

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO. 153/06

**BEFORE: THE HON. MR. JUSTICE HARRISON, J.A.
THE HON. MR. JUSTICE MORRISON, J.A.
THE HON. MISS JUSTICE G. SMITH, J.A. (Ag.)**

DENMARK CLARKE

v

REGINA

Appellant unrepresented.

Ms. Deneve Barnett, on Fiat and Ms. Claudette Thompson, Crown Counsel for the Crown.

ORAL JUDGMENT

July 9, 2008

HARRISON, J.A.

The appellant was convicted in the Regional Gun Court, Montego Bay, on an indictment containing two (2) counts. Count 1 charged him with the offence of illegal possession of firearm for which he was sentenced to six (6) years imprisonment at hard labour. On count 2 he was charged with the offence of assault and was sentenced to four (4) years imprisonment at hard labour. The court ordered that the sentences were to run concurrently. On Criminal Form B1 the appellant filed a notice of application for leave to appeal, quite strangely it says against sentence but he seeks to set out some grounds as unfair trial and insufficient evidence to warrant a conviction. The

application for leave to appeal was considered by a single judge and on count 1 he refused him leave to appeal against sentence. On count 2 he allowed him leave to appeal having looked at the law and considered that a sentence of four (4) years was in excess of the jurisdiction of the learned trial judge. As far as we are concerned, this is an appeal in respect of count 2 that is before us. We are grateful to counsel for the prosecution for supplying us with a copy of the indictment which verifies that count 2 is in respect of an assault at common law.

Section 43 of the Offences Against the Person Act provides that:

"whosoever shall be convicted upon indictment for a common assault shall be liable, to be imprisoned for a term not exceeding one (1) year"

Clearly, the learned judge had indeed exceeded his jurisdiction in sentencing the appellant to four (4) years imprisonment. That will have to be remedied by the court.

In looking at the entire facts as they are set out in the record of appeal, we are satisfied that the single judge had come to a correct decision in respect of the sentence on count 1. We have looked at the transcript and are also satisfied that there would have been no merit in the application for leave to appeal against that conviction. The order of the Court is that the appeal against sentence on count 2 is allowed. The sentence of four (4) years imprisonment is quashed and is set aside and in lieu thereof a term of one (1) year's imprisonment is substituted. The conviction in relation to count 2 is also affirmed. We are of the view that the sentences should run from the date of conviction.