[2014] JMCA Crim 39

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO 103/2009

BEFORE: THE HON MR JUSTICE MORRISON JA
THE HON MRS JUSTICE McINTOSH JA
THE HON MS JUSTICE LAWRENCE-BESWICK JA (AG)

KEITH REID V R

Lynden Wellesley for the applicant

Miss Sasha-Marie Smith for the Crown

27 May 2014

ORAL JUDGMENT

MORRISON JA

[1] In this matter, the applicant was convicted on 27 August 2009 in the High Court Division of the Gun Court of the offences of illegal possession of firearm and illegal possession of ammunition. He was sentenced to 12 years and three years' imprisonment respectively on each count and the sentences were ordered to run concurrently.

[2] We take the basic facts of the case from Mr Wellesley's very helpful skeleton argument. Three police officers gave evidence, that on 22 May 2009, at about 5:00 o'clock in the morning, at Waterford in the parish of St Catherine, they went to 91 Goodwin Way, Waterford, where they saw a concrete house, in which the applicant lived. The applicant, who was also called "Wat a fight", lived there with his common-law wife, a step daughter and an infant child. One of the police officers, District Constable McKoy, opened the door to the house. The constable informed the person who opened the door, who was not the applicant, that he had a warrant to search the house. He was allowed into the house, and the police officers went into the room occupied by the applicant. During their search of the room, they took up a sheet and a pillow and found a firearm under the pillow. When the firearm was examined, it was found to contain live ammunition and the firearm and ammunition were duly certified by the ballistic expert to be a firearm and ammunition within the statutory meaning.

[3] The learned trial judge heard evidence from the police officers and the applicant also gave evidence on oath. The learned trial judge rejected the applicant's evidence, then turned to the Crown's case, as she was obliged to. She accepted the witnesses for the Crown as witnesses of truth and she accordingly convicted the applicant, with the consequences already outlined.

[4] The application for leave to appeal was first considered by a judge of this court on 5 July 2012. That judge refused the application on the basis that the issue before the trial judge was a pure issue of fact and credibility and that the judge accepted the prosecution's case as credible and rejected the defence. The learned single judge

therefore saw no reason to disturb the findings and the sentence of the learned trial judge.

[5] Before us this morning, Mr Wellesley has frankly conceded that, as far as the conviction is concerned, there is no basis upon which he can urge the court to disturb it. He therefore abandoned the original grounds of appeal filed by the applicant himself and Mr Wellesley argued a single ground of appeal, which is that the sentence of 12 years' imprisonment for illegal possession of firearm was in the circumstances of this case manifestly excessive.

[6] In support of this ground, Mr Wellesley referred us to the decision of this court in **R v Percival Moore** (1972) 12 JLR 809. In that case, the applicant was charged on an indictment containing three counts, the first two for shooting with intent and the third for illegal possession of a firearm. After his conviction (in those days, by a jury), the applicant was sentenced to 10 years' imprisonment and his appeal succeeded on the basis that that sentence was manifestly excessive. This court reduced the sentence on that count to five years' imprisonment.

[7] As we pointed out to Mr Wellesley, that decision was in 1972. It was at a time when in fact, cases of this sort were still tried before jurors; it was a decision that was in fact made, before the establishment of the Gun Court in 1975. As is well known, the Firearms Act initially prescribed a sentence of indefinite detention for illegal possession of firearm and this was modified in due course through judicial intervention to a maximum sentence of life imprisonment. It has been the experience of all members of

this court that, certainly in the last 10 years, a sentence at the level given in **R v Percival Moore** is not generally given in these courts, particularly in a case where the applicant did not plead guilty and therefore put the state to the expense of a trial.

[8] The additional factor in this case was that, upon conviction, when the applicant's antecedents were read to the court, it appeared that he had had four previous convictions. But it turned out that one of those convictions was for assault occasioning actual bodily harm and one was for perjury, and the learned judge said expressly that she would not take these into account in sentencing him for illegal possession of the firearm. However, it seems to us that in these circumstances the learned judge was correct to take into account the previous conviction for illegal possession of firearm, and against that background we consider that the judge's sentence of 12 years' imprisonment at hard labour for the count charging illegal possession of firearm cannot be said to be manifestly excessive. It is in fact very much within the range of sentences that has been approved time and again by this court for offences of a similar nature in recent years. So in the result, the application for leave to appeal is refused and the court orders that the sentences are to run from 27 August 2009.