



APPEAL COURT, HIGH COURT OF JUSTICIARY

[2022] HCJAC 35
HCA/2022/000126/XC

Lord Woolman
Lord Boyd

OPINION OF THE COURT

delivered by LORD WOOLMAN

in

Note of Appeal against Sentence

by

LEE IBBOTSON

Appellant

against

HER MAJESTY'S ADVOCATE

Respondent

Appellant: S Collins, Sol Adv for Collins & Co on behalf of Wilson McLeod Solicitors
Respondent: M Way A.D, Crown Agent

8 September 2022

[1] The appellant has been convicted of two rapes against different complainers. He committed the first crime on 7 July 2017. He committed the second one on 25 December 2019, when he was on bail for the earlier incident.

[2] In respect of the first crime, he received a sentence of 5 years imprisonment. It was backdated to 9 October 2020, which was the date of conviction. In respect of the second

crime, he was convicted on 22 February 2022. The trial judge imposed a sentence of 6 years imprisonment and directed that it should be served consecutively to the earlier sentence.

[3] In this appeal Mr Collins does not challenge the length of the second sentence. Instead he invites the court to look at both sentences together. He submits that the *cumulo* sentence of 11 years imprisonment is excessive. He contends that the second sentence should commence on 22 February 2022.

[4] Before proceeding to sentence, the court closely assesses the individual circumstances of each case. That includes considering (a) any existing sentences to which the individual is subject, and (b) the *cumulo* effect of consecutive sentences: see for example *Graham v HM Advocate* 2019 SCCR 19, at para [57].

[5] Approaching the matter on that basis, we conclude that the *cumulo* sentence is not proportionate. The interests of justice do not require both sentences to duplicate the same purposes of punishment, deterrence, protection of the public and rehabilitation. Further, the punishment exceeds what could reasonably have been expected if both crimes had been put on the same indictment: *McGill v HM Advocate* 1996 SCCR 35, 36.

[6] We therefore find that there has been a miscarriage of justice. We sustain the appeal and direct that the sentence of 6 years' imprisonment shall run from 1 September 2022.