

C.A. CRIMINAL LAW - Offences against Persons Act? - appeal from RM Court
- vicious and unprovoked attack - whether sentence
excessive - appeal dismissed.

J A M A I C A

IN THE COURT OF APPEAL

RESIDENT MAGISTRATE CRIMINAL APPEAL # 18/87

COR: The Hon. Mr. Justice Rowe, P.
The Hon. Mr. Justice Carey, J.A.
The Hon. Mr. Justice White, J.A.

Cases referred to
Gibson 24 W.I.R. 296.

R E G I N A

v.

PHARO DIXON

Paul Nembhard for appellant

Kent Pantry & Miss Marlene Harrison for Crown

9th March, 1987

CAREY, J.A.:

This is an appeal against a sentence of 18 months imprisonment at hard labour which was imposed upon the appellant by the Resident Magistrate for the parish of St. Elizabeth sitting at Black River on the 16th day of July last year. The facts and circumstances which he accepted, were that on the 15th of February last year, while the complainant was in his field he was attacked by the appellant who began by throwing stones at him and afterwards by inflicting injuries with a machete, one of these to his forehead and the other to his left hand. The result of all this was that the injured man was in hospital for some 12 days.

The learned Resident Magistrate in his findings stated that this was a vicious attack without any element of provocation and that

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finding is certainly supported on the evidence which we have seen. The learned Resident Magistrate also noted that in his view, when a person chops at another's head, he means business.

Mr. Nembhard valiantly argued before us this morning that the sentence was in all the circumstances manifestly excessive. He said the learned Resident Magistrate was in error because he ignored the previous good character of the appellant. So far as that is concerned, that is not in accord with the record. The learned Resident Magistrate heard a witness as to character who was called on behalf of the appellant, one Inspector Vernon Nembhard, and he also heard an address by counsel who then appeared for the appellant as to the good character of the appellant. That point cannot, in our view, be sustained. Learned counsel also referred to a case of Gibson 24 W.L.R. 296, and some obiter dicta of Mr. Justice Graham Perkins. We must doubt whether in that case, which was an application for leave to appeal treated as the hearing of the appeal, where the appeal was allowed and a new trial ordered, any statement made by the Court upon the matter of sentence would have been necessary and are of opinion that any pronouncement would hardly be helpful in these circumstances.

The learned Resident Magistrate having clearly stated that he was imposing a custodial sentence, pointed out in his findings the basis for that sentence, namely, that this was a vicious and unprovoked attack. In all the circumstances, we are not inclined to interfere in the sentence which has been imposed. We can find no error to ascribe to the learned Resident Magistrate. The appeal will be dismissed and the sentence affirmed. We accede to the application of learned counsel and the sentence will commence to run from the date of the conviction.