

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO 221/2006

**BEFORE: THE HON. MR JUSTICE PANTON, P
THE HON. MR JUSTICE HARRIS, JA
THE HON. MR JUSTICE DUKHARAN, JA**

RAYMOND WHYTE v R

Chumu Paris for the applicant

Mrs Lisa Palmer-Hamilton and Miss Michelle Salmon for the Crown

8 March 2010

ORAL JUDGMENT

PANTON, P

[1] This is an application for leave to appeal against sentence following a conviction for wounding with intent in the St. James Circuit Court presided over by Miss Justice Beckford with a jury. The applicant had initially filed an application for leave to appeal against his conviction and sentence. However, before us this morning, Mr Chumu Paris appearing for the applicant quite properly withdrew the application for leave to appeal against conviction. He decided to pursue the application for leave to

appeal against the sentence and we heard submissions from him in this regard.

[2] The applicant was tried and convicted on 13 and 15 December 2006 and the sentence imposed was one of 12 years imprisonment at hard labour.

[3] The particulars of the offence were that he, on 14 of December 2003, in the parish of St. James, wounded Marvarlyn Haye with intent to cause her grievous bodily harm. As is customary, the application went before a single judge of this court and the single judge indicated that the main issues for the learned trial judge's consideration were self defence and the credibility of the witnesses. The single judge formed the view that the trial judge had fairly and adequately dealt with these issues and refused leave to appeal against both conviction and sentence.

[4] The circumstances which led to the conviction were that in the early morning at about 3:00 a.m. on 13 December 2003, Miss Haye, a higgler, along with another higgler, Miss Gayle, were asleep in a shop operated by a cousin of the applicant. Miss Haye was actually sleeping on her cart. The applicant called her. She told him to go about his business and leave her alone. Both had been in an intimate relationship previously; that relationship was on 13 December 2003 no longer alive. The applicant did not heed the advice of Miss Haye that he was to go

about his business and leave her alone. Instead, he proceeded to colour the atmosphere with curses and he tore away the board window. He was clearly in a rage. Miss Haye, in an effort to calm his rage, invited him to come inside to lay down so that they could talk, but he was not interested in that. He went in, held her by the collar of her sweat suit and pulled her out of the shop. She used the only weapon that she had at the time, which was her teeth, to bite him. Thereupon, he responded with a machete which he had in his waist and chopped her. Before doing so, he had chopped out the electric light in the shop. The chopping resulted in laceration of the base of the left hand of Miss Haye, extending from the mid wrist to the outer side of the base of the hand; that is where the little finger is. This injury resulted in a loss of sensation in the fingers and thumb of the left hand as tendons and nerves were all damaged.

[5] Two surgeries were performed on Miss Haye's hand on 22 January 2004 and on 30 August 2004. The left hand is virtually of no use. The doctor gave the opinion that this could have been caused by a machete and he described the wound as a defensive wound. In other words, the left hand was raised at the time of the contact with the machete; raised in a defensive position. The applicant was not satisfied with inflicting this vicious wound. After the wound had been inflicted he proceeded to beat the complainant with the said machete. Those were the facts that the jury found.

[6] The learned trial judge having listened to a plea in mitigation by counsel who then appeared, pointed to the fact that there was really too much violence of this nature in the society and she gave the opinion that the complainant was very lucky because had it not been her hand it would have been more serious. The learned trial judge quite rightly said that the behaviour of the applicant was to be frowned upon and that he ought to have thrown himself on the mercy of the court, rather than putting the complainant through the process of a trial. She described the applicant's behaviour as vicious and cold-blooded and that it was calculated to maim the complainant. She took into consideration the applicant's age; he having been born on 9 October 1973 and although he had three previous convictions she discounted them. In other words, she did not use them for the purposes of the sentence. One of those convictions, it should be noted was for the offence of assault occasioning actual bodily harm. The applicant was convicted in the Resident Magistrate's Court for that offence on 4 December 1999 and he was sentenced to a fine of \$500.00 or six months imprisonment.

[7] Mr Paris, in making the applicant's application to appeal against his sentence, has referred us to two cases decided in this court, **R v Lloyd Badroe** (1988) 25 JLR 324 and **R v Wilbert Brown** (1987) 24 JLR 37, as well as to **Attorney General's Reference No 18/2002 (Christopher Simon Hughes)**

a decision of the English Court of Appeal reported at [2003] 1 Cr. App. R. 35. Mr Paris has reminded us of the principles that ought to guide the trial judge in imposing sentence. He has argued that this sentence of 12 years imprisonment is manifestly excessive and ought to be struck down. He expressed the view that the sentence which was imposed was more is keeping with sentences where there has been a killing. The Bench did indicate to him that offences of this nature do regularly attract sentences of between 8 and 12 years imprisonment.

[8] We have considered all the submissions and the facts. We are of the view that given the nature of the circumstances in this case; a woman asleep, awakened by someone who had at some stage apparently had professed love for her, is chopped and maimed for no good reason. In the circumstances we cannot say that a sentence of 12 years imprisonment is manifestly excessive. Indeed, we are of the view, that it is quite appropriate. Each case has to be judged on its own facts and the cases cited by Mr. Paris may well have merited the sentences imposed. In this case these facts merit the sentence of 12 years imprisonment.

[9] Accordingly, the application for leave to appeal against conviction is refused, having been withdrawn. The application for leave to appeal against sentence is refused and the sentence is to run from 15 March 2007.