

SUPREME
KINGSTON
JAMAICA

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IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO. 51/88

BEFORE: THE HON. MR. JUSTICE CAREY, PRESIDENT (AG.)
THE HON. MISS JUSTICE MORGAN, J.A.
THE HON. MR. JUSTICE GORDON, J.A. (AG.)

REGINA

VS.

DANNY COOKE

APPLICATION FOR LEAVE TO APPEAL

Hugh Wildman for the Crown

September 25, 1989

CAREY P. (AG.):

In the High Court Division of the Gun Court held in Savanna-la-mar in the parish of Westmoreland on the 22nd of February, 1988, before Walker J. sitting alone this applicant (who was charged with another man, who was acquitted) was convicted on an indictment which charged him for illegal possession of a firearm and burglary and larceny. He was sentenced to concurrent terms of twenty years hard labour in respect of each of these counts. He now applies for leave to appeal his conviction and sentence.

We must say at once that the learned trial judge gave his full attention to the issues which fairly

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arose in this case. The Crown's case depended, first of all, on visual identification and the learned trial judge for reasons which seemed to us eminently right, rejected that evidence. The basis of the conviction rests on other evidence, on circumstantial evidence. There was evidence before the learned trial judge that in the course of the burglary this applicant had been chopped by one of the occupants of the house. A witness, a police officer, who was on duty at the Savanna-la-mar Hospital testified that this applicant attended at the hospital for attention, suffering from injuries which were similar to those inflicted by the householder. There was also evidence given by the police officer as to a statement made by this applicant, which if accepted, would show that he was a participant in the events that took place that night.

The applicant made an unsworn statement in which he denied that he had participated in any burglary. He said he was on his way home on the early morning in question when he was pounced upon by a group of men. He said that the men told him that he, the applicant, was a P.M.P. supporter and he said that one of the men used the knife to cut him and in that way explained the injury and the necessity to attend at the Savanna-la-mar Hospital for treatment.

The learned trial judge considered very careful the question of identification - there were two witnesses who had given evidence in that regard - and he rejected the evidence, one, on the basis that he could not believe what she said and the second, really because there was evidence of confrontation. He thought that at least the police had contrived for one of the occupants of the house to see the applicant bandaged at the police station in circumstances in

which he was bound, or at the very least tempted to assert that the applicant had been the intruder. Nevertheless, as we have said, he addressed his mind to the circumstantial evidence adduced and we can see no reason whatever to fault his approach. In the circumstances therefore the application for leave to appeal conviction will be refused.

On the question of sentence, the record discloses that on the 2nd of April, 1985, the applicant was convicted in the Westmoreland Circuit Court, I rather suspect it is the High Court Division of the Gun Court, and he was sentenced upon his conviction for robbery with aggravation, shooting with intent and illegal possession of firearm to concurrent terms of eighteen months imprisonment at hard labour; that must have been a most merciful sentence. He was released in 1986, and the offence for which he was convicted was committed on the 24th of July 1986. Plainly he has not learnt from the error of his ways.

We see no reason therefore to interfere with the sentence which the circumstances clearly demanded. The application in that respect also will be refused. The Court will order the sentence to begin to run from the 22nd of May, 1988.