

Judgment 100

IN THE COURT OF APPEAL

P.M. CRIMINAL APPEAL NO: 76/82

BEFORE: The Hon. Mr. Justice Rowe, J.A.
The Hon. Mr. Justice Carey, J.A.
The Hon. Mr. Justice Campbell, J.A. (Ag.)

FENTON WILLIAMS v. R.

Mr. H. Edwards, Q.C. for the Appellant

Mr. L. Campbell for the Crown

28th September, 1982

ROWE, J.A.

Fenton Williams, aged 19 years, was convicted in the Resident Magistrate's Court for the parish of Clarendon for the offences of Assault Occasioning Actual Bodily Harm on the person of one Hilet Chambers, and he was sentenced to a term of imprisonment of twelve months with hard labour.

Before us this morning Mr. Edwards, who appears for the appellant, conceded that there was material before the learned Resident Magistrate on which he could convict for the offence charged, but he has argued that the sentence of twelve months imprisonment at hard labour was harsh and manifestly excessive.

The facts which came out in evidence before the learned Resident Magistrate were that on Friday the 2nd of April, 1982, at about 3.30 p.m., Hilet Chambers, who is a 19 year old unemployed girl, was at the playing field at James Hill in Clarendon and she and the appellant had a quarrel; he used indecent and abusive words to her, and according to her he threw a piece of stick at her which hit her on her right hand. The quarrel continued for some time afterwards, and she said he approached her a second time; he pointed his finger in her face twice and she boxed away the hand, whereupon he grabbed her in the front of her chest, boxed her and punched her on her neck. She fell to the ground and, she said, he was coming towards her with a knife and his friend held him.

She said that she sustained a swelling and her left eye pained her. She went to a doctor but there was no medical certificate before the learned Resident Magistrate. The constable to whom she made a report the same day said he saw her with bruises on her left knee and on her left jaw.

The defence admitted that there was a quarrel but said there was no fight, and the appellant denied throwing any stick at the complainant, and he denied boxing her over her eye.

In passing sentence the learned Resident Magistrate, did not, as it appears from the record, make any enquiry as to the antecedents of the appellant. As soon as the defence closed its case he straight away imposed a penalty of twelve months imprisonment at hard labour.

Mr. Edwards has brought our attention to the provisions of the Criminal Justice Reform Act of 1978, and he suggested that in a case of this nature the learned Resident Magistrate ought to have had in contemplation, if not the exact provisions of section 3 of that Act, the spirit of the Act. Here were two 19 year old young people who had a quarrel which ended in some degree of violence, but, from the nature of the injuries, very minor violence indeed.

Was there, we must ask ourselves, any necessity for the imposition of a custodial sentence in a case of this nature? Did the learned Resident Magistrate concern himself at all with the antecedents or the character of the man who was convicted before him? Did he in any way consider the possible effect upon this person of 19 years, who on the evidence before him must have been presumed to have had no previous conviction, of a custodial sentence of twelve months? The Law Reform Act of 1978 brought into force a number of alternative methods by which persons can be punished, especially persons under 23 years, other than sending them to prison.

This Court is unanimously of the view that the sentence of imprisonment in this case was wrong in principle; that to send a man of 19 years to prison for 12 months for thumping a boxing another 19 year old person which caused minor swellings, is to inflict punishment which is harsh, manifestly excessive, and is conduct which can bring into disrepute the sentencing policy

in the Resident Magistrate's Courts. We are of the view that notwithstanding that this is a case involving violence, when a Resident Magistrate is passing sentence in such cases in his court he should always be mindful that it is the policy of the law that custodial sentences should be reserved for really serious cases, and should only be imposed upon young persons as an absolute last resort after all other possible forms of punishment have been considered.. This is clearly not a serious case nor one in which a probation order or a fine would not be entirely appropriate.

The appellant in this case was in custody from the time of his sentence until he was granted bail by a Judge of this Court sitting in Chambers, on the 21st September, 1932. So between April and September he was in custody for a period of more than 4½ months for acts which could quite properly have been tried and disposed of in the Petty Sessions Court. We do not think that he should suffer any further punishment whatsoever. We propose to dispose of this appeal by ordering that, although he ought not to have been imprisoned in the first instance, since he has in fact spent time in prison, that period in prison should be regarded as his total sentence, and that his release from prison on the 21st September should be regarded as the end of the sentence. We, therefore, substitute for the sentence of 12 months imprisonment, a sentence which allows for his discharge on the 21st of September, 1932.