[2013] JMCA Crim 21

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO 71/2011

BEFORE: THE HON MR JUSTICE PANTON P
THE HON MR JUSTICE MORRISON JA
THE HON MR JUSTICE BROOKS JA

MATTHEW HULL v R

Delano Harrison QC for the appellant

Miss Meridian Kohler and Mrs Paula Archer-Hall for the Crown

8 and 9 April 2013

PANTON P

[1] The appellant was tried on 11, 12 and 29 July 2011 by Donald McIntosh J in the High Court Division of the Gun Court sitting in St. Ann. The indictment contained seven counts. The appellant was convicted and sentenced to terms of imprisonment on six of those counts as follows:

Count 1 – illegal possession of firearm – 20 years

Count 2 – robbery with aggravation – 25 years

Count 4 – robbery with aggravation – 25 years

Count 5 – illegal possession of firearm – 20 years

Count 6 – illegal possession of ammunition – 20 years

Count 7 – shooting with intent – 30 years

[2] A single judge of this court granted leave to appeal against sentence on the basis that the level of the sentences might have been thought to be on the high side.

[3] At the hearing of the appeal yesterday, we pointed out that the evidence presented at the trial did not indicate the appellant's involvement or participation in the armed robbery of Veron King or Suzanne Martin, as charged in counts 1, 2 and 4. Miss Kohler, for the Crown, agreed with our observation. Consequently, we quashed the convictions, set aside the sentences and entered judgments and verdicts of acquittal on those counts.

[4] In his original ground of appeal, the appellant's complaint against the sentences was framed thus: "The Sentences of Ninety Five (95) yrs HL in prison is manifestly harsh having regards to the evidence". Mr Delano Harrison QC re-phrased the ground of appeal and filed and argued the following supplementary ground: "The sentences imposed on the Applicant are manifestly harsh and excessive".

[5] Mr Harrison submitted that "the sentences ought to be varied to less severe sentences, consistent with the range of sentences which … the Court has over time, come to consider appropriate for the type of offences of which the Applicant has been convicted". Mr Harrison based his submission on what he put forward as a range of sentences that the court could consider in respect of the type of offences charged in the indictment. Without seeming to be indicating any agreement with, or approval of, the range put forward by Mr Harrison, we agreed that the sentences imposed by the learned trial judge were indeed manifestly excessive in the circumstances of the case.

[6] The facts on which the appellant was properly convicted are, regrettably, too familiar in the society. Two individuals, named in the indictment as Veron King and Suzanne Martin, were robbed of money and jewellery respectively at approximately 8:30 pm on the night of 26 June 2009. In the case of Mr King, the robbery took place inside premises called Club Liquid, in Orange Park, Lydford, St Ann. Mr King, a butcher, had entered the premises to make a delivery of mutton. His companion, Miss Suzanne Martin, had remained in his car. While she awaited his return, she noticed "about four" men entering the club. The next thing that she realized was that she was being ordered by a man to give up her chain and ring. She was not allowed to comply as the man "dragged" them off her, and walked away. She noticed that Mr King came out of the club and ran down the lane. The men who had gone into the club, and the man who robbed Miss Martin then went into a Nissan motor car in which they had travelled, and left the scene. Mr King sought the assistance of some citizens and the police were contacted. They arrived on the scene within minutes and commenced investigation.

[7] The police were on patrol along Britonville main road at about 11:00 pm when they saw a parked Nissan Sunny motor car. They stopped near to the car which started to move off. They ordered the driver to stop and for the occupants to exit the car with their hands in the air. The appellant came out of the car but did not obey the order in respect of putting his hands in the air. After a period of hesitation, he pulled a revolver from the region of his waist and opened fire on the police officers and ran. Other men from the car also opened fire. The police responded to the challenge by firing their weapons. After the shooting had ceased, three men were found injured clutching

revolvers – two of these men were in the car, the other on the road. The appellant was not one of these men. The three men were pronounced dead at hospital.

[8] Early next morning, the police, while searching for the appellant, saw him walking along the said road. He ran, but was chased and held. He gave a written statement admitting his presence in the car and being stopped by the police on the night of the incident. In recounting his version of the incident, he said he heard gunshots and ran up a hill. He slept in the bushes and while walking on the road next morning, he saw the police and ran. He admitted that he was chased and held, and that his "brethren" had fired at the police. At trial, he denied making the statement to the police, and stated that he ran off after a gun in the hand of a policeman with whom he had been wrestling went off. The policeman, he said, had pointed the gun at his head.

[9] An appellate court does not alter a sentence merely because the members of the court might have passed a different sentence. A sentence is only altered when there has appears to have been an error in principle. If a sentence is manifestly excessive, that is an indication of a failure to apply the right principles - see ***R v Ball*** 35 Cr App Rep 164. In the instant case, we saw no indication that the learned trial judge had given sufficient consideration to the fact that the appellant had spent two years in custody. Had he done so, he certainly would not have sentenced the appellant to 20 years imprisonment for the illegal possession of the ammunition involved in the case. We clearly had no choice but to reduce that sentence and we therefore substituted a sentence of seven years imprisonment. Shooting at police officers is a very serious offence but we think that a term of imprisonment of 20 years for that offence, and 15

years for the illegal possession of firearm, taking into consideration the time already spent in custody, is adequate punishment.

[10] We therefore ordered that the appeal be allowed and that the substituted sentences commence from 29 July 2011.