

CRIMINAL LAW: Appeal from Gun Court - (1) Illegal possession of firearm (2) Robbery with aggravation.  
Whether sentence manifestly excessive? Application for leave to appeal refused. JAMAICA

In Case referred to

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO. 9/87

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BEFORE: The Hon. Mr. Justice Carey, J.A.  
The Hon. Mr. Justice Wright, J.A.  
The Hon. Mr. Justice Downer, J.A.

R. v. ELVIS BROWN

Robin Smith for applicant

Miss V. Bennett & Miss A. McKain for the Crown

May 30, 1988

CAREY, J.A.:

In the High Court Division of the Gun Court on the 29th of January, 1987 the applicant Elvis Brown was convicted on two counts which charged respectively, Illegal possession of firearm and Robbery with aggravation. He was sentenced to concurrent terms of 5 years and 15 years imprisonment at hard labour which were ordered to begin at the expiration of some sentences he was then serving.

Mr. Robin Smith who appeared before us this morning has candidly pointed out that insofar as the conviction went, he had no argument which he could put forward with any degree of conviction, and that view we share, because the facts were quite clear. These we summarise:

On the 28th of February, 1986 the house of Mr. Derrick Swaby was broken in by a number of masked marauders who hammered his door in

using a large stone. The raiders subjected the occupants of the house to great terror, because they were forced to flee to the neighbours and watched while their house was ransacked. They lost a great deal of cash, household articles, jewellery, television set, tape recorder, projectors, clothing and other things. Later the same day, the applicant was held and in his possession was found some jewellery which came from that household, so that, unhappily for him, one has to say he was caught almost flagrante delicto. In a house to which he directed the police, other goods stolen from the household were recovered.

Mr. Smith has argued before us this morning the question of sentence. He says the sentence is manifestly excessive. We are not quite clear what is the basis for this argument, because the circumstances of the robbery are indeed shocking. Although only one person was caught, a number of men, five altogether, broke into these people's house demanding money. "We come for the money", said a voice, to which the householder inside responded, "what money you want?" Then the riposte courteous, "look, make it easy for us, come out with your hands up." To which the inhabitants retorted, "We haven't got any money for you". This was like a terrorist raid. Then came the terror; there was the sound of a gun shot then the men went away, returning, as we said, to batter down the house and chase the inhabitants out. The circumstances are indeed appalling.

We can see no reason whatever to interfere with the sentence of 15 years which was imposed and which we think was eminently warranted on the facts. The application for leave to appeal is accordingly refused.