JAMAICA

IN THE COURT OF APPEAL

RESIDENT MAGISTRATE'S CRIMINAL APPEAL NO. 48/90

COR: THE HON. MR. JUSTICE CAREY, J.A.
THE HON. MR. JUSTICE WRIGHT, J.A.
THE HON. MISS JUSTICE MORGAN, J.A.

REGINA

VS

STENNETH STEEL

Appellant in person

Mr. Hugh Wildman for the Crown

10th December, 1990

CAREY, J.A.

In the Resident Magistrate's Court for the parish of Westmoreland held at Savanna-La-Mar on the 5th of April, 1990 this appellant was convicted on an indictment which charged him for housebreaking with intent and he was sentenced to serve a term of 3 years imprisonment at hard labour.

The short facts are that on the early morning of the 4th of February, around 3:30, a Miss Verona Allen a business woman who lived in West End, Negril in Westmoreland was awakened at about 5:00 a.m. to notice that her door-knob was being turned and when she looked out through the back door she saw this appellant whom she knew as "Ten Ten." She called out in picturesque language "chiefing Ten Ten move from the door" but the would-be intruder far from complying with that polite request, used certain Jamaican expletives and threatened to shoot her in some part of her anatomy, that part being described also in Jamaican expletives. Thereupon she screamed out "thief, thief, thief." Another of the occupiers of the premises a Miss Marie Kameka who is well known to this appellant, indeed he tells us that she was his former girl friend also called out

"thief, thief" and he made off. He was subsequently arrested. His defence was a denial.

In this Court he has tried to say that the learned Resident Magistrate ought not to have believed the witnesses at all. Really, there is no merit in the appeal as to conviction and so far as that is concerned, it is dismissed.

However, we were concerned about the sentence which was imposed, which was the maximum sentence allowed in that court namely, three years at hard labour. We think that sentence was manifestly excessive and unjustified in the circumstances of this case.

The appellant, it is true has previous convictions. He has some four previous convictions including two for larceny and one for robbery. It is not quite clear what the fourth is for. But the last of these convictions was in 1963. That ought to demonstrate that the appellant seemed to have been trying to lead an honest life. At least, that has to be said in his favour, and the learned trial judge should reflect that fact in his sentence. We do not think that that was taken into account. The appellant has served almost eight months in prison. We would have thought that a sentence of twelve months imprisonment would have been adequate for this case which is just a little short of vagrancy. In the circumstances therefore, what we propose to do, is to set aside the sentence imposed in the court below and impose such sentence as will allow for his release tomorrow the 11th of December. To that extent the sentence is varied.