C.A. CRIMINAL LAW – Gun Court – Sentence – 1 Count illegal possession of firearm, 2 counts robbery with aggravation – 1 count common assault – On Counts 1-3 sentenced to 10 years at hard labour – Gun Court 4 – sentenced to 2 years at hard labour to run consecutively with sentences on counts 1-3. Whether sentence excessive. Appeal dismissed. Per curiam "Circumstances of extremely serious"

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO. 132/87

✓Comp

No case referred to

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

REGINA

VS.

MICHAEL NELSON

No appearance for the appellant

Miss V. Bennett for the Crown

May 31, 1988

CAREY, J.A.:

This matter comes before the Court by leave of the single judge as respects sentences imposed upon this appellant.

On the 6th of August, 1987, in the High Court Division of the Gun Court, he was convicted for the offences of Illegal Possession of a firearm, 2 counts of Robbery with Aggravation and a fourth count for common assault. He was sentenced to terms of 10 years imprisonment at hard labour in respect of the first three counts of the indictment and as to the fourth count a sentence of 2 years imprisonment at hard labour was imposed, that sentence was made to run consecutively with the sentences on counts 1 to 3.

The appellant pleaded guilty to these counts and the single judge was of the view that some compassion ought to be paid to a person who pleads guilty. Unfortunately, the facts of the case were not included in the record. Insofar as the

facts of the case go, they are, regrettably, common place nowadays. On the 11th of April, 1987, at about 9:10 in the evening, Mr. Frank Davis and his girlfriend Sheryl Anderson were walking along Gerbera Drive in Mona when they were pounced upon by two men, one of whom was armed with a pistol and these men proceeded to rob them of their jewellery and other valuables. Sometime later that same evening in the same Mona area, a J.D.F. officer had just arrived home in his car and was confronted by a gunman who pointed a gun in his ear. He noticed that the gunman had a companion who was menacing another youth who lives in the premises as the J.D.F. officer. The officer was commanded to be silent and to get out of the car and thereafter he was marched towards the house. In the meantime the gunman's colleague was giving orders that the officer should be shot. Fortunately, there was no compliance with this direction. The officer then observed that the gunman had lowered the firearm and he used this opportunity to grab hold of it, whereupon a tussle ensued, in the course of which, the J.D.F. officer was bitten on his hand. Nevertheless, he was able to shout for help which aroused persons about who came to his assistance. Both men fled. This appellant was chased by neighbours, the hue and cry having been raised. He was caught and brought back. The firearm which he had was recovered and in his possession was a pair of earrings belonging to Miss Anderson which had been robbed earlier that evening. When he was arrested and cautioned he said - "Boss, mi a try a thing and it no work". Those were true words, indeed, because he was caught 'flagrante delicto'.

The matter of sentence is always one of great concern and difficulty. We noticed that the appellant is a young man with a previous conviction for larceny from the person, in respect of which he was sentenced to pay a fine of $500 or to serve 3 months at hard labour. One supposes that he served that term.

The sentence imposed, in our view, is within the range for offences of this nature. The learned trial judge indicated that, had he pleaded not guilty, and the case had been tried, he would have been minded to impose a sentence of 15 years hard labour in respect of the offences charged on Counts 1 to 3. We do not disagree with that approach to the matter. The circumstances here were extremely serious. The incidence of this brigandage is far too high. The appellant is fortunate that he is facing mainly counts for robbing with aggravation, because with the gun in the J.D.F. officer's ear, and being prompted by his colleague, but for the courageous action of this officer, he might well have faced some more serious charge.

In the result, we do not think, having regard to the serious nature of the circumstances of this case, that we can interfere with the sentence, which we will order to run from the date of his conviction. Accordingly, the appeal will be dismissed.