

^{Gun Court}
Criminal Law (1) Illegal possession of firearm (2) Robbery with aggravation
whether judge had right to conduct trial without counsel
whether judge had admitted his mind to discrepancies
in evidence. APPEAL DENIED

Cases referred to JAMAICA
Robinson's Case 32 WIR 330
Cargill & Roberts SCCA 130 and 131/1984
Williams SCCA 116/85

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO. 35/87

compr
BEFORE: THE HON. MR. JUSTICE KERR, J.A.
THE HON. MR. JUSTICE CAMPBELL, J.A.
THE HON. MR. JUSTICE DOWNER, J.A.

R. v. DELOY DENTON &
MARCUS DENTON

Delroy Chuck and L.H. McLean for the applicants

Marlene Harrison & Verna Bennett for the Crown

May 9, 1988

DOWNER, J.A.:

This is an application for leave to appeal from the judgment of Patterson, J., in the High Court Division of the Gun Court in which he imposed concurrent sentences of 8 years for illegal possession of firearms and Robbery with aggravation. Two substantial grounds of appeal were argued; firstly, a constitutional ground which in substance challenged the judge's right to conduct a trial without counsel, and secondly, a factual one. The arguments were divided between Mr. Chuck who argued the constitutional point and Mr. McLean.

So far as the facts are concerned, they are in very short compass. The complainant was robbed at gun point and he proceeded to report the matter to the police and gave the names of the accused as "Epsi" and "Little man". A warrant was prepared by the police officer

in question and the accused were arrested shortly after.

As regards the first ground, Mr. Chuck relied on Robinson's case 32 W.I.R. 330 which is a decision of the Privy Council. The essential feature in that case is that it decided that it was in the judge's discretion after taking all the circumstances into account as to whether the trial should proceed without counsel. We find that in the circumstances of this case, where one counsel walked out and another gave an excuse or sent an excuse and the case was pending for over a year, in a jurisdiction which was specifically set up to have speedy trials, that the judge exercise his discretion correctly in holding the trial. In fact, Mr. Chuck virtually conceded this after examining the two unreported cases from this Court, namely, Cargill & Roberts S.C.C.A. 130 & 131 of 1984 and Williams S.C.C.A. 16/85 which applied Robinson's case.

So far as the other ground of appeal is concerned, it challenged the judge's discretion on the issue of discrepancies. At page 64 of the record, it is clear that the judge adverted his mind to them and I quote:

"Today he told the Court that the first accused pulled the gun from outside on the road and held him up and backed him into the yard whilst the others took him in - dragged him in. In his statement earlier he told the police that the first accused man held him by the hand, the other two held him in his pants waist and pulled him inside the yard, all three, and it was inside the yard that the first accused pulled the gun. Well, these are discrepancies. He says that what he said in his police statement is true and the passage of time has dimmed his memory and that accounts for the discrepancies, there are these discrepancies, yes, I reject what they are but in my view they are not profound, they do not go to the root of the case. I have no doubt in my mind whatsoever that these are the two men that the complainant spoke about."

We find that the judge exercised his discretion correctly as the main issue in the case was the matter of identity of the accused whom he had known previously. Consequently, we affirm the convictions. So far as sentencing is concerned, Mr. McLean made a valiant effort to persuade this Court that the sentences imposed were out of line. We find that the sentences were in line with those being imposed by judges exercising a jurisdiction in the Gun Court which we have affirmed. We, therefore, treated the application for leave as the hearing of the appeal and we affirm the convictions and the sentences are to run from the date of conviction.