

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO. 79/94

COR: THE HON MR JUSTICE CAREY JA
THE HON MR JUSTICE GORDON JA
THE HON MR JUSTICE PATTERSON JA

REGINA V. CLEVELAND DOWNIE

Applicant unrepresented

Miss Deborah Martin for Crown

September 25 1995

CAREY JA

In the St. Thomas Circuit Court on the 27th of July 1994, before Edwards J and a jury the applicant was convicted of non-capital murder and sentenced as the law requires, to imprisonment for life. The learned trial judge further recommended that he be not eligible for parole until he has served 15 years. Technically, there cannot be an application for leave to appeal against the sentence fixed by law. We are minded to treat this application not against the sentence which is fixed by law but for the term of 15 years which was recommended by the trial judge. As to that we think that the learned trial judge, if anything, erred on the side of leniency in fixing 15 years as being appropriate.

This was an appalling case. For reasons which are difficult to ascertain, this applicant chopped off the head of his victim - one chop. One moment the victim was sitting on a wall in conversation with other people and the next second, his body was seen falling to the ground. It happened in a flash.

As far as the defence went, it seemed that there was some fracas on the day prior to this incident. The applicant said that on the day in question when he saw the deceased, the deceased said to him that he was "to dead" and spoke disparagingly of his mother. He said he was hit down by the deceased and in defence took up a machete and chopped him.

In all the circumstances, we decline to interfere with the recommendation of the learned trial judge.