

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO. 155 OF 2005

**BEFORE: THE HON. MR. JUSTICE HARRISON, P.
THE HON. MR. JUSTICE COOKE, J.A.
THE HON. MRS. JUSTICE McCALLA, J.A.**

ROBERT HAYLES

v.

REGINA

Robert Fletcher for the Applicant.

**Mrs. Simone Wolfe-Reece, Asst. Director of Public Prosecutions (Ag.),
Miss Sanchia Burrell and Miss Tanya Spence, Crown Counsel (Ag.) for
the Crown.**

April 16, 2007

(Oral Judgment)

COOKE, J.A.

1. This started out as an application for leave to appeal against conviction and sentence. The leave to appeal against conviction has not been pursued and not without good reasons.

2. The facts of this case are without any complexity. On the 15th November, 2004, at about 10:00 in the morning, a police patrol vehicle was in the Olympic Gardens area where the applicant was seen, according to the police officer,

acting suspiciously. On the approach of the vehicle, he immediately turned into a premises. The police immediately stopped, went into the premises where they saw him with another man. They proceeded to search both men and from the applicant's waist removed a magnum firearm which contained five unexpended rounds.

3. The defence was that the applicant had come out on his verandah and was mopping it up. A brethren of his "come check" him and was speaking to him when lo and behold, there was a firearm just below the verandah. He apparently did not readily recognise the object because his curiosity was awakened as to what it could have been.

4. On September 20, 2005 the applicant was convicted in the Gun Court and received sentences of twelve years imprisonment at hard labour for the possession of the magnum and six years imprisonment at hard labour in respect of the ammunition.

5. Mr. Fletcher on behalf of the applicant has sought to persuade this court that the sentence of twelve years was manifestly excessive. His major contention is that in the instant circumstances, there was no violence. In other words, there was no immediate manifestation that the illegal possession was being utilized in a manner so as to occasion violence.

6. Mr. Fletcher recognized that it could not be said that the sentence of twelve years was outside the range of punishment which is employed in the Gun Court. However, he submitted that two years be taken off because the applicant is a young man and he has two young children who are attending school.

7. Now in this court, there must be some bases upon which the court can act in the reduction of the sentence. This court cannot approach the question of the appeal against sentencing in an ad hoc manner, and to accede to the submission of Mr. Fletcher would not be consistent with the established approach of this court. Accordingly, since there is no basis for interfering with the sentence, being mindful that the criterion is whether or not the sentence is manifestly excessive, the plea of Mr. Fletcher finds no favour in this Court. As in the case of the application in respect of conviction which was abandoned and for which we stated that the sentence should commence from the time of conviction, we do likewise with this case. Therefore, the sentence shall commence on 20th September, 2005.