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IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO. 155/72

BEFORE: THE HON. PRESIDENT

THE HON. MR. JUSTICE GRAHAM-PERKINS

THE HON. MR. JUSTICE HERCULES

R. v. Errol Marsh

Mr. Henderson Downer for the Crown

Accused unrepresented

18th January, 1973

HENRIQUES, P.:

In this case the applicant was convicted of two offences at the Home Circuit Court on the 27th of September, these offences being one for robbery with aggravation and another for unlawful wounding. In respect of the conviction for robbery with aggravation he was sentenced to eighteen years imprisonment at hard labour, and in respect of the offence of unlawful wounding, one year hard labour to run concurrent with the previous sentence. He has applied for leave to appeal against his convictions and sentences.

So far as the convictions are concerned, the Court is of the view that there is no reason for it to interfere and the application is, therefore, refused. So far as the sentences are concerned it appears that at one stage the learned Chief Justice considered the question of whether or not he should place the applicant on probation. The applicant was

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a young man of previous unblemished character. Taking that view, the learned Chief Justice had enquiries made by a Probation Officer into the history and antecedents of the applicant. The Probation Officer attended the Court and presented his report. According to that report it appears that the circumstances which existed in the home of the applicant were of such a nature that if a probation order were made it was hardly likely that it would have been successful, as the result of which the learned Chief Justice decided not to place the applicant on probation. He then proceeded to impose a sentence of eighteen years imprisonment with hard labour.

We have considered carefully this matter; we have considered the circumstances of the case as against the character and age of the applicant and we feel in all the circumstances that the sentence was not an appropriate sentence to have been passed.

We, therefore, treat the application for leave to appeal against the sentence as the hearing of the appeal; we allow the appeal; quash the sentence of eighteen years hard labour that was imposed and substitute for that sentence a sentence of twelve years hard labour.