JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO. 101/08

BEFORE: THE HON. MR. JUSTICE HARRISON, J.A.
THE HON. MRS. JUSTICE HARRIS, J.A.
THE HON. MR. JUSTICE DUKHARAN, J.A.

KIRK CALLENDER
v
REGINA

Mr. Ravil Golding for the appellant.

Miss Natalie Ebanks, Crown Counsel, for the Crown.

September 29, 2009

Oral Judgment

HARRISON, J.A.

1. The appellant Kirk Callendar was tried and convicted in the High Court division of the Gun Court on an indictment which contained four (4) counts. On count 1, he was charged with illegal possession of a firearm, on count 2, abduction, on count 3, rape and on count 4, buggery. In respect of the illegal possession of firearm he was sentenced to imprisonment for a term of 15 years, on count 2 for abduction, 7 years imprisonment at hard labour, on count 3 for rape, 15 years imprisonment at hard labour and on count 4, 5 years imprisonment.

2. The learned trial judge in imposing the sentence ordered that counts 1, 2 and 3 should run concurrently and said that the sentence on count 4 should run consecutively with the sentences on those 3 counts. The appellant was therefore sentenced to serve a total of 20 years imprisonment.

3. The appellant has sought leave to appeal both conviction and sentence. Today, Mr. Golding who appears on his behalf has informed the Court that the appellant has abandoned the original grounds of appeal. He sought and obtained leave to argue a supplemental ground based solely on sentence. The ground is that the sentence of the Court is manifestly excessive in all the circumstances.

4. Credibility was the only issue in the case. The learned trial judge rejected the applicant's unsworn statement and accepted the complainant's version. On the evidence adduced in the case, he was fully entitled to do this.

5. On the question of sentence, it certainly cannot be said that the sentences imposed on the four (4) counts were manifestly excessive in the circumstances of this case. However, we do have a query as to whether it was appropriate to order that the sentences on counts 1, 2 and 3 should run concurrently but consecutively to the sentence on count 4. We therefore granted leave to appeal the question of sentence only.

6. We are in full agreement with the views expressed by the learned single judge when he said that it cannot be said that the sentences imposed on these four (4)

counts were manifestly excessive. The sentence of 15 years for rape, in our view, was quite proper. For the illegal possession, abduction and buggery, these sentences were also appropriate. The question we now face is whether or not the 5 years imposed on count 4 should run consecutively with the sentences on counts 1, 2 and 3. Mr. Golding agrees that this was a bad case indeed, but argues that the sentences are manifestly excessive, this being the first conviction for the applicant.

7. In conclusion, we cannot agree with counsel that the sentences are manifestly excessive but we do agree with counsel that the learned trial judge ought not to have ordered that the sentence on count 4 should run consecutively with the sentences on the other 3 counts. The application for leave to appeal against conviction is refused and the appeal against sentence is allowed. The sentences are varied to read that the sentences on counts 1, 2, 3 and 4 are to run concurrently and will commence as of the 9th August 2007.