

C.A. Criminal Law - Wounding - Sentence 2 years hard labour
Appeal against sentence only.
C.A. "This was a case which called for condign punishment"

Appeal Dismissed

JAMAICA

IN THE COURT OF APPEAL

RESIDENT MAGISTRATE'S CRIMINAL APPEAL # 34/87

COR: The Hon. Mr. Justice Carey, J.A.
The Hon. Mr. Justice White, J.A.
The Hon. Mr. Justice Downer, J.A. (Ag.)

REGINA VS DENNIS SAMUELS

Mr. Richard Brown for appellant

Mr. Canute Brown for Crown

May 21, 1987

CAREY, J.A.:

In the Resident Magistrate's Court at Linstead on the 16th of February of this year, the appellant was convicted for the offence of wounding one Patrick Graham, and upon his conviction was sentenced to a term of 2 years imprisonment at hard labour. He now appeals to this Court in respect of his sentence only.

Learned counsel who appeared before us this morning has submitted very sturdily that the sentence is excessive, having regard to the evidence. The short facts which we need notice for the purpose of this appeal are as follows: On the 19th June, 1986, the victim of this offence, one Patrick Graham, was at his mother's premises, a place called Lemon Ridge in Saint Catherine, when, at about 2:30 p.m., this appellant and two of his brothers came through a gate into these premises. Initially, the complainant paid no attention because the premises are often used, as he said, as a short-cut. But these persons, instead of

using it as a short-cut, jumped onto the verandah and all, being armed with machetes, proceeded to inflict injuries upon their unfortunate victim. The evidence discloses that he was chopped by all of them and he received injuries on his right shoulder, right elbow, right side of the forefingers of his right hand. In order to escape their attention, he managed to run into another part of the house and locked himself in. These persons, including this appellant were not content to put a halt to the activities because they started throwing stones at the house. The victim in fact did himself fling two stones, and then they all ran off.

Learned counsel initially said that the sentence was excessive having regard to the age of the appellant. We understand from him that the appellant is 21 years of age and ought to be treated under the provisions of the Criminal Justice Reform Act of 1978, which provides under Section 3(1) "that where a person has attained the age of 17, but is under 23 years, the Court, instead of sentencing the person to imprisonment, shall deal with him in other manner which is prescribed by the Act." Learned counsel had to concede, however, that he could not rely on those provisions because section 2 (c) exempts from such treatment, persons who are guilty of violence or threat of violence used in the commission of the offence.

The facts in this case show plainly that there was violence used. In our view, the circumstances of this offence were serious indeed, and we can do no more than to confirm the view which was formed by the learned Resident Magistrate, who in her findings, stated:

"I impose the sentence of 2 years at hard labour having regard to all the circumstances, including the intent with which the defendant entered the premises. In my opinion, what took place was tantamount to attempted murder."

We do not dissent to that approach to the case. This was a case which called for condign treatment. As the learned Resident Magistrate

said, this was a vicious attack upon this person, upon his premises. It is true that the man is a young offender and that he had no previous conviction, but having regard to the state of violence in this country, this Court must set its face very firmly against such continued conduct.

We can find no ground for saying that the learned Resident Magistrate erred in principle in imposing the sentence which she in fact imposed. The result of all this, is that the appeal must be dismissed, and the sentence is affirmed.