

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NOS 91 & 128/2006

**BEFORE: THE HON MR JUSTICE PANTON P
THE HON MR JUSTICE MORRISON JA
THE HON MISS JUSTICE PHILLIPS JA**

**KEVIN FRASER
FABIAN WILSON v R**

Leroy Equiano for the applicant Wilson

Mrs Hannah Harris Barrington for the applicant Fraser

Jeremy Taylor and Mrs Lori-Anne Montague for the Crown

17 May 2012

ORAL JUDGMENT

PANTON P

[1] Before us this morning are two applications for leave to appeal by Messrs Kevin Fraser and Fabian Wilson against their convictions and sentences recorded on 2 June 2006 for the offences of illegal possession of firearm, robbery with aggravation and assault with intent to rob. The sentences that were recorded in respect of Mr Wilson are 10 years for illegal possession of firearm, 12 years for robbery with aggravation and in respect of assault with intent to rob, there is a sentence of one year's imprisonment.

The learned judge ordered that all the sentences were to run concurrently which meant that he would do a maximum of 12 years imprisonment. In respect of Mr Fraser, he was sentenced to 12 years imprisonment at hard labour on count one and in respect of the robbery, he was sentenced to 12 years imprisonment. He was sentenced to one year's imprisonment and also for the assault with intent to rob, and the maximum sentence that he would serve would be one of 12 years imprisonment also.

[2] Mr Equiano was assigned to represent Mr Wilson and he has submitted to us that in respect of Mr Wilson there is good reason for the sentence to be reduced, in that, Mr Wilson's co-accused had previous convictions for firearm offences whereas Mr Wilson had an unblemished record and that being so there should have been some differentiation in the sentence. He never attempted, and indeed could not have attempted, to challenge the convictions, given the nature of the evidence.

[3] We do not find any sympathy with the position put forward by Mr Equiano, in that, when one considers the facts of the case and the fact that Mr Wilson chose to engage the prosecution in a trial, the sentences which amounts to 12 years imprisonment in total for illegal possession of firearm, robbery with aggravation and assault with intent to rob cannot be described as manifestly excessive. The fact that Mr Fraser may have been fortunate in that the full weight of the law was not brought to bear on him in terms of sentence cannot be used in circumstances such as these to the advantage of Mr Wilson.

[4] As regards Mr Fraser, no skeleton arguments have been brought to our attention, which we interpret to mean that none were filed and, indeed, no one appeared when the matter was called, to put forward any points of worth.

[5] We have examined the facts and we note that on clear evidence, these applicants at night, in fact, in the dead of night, went into Springfield in the parish of St Thomas and in effect terrorized the shopkeeper pretending to want to execute a purchase and proceeded to rob the shopkeeper and another. Thereafter they escaped in a motor vehicle and through presence of mind on the part of the shopkeeper and quick action on the part of the police, they were able to track this vehicle and apprehend these two culprits in quick order. In spite of all that, they chose not to surrender to the court and seek mercy in sentencing.

[6] In the circumstances, the convictions were properly recorded and the sentences were also well within the range that the court had power to impose and we therefore refuse the applications and order that the sentences run from 2 September 2006.