

CA. CRIMINAL LAW - Gun Court - <sup>Evidence - sentence:</sup> ① Illegal possession of firearm  
② Robbery with aggravation - whether sufficient evidence to  
prove the allegation - whether sentence of 10 years and 7 years  
to run concurrently excessive.  
Application for leave to appeal refused.  
No case referred to. ✓ comp  
Evidence  
Sentence

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO. 33/88

BEFORE: The Hon. Mr. Justice Carey - President (Ag.)  
The Hon. Mr. Justice Forte, J.A.  
The Hon. Miss Justice Morgan, J.A.

R. v. GARY HOYES

Delroy Chuck for Applicant

Brian Skyes for Crown

September 26, 1988

FORTE, J.A.:

On the 14th of February, 1988 the applicant was convicted in the High Court Division of the Gun Court on two counts of an indictment, the first charging him with illegal possession of firearm and the second, with robbery with aggravation of Carlton Randall of One Thousand and Forty United States Dollars (\$1,040.00) and Forty Jamaican Dollars (\$40.00). He was sentenced to 10 years and 7 years respectively, the sentences to run concurrently.

The robbery occurred on the 24th of February, 1987. On that day the complainant Carlton Randall and his cousin who shares his (Randall's) last name, travelled to Burger King Stores in Ocho Rios in the parish of St. Ann. The complainant at that time worked at Burger King in Kingston. On returning to Kingston, he went to Brooks Level Road in Stony Hill for the purpose of

taking his cousin home. While seated in a van, speaking to his cousin he felt a gun in his ear and looking around, he saw a man pointing a gun in his ear. The man whom he did not know before, and whom he testified at the trial was the applicant was then about 1 foot from him. The applicant said to him "come out boy." As he emerged, the gun was pointed in his face. The applicant asked him for 'the money' and to the reply 'what money' said, "give me the money before I kill you". In response to the threat that he might be killed, the complainant revealed that he had money in the 'pocket' of the van. At this point he saw two other men jump from the bank at the side of the road. Those men went into the van, searched the glove compartment of the van while the complainant was being held by the applicant with the gun pointed to the back of his neck. This done, the two men made their escape. The complainant was then ordered back into the van after which the applicant also made his escape. The complainant then discovered that U.S. \$1,040.00 had been taken from the glove compartment.

He went to the Stony Hill Police Station and made a report. He afterwards went to the house of his employer, made a report to his employer, who returned with him to the Stony Hill Police Station. He subsequently went with Ag. Cpl. Mellis in search of his assailants. This took them to a home which Mr. Randall entered. On entering the home, he saw his cousin Rennie Randall (who had been with him at the time of the robbery) together with another man and in a spontaneous reaction he said, the following words, "Jesus Christ, this is the man that just rob<sup>he</sup> me." As said so, the applicant who was the man to whom he was referring, ran and held Ag. Cpl. Mellis and said "Jesus Christ, no

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kill me sir, I will tell you how it go." The applicant was then taken into custody, and subsequently arrested and charged for the offences.

Before us, counsel for the applicant, Mr. Delroy Chuck attempted to advance arguments in respect of the only ground of appeal that was filed i.e. "Insufficient evidence to prove the allegation." Mr. Chuck's complaint rested on what he submitted was the "identification by confrontation" of the applicant. However, he did not pursue that argument with any conviction and finally conceded that there was no merit in the complaint. The circumstances were that the complainant made a spontaneous identification of the applicant, on seeing him in the course of the search for his assailants. In any event, the applicant's reaction to the statement made in indentifying him i.e. his own statement that "I will tell you how it go" amounts, in our opinion, to an admission of his participation in the offence. He again made an admission after he was arrested, charged and cautioned saying "Officer a Rennie and Eva Shenks force me to do it sah." Accordingly, we find that there is no merit in the single ground of appeal.

Mr. Chuck also advanced arguments to support the application for leave to appeal against sentence. He submitted that the sentence of ten years passed on the applicant in relation to Count 1 (illegal possession of firearm) was manifestly excessive and not in conformity with the sentence of 5 years which he maintained is the usual sentence passed by other judges for the same offence. The court cannot agree that predetermined sentences should be set for particular offences, as an appropriate sentence must relate to the circumstances of the offence and also have regard to the antecedents

of the accused. The court must therefore look to see if the sentence imposed comes within the usual range which relates to a particular offence.

We find that in this case, the circumstances are such that the sentence imposed by the learned trial judge far from being manifestly excessive, was indeed reasonable. Therefore we are not disposed to interfere with it. For these reasons, the application for leave to appeal is refused. The court orders however that the sentence should run from the date of conviction.