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JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO. 68/93

BEFORE: THE HON. MR. JUSTICE RATTRAY, P.
THE HON. MR. JUSTICE FORTE, J.A.
THE HON. MR. JUSTICE GORDON, J.A.

REGINA

VS.

PATRICK JAMES

Miss Sandra Johnson for Applicant

Dr. Diana Harrison for Crown

September 20 and 23, 1993

RATTRAY P.:

This is an application for leave to appeal against the conviction of the applicant and the sentence imposed in the High Court Division of the Gun Court. The application for leave to appeal against conviction was withdrawn and the matter proceeded as an application in respect only of sentence.

The trial took place on the 27th of May, 1993 before Beckford J. (Ag.). The applicant Patrick James was charged with the offences of illegal possession of a firearm and ammunition and was sentenced to imprisonment for a period of six years on count one and two years on count two, both sentences to run concurrently.

At the end of the trial when the Learned Trial Judge convicted the applicant she requested a Probation Report. The applicant is a young man of 24 years of age, with no previous convictions. It appeared therefore at that stage it was the view of the Learned Trial Judge that if a Probation Report was favourable to the applicant she would give consideration to the question of a sentence other than one of imprisonment. However, when the case resumed she imposed the custodial sentence already stated.

We have given very serious consideration as to whether in all the circumstances the sentence is appropriate. We have had the benefit of seeing the Probation Report which indeed is very positive and favourable to the applicant. We have also had the benefit of hearing from the Probation Officer whom we requested to come before us and she supports the Report. The applicant has also been brought before us. We have had therefore the opportunity of seeing him, and we have explained to him the course which we intend to adopt, to which he has agreed.

Although therefore the conviction is proper, it is our view that this applicant, a young man, with a good record, could benefit from supervision and should be given the type of sentence which will allow that supervision without his being subject to serving time in custody.

We therefore set aside the sentence imposed on count 1 and we substitute therefor a sentence of three years imprisonment. The sentence on count 2 will remain but both sentences will run concurrently. The concurrent sentences however will be suspended for a period of three years. We also make a suspended sentence supervision order for that period during which time the applicant will report to and come under the supervision of a Probation Officer and carry out such instructions as the Probation Officer will give from time to time. The applicant will

have to provide an address at which he will reside, appropriate and satisfactory to the Probation Officer. He will not be able to change that address without the consent of the Probation Officer. This we regard as the appropriate sentence in this particular case after a consideration of all the relevant circumstances including the offence as well as the offender.