

CA - Common Law - Gun Court - Trial (Illegal possession of firearm and assault with intent to rob) - Sentences - Twelve years and five years imprisonment respectively. The man, after appeal, changed plea to "guilty", was then sentenced to 7 years imprisonment and substituted for 12 years. To run together with sentence of five years. It was for the first time.

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO. 60/88

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

REGINA

VS.

EVERALD CHAMBERS

Applicant unrepresented

Miss Marcia Hughes for Crown

February 13, 1989

ROWE P.:

Everald Chambers was convicted in the Circuit Court Division of the Gun Court on the 11th of March, 1988 and he was given sentences of twelve years and five years imprisonment at hard labour for illegal possession of firearm and assault with intent to rob, respectively.

This was a case in which at 4:45 a.m. on the 18th of May, 1986, Mr. Robert Smith was sitting in a parked car on Monterey Avenue in Patrick City when he was approached by three men. Two of them came to the driver's side. Both were holding firearms and they ordered Mr. Smith to get out of his car. One man left to go to the passenger's side and Mr. Smith who is an ex-army officer took the opportunity to

draw his own firearm and he fired at the man who was then opening the door for him at his driver's side. That man, Mr. Smith said, was the applicant who was shot three times. A home-made three barrel shot-gun dropped from the man's hands. An imitation firearm was later recovered. Mr. Smith said that the applicant ran away from the scene. Later on that morning Mr. Smith went to the Kingston Public Hospital where he saw and identified the applicant as the man who had opened the door and ordered him out of the car at the point of firearm.

Half-way through the trial the applicant changed his plea from "Not Guilty" to one of "Guilty". Through his Attorney, the applicant admitted the Crown's case but sought to excuse his participation by saying that he was pressed into the activity by the other two men and that what he did was not something which he had premeditated.

These applications for leave to appeal are in relation to the sentences. The applicant was given twelve years imprisonment for having possession of a firearm illegally. At the time of his trial he had no previous conviction. He received quite serious injuries from having been shot by his would-be victim and the question for us is whether in the circumstances that sentence of twelve years is above the upper limit which ought to be permitted to stand in these cases.

We are of the view that given the fact that the weapon which the applicant had was a home-made shot gun as to which there was no evidence that that particular weapon could actually be fired, although the offence is a very serious one, it is not quite as serious as if the weapon was a K.16 firearm. We think that in all the circumstances, the sentence of twelve years imprisonment on Count I is manifestly excessive and ought

to be reduced. We take into consideration, of course, the fact that the applicant had the decency to plead guilty and to retract his earlier suggestion, that Mr. Smith had come upon him on the road and had deliberately shot him for no reason at all.

This application for leave to appeal ought to be allowed. We think that a sentence of seven years imprisonment at hard labour should be substituted for that which was imposed on Count I.

It is ordered that the sentence of seven years hard labour should run together with the sentence of five years on the second count and that both sentences should commence three months from the date of convictions.