

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO 9/2009

BEFORE: THE HON. MR JUSTICE PANTON, P.
THE HON. MR JUSTICE MORRISON, J.A.
THE HON. MR JUSTICE BROOKS, J.A. (Ag)

DEMAR WATSON v R

Dwight Reece for the Applicant

Ms Kathy-Ann Pyke and Greg Walcolm for the Crown

12 April 2010

ORAL JUDGMENT

MORRISON, J.A.

[1] This is an application for leave to appeal against conviction and sentence in the High Court Division of the Gun Court held at May Pen in the parish of Clarendon on 1 December 2008. Having found the applicant guilty of two counts on the indictment namely: illegal possession of firearm and shooting with intent, Daye J sentenced him to eight years imprisonment on count one and 15 years imprisonment on count two. The sentences were ordered to run concurrently.

[2] From this conviction, the applicant's application for leave to appeal went firstly before a single judge of this court, who considered that the matter turned entirely on issues of identification and credibility and that there was no basis to grant leave to appeal. As is his right, the applicant has renewed the application before this court.

[3] Before us, counsel for the applicant Mr Dwight Reece, who appeared for the applicant at the trial, again appeared and quite candidly and, if I may say so, properly, indicated to the court that, having perused the transcript of the evidence and the learned trial judge's summation, he was unable either to support the grounds originally filed by the applicant himself, or to advance any further argument on behalf of the applicant. On the basis of the material that appeared in the transcript, we share Mr. Reece's assessment of the situation.

[4] The allegations were that on 6 April 2008, the applicant unlawfully had in his possession a firearm without a licence and that on that day he shot with intent to causing serious bodily harm at Mr Phillip Dawkins.

[5] The sole eye witness for the prosecution to that incident was Mr Phillip Dawkins who was the virtual complainant. Mr Dawkins' evidence was that, on the day in question, he was in the vicinity of Canaan Heights, in the parish of Clarendon, when the applicant came upon him and fired a shot at him. He was able to recognize the applicant because

he was someone well-known to him. He had known him for at least 17 years. He gave evidence that he knew his family, his mother, and a brother of the applicant who attended Bustamante High School.

[6] The learned trial judge assessed the issue of identification very carefully, particularly in the light of the defence put forward on behalf of the applicant in his unsworn statement in which he basically denied any involvement in the incident for which he was charged. He told the court in his unsworn statement that he lived in Canaan Heights. He was a higgler. He said: "I didn't shoot at him, I didn't have any gun. He is telling lie on me sir, because of his brother's death. He is trying to frame me sir".

[7] The learned trial judge accepted that the issue was one of identification. He gave himself a very careful and full direction on the question of identification. He also took into account a suggestion in the case which was borne out by the unsworn statement given by the applicant himself, that there were issues of motive involved in the case, that the applicant might have had a motive to fabricate these charges against him because of the death in an alleged incident of gang warfare of brothers of the complainant.

[8] The learned trial judge accepted the evidence of the complainant. He also, having taken into account the warning which he had given

himself as to identification, accepted that on the Crown's case there was a sufficient opportunity to identify the applicant. He also considered the issue of motive and credibility in the light of alleged gang warfare in the Canaan Heights area. He took that into account and came to the conclusion that the applicant was guilty as charged.

[9] The learned trial judge devoted a fairly long time to the question of sentencing and it is obvious that he considered this very carefully as well and at the end of the day, he came to the conclusion that the appropriate sentence for illegal possession was eight years and for shooting with intent was 15 years imprisonment. As he told the applicant, "I can't do much more than that, it should be 18", but taking into account the fact that he had two previous convictions, which were irrelevant to the offences for which he was charged, he gave the sentence of 15 years imprisonment.

[10] It has not been contended, that this sentence was manifestly excessive and Mr Reece has not contended that this morning.

[11] In the result, the application for leave to appeal is dismissed and the sentences are to run from 1 March 2009.