COMMONWEALTH OF THE BAHAMAS *CRI/VBI NO.109/07/2020*

IN THE SUPREME COURT

Criminal Division

B E T W E E N

DIRECTOR OF PUBLIC PROSECUTIONS

AND

JAMAL LARODA & ISAIAH WALKINE

BEFORE: The Honourable Mr. Justice Andrew Forbes

APPEARANCES: Mrs. Eureka Coccia on behalf of the Director of Public Prosecutions

Mr. Kendal Knowles on behalf of Mr. Laroda

HEARING DATE: 21st June 2024, thru 17th July 2024

SENTENCING DATE: 29th October 2024

SENTENCING

FORBES, J

BACKGROUND

[1.] On the 5th July, 2024 the Convict appeared at the Criminal Court and entered a guilty plea to the charge of Armed Robbery. The facts were read and accepted as factual by the Defendant who was Attorney Kendal Knowles at the time. The Plea was accepted and the Convict was subsequently convicted on the 5th July, 2024 for the offence of Armed Robbery contrary to section 339(2) of the Penal Code. The Court recommended that a Probation Report should be provided to aid in sentencing. A probation report was, in fact, prepared by Chief Probation Officer Ms. Wynelle Goodridge and Mr. Laish Boyd Jr. as a Trainee Probation Officer and dated the 2nd September 2024. The report sourced information from the Convict himself, also his mother Ms. Charmaine McInnis, his maternal Aunt Ms. Janet Brown and his cousin Ms. Raquel Forbes. The report also sought to rely upon information from the Criminal Records Office. Counsel for the DPP, Mrs. Coccia made recommendations as to an appropriate sentence and Counsel for Mr. Kendal Knowles made pleas in mitigation.

FACTS

[2.] The brief facts were extracted from the statements of the Officers conducting the investigations as well as the statements made by the Convict to the Police when questioned. According to Officer Lakeria Williams, on the 3rd August 2019 she received certain information and as a result she spoke to the Convict who was in Police custody. That Officer Van Rolle arrested and cautioned the Convict who was in police custody. During a Record of Interview, the Convict was, again, cautioned and was asked if he wished to assist the Police. He then elected to ride along with Officers and took them to an establishment that appeared abandoned; where he along with Officers were able to retrieve some clothing. The said clothing were secured for processing. According to the Officer Lakeria Williams, the Convict reportedly gave a statement in which he

denied any involvement. However, after further investigations they showed him additional information. He then reported that he and a friend left Eight Mile Rock and travelled into Freeport in separate vehicles. He then went to his residence after they had parked his friend's vehicle at an abandoned building after which he got some clothing and they then went to the Parker Building where his friend drove his vehicle and he went into the store and robbed it. He then left the premises, returned to the vehicle and they returned to the abandoned building and his friend left. He noted that he had only gotten One Thousand Dollars ($1,000.00). That he used the money to purchase groceries for his son.

[3.] That during the investigation the Officers also retrieved surveillance footage and spoke to several individuals and received information. That as a result they elected to charge the Convict with Armed Robbery contrary to section 339(2) of the Penal Code.

[4.] According to the information supplied in the Probation Report the Convict was the child born to Ms. Charmaine McInnis and Mr. Labion Laroda and was born in Freeport, Grand Bahama. That he was enrolled at Maurice Moore Primary School where he completed the Third grade. He then attended Martin Town Primary School where he completed the fourth and fifth grades. Mr. Laroda completed his primary education at the Hugh Campbell Primary School. The Convict then attended to Jack Hayward High School. He was later expelled in the tenth grade reportedly for being a negative influence on other students. Sometimes after his expulsion from Jack Hayward High School attended the Total Education Center and studied welding for one (1) year. In 2012, the Convict briefly became employed at Records Archiving Management as a filing clerk. He was then employed on a part time basis for several construction companies. In 2014, Mr. Laroda was employed at First Mate on Ducky Tide boat.

[5.] That he held several positions for five years (5) and then subsequently became self-employed and started several businesses in the areas of landscaping, pressure cleaning, home improvement and painting. He also worked on a par time basis as a fisherman and diver and was employed at our Andros Fisheries. The Probation Officer notes that the Convict is the father of two children and reports that he suffers from Mitral Valve prolapse and has suffered a heart attack.

