

C.A. CRIMINAL LAW - Gun Court - Illegal possession of firearm - robbery with
aggravation Sentence - whether concurrent terms of 30 years and
15 years imprisonment at hard labour manifestly excessive.
Appellant had one previous conviction for Gun Court offence - whether mitigating
factors.
JAMAICA
Appeal against sentence in Court 1 allowed - sentence of 15 years hard labour
substituted [Per curiam] The learned judge properly imposed a deterrent sentence but
a deterrent sentence ought also to have in mind a possible rehabilitation of the prisoner. He must
be given some hope. []
IN THE COURT OF APPEAL
SUPREME COURT CRIMINAL APPEAL NO. 83/88

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.

SENTENCE
(Punished)

R. vs. ERROL BROWN

Delroy Chuck for appellant
Miss Yvette Sibble for Crown

November 7, 1988

CAREY, P. (Ag.):

In the High Court Division of the Gun Court held in
Montego Bay in the Parish of St. James on the 12th of April, Errol Brown was
convicted on an indictment which charged him for the offences of illegal
possession of a firearm and robbery with aggravation, before Orr, J., sitting
alone. He was sentenced to concurrent terms of 30 years and 15 years
imprisonment at hard labour in respect of these counts. The single judge granted
him leave to appeal against sentence. With respect to that, Mr. Chuck, who
appears this morning for the appellant, has indicated that he did not intend to
put forward any argument in support of the application on that question.

We entirely agree because the evidence against the appellant was
overwhelming. It is only necessary to set out in the briefest detail, the facts
of this case: On the 14th of November 1987, at about 8:30 p.m., Mrs. Bromfield
who carries on a grocery business in Fustic Road, Montego Bay, was held up by a
number of men including the appellant and she was relieved of a large sum of money.

2.

She was robbed of cash and jewellery including her wedding ring, altogether valued \$8,000.00. At the time of the robbery, customers were engaged in transacting business in the shop and they too were held up and robbed. At an identification parade held subsequently, she pointed out this appellant and one of her workers or handyman also identified him. In fact, the handyman pointed him out to the police on the road and he was held and taken to the police station. His defence was he robbed no one.

Mr. Chuck confined himself to the question of sentence, in respect of which, he said that the learned trial judge appeared to have been strongly motivated to impose a sentence of 30 years imprisonment at hard labour by reason of the fact that the appellant had a previous conviction for a Gun Court offence. In pointing to a mitigating factor, he suggested that despite the nature of the offence, no injury had been occasioned to anyone, in the course of the hold-up. The record, the previous convictions of this appellant were as follows: He had three previous convictions, one for shop-breaking and larceny, one for illegal possession of firearm, and one for robbery with aggravation. His last conviction took place in the Gun Court on the 30th of April, 1976, and a sentence of 10 years imprisonment at hard labour was imposed on the count, charging robbery with aggravation and he was given the mandatory term of life imprisonment for the illegal possession of firearm. The appellant, it would appear, was released in 1984 and by November 1987, he was once again engaged in criminal offences involving the use of a firearm.

There was no question that this case called for condign treatment. The only question is to whether the sentence imposed was not, in all the circumstances, manifestly excessive. The learned trial judge properly imposed a deterrent sentence but in doing so, we are clearly of opinion, that a deterrent sentence ought also to have in mind a possible rehabilitation of the prisoner. He must be given some hope. Indeed, this appellant, when the sentence was imposed observed to the learned trial judge -

"My Lord, you sent me a young man
to prison at this time"

That was a heartfelt cry. In our view, the sentence imposed on count 1 was manifestly excessive having regard especially to the facts of the case and we

3.

propose to allow the appeal in regard to that sentence and to substitute the sentence imposed to one of 15 years hard labour. The court further directs to commence from the date of his conviction.