C.A. Criminal Law - Causing grievous bodily harm with intent to do grievous bodily harm - Counsel conceded no ground for upsetting conviction - Whether sentence excessive - Views taken which had caused severe injury - Appeal against sentence dismissed.

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO. 33/85

Roy v Ernest Marshall decided by Jam CA on 31/3/86

BEFORE: The Hon. Mr. Justice Rowe, President
The Hon. Mr. Justice Campbell, J.A.
The Hon. Mr. Justice Bingham, J.A. (Ag.)

R. v. LINTON MILLER

C.S. Miller and Miss Nancy Anderson for the appellant

John Moodie for the Crown

13th May, 1987

ROWE, P.:

The appellant Linton Miller was convicted before Gordon J. and a jury in the St. Elizabeth Circuit Court on March 12, 1985, of causing grievous bodily harm with intent to do grievous bodily harm and he was sentenced to six years imprisonment at hard labour. From this conviction and sentence he appeals and he is represented by Mr. Miller who this morning, having had a look at the summing-up, more than a look, having gone through it very carefully, has conceded that there is no ground on which the conviction could be up-set. He has argued, however, that the sentence is excessive and ought to be reduced and he has suggested that the proper sentence that should be given is one which would terminate as at this time seeing

that the appellant has been in prison for some two years and four months to date.

The circumstances which led to his conviction were that on the 30th October, 1983, the appellant and the complainant, one Hassan Simpson, were together at a domino game in St. Elizabeth. There arose a dispute between the men, there was a quarrel which was pacified and the appellant left the scene. Sometime after the other people including the complainant also left and they were ambushed by the appellant who used language - "You blood cloth you, a who you did a fuck round" - and with that he used a stone and delivered a blow to the right side of Simpson's head, a blow which the doctor said caused a laceration and inverted upside down L-shaped injury to the right side of the frontal parietal region of the skull with a depressed fracture below. He was rendered unconscious for some 24 hours. He underwent an operation and was treated in hospital for some two weeks. His treatment was continuing and since that occasion he had up to the time of trial four episodes of total unconsciousness. So it appears that whatever injury was done to his brain is a continuing one and certainly was continuing up to the date of trial.

We are of the view, that the injury was an extremely serious one, that it was inflicted in circumstances which can only be construed as vicious, that the applicant intended to cause the injury; indeed this is one of the cases where he had it in his mind and he expressed himself to have it in his mind, to do really serious harm to the complainant Simpson. He was in such

a rage when he hit down Hassan Simpson that those who tried to come to Simpson's assistance had to flee from the stones which he threw at them. It was no question that he flung a stone to scare, he flung the stone to hurt.

The learned trial judge who had the benefit of hearing the evidence and seeing the witnesses, described the action in this way. He said to the appellant:

> "Yours was not a case in which in the heat of passion and spur of the moment you committed an offence. You had a quarrel with the complainant, Hassan Simpson, you went away, you laid in wait for him and you didn't give him a chance; as he came you bashed his head with a stone. You could have killed him. He still suffers from it."

We think that that is a proper description of the event as seen by the learned trial judge. What then should be the quantum of sentence which ought to be imposed in this case?

The learned trial judge said he had agonized over it and he came up with a sentence of six years imprisonment at hard labour. In the circumstances Mr. Miller has asked us to say that the physical condition of the prisons especially the General Penitentiary is dehumanizing, unfit for human habitation. He says that there is evidence of every sort of depravity existing in that place, that the over-crowding is scandalous and that having regard to the good behaviour of the appellant in prison the sentence should be reduced. He has referred us to the case of the Queen v. Errol Marshall which was decided in this court on the 3rd February, 1986, in which the sentence was reduced from five years to three years, and Mr. Miller says that

the injury in the case of Marshall was more serious, if anything, than the injury in the instant case. In that case the complainant spent some two months and five days in hospital.

We are not prepared to say that the sentence of six years hard labour in the instant case was in anyway manifestly excessive. We take note of the fact that the blow was struck with the intention to hurt, it was a vicious blow and it has caused very severe injury indeed. In all the circumstances we are of the view that the appeal against sentence ought to be dismissed and we so order. We will, however, order that the sentence ought to commence from the date of conviction.