[6.] The mother of the Convict Ms. McInnis, described her son as the life of the party and said that the Convict usually ensured everyone was having a good time. That he was a hardworking man and enjoyed spending time with his family and children when he wasn't working. She described her son as a skilled young man with an excellent work ethic.

[7.] That she expressed shock when she learned of the allegations. As he has not had any previous issues with the Convict during his formative years and had wished that his father had remained a part of his life. She noted that he never any legal issues. That since his arrest family outreached has occurred and has been overwhelming. She remains hopefully that that his clean record is taken into account and would be shown mercy by the Courts.

[8.] The Probation Report then referenced Mrs. Janet Brown, the maternal aunt of the Convict. She too described him as a nice child who was raised in church with Christian values. That he had a positive relationship with her husband. She knows him as someone who loves his family and was always working.

[9.] The Court notes that in the Probation report cites Ms. Raquel Forbes, the cousin of the Convict. She described him as a good person who would give his last. That they were close in age and were raised as siblings. Ms. Forbes described the Convict as a home body who enjoyed working to provide for his children. She expressed surprise regarding the Convict's current predicament.

[10.] That the Convict is single and with two (2) children. That the Convict asserts that he was in the Ghetto where he spends time with childhood friends. A man he knows offers him fifty ($50.00) Dollars to use his vehicle. The Court would acknowledge the fact that the Convict did not own a vehicle but is representing that it was his. It was a determined fact that the vehicle involved in the incident was found to belong to his girlfriend at the time Ms. Collie and her mother Ms. Moxey. He continues that he was later arrested while driving this vehicle along with his girlfriend. That he was then pressured to enter into a statement implicating himself in the Armed Robbery.

[11.] Again, the facts ought not be distorted, there was vigorous hearing to determine the admissibility of the Records of Interview; (three) in total involving this Convict, as well as video recordings, which according to the lead investigator Sargent Lakeria Williams, had been destroyed as a result of Hurricane Dorian. The finding of the Court was those statements were admissible and it was after that finding the Convict elected to plead guilty. Now according to the Convict, he now regrets his guilty plea and felt it was his only option. Although Mr. Boyd when questioned by Counsel for the Convict, noted that the Convict did express responsibility and remorse.

[12.] The Court was advised by Counsel for the Convict that he has experienced medical episodes while he has been at the Bahamas Department of Correctional Services (BDCOS) awaiting sentencing in this vein the Court has invited the Office of The Director of Public Prosecutions (DPP) and Counsel for the Convict to have the relevant evidence presented before the Court so a full assessment can be made. In this regard the Court heard from Doctors Timothy Providence and Basil Dookran. The evidence of both doctors are discussed below.

[13.] The Probation Department in its summation noted that the Convict was raised in a traditional home environment and was afforded the basic education. That he has been employed continuously. That family members are shocked of the allegations involving the Convict. However, the Probation report notes that the Convict has no history of criminal activities and he appeared to be a contributing member of the society. Although, it is hoped that this incident will allow the Convict to improve himself and strengthen his resolve.

LAW

[14.] The Penal Code prescribes as follows:

"339. (1) Whoever commits robbery shall be liable to imprisonment for fourteen years. (2) Whoever commits robbery, being armed with any offensive instrument, or having made any preparation for using force or causing harm, shall be liable to imprisonment within the range of fifteen to twenty-five years: Provided that whoever commits robbery, being armed with any offensive instrument shall, where the offensive instrument is a firearm, be liable to imprisonment for life. (3) In subsection (2) "firearm" means any barreled weapon of any description capable of inflicting injury from which any shot, bullet or other missile can be discharged and includes anything which has

the appearance of being a firearm notwithstanding that it is not loaded or is otherwise incapable of discharging any shot, bullet or other missile."

[15.] In deciding the appropriate sentence consideration must be given to the general principles of sentencing Halbury's Laws Third ed. Vol 11(2) at paragraphs 1188 notes:

> *"The aims of sentencing are now considered to be retribution, deterrence and protection and modern sentencing policy reflects a combination of several of all of these aims. The retributive elements is intended to show a public revulsion of the offence and to punish the offender for his wrong conduct. Deterrent sentences are aimed at deterring not only the actual offender from further offences but also potential offenders from breaking the law. The importance of reformation of the offender is shown by growing emphasis laid upon it by much of modern legislation. However, the protection of society is often overriding consideration. In addition, reparation is becoming an important objective in sentencing."*

Each case must depend on its own circumstances and various factors must be considered by the court in deciding which of the principles should predominate.

