

CA: Criminal Law - Gun Court - Trial (Illegal possession of firearm) Sentence - 12 years imprisonment at hard labour  
Sentence - whether manifestly excessive - Appeal in the security guard - no previous conviction for violence  
Held allowing appeal against sentence, sentence manifestly excessive term of seven years imprisonment at hard labour substituted.  
JAMAICA  
IN THE COURT OF APPEAL  
SUPREME COURT CRIMINAL APPEAL NO. 107/88  
Processes reg. 5 of the  
Vcomp

BEFORE: THE HON. MR. JUSTICE ROWE, PRESIDENT  
THE HON. MR. JUSTICE WRIGHT, J.A.  
THE HON. MR. JUSTICE DOWNER, J.A.

REGINA

VS.

ALTON PHILLIPS

No appearance for the applicant

Miss C. Richards for the Crown

May 15, 1989

ROWE, P.:

Alton Phillips, on his plea of guilty, was convicted in the Gun Court on the 3rd of May, 1988 for illegal possession of a firearm and he was sentenced to serve twelve years imprisonment at hard labour.

The evidence which came from the Crown was of the greatest simplicity. On the 23rd of September, 1987 at about 7:00 a.m. a Corporal of Police in the Williamsfield Police Area in Manchester, received a report and he went to a place called Bluefields. There he saw a group of men. The group of men ran, except for the applicant and when the police searched him there was a .38 special calibre revolver with two .38 special super automatic calibre cartridges in his pocket. When he was asked how he came in possession of this he said: "Is a man me borrow it from yesterday, Officer, because we nuh have any gun".

On these very simple facts the applicant's Counsel advanced in mitigation that the applicant had never had any previous convictions of violence and the applicant did not intend to use the firearm.

There are two interesting features of this case. One feature is that this applicant admitted to ten previous convictions, all for dishonesty. Between 1973 and 1985 he had been involved in ten incidents all to do with motor cars. He was either stealing cars or driving away motor cars without the owners' consent, and it appears from the explanation which was offered by the applicant's Counsel, that on this occasion the applicant was in Manchester doing some kind of business related to a motor car.

The other feature of the case which we find of some interest is the antecedent history of this applicant, of whom it was said that upon leaving school he obtained employment as a labourer in the Corporate Area and at the time of his arrest he was employed as a Security Guard with the Aerocan Construction Company earning \$517.60 fortnightly.

On the face of it then, a man who had had ten previous convictions for dishonesty and who had been to prison repeatedly between 1974 and 1985, was now employed as a Security Guard. We think that employers who provide security services should endeavour to recruit persons of good character.

We think, however, that notwithstanding the peculiar criminal career of the applicant, a sentence of twelve years hard labour was manifestly excessive considering that the highest sentence that he had ever served up to that time was one of two years imprisonment at hard labour.

The learned trial judge expressed himself, and we think quite rightly, that the possession of a firearm in circumstances where it can be used against innocent people is a very very serious offence indeed, and he must have felt that this man is such a nuisance that he ought to be put away for a long time. That, however, would not justify, in our view, a sentence which is clearly out of line with the current sentences for similar offences. We will, therefore, treat the application for leave to appeal against sentence as the hearing of the appeal. We will allow the appeal against sentence and we will substitute a sentence of seven years imprisonment at hard labour to commence three months from the date of the applicant's conviction.