

CA CRIMINAL LAW

Rape

Sentence

• No argument in relation to appeal against conviction so amendment refused. Whether sentence of 7 (seven) years imprisonment at hard labour manifestly excessive — Appellant 21 years old no previous conviction — no serious injury caused to victim.

JAMAICA

Appeal against sentence allowed — Sentence of 5 (five) years imprisonment at hard labour substituted

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO. 238/87

✓ comp

Case referred to

R. Billings (1986) 8 Cr App

BEFORE: THE HON. MR. JUSTICE CAREY, P. (Ag.)
THE HON. MR. JUSTICE FORTE, J.A.
THE HON. MISS JUSTICE MORGAN, J.A.

REGINA vs. ALDANE MINTO

Eric Frater for the appellant

Brian Sykes for the Crown

September 29, 1988

CAREY, P. (Ag.):

In the St. James Circuit Court on the 8th day of December, 1987, the appellant Aldane Minto was convicted for the offence of Rape and sentenced to a term of seven years imprisonment at hard labour.

The matter comes before this Court by leave of the single judge on the question of sentence only.

In so far as the application for leave to appeal against his conviction goes, there was no argument in relation to that, so that aspect of the application must be refused.

The short facts are that the appellant had intercourse with a young woman on the 19th of July, 1987. It appears that she had gone to visit her boyfriend who is a brother of this appellant. At the material time that brother was away from the home.

The appellant's defence was consent but that defence was rejected by the jury upon a proper direction in that regard by the learned trial judge.

Mr. Frater has argued this morning that the sentence imposed, of seven years at hard labour, was manifestly excessive in all the circumstances. He pointed to certain mitigating factors; for example, he said that some force was used which apparently did not result in any serious injury to the victim. He said this was a youthful offender, some twenty-one years old and that he had no previous convictions.

He referred to an authority - R. v. Billam [1986] 8 Cr. App. R. (S), in which it was said in England that the starting point for these sort of offences should be some five years.

The learned trial judge in imposing sentence observed that in England the starting point was eight years and he would discount that by one year. There seems some disparity in the view taken by Mr. Frater and the learned trial judge.

So far as this Court is concerned, the range of sentence in this offence, where there is no humiliating conduct in which the victim is required to participate or there are no other aggravating factors, e.g., the use of firearm or knife or the like, has been between five to seven years.

We are disposed to reduce the sentence in this case because we are impressed by the fact that this was a young man of twenty-one years who had no previous convictions and that no real violence resulting in any serious injury was caused to the young woman. This is not to minimise the gravity of the offence in any way. We will therefore allow the appeal and substitute a sentence of five years imprisonment at hard labour in place of that imposed by the learned trial judge.

The Court directs that the sentence begin to run from the date of conviction.