[16.] In the Court of Appeal case of **Prince Hepburn v. Regina** SCCrApp. No. 79 of 2013, *Adderley JA (Retired)* offered the following guidelines as to sentencing where he said at paragraph 36:-

> *"In excising his sentencing function judicially the sentencing Judge must individualize the crime to the particular victim so that he can, in accordance with his legal mandate identify and take steps into consideration the aggravating as well as mitigating factors applicable to the particular perpetrator in the particular case. This includes but not limited to considering the nature of the crime and the manner and circumstances in which it was carried out, the age of the convict, whether he has past convictions of a similar nature and his conduct before and after the crime was committed. He must ensure that having regard to the objects of sentencing, retribution, deterrence, prevention and rehabilitation that the tariff is reasonable and the sentence is fair and proportionate to the crime."*

SUBMISSIONS

[17.] Mr. Knowles, on behalf of the Convict, suggests that the he is a relatively young man and still redeemable. That the Convict plead guilty at the earliest opportunity. That the Convict's actions although premeditated that he didn't used the weapon to harm anyone. He notes that the Convict has expressed remorse and that the Court should not engage in any punitive sentences

towards the Convict. He further notes that the Convict has a heart condition and hasn't received any treatment while at BDOCS.

[18.] Mrs. Coccia on behalf of the Director of Public Prosecutions notes that the Convict has no previous convictions in this jurisdiction. The Court for convenience will insert the relevant portions of Mrs. Coccia's Submission, in brief, as follows:

a. That the offender is not entitled as of right to a reduction in sentence for mitigating factors. That the reduction is at the discretion of the Court (see **COP v Botham** [2015] MCCrApp & Cais No. 134).
b. That this case is an exceptional circumstance given the peculiar nature of the Convict who suffers from "a specific medical condition that is not a common everyday condition."
c. That the Appellate Court allowed an appeal and quashed a conviction, substituting a sentence of three days on each count where the appellant was charged with Possession of an unlicensed firearm and ammunition. (see **Moorhead Jr. v COP** [2022] MCCrApp No. 90)
d. That a late plea cannot be held against the Convict (see. **Botham *supra***)
e. That there is a possibility that the inmate may not survive in prison.

She then suggests that the appropriate sentence of time served with consideration of the time spent awaiting sentencing on remand and compensation to the victims for the stolen sums of money.

ANYALSIS & DISCUSSION

[19.] In individualizing this case to the present Convict, Mr. Jamal Laroda, appeared to have cooperated with the investigation. He did participate in the Record of Interview and gave a full statement while also taking Officers to various locations. He also elected to plead guilty at the very earliest of opportunity. These certainly all inure to his credit. The Court recognizes the comments made by President of the Court of Appeal, Sir Michael Barnett in **The Attorney General v. Claude Lawson Gray** SCCrApp. No. 115 of 2018, and citing the Judgement from the Eastern Caribbean Court of Appeal of **Kenneth Samuel v. The Queen** Criminal Appeal No. 7 of 2005 where in that case the question of reduction of sentence for manslaughter was being reviewed. It is accepted that this present case is not a case dealing with Manslaughter and that is accepted,

however, the comments made are relevant and in Samuels case cited by the Court of Appeal and specifically the comments of *Barrow JA* this portion of his comments are relevant as there are no guidelines related to these offences,:

> *"[18] In the application of these sentencing principles guidelines have been developed that assist a sentencing judge in arriving at a sentence that is deserved, which is to say a sentence that is fair both to the convicted person and to the community, including the family and friends of the victim. A principal guideline is that there must be consistency in sentences. Where the facts of offences are comparable, sentences ought to be comparable, if rationality is to be served. The objective of consistency has led to the emergence of ranges of sentences. In England, for example, it is established that the range of sentences for manslaughter committed after provocation is between three and seven years imprisonment. The particular facts of a case will determine where in the range the sentencer will come down; thus, an offender who had some time to regain self-control after provocation will attract a heavier sentence than the offender who had no time to regain self-control. An offender who delivers one blow in response will deserve a lesser sentence than one who delivers multiple blows. The weapon used and how likely it was to be lethal may be another factor in determining degrees of culpability and therefore severity of punishment. Similarly, an offender who has a criminal record will not get as much of a reduction from the starting sentence as one who has no criminal record and is widely regarded in his community as a good and caring person. These examples are illustrative and not exhaustive."*

