

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO: 179/06

**BEFORE: THE HON. MR. JUSTICE PANTON, P.
THE HON. MR. JUSTICE HARRISON, J.A.
THE HON. MR. JUSTICE DUKHARAN, J.A. (Ag.)**

R. v. GREGORY SMITH

Patrick Atkinson & Gladstone Wilson, instructed by Elliot, Wilson & Thompson for the applicant

**Mrs. Caroline Williamson-Hay, Deputy Director of Public Prosecutions
for the Crown**

6th October 2008

ORAL JUDGMENT

PANTON, P.

1. This applicant Mr. Gregory Smith was tried and convicted in the Gun Court before the former Chief Justice Mr. Justice Wolfe and sentenced on the 5th October 2006 on three counts of an indictment for illegal possession of firearm, rape and indecent assault. For the illegal possession of firearm, he was sentenced to 10 years imprisonment, for rape 20 years imprisonment and for indecent assault 2 years imprisonment, all at hard labour. The learned Chief Justice ordered that the sentences were to run concurrently.

2. The circumstances may best be described as awful, in that, in this day and age, on the 2nd December 2005, the applicant along with another man held up the complainant in Half-Way-Tree square that night at approximately 9:00 o'clock and forcibly took her into Mandela Park where both men had sexual intercourse with her without her consent. This applicant was a further participant in the process by video-taping the event whereby he video-taped while his co-criminal raped her and then he proceeded to participate in the act of raping.

3. His defence, as we are reminded by learned counsel for the Crown, was that these activities were being done with the consent of the young lady, he himself did not participate in the act of sexual intercourse and that it was a process of doing a movie, so to speak. By arrangement, he met the young lady the next day. By then, the young lady had made a report to her mother and her mother was in her company when this rapist appeared on the scene. She, the mother, made an alarm and he was duly held by alert and co-operative citizens and turned over to the police authorities.

4. The learned Chief Justice conducted the trial efficiently, as would have been expected, and summed up the case with impeccable ease and clarity, dealing with all the issues. That being so, there is nothing learned and distinguished counsel for the applicant, Mr. Patrick Atkinson, having perused the record and the exhibit (because the video camera was indeed seized with film by

the alert citizens who assisted this complainant and her mother) could urge the court except in respect of the sentence. So far as his view of the conviction is concerned, he may be heartened to know that the single judge who looked at this matter on the 25th of June this year agreed with him that there was no basis for leave to appeal to be granted.

5. We have examined the transcript and we agree fully with the single judge and Mr. Atkinson. However, we do not agree with Mr. Atkinson in respect of the sentence. The sentences that were imposed were quite appropriate. Any individual who commits an offence of this nature must expect a long term of imprisonment. Anyone armed with a gun who commits a rape, must expect a long term of imprisonment, more so, where the victim is kidnapped in a public place and forced to indulge in this activity in, of all places, the place that bears the hallowed name of Nelson Mandela. There is absolutely no merit whatsoever in the application in relation to conviction or sentence.

6. The application is refused and the sentences are to run from the 5th January 2007.