[2010] JMCA Crim 97

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO. 49/2008

BEFORE: THE HON. MR JUSTICE HARRISON, JA
THE HON. MR JUSTICE MORRISON, JA
THE HON. MISS JUSTICE PHILLIPS, JA

DEVON CARTER v R

Arnaldo Brown for the appellant

Mrs Sharon Milwood-Moore for the Crown

1 February 2010

ORAL JUDGMENT

HARRISON, JA

[1] In the High Court Division of the Gun Court held at the May Pen Circuit Court in the parish of Clarendon, Devon Carter was tried between 13-27 March 2008 and convicted on an indictment which charged him on count one, for illegal possession of a firearm and on count two, for assault. He was sentenced on 27 March to concurrent terms of 17 years and five years imprisonment at hard labour respectively.

[2] The single judge refused his application seeking leave to appeal against conviction but granted him leave to appeal against sentence in respect of count one

and he was also granted legal aid. Mr Carter renewed his application to the court seeking leave to appeal his conviction, however Mr Arnaldo Brown, counsel appearing on his behalf, informed the Court that he has abandoned the application seeking leave to appeal against his conviction. We do believe that this was a very wise decision as the evidence presented against the appellant was indeed strong.

[3] The learned trial judge, in our view, had given an excellent analysis of the facts and principles of law involved. We agree with her that credibility was the main issue in the case. Identification was no longer an issue since the appellant had placed himself at the scene of the crime. The learned judge had considered the inconsistencies which arose on the evidence and quite properly, in our view, concluded that the appellant was acting in concert with other men armed with firearms and had held up Mr Newton Shea on 26 January 2008 whilst Mr Shea was driving his Datsun motor car. The learned judge found on the facts that the appellant had knowledge of the gun that the men had in their possession and that he therefore fell within the provisions of section 20(5)(a) of the Firearms Act.

[3] In our judgment, the judge's directions both on the law and on the findings of facts cannot be faulted. The real point which Mr Brown endeavoured to urge before us is that the sentence was manifestly excessive. He submitted that the appellant had no previous conviction in this jurisdiction. The antecedent report of the appellant stated among other things that at the time of his conviction he was 31 years old. He has one daughter who is four years old and is dependent on him for support. The learned judge

in dealing with the question of sentence stated that she was mindful of what was operating in the society today but at the same time she had to be merciful. She took into consideration that he had no previous conviction.

[4] We have looked very carefully at the sentence which was imposed upon this appellant. It is very clear that the learned trial judge, in handing down her sentence, felt that the appellant should be taught a lesson. We feel however that the sentence on count one is somewhat outside the spectrum of sentences usually imposed for that type of offence in the courts below. We therefore propose to reduce the sentence on count one from 17 years to 10 years at hard labour. To that extent, the appeal will therefore be allowed. The court makes the following orders: (1) The appeal is allowed in respect of the sentence imposed on count one. (2) The sentence of 17 years is set aside and a sentence of 10 years is substituted therefor. (3) The sentence imposed on count two will stand. (4) The application for leave to appeal conviction is refused. The sentences are therefore to commence as of 27 June 2008.