[Emphasis mine]

[20.] Also of assistance are the comments of the authors of Blackstone Criminal Practice 2004 edition at paragraph B4.50 at page 298 where they said the following:

> *"The combination of violence and theft makes robbery the most serious of the common offences of dishonesty. The great majority of offenders convicted of robbery receive custodial sentences. The guideline cases are Turner (1975) 61 Cr. App. R. 67, Daly (1981) 2 Cr. App. R (S) 340 & Gould (1983) 5 Cr. App. R. (S) 72..... In Gould Lane CJ confirmed; "that the Turner guidelines remained the basis for sentencing in armed robbery offences. He also added: :Some of the features likely to mitigate an offence are a plea of guilty, the youth of the offender, a previously clean record, the fact that the defendant had no companion when committing the offence and the fact that no one was injured. On the other hand the fact that a real, rather than imitation weapon was used, that it was discharged.... These considerations are of course not exhaustive and are not intended so to*

be." For robberies in the first division which are the subject of the guideline cases of Turner, Daly and Gould, the normal starting point is 15 years...the Court of Appeal dealt with four separate references and increased custodial sentences on seven offenders involved in robberies of small shops, off licenses and similar premises, in each case to sentences between three and a half and six years. A third category of robbery is street robbery or mugging. The Court of Appeal's approved tariff seems to be from two to five years, through a total of six years for the robbery of two elderly ladies... Where victims are attacked in their own homes, sentences vary according to the degree of violence used and the property taken.... A case towards the lower end of the scale of seriousness.... A sentence of six months detention in a youth offender institution was upheld... Notwithstanding the guilty, and the offender's good record, it was held that this offense of robbery was so serious that a non-custodial sentence could not be justified."

[21.] The Crown for its part has laid over three (3) cases where the sentences range from ten (10) years to Seven (7) years. In the case Adrian Stubbs, this appellant was convicted and sentenced for Attempted Murder and Armed Robbery (3 counts) and sentenced to 26 years and 6 months for the Attempted Murder and 7 years for the Armed Robberies (3 counts) to run concurrently. On Appeal he argued that the sentences were unduly severe. It would be noted that on Appeal he advanced no rational why his sentences were severe and failed to express remorse as he maintained his innocent. This case is helpful in the sense that it provides a range which can be considered as the Court of Appeal did not reject the sentence of seven years on each Armed Robbery count to run concurrently with his sentence of 26 years and 6 months for Attempted Murder as being outside of the norm. Also, the distinction being that Stubbs case went to a full trial whereas in this case there was a plea at very first instance.

[22.] In **Leon Romeo Rahming's** case he was convicted for Armed Robbery and sentenced to ten (10) years on Appeal the Appellant made several arguments regarding the procedural irregularities of his arrest and subsequent conviction on trial. The Court of Appeal dismissed the Appeal and affirmed the conviction and sentence. Again, unlike the present case the Appellant choose a full trial and was hence not given any discount for a guilty plea. Notwithstanding that fact, however, he was sentenced to ten (10) years which was unchallenged nor commented as too lenient. It thus provides a reference for consideration by this court when considering the current case. And finally the crown notes Jeremy Kemp's case the Appellant was convicted for Attempted

Armed Robbery and sentence to nineteen years (19) on Appeal the convict was affirmed and sentence varied to nine (9) years and The Court of Appeal said the following:

> *"There is, however, a distinction between applying principles and over straining them. A sentence recognizing the preventative principle is punitive. It also act as deterrent to others. Such a sentence however, must be balanced against the age of the offender and in this case his mental condition. It is true that he has previous conviction for a firearm offence but nevertheless, he should be given an opportunity to prove to society that he is capable of making something of himself. The sentence meted out to the appellant is too severe..."*

