C.A. CRIMINAL LAW — Gun Court — Illegal possession of firearm — rape.
① Identification — whether evidence of identification sufficient
② Sentence; whether concurrent terms of 15 years and 18 years imprisonment at hard labour respectively excessive. Applicant had "no record indeed."

Appeal against conviction dismissed. Ample evidence before trial judge. Appeal against sentence allowed in that sentence on count 2 reduced from 18 years to 15 years at hard labour — sentence somewhat outside spectrum of sentences usually imposed for that type of offence.

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO. 71/88

No case referred to

BEFORE: THE HON. MR. JUSTICE CAREY, P. (AG.)
THE HON. MR. JUSTICE DOWNER, J.A.
THE HON. MISS JUSTICE MORGAN, J.A.

R. Vs. CARLTON SMITH

Earl Hamilton for applicant

Miss Yvette Sibble for Crown

November 7, 1988

CAREY, P. (AG.):

In the High Court Division of the Gun Court held at Morant Bay in the parish of St. Thomas, on the 23rd of March, the applicant was convicted on an indictment which charged him for illegal possession of a firearm and rape. He was sentenced to concurrent terms of 15 years and 18 years imprisonment at hard labour respectively. He now applies for leave to appeal his conviction and sentence.

The short facts which gave rise to his conviction were that on the morning of the 9th of April, 1987, a young woman was intending to go to the Hampton Court Hospital Centre and she had begun walking in that direction when she saw a car passed by her. At that time there were some three occupants in the car; the car returned from the opposite direction and on this occasion only one person was in the car. When the car slowed by her she called taxi as she thought it was a taxi. The driver of the car, this applicant, was a person whom she knew before as "Helicopter." When she got into the car, the driver instead of proceeding in the direction where she was minded to go, sped off and came to a stop a mile and a half further along the road at an interval. He used, rather vulgar language to her, indicating his desire to have sexual intercourse with her.

As she was not of like mind, a tussle ensued. He drew a gun and with this persuasive object in hand, forced her into the back seat. She, nevertheless, resisted his efforts and began to wrestle with him. He was, however, able to overpower her and to have intercourse with her by refering to certain persons whom she knew to be dangerous gun men. But she was not content to lie there. She wrestled with him, fought him off and forced him off her and out of the car. During this time he had this firearm, she thought that it was an imitation weapon, and as she explained, that is the reason she fought him off. Eventually she was able to rush away from the car, half dressed as she was, and to hide somewhere down a gully which she described as a precipice. While she was in hiding, she heard two shots fired from the direction where this applicant was by thecar. She then realized that she had been in more danger than she had previously thought. She subsequently ran out onto the road where she was picked up by a gentleman who took her to the police station. When she arrived there, she made a report of the ordeal she had just experienced.

In his defence, the applicant who gave evidence under oath, admitted that he was called "Helicopter," but said that he could not remember the 9th of April of last year. He denied however, that he had ever seen the lady before and he denied that he had intercourse with her. He further stated that he knew of no reason why she would want to tell untruths on him and he could only say that she was mistaken.

Mr. Hamilton on the question of conviction endeavoured to suggest that the evidence as to identification was insufficient. We do not think that the arguments put forward were of any merit. There was ample evidence before the learned trial judge with regard to identification on which he could come to a conclusion adverse to this applicant. The evidence was that she had seen him two or so times prior to the incident; that he had come into Rowlands area driving a can and she was advised from those times that his name was "Helicopter."

In sofar as the opportunity for identification, she had more than ample opportunity, having regard to the length of time she had been in his company on that day.

The real point which Mr. Hamilton endeavoured to urge before us related

to sentence which he thought excessive. He admitted that this applicant had a very sorry record indeed. He had some eleven previous convictions and he was only 31 years of age. His record shows that his convictions related to minor offences, e.g., simple larceny, praedial larceny, assault occasioning actual bodily harm, malicious destruction and unlawfully wounding.

In the antecedent which was given before the learned trial judge, it was stated as follows - "The accused is always in problems with the police, citizens of a wide cross-section are fearful when he is seen in the area and make numerous amount of reports against him. He is a plague to the citizens and the police of the parish."

We have looked very carefully at the sentence which was imposed upon this applicant and it is clear that the learned trial judge felt this applicant should be taught a lesson because he was a plague and a nuisance, not only to the people in the community, but to the police officers, and accordingly, a condign sentence ought to be imposed. What we propose to do is to reduce the sentence on count 2 from 18 years to 15 years at hard labour, as we feel that sentence is somewhat outside the spectrum of sentences usually imposed for that type of offence in the courts below. To that extent, the appeal will be allowed, and the application for leave to appeal as to conviction, will be refused.