

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO. 123/90

BEFORE: THE HON. MR. JUSTICE ROWE, PRESIDENT
THE HON. MR. JUSTICE FORTE, J.A.
THE HON. MR. JUSTICE GORDON, J.A.

REGINA

VS.

CARLTON KERR

Applicant unrepresented

Miss Diana Harrison for the Crown

January 15, 1992

ROWE P.:

The applicant Carlton Kerr was convicted in the St. Catherine Circuit Court on July 30, 1990 before Mr. Justice Wolfe and a jury on count 1 for Housebreaking and Larceny and on count 3 for Burglary and Larceny. The first offence was committed on the 13th of May, 1989 and the second offence on the 10th of June 1989.

This was a case in which the police were on the alert and saw the applicant in the early morning of the 10th of June in the vicinity of a motor car in the Portmore area. As the police approached the car a man ran away. They had enough time, however, to recognize that he was the accused Carlton Kerr. When the police searched the vehicle they found a quantity of goods therein, including a 3 burner gas stove and a cylinder, a component set and a speaker box. The police continued their investigations and they came upon a house about three chains away with doors wide open and the

occupants still asleep. The police awoke the people, pointed out the condition of their house and then they realized that their house had been broken into and the articles found in the motor car had been stolen therefrom.

The police in continuation of their investigations went to the home of the accused and there they found a radio cassette recorder, a Black and Decker steam iron, a blender, a radio, an amplifier-receiver and a video cassette. These articles were claimed by Bobby Hammond as having been stolen from his house while he was away therefrom on the 13th of May, 1989.

This was a case in which the evidence against the accused was very strong indeed and although the applicant said in his defence that his car had been stolen and some other person had used it to go and steal, this was rejected and quite rightly so, by the jury. The learned trial judge gave impeccable directions on the issues of visual identification and recent possession of stolen goods.

The learned trial judge when he came to sentence the applicant, had before him a conviction sheet which showed that the applicant had twelve previous convictions, nine of them related to dishonesty and he decided that the public needed protection and needed protection from the accused for a very long period of time. As a consequence he imposed a sentence of ten years hard labour for the housebreaking and a sentence of fifteen years hard labour for the burglary.

We think that the public does need protection from somebody who has been breaking houses ever since December 1969 and had done so on many occasions since. But we notice that the very longest sentence that he ever received was one of three years hard labour in 1982 to be followed by five years police supervision and we think that to make the jump from a three year sentence to one of fifteen years is out of all proportion to what is the average sentence being imposed for crimes which involve property and does not involve any violence to the person.

In the circumstances we think that a balanced sentence would be one of seven years hard labour on each count. We therefore refuse leave to the applicant to appeal against the convictions but we allow the appeals against sentence and impose a sentence of seven years hard labour on each count and the sentences which will be concurrent will begin to run from the 30th of October 1990.