[23.] In the cases cited by the Crown they all proceeded to trial whereas the Convict in this case plead at the earliest. That will inure to his benefit and during the process the Convict has express remorse and regret for his conduct. Court notes however, the use of a firearm which traumatized an employee of the Shop. Although the Convict entered the establishment by himself, there were allegedly other persons who aided this conduct according to the Convict. The Convict is 30 years old, unmarried with Two (2) children and appeared to have been raised in a stable home environment, nonetheless, was easily influenced if one accepts the statements made by the Convict. The court accepts his sincerity and honesty as to his participation and his frankness when he corporated with law enforcement. One would have hoped that a thirty (30) old adult would be making more sound decisions and wouldn't be so gullible or reckless. The Crown proposes five (5) years commencing from 17th July 2024. The Court notes that the lowest sentence for such an offence which involved a firearm was seven (7) years and that courts accepts that is in keeping within an acceptable range, whereas no argument was advanced to convince the Court that exceptional circumstances exist in this case for a sentence less than seven (7) years. Clearly the Convict appears contrite and remorseful, has accepted responsibility, but what should never be overlooked that the Convict as an adult made a decision to enter an establishment with a firearm (whether loaded with ammunition or not is unknown) and pointed it at the head of the cashier and demanded money. There are countless scenarios where that event could have resulted in a more tragic outcome and whereas it is indeed comforting that it did not the cashier remains traumatized. So the court accepts the mitigating factors but must balance them against the reality of what transpired.

[24.] Counsel for the Convict purports that the Convict has a medical condition known as Mital Valve Prolapse. A condition that he purports to be untreated at the prison and further asserts that the Convict has lost consciousness "on a number of occasions" since the Convict was taken into custody. At the sentencing hearing of the Convict, he would have called both Dr. Basil Dookran and Dr. Timothy Providence. Neither, Doctor provided any documentary evidence that corroborated this diagnosis. Dr. Providence stated that between the period of August 2024 to September 2024 the Convict was seen by him once on the 15th August 2024. That when he was seen he complained of "chest pain and possible heart condition and possible Syncope episode, which is a blackout. He had chest pain for four days on the 15th and that a syncope episode is a "black out". Further he stated:

> "I just examined him. He claims to have a history of micro valve prolapse, which he had some incident at The Rand, The Rand Memorial Hospital. But we may have no documentation from the hospital. So I started the process. I did some exams from him which are still pending."

Dr. Providence also stated that though his symptoms could be as a result of the condition, he could not state how many episodes of syncope the Convict had, if any.

[25.] The evidence of Dr. Dookran mirrored that of Dr. Providence in that they had no documentary evidence from the Rand Memorial Hospital or otherwise that diagnosed the Convict with this heart condition. Further, The Court notes that Counsel for the DPP inaccurately contends that the evidence of Dr. Fernando Fermo was that he supported the diagnoses of MVP. That was not the evidence of Dr. Fermo. The evidence, though given at the voire dire and not at this sentencing hearing, was that there is evidence of a musculoskeletal injury caused by either strain or trauma. Further, his evidence was that the presentation of the symptoms by the Convict were distinct from those of a heart condition such as MVP.

[26.] Nonetheless, Dr. Dookran stated that he saw him on the 14th August, 2024 but had no notes of seeing him in the month of September. He stated that the Convict complained of symptoms similar to MVP. However, at page 7 line 31 of the transcript dated 10 September, 2024, he stated that his heart beat was perfectly fine. Further at page 8 line 1 of the same transcript, stated his blood pressure was perfectly normal. Moreover, he ultimately assessed him as having costochondritis, an inguinal hernia and dehydration. Further, that he: "... didn't find anything on examination of his chest and his heart that would suggest that he needed further medical evaluation and treatment or consultation." Dr. Dookran acknowledged that every time the Convict saw a

doctor he mentioned this condition and that sometime before Dr. Dookran saw him that he mentioned having a heart attack

[27.] He stated:

> "But when I saw him on the 14th, on 14th August he didn't tell me of any black out. And on the 14th he may have been -- you asked me before if he was placed in sick bay. On the 14th there is a possibility that he may have been place briefly in sick bay so that he could get the treatments, the rehydration fluid and so forth.

[28.] Further at page 12 of the transcript at lines 20-27 Dr. Dookran stated:

> "And he had another admission on 14th August, 2019. I see two admissions he had to prison. And even though, that he would have made some complaints regarding chest pain, we were never able to diagnose a heart attack or myocardial infarction. We were able to -- it was chest pain that was made; minor issues to the chest and not to the heart."

