

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO 50/2011

**BEFORE: THE HON MR JUSTICE PANTON P
THE HON MISS JUSTICE PHILLIPS JA
THE HON MRS JUSTICE McDONALD-BISHOP JA (Ag)**

CORNEL GRIZZLE v R

Applicant unrepresented

Mrs Andrea Martin-Swaby for the Crown

28 and 29 May 2015

ORAL JUDGMENT

PANTON P

[1] This is an application for leave to appeal against conviction and sentence. The trial took place in the Western Regional Gun Court in Montego Bay on 9 and 10 June 2011 before D McIntosh J. The applicant was tried along with his son Adrian Grizzle for illegal possession of firearm (count one) and assault at common law (count two). They were sentenced on 14 June 2011 to terms of imprisonment of 12 years and three years respectively. The sentences were ordered to run concurrently.

[2] The application for leave to appeal was considered by a single judge of this court who indicated that the case was one of credibility and that the learned trial judge,

having accepted the witnesses for the prosecution as truthful, saw no reason to disturb his findings. The application was refused, and the sentences were ordered to commence from 14 June 2011. However, as was the applicant's right, he has renewed his application before us.

[3] Counsel who appeared on the applicant's behalf in the court below has indicated in writing to the registrar that he is no longer appearing for Mr Grizzle. He said that Mr Grizzle's mother advised him that she has retained "Queen's Counsel in Kingston" to argue the appeal. However, no Queen's Counsel has appeared or made contact with the registrar or Crown counsel. In fact no one has appeared to argue the appeal for Mr Grizzle.

[4] We have examined the transcript, particularly pages 157 to 181 in respect of the summing up of the learned trial judge, and we have not seen any reason why the conviction of Mr Grizzle should be disturbed. There is nothing that we have observed that would warrant disturbing the conviction.

[5] The evidence taken in this matter was very short. The complainants were Mrs Gloria Smith-Campbell and her daughter Sabrina Campbell. They both lived in Montpelier, Hanover. They said that the Grizzles and another man, who was not before the court, turned up in broad daylight on 8 November 2010 at the residence of the Campbells and demanded to know the whereabouts of Shawn, the son of Mrs Campbell. They were armed – all three with guns, and Sabrina said that the guns were pointed at her. Both complainants indicated how fearful they were at the sight of guns

in their yard at that hour of the day. They had not seen guns of that type before. When Mrs Smith-Campbell asked what they wanted her son for, the response of Cornel Grizzle was "Mek u see say we kill man in a broad daylight". This was clearly a demonstration of firepower aimed at instilling fear in the ladies.

[6] Mr Leslie Campbell, husband of Gloria and father of Shawn, came on the scene after this demonstration by the Grizzles and their accomplice. They walked off and the Campbells went to the police station at Sandy Bay in the parish of Hanover. The Grizzles say they also went to the police station. There was a discussion at the police station which ended with the Campbells making a report with regard to the incident. A few days later Shawn was murdered; that is, on 16 November 2010. On the following day, the Campbells went back to the police station and thereafter action was taken in respect of the incident that occurred on 8 November 2010. At the trial, the Grizzles gave evidence. They denied going to the Campbells' residence and stated that what the Campbells said was not true. The suggestion put forward by the defence was that the charges were being laid and pursued because of the death of Shawn.

[7] The learned trial judge, having seen the witnesses and having made careful assessment of their testimony and demeanour, concluded that the witnesses for the prosecution were the witnesses to be believed. He held that neither vendetta nor revenge was a motivating factor in the laying of the charges. He concluded that guns had been brought into play and pointed at the complainants. In any event, he said, even if the complaint was motivated by revenge, that was not important if the offences

had indeed been committed. They were in illegal possession of guns and they had assaulted the ladies. He found them guilty.

[8] This court, having examined the sentence imposed on count two has formed the view that there was an error in the imposition of that sentence as the maximum sentence allowed by section 43 of the Offences Against the Person Act is one year. This court in **Denmark Clark v R** SCCA No 153/2006, an oral judgment by K Harrison JA, delivered on 9 July 2008, quashed a sentence of four years imprisonment imposed in the Western Regional Gun Court in Montego Bay in respect of the common law offence of assault and substituted a sentence of one year's imprisonment.

[9] Therefore, the application for leave to appeal is refused in respect of the conviction. There is nothing manifestly excessive in respect of the sentence of 12 years imprisonment for the illegal possession of firearm. However, in respect of count two for the offence of assault, the application for leave to appeal is granted and the hearing of the application is treated as the hearing of the appeal which is allowed. The sentence of three years imprisonment is quashed and one year's imprisonment is substituted therefor. The sentences are to run concurrently commencing from 14 June 2011.