

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO. 13/2008

**BEFORE: THE HON. MR. JUSTICE SMITH, J.A.
THE HON. MR. JUSTICE COOKE, J.A.
THE HON. MRS. JUSTICE MCINTOSH, J.A. (Ag.)**

PETER BERNARD

**V
REGINA**

The appellant is unrepresented.

Ms. Maxine Ellis for the Crown

June 1, 2009

(Oral Judgment)

COOKE, J.A.

1. On the 23rd January, 2008 Mr. Peter Bernard was convicted in the Western Regional Gun Court on three counts. Count 1 deals with illegal possession of firearm and the two other counts, robbery with aggravation, speak to the robbery which he committed against a man and his female companion.

2. The court finds it unnecessary to embark upon an expansive discourse in respect of the factual situation. It is sufficient to say that on Monday the 21st January 2008 at about 2:25 a.m., the two complainants were walking on a beach known as Aqua Sol, in Montego Bay. They were strolling along this beach having

been to a party at that same location. Two men approached them, one with a gun and the other with a knife. From the lady was taken a quantity of jewelry among other items and from the gentleman a small amount of cash and a bottle of cologne. As it happened, the beach was being patrolled by the security guards, and within a very very short time, Mr. Bernard was reduced into police custody and the fruits of his robbery were found on him. When the prosecution had almost completed its case, Mr. Bernard by now recognizing the futility of his efforts to challenge the overwhelming evidence of the crown threw in the towel and entered a plea of guilty.

3. The learned Trial Judge imposed sentences as follows:

30 years on count 1, which is for illegal possession of firearm and 20 years on counts 2 and 3 in relation to the counts pertaining to robbery. On the face of it, this is a rather unusual sentence, since the counts pertaining to robbery are the counts that usually carry the harsher punishment.

4. The single judge refused leave to appeal against conviction, but granted leave in respect of sentence, and in regard to sentence Mr. Bernard will be recognized as an appellant. He had a quite unsavory record, which shows that in 1991, he was convicted of larceny from the person; in 1992; larceny from the person; in 1993; robbery with aggravation; in 1996, robbery with aggravation; in 1999, attempted larceny; in 1999 attempted larceny; in 2001; larceny from the person. If there was ever a recidivist this is he, and his record would tend to

indicate that he is a "career robber". This is a factor which obviously must be taken into consideration. The society ought to be protected from persons of his ilk. However, we are of the view that the sentence of thirty years on count 1 is not only quite unusual bearing in mind the other sentences as the court has adverted to previously but is quite out of line with the usual type of sentences. We are of the view that in the circumstance of this case, such a sentence is manifestly excessive. He should get a little consideration for having pleaded guilty, albeit at so late a stage.

5. We are of the view that on count 1, an appropriate sentence, taken into consideration, the use of the firearm, and the fact that it was not a case of possession simpliciter that the sentence should be 15 years. In respect of counts 2 and 3 which pertain to the robbery, the proper sentence is one of eighteen years on each count. All the counts are to run concurrently. So finally, the order of the court is as follows:

The appeal against sentence is allowed.

The sentences are set aside and substituted therefor are the following:

On count 1, 15 years imprisonment

On count 2, 18 years imprisonment; and

On count 3, 18 years imprisonment at hard labour.

These sentences which are to run concurrently shall commence as of the 28th January 2008.