

JAMAICA

IN THE COURT OF APPEAL

SITTING IN LUCEA, HANOVER

PARISH COURT CRIMINAL APPEAL NO 14/2016

**BEFORE: THE HON MISS JUSTICE PHILLIPS JA
THE HON MR JUSTICE BROOKS JA
THE HON MRS JUSTICE MCDONALD-BISHOP JA**

CHARLES JOHNSON v R

Don Foote for the appellant

Ms Paula Llewellyn QC and Stephen Smith for the Crown

8 December 2017

BROOKS JA

[1] Mr Charles Johnson, the appellant, was on 17 December 2015 convicted of unlawful wounding in the Parish Court for the parish of Westmoreland. He was sentenced by the learned Parish Court Judge to serve 12 months imprisonment at hard labour.

[2] He filed a notice of appeal contesting both the conviction and sentence. Before this court, counsel appearing for him, Mr Don Foote, correctly abandoned the appeal against conviction but argued that the sentence was manifestly excessive.

[3] In order to assess the merit of that argument, it is necessary to briefly set out the findings of the learned Parish Court Judge, Miss Icolin Reid, who provided an excellent summation of the case and a clear expose' of her reasons for judgment.

[4] The learned Parish Court Judge found, as fact that:

1. The police had been called to premises at Whitehouse in the parish of Westmoreland. At that time, Messrs Charles Johnson and his brother Mr Steve Johnson occupied those premises. The police were present to quell a dispute between the two men.
2. The police were in the process of leaving the premises when Mr Charles Johnson used a machete to inflict a wound to Mr Steve Johnson's left side.
3. Constable Lee, one of the police officers present, heard a shout and rushed back into the building where she saw Mr Charles Johnson with a machete in hand. She asked him for the machete but he ran into another section of the building and hid it. She did not find it, despite searching for it.

[5] The learned Parish Court Judge rejected Mr Charles Johnson's testimony that he did not know how Mr Steve Johnson came to be injured. She also rejected his

testimony that Mr Steve Johnson has attacked him. She described his defence as a "work in progress. Most of what [Mr Charles Johnson] declared in his evidence was never put to either of the [C]rown's witnesses" (pages 26-27 of the record).

[6] It is on those bases that she convicted Mr Charles Johnson.

[7] The medical certificate that was admitted into evidence in respect of Mr Steve Johnson's injuries shows that they were inflicted by a sharp object. They were:

- (a) "4cm jagged laceration to the left paraumbilical area of abdomen with possible peritoneal breach."
- (b) "1½cm subcutaneous depth laceration to dorsum of distal phalanx left 3rd finger."

[8] The certificate showed that Mr Steve Johnson was admitted to the Black River Hospital and managed by the general surgery team of the hospital. The injuries were said to be not serious but Mr Steve Johnson said that he was in hospital for a week.

Sentence

[9] In handing down her sentence, the learned Parish Court Judge did not accept a recommendation made in a social enquiry report that Mr Charles Johnson be given a suspended custodial sentence.

[10] The learned Parish Court Judge took the view that:

- (a) Mr Charles Johnson was aggressive and defiant in his attitude, even in the face of the court.
- (b) There was a likelihood of death resulting from:

- (i) Mr Charles Johnson's hostility to his brother,
and
 - (ii) the toxic relationship in the family over land
and other property.
- (c) A strong message of deterrence ought to be sent to Mr Charles Johnson as there were too many instances in Jamaica about fighting over dead people's estates.
- (d) The court needed to express its abhorrence of the behaviour and attitude.

[11] The learned Parish Court Judge did take into account Mr Charles Johnson's previously unblemished record and his good reputation with the community.

[12] Mr Foote submitted that the sentence was manifestly excessive because the learned Parish Court Judge did not demonstrate that she took into account the age, ill health and general good antecedent of Mr Charles Johnson.

[13] Learned counsel pointed out that the social enquiry report indicated that Mr Charles Johnson was not a wayward individual or a threat to the community and that the offence was out of character.

[14] The learned Director of Public Prosecutions, on the invitation of the court, also made submissions on the issue of sentence. She supported the submissions of Mr Foote

and argued that it did not appear that the learned Parish Court Judge placed sufficient emphasis on rehabilitation which would have been more appropriate in the context of this case and this particular appellant.

[15] We agree with the submissions of learned counsel and whereas we commend the learned Parish Court Judge for an excellent summation and reasons for her decision on the facts, we are of the view that she erred in respect of the issue of sentence.

[16] The learned Parish Court Judge did not pay sufficient regard to the principle that a custodial sentence should be one of last resort.

[17] We are of the view that in these circumstances and with this appellant the stress should be on preventing a repetition, while taking into account his previous unblemished record.

[18] This we find would be achieved by a suspension of the custodial sentence. It would allow for the appellant to behave so as to reduce the possibility of fuelling violence in the family, and that would serve the purposes of rehabilitation and deterrence. A supervision order would also assist the family situation.

[19] The orders therefore are:

- (1) Appeal against conviction is dismissed.
- (2) The appeal against sentence is allowed.
- (3) The conviction is affirmed.
- (4) The sentence of 12 months imprisonment at hard labour is set aside.

- (5) A sentence of 12 months imprisonment at hard labour suspended for two years with a supervision order of 12 months during the period of the suspended sentence is substituted therefor.