[2010] JMCA Crim 4

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO. 212/04

BEFORE: THE HON. MR JUSTICE PANTON, P.
THE HON. MRS JUSTICE HARRIS, J.A.
THE HON. MR JUSTICE DUKHARAN, J.A.

R v MICHAEL WHITE

Applicant unrepresented

Ms. Meridian Kohler, Deputy Director of Public Prosecutions (Ag.), Broderick Smith, Crown Counsel (Ag.) & Ms. Kelly-Ann Boyne, Assistant Crown Counsel (Ag.) for the Crown

1st February 2010

ORAL JUDGMENT

PANTON, P.

[1] The applicant was tried and convicted before Mr. Justice Donald McIntosh in the High Court Division of the Gun Court for the offences of illegal possession of firearm and wounding with intent. In respect of the first count, the particulars are that on the 27th day May 1998 in the parish of Kingston, he had in his possession a firearm not under and in accordance with the terms and conditions of a Firearm User's Licence. The second count charges that on the said day in the said parish, he wounded Leroy Falkner with intent to cause him grievous bodily harm. He was sentenced on the 29th day October 2004, on count 1 to 15

years imprisonment and on count 2 to 25 years imprisonment. Both sentences were ordered to run concurrently.

[2] The circumstances which resulted in the verdict of guilty indicate that Mr. Falkner, who was a Corporal of Police at the time, was driving his motor car along Canava Street in Vineyard Town when he saw the applicant who was armed with a firearm and who fired shots injuring him. The applicant knew the corporal before the incident. Approximately a month after the incident the corporal pointed out the applicant on an identification parade. The applicant at the trial maintained that Corporal Falkner had seen him prior to the identification parade and he accused the corporal of not being truthful.

[3] The learned judge, as found by the single judge of this court, identified and warned himself of the main issues in the case namely; identification, credibility and the propriety of the identification parade. Having done that, he rejected the defence and accepted the prosecution's case.

[4] We have examined the transcript and we found no ground which would be of use to the applicant so far as affecting the conviction is concerned. We note that the learned trial judge imposed on count 2 a sentence of 25 years imprisonment. Whereas the sentence in respect of count 1 was appropriate, we are concerned as regards the sentence on count 2. We take into consideration here, the question of the period of time the applicant had been in custody prior to the trial. We are of the view that the sentence on count 2 is manifestly excessive and accordingly we are reducing it, to one of 18 years imprisonment.

[5] The application for leave to appeal against conviction is refused. The application for leave to appeal against the sentence is granted and the hearing of that application is treated as the hearing of the appeal. We allow the appeal as to sentence and reduce that imposed on count 2 to 18 years imprisonment. We order that the sentences are to run from the 29th January 2005.