

NML

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO: 23/03

**BEFORE: THE HON. MR. JUSTICE PANTON, P.
THE HON. MR. JUSTICE COOKE, J.A.
THE HON. MR. JUSTICE MORRISON, J.A.**

KENARDO GENERAL v R

Applicant unrepresented

**Ms. Paula Llewellyn, Q.C., Director of Public Prosecutions & Ms.
Claudette Thompson, Crown Counsel for the Crown**

12th May 2008

ORAL JUDGMENT

PANTON, P.

In this matter, the applicant for leave to appeal against sentence, Mr. Kenardo General, pleaded guilty before Miss Justice Beckford in the Western Regional Gun Court held in Montego Bay on the 15th of January 2003. He pleaded guilty to the offences of illegal possession of firearm, assault with intent to rape and wounding with intent. The sentences imposed by the learned judge were, in respect of illegal possession of firearm, nine years imprisonment, in respect of assault with intent to rape, ten years, and in respect of wounding with intent, she imposed a sentence of twenty years imprisonment and in so doing she indicated to Mr. General that, had he not pleaded guilty he would have been

sentenced to something like forty-five years imprisonment as she thought that he deserved forty-five years but, having expressed such a view, she reduced it by more than 50% to twenty years imprisonment. The sentences were ordered to run concurrently.

The particulars of this offence indicate that as happens with many of our young men, this gentleman who goes by the military name of General, attempted at gunpoint to rape a lady in a situation where this was a rural incident in the parish of Hanover. In the process, he actually did fire this firearm hitting a Mr. Clarke causing him injury to his jaw and also to his back. Mr. Clarke was admitted at the Cornwall Regional Hospital where he spent sometime as a patient. When the applicant was arrested, he said that he had his machine but he would not have done that to "Tallest". Tallest was Mr. Clarke.

The application for leave to appeal was refused by the single judge and the application has now been renewed before us. We are concerned in respect of the sentence imposed on count 3 in that it appears, and we do so find, that that sentence of 20 years, bearing in mind that this was on a plea of guilty, is manifestly excessive in the circumstances and that being so, we are reducing it to 15 years imprisonment.

The application for leave to appeal against sentence is granted in respect of count 3. Appeal is allowed and the sentence of 20 years is varied to one of 15 years imprisonment, and all other aspects of the sentences imposed remain

except that the sentences will now run from 15th of January 2003. It should be noted that Mr. General was at the time serving other sentences for related offences, related in the sense of the nature of those offences. That no doubt may have influenced the time when the transcript reached the Court of Appeal which we should point out was February 1, 2007.