

J A M A I C A

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO. C.A. 131/72

Before: The Hon. Mr. Justice Fox - presiding
The Hon. Mr. Justice **Robinson**
The Hon. Mr. Justice Grannum

R. v. Lascelles Thomas

Appellant - unrepresented

Mrs. Ruby Walcott, ... for the Crown

19th June, 1973.

Fox: J.A.

This application for leave to appeal against conviction and sentence on two counts of an indictment was refused by a single judge on the 27th of April, 1973. The first count charged being found by night with implements of housebreaking. The second count charged shopbreaking and larceny. The application from the refusal of the single judge is now before this court. We have considered the application in relation to the convictions, find no merit in it, and accordingly refuse that application.

We have also considered the application in relation to sentence. On the first count, the applicant was sentenced to a term of imprisonment for ten years at hard labour. This is the maximum sentence which could have been awarded under the law. It is in accordance with the provisions of section 39 (4)(a) of the Larceny Law, Cap. 212 having regard to the fact that the applicant was previously convicted of felonies. The applicant had a record of thirteen previous convictions, eleven being for dishonesty. We agree that the learned trial judge was obliged to give effect to the history of the applicant, and in particular, to reflect in

the sentence which he passed, the circumstance that both offences were committed whilst the applicant was undergoing police supervision. Nevertheless, the sentence passed has aroused our anxious concern. Giving the matter the very best consideration of which we are capable, it seems to us that the sentence is, in all the circumstances, manifestly excessive. We think that a sentence of seven years on the first count would have been appropriate, and this sentence is substituted for the sentence of ten years, which was passed on count one.

Formal Order

The application as to convictions is refused. The convictions are firm. The application as to sentence is granted and is treated as an appeal. The appeal as to sentence on count one, is allowed. That sentence of ten years hard labour is quashed and in substitution, therefor, a sentence of seven years at hard labour is imposed. The sentence of five years hard labour on count two is affirmed. Both sentences are to run together.