

111 11/11/66 871
11/11/66

J A M A I C A

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL No. 4/66

BEFORE: The Hon. Mr. Justice Lewis, Presiding
The Hon. Mr. Justice Henriques
The Hon. Mr. Justice Moody

R. vs PHILIP COLTHURST

Mr. M. Wright for the Crown

Mr. A.M. Spaulding for the appellant

28th March, 1966.

LEWIS, J.A.,

Leave to appeal was granted in this case on an application for leave to appeal against conviction for robbery with violence. Mr. Spaulding who appeared for the appellant has sought the leave of the Court to abandon that appeal, and this Court grants leave to do so, and dismisses the appeal.

Having done that, Mr. Spaulding then asked the leave of the Court to file an application for leave to appeal against sentence out of time. The appellant was convicted on the 13th of January, 1966, and on the 27th of January, 1966, supplementary grounds of appeal signed by his Counsel were lodged in which it was alleged that the sentence passed on the accused by the learned trial judge was unreasonable and manifestly excessive. The point raised by Mr. Spaulding on which he seeks leave is an alleged wrongful exercise of the learned Judge's discretion to bind over a person convicted of robbery with violence under Section 57 of the Larceny Law instead of imposing the minimum sentence under Section 34(1) of the Larceny Law. It is alleged that the learned Judge misconceived his functions, and it is said that this is

∟ apparent from....

apparent from what the learned judge said.

The Court has looked at the **record** and has no reason to think that the learned Judge in any way misconceived his functions. He applied his mind to the question of his discretion under Section 57 and decided that he would not exercise it in this case. He then went on to deal with the sentence that he should impose under Section 34 and considered that it was a fit case for imposing only the minimum sentence prescribed by the law, namely, one of five years imprisonment to which on the compulsory flogging aspect of the case, he added one lash, the minimum that he could impose.

The Court thinks that no sufficient grounds are made out for granting an application for leave to appeal out of time. The application is therefore refused.