JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO. 224/87

BEFORE: THE HON. MR. JUSTICE CAREY, J.A.
THE HON. MR. JUSTICE DOWNER, J.A.
THE HON. MISS JUSTICE MORGAN, J.A.

R. v. PAUL JONES

Mr. Anthony Pearson for appellant

Mr. Lloyd Hibbert and Miss Sheryl Richards for the Crown

April 20, 1989

CAREY, J.A.:

In the High Court Division of the Gun Court, this appellant, Paul Jones, was convicted before Smith, J., for the offences of illegal possession of a firearm and wounding with intent. He was sentenced to concurrent terms of five years imprisonment at hard labour as respects count 1 and ten years imprisonment at hard labour as respects count 2. The matter comes before the Court by leave of the single judge in relation to the sentence imposed on count 2.

Mr. Pearson, who has appeared before us this morning, has candidly conceded that there are no arguments which he could usefully put forward, either in relation to conviction or as to the sentence imposed on count 1. In order to consider this question of sentence, it is necessary to give an outline only of the material facts from which this conviction arises.

In the early morning of a day in May, 1986, Mrs. Merille Johnson was awakened by barking dogs. She noticed at that time that the outside lights which had earlier been switched on were now off. When she looked

outside, because as the evidence discloses there was other light, she saw the appellant, who had previously been employed to herself and her husband as a gardener on the premises, in the vicinity of the outside light switch. When she switched the light on, it was again switched off. She called to her husband and a farm manager, who was apparently in the house. Both of them, the husband armed himself with a lug tool, raced out. When the husband ran out with the farm manager, he was shot by another man whom he found dismantling his motor car. In his defence, the appellant said that he knew nothing about the matter and people were telling untruths on him.

The evidence was overwhelming; the identification evidence was satisfactory and there really was, as Mr. Pearson candidly conceded, no point in arguing conviction. This brings us to the matter of substance of this appeal, the question of sentence.

Mr. Pearson pointed us to the fact that this appellant was born in 1970 and at the date of the offence, which was on the 14th of May, was aged only fifteen years. When he was convicted, he was by then eighteen. He concedes that the offences, on which he was convicted, are admittedly serious, but having regard to his age, he was of the view that the sentence imposed was manifestly excessive.

The question of sentence is always one of difficulty. It is all the more so when one is considering the present situation of the present climate of violence in this country. It cannot be disputed that count 2 was a very serious offence indeed. It was serious because this appellant had been employed to the victims of the charge and plainly he was the pilot who had brought his gunman associate to steal apparently his employer, Mr. Johnson's, motor car, and indeed, he had just, shortly before the offence, been discharged by him. The only matter which tells in his favour is his extreme youth at the time of the offence.

We are of opinion that, speaking quite generally, when one is dealing with a juvenile he ought not, in our view, to be treated in the same way as an adult, as a mature person; some allowance must be made for his extreme youth. That is not to say that the sentence imposed should

not demonstrate how serious a Court might view the particular offence committed. But we think that more allowance must be given to his age, in this case, the fact that he was fifteen years at the date of the offence and we do not think that enough discount was given in that respect. We think that justice will be served in this case if we were to reduce the sentence imposed from ten years to that of seven years imprisonment at hard labour. And we so order.

We direct that sentence is to commence on the 3rd of March, 1988.