[2014] JMCA Crim 10

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO 1/2010

BEFORE: THE HON MR JUSTICE MORRISON JA
THE HON MR JUSTICE BROOKS JA
THE HON MS JUSTICE LAWRENCE-BESWICK JA (Ag)

BASIL BRUCE V R

Robert Fletcher and Kashaka Smith for the applicant

Ms Sanchia Burrell for the Crown

17 and 18 February 2014

ORAL JUDGMENT

BROOKS JA

[1] On 10 December 2010, Mr Basil Bruce pleaded guilty in the circuit court held in the parish of Saint Elizabeth, to an indictment charging him with two counts of causing grievous bodily harm with intent. He was sentenced, six days later, to nine years imprisonment in respect of count 1 of the indictment and 12 years imprisonment in respect of count 2. The sentences were ordered to run concurrently.

[2] This is an application by Mr Bruce for permission to appeal against the sentence imposed by the learned sentencing judge. Mr Bruce was refused permission to appeal

by a single judge of this court. Despite this refusal he has renewed his application before the court.

[3] The facts that were outlined to the court in support of the convictions were that on 17 July 2009, the two complainants, Messrs Neville Rowe and Kevon Smalling were sitting together at a shopping arcade in Black River in the parish of Saint Elizabeth when Mr Bruce approached them. Mr Bruce had a bottle in his right hand at the time.

[4] The men stated that when Mr Bruce was about 6 feet from them he "flashed" the bottle at them. A liquid substance came from the bottle and splashed on them at various parts of their bodies, including their faces and upper bodies. Mr Rowe's eye is said to have been also affected. The men felt those areas beginning to burn and they had to receive medical treatment. This treatment involved skin grafts for Mr Smalling. The burns were chemical burns. It proved, based on what defence counsel said to the court during a plea in mitigation, that the substance that Mr Bruce had thrown was a liquid "pool cleaner".

[5] It was in respect of count 1 of the indictment, which involved the injury to Mr Rowe, that Mr Bruce was sentenced to nine years imprisonment. The sentence of 12 years imprisonment was in respect of count 2, which involved the injury to Mr Smalling.

[6] Mr Bruce's complaint, which is contained in the single ground of appeal, is that the sentence is manifestly excessive. In arguing this ground, Mr Fletcher, on his behalf, brought to the attention of the court that there was a disparity between the sentences

imposed on Mr Rowe and those passed on Mr Smalling. He argued that there was no obvious reason to explain what a member of our panel described as a lack of "symmetry". In his written submissions Mr Fletcher said, "What is absent is any distinguishing feature between the injuries which ground each count and the sentences for each".

[7] In assessing this complaint, it is to be noted that in her sentencing of Mr Bruce, the learned sentencing judge indicated that her starting point was that of 18 years imprisonment at hard labour. She quite properly indicated that as a result of Mr Bruce's plea of guilty she was inclined to reduce that figure by one third. That would result in a sentence of 12 years.

[8] Mr Fletcher is quite correct in saying that there is no explanation in the learned sentencing judge's reasons for sentence for the disparity in the sentence in respect of count 1 as opposed to count 2. It may be said however, that that explanation may be found in the transcript. This is recorded at pages three to four of the transcript:

> "MR. J. TAYLOR: ...M'Lady, Mr. Rowe says that the substance caught him in his face, his eye, his left hand.
>
> HER LADYSHIP: One second. Rowe [sic] caught him where?
>
> MR. J. TAYLOR: His face, m'Lady, his eye, his left hand.
>
> HER LADYSHIP: That's Rowe?
>
> MR. J. TAYLOR: This is Mr. Neville Rowe, m'Lady, in the yellow shirt.

HER LADYSHIP: Yes.

MR. J. TAYLOR: Left side, his back, the entire body and he started to see his clothes started to drop off of him, m'Lady and then he started to feel all those areas of his body begin to burn him.

HER LADYSHIP: I just need to see. Lift up your shirt, please. Yes.

THE WITNESS: (Indicates).

MR. J. TAYLOR: In relation to Kevon Smalling, m'Lady, Mr. Smalling received m'Lady, burns to the left side of his face, his right shoulder, his right arm and forearm.

HER LADYSHIP: Let the records show that I am examining the scars.

MR J. TAYLOR: And posterior aspect of his neck.

THE WITNESS: Is a skin graph. I removed skin from the leg (witness indicates).

MR. J. TAYLOR: And to his back, m'Lady.

HER LADYSHIP: Thank you."

[9] It will be apparent from the record, that Mr Smalling's injuries, because of the skin grafting, required more extensive medical treatment than did Mr Rowe's. There would have been a difference in the impact on the men. That would have been brought to the learned sentencing judge's attention by what was said and her examination of the scarring.

[10] We are of the view that looked at in isolation, a sentence of 12 years imprisonment would not be manifestly excessive in these circumstances. Indeed the single judge of appeal who considered this matter used these words:

> "The applicant pleaded guilty to these charges which were indeed quite serious. Persons who maim or disfigure others by using corrosive substance should expect lengthy sentences."

[11] We agree with those sentiments and find that the learned sentencing judge's exercise of her discretion in respect of the two counts was based on her examination of the injuries of each of the virtual complainants. It must be noted that she addressed the issues involved in the case, including the fact that Mr Bruce had three previous convictions, two of which involved violence to a person, albeit in respect of the same incident. She also addressed the issue of the danger Mr Bruce posed to society and the issue of prevention of further offences.

[12] In those circumstances, we are not inclined to disturb the exercise of that discretion as there is no indication of any error of law or misapplication of the facts in this case.

[13] The order therefore is that the application for leave to appeal is dismissed, and the applicant's sentences are to be reckoned as having commenced on 16 December 2010.