from both the sharp force injuries to her neck as well as smoke inhalation. Miss Leslie's offence was motivated by jealousy and embarrassment. This does not suggest that she is generally a danger to others. The circumstances of the murder, however, call for the pre-parole period to reflect a strong element of retribution. In our view an addition of eight years, in agreement with the approach of the learned judge, reflects the aggravating circumstances.

(c) *The mitigating circumstances*

[90] Miss Leslie has expressed remorse and acknowledged that she took the wrong path in dealing with the infidelity of her then boyfriend as well as her embarrassment. As the learned judge acknowledged, she had no previous conviction and had a good community report. We note that she also pleaded guilty at an early stage of the proceedings. She appears to have a good prospect for rehabilitation, her actions having been totally out of character. The learned judge noted the nature of the issues troubling Miss Leslie when she remarked that Ms Jackson was Miss Leslie's "rival". Nevertheless, the aggravating features of the offence, far outweigh Miss Leslie's personal mitigating circumstances and a deduction of three years is made for this purpose.

(d) *The guilty plea discount*

[91] The learned judge granted Miss Leslie a 20% discount in all the circumstances. It would appear that this level of discount was granted in light of the high starting point that the learned judge utilised. Although the applicant pleaded guilty at an early date, it appears that it would have been difficult for her to avoid being convicted and the circumstances of Ms Jackson's killing are quite gruesome. In all the circumstances it is our view that a 15% discount would be appropriate. This would reduce the pre-parole period that would have been imposed had she been convicted at trial from 27 years to 23 years.

(e) *Deduction of the time spent on remand*

[92] The applicant spent one year on remand. In accordance with the decisions of this court, that period must be deducted from the pre-parole period leaving a pre-parole period of 22 years.

(f) *The pre-parole period*

[93] In our view, this is an appropriate minimum period of imprisonment to be served for the first count bearing in mind the impact of the CJAA, the circumstances of the crime

which call for a significant retributive impact, and the applicant's prospects for rehabilitation.

Mr Leslie: count one - the murder of Ms Jackson

[94] Mr Javone Leslie stated that he did not know that Miss Leslie intended to kill Ms Jackson and her children when he agreed to accompany Miss Leslie that day. However, in our view, he failed to exercise control over himself when he discovered what his sister's intentions were. Even if he felt that he could not dissuade her from her evil plan, he ought to have disassociated himself. Instead he participated fully. In weighing the various elements with a view to determining an appropriate pre-parole period, while the lack of premeditation would reduce the aggravating circumstances, his poor social enquiry report would suggest less mitigating circumstances. He also spent one year in pre-trial remand. In the round, in our view, applying a similar pre-parole period and discount, 22 years, would be appropriate for him in all the circumstances.

Miss Leslie: counts two and three

[95] In light of the fact that more than one murder was committed on the same occasion, the Crown could have sought the death penalty in respect of the second and third murders. However, it did not do so. Parliament has mandated a sentence of life imprisonment and a minimum pre-parole period of 20 years in these circumstances. It is now necessary to establish what pre-parole period is likely to have been imposed had the matter gone to trial. Thereafter, a discount for the guilty plea can be applied.

[96] The learned judge did not outline a different approach to establishing the pre-parole period for counts 2 and 3. This was required in light of the fact that the discount regime under the CJAA was inapplicable, and a different statutory minimum pre-parole period applies.

[97] In **Passmore Millings and Andre Ennis v R**, Brooks P conducted an extensive review of the sentences and pre-parole periods handed down in cases involving multiple murders. The President, after referring to a number of cases including: **Paul Brown v R**

[2019] JMCA Crim 3 (which he acknowledged did not involve more than one murder), **Watson v R** [2004] UKPC 34, **Garland Marriott v R**, **Alton Heath & Others v R** [2012] JMCA Crim 61, **Calvin Powell and Another v R**, **Rodrick Fisher v R** (unreported), Court of Appeal, Jamaica, Supreme Court Criminal Appeal No 49/2006, judgment delivered 21 November 2008, **Jeffrey Perry v R** and **Peter Dougal v R** [2011] JMCA Crim 13 (see paras. [83]-[93]) stated at para. [93] of the judgment that:

> "A range of 20 to 45 years' imprisonment before parole, with a greater concentration at the higher end of the range, is demonstrated by this sampling of the cases."

[98] The facts in **Passmore Millings and Andre Ennis v R** are useful. In that case Mr Taiwo McKenzie and his girlfriend Janelle Whyte went missing. Their bodies were found in bushes in Saint Andrew. Their throats had been slashed. Evidence led at the trial revealed that Mr McKenzie, while driving a car, was involved in an accident with a motorcycle that Mr Ennis was riding. The accomplice who testified said that his ankle was injured and the motorcycle was damaged in the crash. Mr McKenzie stated that he would pay the medical expenses and the repair bill. Mr Millings came to secure the motorcycle and Mr McKenzie transported the accomplice, Mr Ennis and another person to the University Hospital of the West Indies where the accomplice was treated and released. At some point Mr McKenzie discovered that the motor cycle was not registered for use on the public roadway and he stated that he would not pay for its repair but would pay for medication for the accomplice. Mr McKenzie was lured to a spot on the ruse of delivering medication. He was accompanied by his girlfriend. Mr McKenzie was given a telephone to make calls to secure money to pay for the repairs to the motorcycle. He and his girlfriend were tied, gagged, taken into bushes and stabbed to death. The men used the girlfriend's ATM card to withdraw money. After trial, the trial judge sentenced the applicants to life imprisonment and ordered that the applicants serve pre-parole periods of 50 and 40 years in respect of the murders.

