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JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO: 195/88

BEFORE: The Hon, Mr. Justice Carey, P. (Ag.)
The Hon. Mr. Justice Campbell, J.A.
The Hon. Mr. Justice Forte, J.A.

R. v. MICHAEL REID

Dr. Randolph Williams & Delroy Chuck for Applicant

Samuel Bulgin for the Crown

October 9, 1989

CAREY P. (AG.)

On the 29th of September, 1988 in the High Court Division of the Gun Court this applicant was convicted on an indictment which charged him with illegal possession of firearm and robbery with aggravation. He was sentenced to concurrent terms of twelve years imprisonment at hard labour and he now applies for leave to appeal that conviction. The single judge granted him leave to appeal the sentence which was imposed upon him.

The facts against this applicant were overwhelming. On the 22nd of November, 1987, at about 7:30 in the morning a Mr. George Chung, a chinese gentleman, who has lived in this country for some considerable number of years, but plainly, does not wish to become involved in "things Jamaican", attended at the beach at Greenwich Farm to purchase fish, when he was set upon by two young-men, one of whom was armed with a firearm. In the event, he was robbed of some four thousand odd dollars which he had on his person. Persons who were at the beach shouted

for "thief" and the two miscreants were chased. A police officer who happened to be in the vicinity pursued them in his car. He saw them ahead of the crowd. He caught this applicant, the other assailant making his escape. When this applicant was searched at the police station, some four thousand odd dollars were recovered from him. Although the police officer said that Chung identified this applicant, as one of the robbers, Mr. Chung in evidence did not identify him. When the police officer questioned the applicant, he said that the other man had given him the money.

In his defence, the applicant who gave evidence on oath, said that he was walking along Marcus Garvey Drive when a car came by with the police officer who held and took him back to some men and asked one of them if he was the robber. At the Police Station, the police, he acknowledged did recover some four thousand odd dollars which he explained was money given to him by a witness, Mr. Norman Martin, whom he called and who testified that he had given him some money to purchase doors. The applicant said that he had the money on his person on this Sunday morning, presumably, in his search for doors. Not unnaturally, the learned trial judge rejected that curious story.

As we said, the evidence was overwhelming. This applicant was caught in hot pursuit. He was found in possession of goods which were recently stolen, so shortly after, that the inference must be clear that he was one of the participants.

At all events, the evidence was that two men were engaged in this robbery, one was caught and the money recovered from him. An adverse verdict would be inevitable. Nevertheless, we have been accorded some very interesting arguments by Dr. Williams, supported in some measure by Mr. Chuck. It was

said that the evidence rather supported a charge of receiving. That is a very curious situation because the basis of the receiving charge would be that this was a man who had been found in possession of recently stolen property and the presumption is either, that he was the thief, or the guilty receiver and on these facts, plainly, the former would have met the case.

There really was no merit in the arguments put forward in that regard and accordingly they are rejected. In the result the application for leave to appeal is refused.

In so far as the appeal against sentence goes, the argument which is advanced was that the learned trial judge took into account, the fact that the appellant had been convicted and sentenced to a term of eight years imprisonment at hard labour on a previous occasion. It is also being urged before us that the learned trial judge must have taken an improper view of the fact that this applicant had brought a witness to court who had committed perjury on his behalf.

We may dismiss the second point rather succintly by saying that nowhere in his summation or in his address, as to sentence, could it be shown that the factor that the witness was called and plainly perjured himself played any part whatsoever in the sentence which was ultimately imposed.

We find the first ground also without merit. It seems to us eminently right for a judge to take into account the antecedent of the person whom he is sentencing. He is obliged to do so and if a person had a previous conviction for a similar offence, then it seems to us logical that that must play a significant part in the sentence which is ultimately imposed. Otherwise, the position would be this, that a man with no previous conviction would be treated in the same way as one with a similar previous conviction.

In our view the learned trial judge was right in taking into account the fact that this applicant had been sentenced to eight years imprisonment at hard labour for a similar offence. The learned trial judge was entitled to form the view that the applicant had not learnt his lesson from that sentence and that obviously a more serious sentence was warranted in the circumstances. We can see nothing wrong with that view and accordingly, the appeal against sentence also will be dismissed. The court orders the sentence to commence on the 29th of December, 1988.