[29.] Dr. Dookran contends that the Convict did not complain of frequent blackouts, and if a prisoner was having frequent blackouts they would be sent to Princess Margaret Hospital for treatment. Moreover, he stated that "We treat blackouts here on a number of occasions for a number of different causes on a daily basis." When asked if the condition of MVP would worsen over time, Dr. Dookran contended that the question should be best addressed to a cardiologist.

[30.] As it stands before this Court the only evidence that supports a heart condition of some sort, is the anecdotal evidence of the mother of the Convict. The Convict's mother stated that she recalls him having a heart attack and that he had a hospital stay of 11 days. That he was subsequently seen by a cardiologist and diagnosed with MVP. That the condition runs in her family. Further, at this same sentencing hearing the former partner of the Convict, Ms. Domonique Collie, former girlfriend and mother to one of his children made mention that he would have chest pains and that without him present in the home there have been financial hardships. She also purports to have spoken with the mother of the Convicts second child and advises that the child is well taken care of by the Convict but that now it's a challenge given his incarceration. Further mentioned that this child resides in the United States of America.

[31.] If the Court is to take the evidence of the Convict's mother to its highest standard, it is still guided by the decision of *Isaacs, JA* in the Court of Appeal decision of **Ronald Ralph Moorhead Jr. v COP** MCCrApp. No. 90 of 2022. The appeal concerned the sentence for the conviction of possession of an unlicensed firearm and ammunition of a diabetic Convict. *Isaacs, JA* stated:

37. We are cognizant of the seriousness by which Parliament views firearm offences. However, **this is an unusual case in that BDOCS has informed the Court that it does not have the resources or manpower to adequately treat and care for the appellant given his particular requirements to manage his diabetic condition.** In this regard, the statement **by the Acting Commissioner in his affidavit is both unqualified and unequivocal and therefore must be taken to state the position notwithstanding the on-site medical facilities at BDOCS.**

38. Bearing this in mind and the appellant's other personal circumstances, i.e., no antecedents and early guilty plea, we hold the view that the sentences imposed by the Magistrate are unduly severe as a magistrate, **properly advised of all the circumstances surrounding the commission of the offence as well as the peculiar medical circumstances of this particular offender, would have been driven to impose a lesser custodial sentence.** In fairness to the learned Magistrate, she was clearly of the view, which we have held was in error, that the minimum mandatory sentence for conviction of each of the offences in this case was one year. Therefore, given her appreciation of the extenuating circumstances of this case, the Magistrate imposed what she regarded, albeit wrongly, as the most lenient sentence allowed by law.

Further, in the case of **Moorhead** ***supra*** *Justice Isaacs* held:

> We hasten to caution that this decision turns on its own peculiar facts and circumstances and it should be viewed in that narrow context. It is an extremely rare case where the institution which is responsible for the incarceration of convicted persons informs the Court that it lacks the capacity to properly manage and attend to the medical requirements of a specific person if he is given a custodial sentence. That is a weighty and compelling factor which must be considered when sentencing the person together with all the circumstances surrounding the commission of the offence and the antecedents of the person.

[32.] It cannot be said that in these circumstances the criteria set out in the **Moorhead** judgement are satisfied. There is no definitive diagnosis, the Doctors called have not said that the Bahamas Department of Correctional Services is incapable of meeting the alleged symptoms/needs of the Convict, nor does the convict have a particular medical routine that is required.

ADDENDUM

[33.] The Court, just prior to sentencing the Convict, was emailed an Affidavit which the Court notes has not been filed, sworn by Mrs. Charmaine Laverne McInnis who avers that she is the mother of the Convict and that at the time her son was born, he was registered at the Rand

Memorial Hospital as baby Boy Bowleg which was her maiden name. Hence, he was registered in their system as Jamal Bowleg. And that Jamal Bowleg and Jamal Laroda are one and the same individual.

[34.] Mrs. McInnis further avers that her son was in June 2011 diagnosed by Cardiologist Doctor Winston Forbes with "Mitral valve Prolapse" and seeks to exhibit that report to her Affidavit. The Court will speak to the efficacy of that later. Also exhibited to the Affidavit was a second report of Doctor Winston Forbes dated the 13th September 2024.

