

C.A. CRIMINAL LAW — (1) Illegal possession of firearm (2) Robbery with aggravation — Sentence 7 (seven) years and 15 (fifteen) years imprisonment at hard labour each — recommendation that applicant be not eligible for parole until he has served at least 10 (ten) years of the sentence. Whether sentence manifestly excessive — (Applicant at least 45 years old — had 14 previous JAMAICA convictions for dishonesty last for leaving by a truck — assault who was armed with firearm and has not been detected — took money from victim's pocket in robbery) Applicant a small time parasite using his wits to prey upon gullible citizen.

IN THE COURT OF APPEAL (No merit as upheld against conviction) Appeal against sentence allowed Sentence of 15 (fifteen) years on Count 2 reduced to 10 (ten) years — recommendation as to minimum sentence to be served before parole set aside. [Comments on principles/purposes of sentencing] ✓ Comp

No case referred to

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

REGINA

VS.

LLOYD BADROE

Sentence

Applicant unrepresented  
Miss Verna Bennett for Crown

July 18 and 28, 1988

ROWE P.:

This applicant, described by the learned trial judge as a "compulsive thief" was sentenced to seven (7) years imprisonment at hard labour for illegal possession of a firearm and to fifteen (15) years imprisonment at hard labour for robbery with aggravation. We found no merit in either of the two grounds of appeal viz.:

- "(1) Unfair trial;
- (2) Insufficient evidence to warrant a conviction;

and consequently we refused the applications for leave to appeal against convictions. We however varied the sentence on Count II and to understand why this was done we must refer to the facts.

Mrs. Adlyn Plunkett, a woman of sterling character who demonstrated in cross-examination that she was one witness who could not be corrupted with an offer of a money bribe, was the victim of two confidence tricksters. On a Monday in August 1985, at a Wholesale shop in Linstead, St. Catherine, Mrs. Plunkett, a customer, was drawn into casual conversation first by one man and then the applicant, apparently a total stranger was invited into the discussion. Later that day Mrs. Plunkett was walking home when she saw the same two men, viz., the applicant and the other man, walking ahead of her. First they engaged her in friendly bantering. They wanted her to give them something from her bag. They wanted "a wear" off the gent's watch she had on her left wrist. Suddenly, after her gentle denials that she had any money and her expressed unwillingness to lend the watch, the men's mood changed. "Give the man the bag" the other man commanded. She looked towards the applicant, and then she realized that the other man had a thing looking like a gun pointing at her. The applicant took Mrs. Plunkett's bag containing \$2,040.00 and her wrist-watch valued at \$200.00. The victim was extremely frightened but was otherwise unhurt. Both men walked along with her as if nothing had happened and after a short while, disappeared.

Mrs. Plunkett reported the robbery to the police and gave a description of her assailants. Some eighteen months later Mrs. Plunkett saw the applicant in Linstead and pointed him out to the police. His defence was a denial of the offence. When he came to pass sentence Wolfe J. had the antecedents of the applicant which showed that he was at least 45 years of age, had accumulated fourteen previous convictions, all for dishonestly, the last of which was for larceny by a trick. The trial judge was obviously affected by the numerous convictions for dishonesty and by the fact that on three separate occasions the applicant had been given opportunities to reform. He said:

"You need a long term of imprisonment to bring you to your senses. You have had a lot of chances. You just go around the place stealing. You are a compulsive thief. I get the impression that you will never stop stealing."

With those firm impressions in his mind the trial judge imposed the sentence of fifteen (15) years imprisonment at hard labour for the robbery with aggravation and recommended that he be not eligible for parole until he had served at least ten (10) years of the sentence.

We think that this case raises an important point of principle as to the purposes of sentencing. The trial judge set out to punish the applicant for being an incorrigible thief. In other words he wished the applicant to receive his just deserts for his crime. The sentencing judge did not contemplate that this applicant could be reformed, a view with which we can readily associate. He thought, however that the public should be protected from dishonest practices of the applicant for a protracted period.

Accepting that the paramount purpose of sentencing in criminal cases is for the general protection of the public, the sentencing judge is required to impose a sentence which fits the crime, that is to say, the sentence imposed must bear some reasonable relationship to society's abhorrence of the particular crime. Not only must the sentence fit the offence, but it must also fit the offender. Young offenders are routinely treated in a different manner from adult offenders; first offenders are viewed differently from hardened recidivists.

In this case there was every justification for a custodial sentence which would act as a deterrent to the applicant and incapacitate him from committing similar crimes during the period of incarceration. What is at issue is the length of the period of imprisonment. Robbery with aggravation with the use of a firearm or an imitation firearm is an extremely serious offence which has an unsettling effect upon the peace

and tranquility of the country. But even with this very serious offence there are degrees of seriousness. Some robbers play for very high stakes and attack at points where they expect huge monetary rewards. Other robbers use a degree of violence towards their victims and they attract sentences near the upper end of the punishment scale.

The sentencing judge must discriminate between these offences where offenders who can only be adequately and proportionately punished at the upper end of the scale and those offences which though serious and of much nuisance value, do not present the same level of danger to the society. This applicant was, so far as his criminal record goes, a small-time parasite using his wits to prey upon gullible citizens. His new associate who has not been detected was armed with a firearm and took the more prominent position in the robbery. To sentence the applicant as if he had been a persistent robber, was to pass a sentence out of proportion to the offence committed.

In our view the sentence of fifteen (15) years imprisonment at hard labour was manifestly excessive and we accordingly granted leave to appeal against sentence, on Count II, and varied the sentence to one of ten (10) years imprisonment at hard labour. We set aside the recommendation as to the minimum sentence to be served before grant of parole, and order that the sentences on both counts be made to run from the date of conviction.