

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO 42/2008

**BEFORE: THE HON MR JUSTICE MORRISON JA
THE HON MISS JUSTICE PHILLIPS JA
THE HON MR JUSTICE HIBBERT JA (Ag)**

STEPHEN JAMES v R

Mr Leroy Equiano for the applicant

Mrs Ann-Marie Feurtado-Richards for the Crown

30 January 2012

ORAL JUDGMENT

MORRISON JA

[1] The applicant was convicted on 31 July 1995 on an indictment containing two counts: count one charged him with illegal possession of a firearm and count two charged him with assault at common law. The learned trial judge sentenced him to seven years imprisonment on count one and three years imprisonment on count two and ordered that the sentences should run consecutively.

[2] The trial of this matter took an unusual turn after it had commenced on 1 June 1995, was part heard and adjourned to 15 June 1995, and again part heard and

adjourned to 31 July 1995. On this last date, the applicant did not attend and the case continued to its conclusion in his absence. After he was sentenced in his absence, nothing was seen or heard of him for a period of nearly 13 years, until 30 January 2008, when he was re-arrested and taken to prison. Upon his re-arrest, he then applied for and was granted an extension of time within which to file an application for leave to appeal against his sentence.

[3] The learned single judge who considered this matter on paper took the view that, although a consecutive sentence arising out of the same incident might ordinarily be open to question, it could not be said in this case that a total period of incarceration of 10 years for illegal possession of a firearm and a violent armed assault was manifestly excessive. The application for leave to appeal was accordingly refused.

[4] Before us this morning, Mr Equiano has argued in support of the single ground of appeal filed, that the sentence of the learned trial judge was manifestly excessive, on the basis that although consecutive sentences are frowned upon generally speaking, even where a consecutive sentence is given, it is necessary to look at the cumulative effect of the sentences. The aggregate of the sentences, he submitted, should not substantially exceed the normal level of sentences for the most serious of the offences. Mr Equiano submitted further that in 1995 a sentence of 10 years imprisonment for the offence of illegal possession of firearm would have been manifestly excessive and he told the court that, on the basis of his experience, which we accept, at that time, the sentencing range for illegal possession of firearm after a trial was of the order of five to

seven years. So in those circumstances, Mr Equiano urged, when one takes into account that the consecutive sentence is not ordinary the norm, the result of the consecutive sentence in this case was to take the aggregate sentence outside of the range of what would be appropriate in all the circumstances of the case.

[5] This is obviously a highly unusual case, not least of all because the court is required to cast its mind back as far as 1995, 17 years ago, to determine what might have been appropriate at that time. In all the circumstances of the case, we think that Mr Equiano has made good his point, though we would emphasize again that this is an unusual case and that our decision in this case is not expected or intended to be treated as a precedent of any kind. What we will do is (i) grant the application for leave to appeal against sentence, (ii) treat the hearing of the application as the appeal and (iii) allow the appeal, to the extent that the learned trial judge's order that the sentences should be consecutive is set aside and substituted by an order that the sentences on counts one and two should run concurrently.

[6] These sentences are to commence on 30 January 2008, which is the date on which the applicant was re-arrested after conviction.