[99] On appeal, Brooks P stated that an appropriate starting point for the case was 35 years, identified numerous aggravating factors that increased the figure to 50 years and

stated that while there were no mitigating features of the commission of the offence, there were personal mitigating factors that reduced the pre-parole period to 40 years. In the end a pre-parole period of 40 years (reduced from 50 years) was set for count one of the indictment, similar to the pre-parole period for count two.

[100] It is helpful to refer to a few cases-including some of those to which Brooks P referred in **Passmore Millings and Andre Ennis v R**. These cases did not involve guilty pleas, but instead reflect sentences that were imposed after a trial.

[101] In **Garland Marriott**, two persons were murdered. Death occurred through strangulation and stab wounds to the chest. The court imposed a sentence of life imprisonment with a pre-parole period of 25 years in respect of both murders.

[102] In **Calvin Powell and another**, a husband and wife were strangled to death and their bodies left in a garbage dump. A sentence of life imprisonment was imposed for count one of the indictment but a sentence of death was imposed at trial for count two-the murder of the wife. The death sentence was set aside on appeal. The court indicated that in light of the heinous nature of the killings a pre-parole period of 35 years was appropriate.

[103] In **Rodrick Fisher v R**, three victims were shot in the head. The court imposed a sentence of life imprisonment with a pre-parole period of 40 years. The court reasoned at para. [14] that if the circumstances of the killing are particularly heinous the offender "can be regarded as twice as culpable as those who would be entitled to apply for parole after twenty years and deserving of spending as much time incarcerated".

[104] In **Jeffrey Perry v R**, the appellant stabbed three children to death in their home. The court imposed a sentence of life imprisonment with a pre-parole period of 45 years.

[105] In **Paul Murphy v R**, the applicant was convicted of the murder of two victims who suffered multiple gunshot wounds. He was sentenced to life imprisonment with a pre-parole period of 40 years.

(a) *The range and starting point*

[106] The OAPA mandates a minimum pre-parole period of 20 years in these circumstances. Bearing in mind the statutory minimum and case law, the range for pre-parole periods in similar cases is 20-45 years. In our view an appropriate starting point, bearing in mind the circumstances of the offence, is 33 years.

(b) *The aggravating circumstances*

[107] In light of the terrible circumstances in which the children lost their lives, an increase to 38 years is appropriate. The infant children, who were vulnerable and defenceless, died from smoke inhalation in their home.

(c) *The mitigating circumstances and the resulting period*

[108] A deduction of three years is considered reasonable bearing in mind Miss Leslie's previously outlined personal mitigating circumstances. It is against the resulting period of 35 years that the discount for the guilty plea would be applied.

(d) *The guilty plea discount*

[109] A similar discount of 15% for the reasons expressed above is appropriate. This would indicate a pre-parole period 29 years and nine months.

(e) *Deduction of the time spent on remand*

[110] The one year spent in custody is then deducted. The pre-parole period is, therefore, rounded to 28 years and nine months.

Mr Leslie: counts two and three

[111] For the reasons expressed above a similar pre-parole period of 28 years and nine months is appropriate for Mr Leslie.

General comments

[112] The pre-parole period reflects the fact that although Ms Leslie appears to be genuinely remorseful, and acted out of character, a strong element of retribution is appropriate in light of the heinous nature of the murders that were committed. It must be noted that counsel appearing before this court were of the view that no discount could be contemplated for counts two and three. This accounted for their submissions on the appropriate sentences for counts two and three.

Arson

[113] Neither counsel for the applicants nor for the Crown took issue with the sentences imposed on the applicants' guilty plea to arson. In our view they were well within the appropriate range in light of the circumstances of the offence.

A few comments on the *functus officio* point referred to by counsel for the applicants

[114] We agree with the position taken by counsel for the applicants, that when the learned judge recalled the matter on 7 June 2019, she merely clarified the sentences. Accordingly, the issue of *functus officio* does not arise. We have arrived at that conclusion for several reasons. It is noteworthy that the learned judge described the case as "one of the worst" that she had seen since she started her legal career: determinate sentences were clearly not within her contemplation. Her reference to life imprisonment and explanation that the years to which she had referred on 31 May 2019 related to the pre-parole period, are quite rational and consistent with her statements during the sentencing process. In addition, when the matter came before the learned judge on 7 June 2019 she referred to life imprisonment and explicitly declared her intention. This declaration is also consistent with her comments throughout the sentencing process.

[115] In any event, as was reflected earlier, the sentencing process reflected errors that would have necessitated setting aside the sentences. It would also have been in breach of the OAPA for the learned judge to impose a determinate sentence for counts two and three of the indictment.

Concluding remarks

[116] It is important to note that after the resentencing process the overall sentences of the applicants have been reduced and not increased.

Order

[117] By a majority (Dunbar Green JA dissenting) these are the orders of the court:

1. The applications for leave to appeal sentences are granted.

2. The hearing of the applications for leave to appeal are treated as the hearing of the appeals.

3. The appeals against the sentences imposed for arson are dismissed.

4. The sentences imposed for arson are affirmed.

5. The appeals against the sentences imposed for murder are allowed.

6. The sentences of life imprisonment imposed on both applicants in respect of count one of the indictment, are affirmed. The stipulations that both applicants should serve 36 years before being eligible for parole are set aside. In their stead, pre-parole periods of 22 years are imposed.

7. The sentences of life imprisonment imposed on both applicants in respect of counts two and three of the indictment are affirmed. The stipulations that both applicants should serve 21 years before being eligible for parole are set aside. In their stead, pre-parole periods of 28 years and nine months are imposed on each applicant in respect of counts two and three of the indictment.

8. The sentences are to be reckoned as having commenced on 7 June 2019 and are to run concurrently.