JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NOS. 6 & 7 OF 1991

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

REGINA

VS.

OWEN RODRIQUES
ANTHONY PLUMMER

Dennis Daly, Q.C. for Rodriques

L.H. (Bunny) McLean for Plummer

Hugh Wildman for the Crown

January 27, 1992

ROWE P.:

The appellants were convicted in the Clarendon Circuit Court before Wolfe J. and a jury, of wounding with intent to do grievous bodily harm to Eup emiah Larman and were each sentenced to serve a term of fifteen years imprisonment at hard labour.

At trial both accused were unrepresented. The evidence for the prosecution as summarised by the trial judge was that in the early morning of Saturday, October 7, 1989, Miss Larman and her daughter-in-law were at Beckford Crawle in Clarendon awaiting transportation to take their goods to the market. They are higglers. While there a group of men numbering between thirteen and twenty including the two appellants set upon them. Plummer who was armed with a gun menaced the women while Rodriques used a machete to chop the left arm of Euphemiah Larman, amputating it. The witnesses testified that the hand was held by a brother of Rodriques at the time when the injury was inflicted. Rodriques in defence said that

he was set upon by a son of Miss Larman who chopped him with a machete. He tried to defend himself against that attack when Miss Larman intervened and chopped him. In defence of himself against Miss Larman and her son, Miss Larman received her injury.

Plummer's defence was an alibi. He said he was not present at Beckford Crawle on October 7, 1989 and he did not take part in the incident involving Miss Larman.

Mr. Daly filed a single ground of appeal on January 24, 1992 complaining that the sentence imposed was manifestly excessive having regard to all the circumstances. But there was a rider to the effect that the appellant would seek leave to file additional grounds of appeal upon receipt of the transcript of the evidence. Not surprising therefore, Mr. Daly applied to the Court for an order that the evidence be transcribed and supplied to the appellant. He grounded this application on the basis that Rodriques was unrepresented at trial and although he could find no complaint with the summing-up, he hoped that a perusal of the transcript of evidence might disclose information on which to fix a complaint. On behalf of Plummer, Mr. McLean made a similar application.

We refused both applications. Rule 47(3) of the Court of Appeal Rules provides the manner in which the Record in an appeal from the Circuit Court ought to be made up. The Record must include the summing-up and notes of any particular part of the evidence or cross-examination relied on as a ground of appeal. Only in capital cases are the notes of evidence included in the Record as a matter of course. Provision is made however for a single judge or the Court itself to order the production of part or the whole of the evidence. This discretion can only be exercised where the summing-up is unclear or there is an allegation that the trial judge misquoted or omitted material portions of the evidence. Where there is no allegation that the summing-up is deficient in any respect, there can be no basis for the exercise of discretion to order the production of the entire transcript of the evidence.

Mr. Daly turned his attention to the question of sentence. In fixing the length of a sentence this Court will take into consideration the severe over-crowding in the adult correctional centres and the facilities which now exist in those institutions. A sentence of fifteen years at hard labour should only be imposed for the gravest crimes.

In the instant case the wound was serious but was said to be not life-threatening. Only one blow was struck. Although the appellant Rodriques had two previous convictions for violence, we think that a sentence of ten years hard labour would be adequate punishment and accordingly we propose to reduce the sentence to that term.

Plummer had no previous conviction. His culpability seemed less than in the case of Rodriques and we therefore propose to reduce his sentence to seven years imprisonment at hard labour.

In each case the sentence will commence on the 14th of April, 1991.