

See
119 report 658

5th October, 1965.

J A M A I C A

IN THE COURT OF APPEAL

CIRCUIT COURT APPEAL Nos. 62/65 & 64/65

BEFORE: The Hon. Mr. Justice Duffus (President)
The Hon. Mr. Justice Henriques
The Hon. Mr. Justice Moody (Acting)

HUBERT SMITH
and
R. v. KENNETH FRAMPTON

Mr. F. Phipps appeared for the Crown
Appellant not represented.

HENRIQUES, JA.,

These applications are in respect of convictions for burglary and larceny in two cases, also for wounding in one of the cases which took place at the Saint Mary Circuit Court at Port Maria on the 24th of March.

With respect to the application for leave in the case of Kenneth Frampton, the Court has considered carefully the papers and has come to the conclusion that leave ought to be refused. The applicant Smith's application for leave to appeal against conviction will be refused. The applicant, Smith, who was sentenced in all to a period of 18 years imprisonment with hard labour together with an order to receive twelve lashes of the cat-o'-nine tails, has also appealed against his sentence.

It appears that he is a fairly intelligent young married man, but that he has had a series of previous convictions some 18 in all but all of those except one have been in the Resident Magistrate's Court. His one conviction - previous conviction - in

↳ the.....

the Circuit Court was one in respect of which he received a sentence of three years hard labour. The Court in offences of this nature where premises are entered during the night and property stolen, naturally, must take a serious view of the particular type of offence. But it seems that in view of the record of this accused person that a sentence of 18 years hard labour might be said to be excessive. Though the Court is loathe to interfere, nevertheless, we feel that that sentence can be said to be excessive. In the circumstances, leave will be granted and the sentence of fifteen years hard labour will be varied to a sentence of twelve years hard labour and the twelve lashes will be varied to six lashes, that is in relation to the first count of the indictment. The sentence on count two for wounding will be affirmed.