

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO. 55/88

BEFORE: THE HON. MR. JUSTICE CAREY, J.A.
THE HON. MR. JUSTICE CAMPBELL, J.A.
THE HON. MR. JUSTICE WRIGHT, J.A.

R. v. MICHAEL JOHNSON

Mr. Michael Lorne for appellant

Miss Marcia Hughes for the Crown

February 20, 1989

CAREY, J.A.:

This matter comes before the Court by leave of the single judge, who was a little concerned about the sentence of imprisonment imposed on this appellant, and felt that the Court ought to give some guidance as to the appropriate sentence in cases of this nature.

The appellant pleaded guilty in the High Court Division of the Gun Court on the 9th of March for the offence of illegal possession of a firearm. The facts which gave rise to the indictment were as follows: On the 12th of September, 1987 at about 6 o'clock in the evening, a police officer who was travelling along the August Town Road while passing a bus stop, noticed this appellant. He observed that the appellant was adjusting a bulge in the area of his right hip; he thought this was somewhat suspicious and therefore he carried out a search upon the appellant to find a .32 calibre Carrington and Richardson revolver. The firearm had no live rounds in the chamber. It would appear that when the weapon was analysed by the ballistics expert, it was found that it could not, in its present state, discharge any missile in the normal way, although it

was designed for the purpose of discharging missiles; It was said that all the components were in place except that some of them were not functioning. The antecedent history of the appellant showed that at the time of the offence, he was aged 16 years and 5 months having been born on the 2nd of April, 1971. The appellant went to basic school and had some secondary education. It is not quite clear what success in examinations he achieved during his career in school. We understand that he plays for a well-known football team. He has never ever been employed and as one would expect, he has no previous convictions recorded against him.

Mr. Lorne has argued before us this morning that he thought the sentence was a little bit severe. He pointed to the fact that the weapon was useless in its present state and suggested that in carrying this firearm to a football match, the appellant was showing off, doubtless part of the macho image of youth.

This case has given us some concern. The learned judge imposed a sentence of two years imprisonment at hard labour. Now the range of sentence for an offence of this nature viz., possession of a firearm simpliciter, is somewhere between two to five years for an adult. We do not think that there is any reason why the sentence should be different for a juvenile. This Court is well aware that in fact juveniles and/or young persons are used by adults to transport their firearms around, to allow them to be able themselves to travel freely without let or hindrance. Therefore, it would be quite wrong of this Court to lay down any policy which would inhibit the discretion of a trial court to impose a sentence that is appropriate in the circumstances of the particular case having regard to the antecedent of the particular offender.

It is quite clear that despite the provisions of the Juveniles Act to the contrary by virtue of the provisions of section 8(2) of the Gun Court Act, juveniles are now subject to terms of imprisonment. Indeed, under the Criminal Justice (Law Reform) Act, section 3, the provisions there exempt from within its purview, situations where the offence involves either violence or a threat of violence. Section 3(2)(d)

provides - "the person at the time of the offence was in illegal possession of a firearm or imitation firearm". We would also point out that section 6, which permits suspended sentences where imprisonment would normally be appropriate, exempts from its ambit offences involving the use or the illegal possession of a firearm or imitation firearm. So that there is nothing which precludes the Court from imposing a sentence of imprisonment when that is appropriate.

Having given this matter our very best consideration, we feel that a sentence of two years, which was imposed in this case, cannot be said to be manifestly excessive as it is well within the range of sentences for an offence of this nature, and insofar as the antecedents are concerned, there is nothing which, in our view, differentiates this case from any other case where a youngster chooses to arm himself with an illegal weapon. We do not think the fact of age can be prayed in aid as being the only factor.

In the circumstances of this particular case, what we propose to do is to dismiss the appeal, affirm the sentence, but we will order that the sentence run from the date of his conviction, which is from the 9th of March, 1988.