[35.] On the 19 September, 2024, the date in which the Court was moving to sentence the Convict, Counsel for the Convict indicated he was only able to secure the information at the very last minute and it was only now at this late hour he was able to provide it to the Court. The Crown Prosecutor noted that while not objecting she was unable to speak to the contents as she has not yet had sight of the documents and it might require Doctor Forbes being summoned for questioning. That remains a question given that it is the Convict who is seeking to have Doctor Forbes give evidence for the purpose of offering evidence as to his health so as to fully provide the court with a full understanding. This Court takes albeit an unusual case is the Ralph Moorhead case supra the Court of Appeal notes the benefit of taking medical conditions into consideration to offer a more considered opinion. That being said however, the question is whether this Affidavit can appropriately exhibit reports not authored by the Affiant. Does that not violate the rules of evidence related to hearsay?

[36.] Furthermore, should the Court accept both the affidavit and its exhibits, it does not provide the content and context being sought to be extrapolated by the Convict and his Counsel and has not been filed. A very unscientific or medically qualified review of the Reports appears to contradict the assertions being made by the Convict. Nonetheless, the Court reviewed the Affidavit and reports and the following notes are made.

[37.] The 2011 Report states: **"Suggestive of mitral valve prolapse syndrome but not meeting the full criteria".** A clinical correlation was suggested. It appears from all indications that this didn't occur. It is inaccurate to then suggest that the Doctor diagnosed the Convict with MVP but rather suggested this might have been a possibility and further follow-up was recommended none of which occurred.

[Emphasis mine]

[38.] The 13 September 2024 Report is itself unremarkable as it states that **"His chest pains occurs independent of activity [and] he also notes that his symptoms are aggravated when he inhales smoke from cigarettes, which may lead to syncope."** Further, **"...when he consumes cigarettes or marijuana, his symptoms were aggravated but notes stopping the se of these items 2 months ago."** This evidence may lead to the inference that this alleged heart condition is not the sole reasoning of his Syncope Episodes. Rather, it is the use of drugs such as cigarettes and marijuana that leads to the alleged blackouts he was having. Ultimately, the Doctor again remarks that the Convict's chest **"pains are typical for and unlikely cardiovascular in etiology and his physical exam is normal".**

[Emphasis mine].

[39.] The Doctor further notes that the mother then brought the 2011 report and again and again noted that it was merely suggestive and that that report was outdated and they required the further evaluations be done to make a definite determination. It again appears that those further testing have not been done, or they have not been provided to the Court, thus from this Court's perspective there is no direct evidence that the Convict has MVP but he and his family has latched onto the terminology and are seeking to exploit what may or may not a condition he suffers from. That is the most generous explanation which can be offered by this Court.

[40.] This circumstance does not meet the narrow criteria of cases as described in **Moorhead *supra***. Further, the Court is not satisfied that the Convict has this condition at all, nor that it would be inhumane to have him be put to a custodial sentence and the court appropriately advised cannot state that the Prison is ill-equipped in any event to handle the daily symptoms of the conditions of MVP.

DISPOSITION

[41.] In these circumstances, there is no unequivocal evidence that the Convict suffers from MVP. However, even if this Court takes the anecdotal evidence of the Convict's mother about the heart attack and MVP diagnosis to its highest standard, there too is no unequivocal evidence that the Prison is incapable of treating the Convict if necessary. The Court is not of the view in absence of a diagnosis that the Convict suffers from this condition. Therefore, considering the aims of sentencing and all the circumstances surrounding this matter. The Court hereby convicts Mr. Jamal Laroda of Armed Robbery contrary to section 339(2) of the Penal Code of the Statute Laws

of the Bahamas and imposes an Eight (8) year sentence commencing from the 17th July 2024. The Convict has expressed interest in attending Carpentry and Welding while at BDOCs if classes are available it is recommended that the convict is so enrolled. It is perhaps also necessary that the Convict be enrolled in Anger Management classes if available and substance abuse classes also if available. It's further suggested that should either Doctor Providence or Dookran recommend that a full Cardiac medical evaluation be completed on the Convict so their records can accurately assist should the Convict have further episodes while at BDOCS.

[42.] The Convict may appeal the sentence of this Court to the Court of Appeal within the statutory time.

Dated the 29th October, 2024

Andrew Forbes
Justice of the Supreme Court