

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO. 82/2006

**BEFORE: THE HON. MR. JUSTICE COOKE, J.A.
THE HON. MR. JUSTICE HARRISON, J.A.
THE HON. MR. JUSTICE DUKHARAN, J.A. (Ag.)**

SIDNEY MILLWOOD v R

The applicant unrepresented

Miss Kathy Pyke, on fiat for the Crown

19th May 2008

ORAL JUDGMENT

COOKE, J.A.

1. The single judge having addressed his mind to the issue of the application for leave to appeal refused it. This application has now been renewed before the Full Court. The applicant was on the 12th May, 2006 convicted in the High Court Division of the Gun Court in Kingston, on two counts of an indictment, the first of which pertains to illegal possession of firearm and the second illegal possession of ammunition. He was on 19th May 2006, sentenced to five years imprisonment on count 1 and ten years imprisonment on count 2. The sentences were to run concurrently.

2. The factual circumstances are within a very narrow compass. On the 17th April 2006 police officers at the Morant Bay Police Station in the parish of St. Thomas received information. The information was of a specific nature and, based on that intelligence, a police party set out to Cedar Grove Lane in quest of the applicant. The applicant was seen at a coal kiln some fifty meters from the Cedar Grove main road. He was approached and challenged with the information that he was in possession of an illegal firearm. He was searched and from his waist was removed a mini Uzi Submachine Gun, with thirteen 9mm cartridges.

3. Evidence was accepted by the learned trial judge that the applicant said "no officer, mi never fire it yet, a get mi get it fi defend myself". The defence was that no firearm was taken from him albeit that a firearm was found in the vicinity. The learned trial judge accepted the evidence tendered by the prosecution. This acceptance cannot be faulted.

4. There is an alarming disparity between the sentences handed down in respect of the sentences on count 1 (illegal possession of firearm) and count 2 (illegal possession of ammunition). This disparity arises, as it is the normal approach to sentencing in these type of cases that there is usually a significantly harsher sentence imposed in respect of illegal possession of firearm vis-à-vis illegal possession of ammunition. Of course, if the amount of ammunition is substantial and is in addition to that contained in the firearm itself or in a

magazine attached to the firearm, then a departure from the normal approach would be understandable. In this case we cannot conceive why the normal approach should not obtain. We came to this view after a diligent search of the transcript to discern if there were any exceptional features which could explain the disparity. We found none. We noted that the sentencing exercise took place about one week after the pronouncement of guilt. This factor only served to add to the puzzle.

5. The applicant at the conclusion of his trial went off to his confinement believing that on the count for illegal possession of firearm he was to serve a sentence of five years at hard labour. We do not think that in circumstances of this case we should interfere with this sentence. However, in respect of count 2 (the ammunition count), we are compelled to reduce the sentence that had been imposed. We are of the view that in the circumstances the sentence of ten years on count 2 is without justification. Accordingly, we grant the application for leave to appeal against the sentence imposed on count 2. The appeal against that sentence is allowed. That sentence is quashed and it is substituted with a term of imprisonment for three years at hard labour. As indicated earlier leave to appeal against convictions is refused. Sentences are to run concurrently and to commence on 19th August, 2006.

ORDER

Application for leave to appeal against convictions refused. Application for leave to appeal against sentence granted. Appeal against sentence on count 2 allowed. Sentence set aside. Sentence of three years at hard labour substituted. Sentence on count 1 affirmed. Sentences to run concurrently as of 19th August 2006.