

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO. 4/89

COR: THE HON. MR. JUSTICE CAREY, J.A.
THE HON. MR. JUSTICE WRIGHT, J.A.
THE HON. MISS JUSTICE MORGAN, J.A.

REGINA

VS

ALBERT THORPE

Application for leave to appeal

Mr. Phillip Sutherland for the applicant

Crown not represented

10th December, 1990

CAREY, J.A.

In the St. James Circuit Court before Wolfe, J. sitting with a jury on the 15th of December, 1988 this applicant was convicted on an indictment which charged him with the offence of manslaughter, and was sentenced to 10 years imprisonment at hard labour. He now applies for leave to appeal both that conviction and the sentence which was imposed upon him.

Mr. Sutherland has quite candidly conceded that having read the papers he is quite unable to find any arguable ground of appeal either as respects the verdict which was returned by the jury or the sentence which was imposed by the learned trial judge. With that view, we are in entire agreement. We might however, merely give in outline only, the facts of this case to demonstrate the correctness of the view taken by learned counsel. The facts are short and are as follows:

On the 16th of March, 1982 round about 9:30 in the morning, a Mr. Sydney James was at his farm in Endeavour in the parish of St. James when he observed, passing along the road, this applicant who had a bag under his arm and also the victim

Mr. Reginald Duhaney who had with him his machete and who was coming in the opposite direction. When those two men confronted each other, a conversation took place. The victim is alleged to have said to the applicant "you are not going away with my herbs this morning" - by herbs he meant ganja - cannabis sativa. The applicant responded "ease me up." Mr. Duhaney approached the applicant with his machete upraised, whereupon the applicant pulled the firearm which he had with him, pointed it in the face of Mr. Duhaney and shot him dead.

Sometime afterwards when the applicant was arrested he said he was at his mother's yard. The defence therefore, as is usual in this jurisdiction, was that of alibi and as well that Mr. Sydney James fabricated the case against him being actuated by malice.

The learned trial judge left for the jury's consideration, the question of provocation and of course the question of self-defence which arose on the Crown's case. He also was very careful insofar as the warning he gave as to visual identification and the caution which the jury ought to have in mind in considering visual identification evidence. That evidence came entirely from the solitary eyewitness, Mr. Sydney James. As to that, the evidence was, in our view, clear beyond a peradventure. The incident took place at 9:30 in the morning. Mr. James was at a vantage point some three chains away looking down at the incident and was able both to see and to hear what took place. He knew both men before and under cross examination, he certainly was not in any way shaken.

In our view, the evidence was overwhelming, a view which is shared by counsel for the applicant this morning. In the circumstances, the application for leave to appeal will be refused.

Mr. Sutherland has asked us this morning to allow the period which the applicant served pending the hearing of the appeal to be discounted. The practice of this court in the ordinary case is to allow a period of three months from date of conviction as a discount and we therefore order that sentence commence to run on the 15th of March, 1939.