J A M A I C A

IN THE COURT OF APPEAL

CRIMINAL APPEAL NOS. 100 & 105/73

BEFORE: The Honourable Mr. Justice Fox - Presiding
The Honourable Mr. Justice Hercules
The Honourable Mr. Justice Swaby

R E G I N A vs. JAMES GORDON
LIVINGSTON GRAHAM

Applicants appear in person.

Mr. A. Smith for Crown

2nd April, 1974

FOX, J. A.:

These applicants were found guilty in the Home Circuit Court on the 5th of July, 1973, for robbery with aggravation. The evidence in support of this charge is that, acting together, Gordon armed with a knife, and Graham, armed with a gun, they robbed the complainant of a sum of money. On the second count, Gordon alone was charged with assault at common law. The evidence in support of that count being that Gordon struck at the complainant with his knife. The complainant drew himself back and in this way avoided injury. Gordon was found guilty of assault at common law.

The applications for leave to appeal against convictions and sentences came before me as a single judge on the 24th of September, 1973. In my view then, the evidence was sufficient to sustain the convictions and there was no ground upon which they could be disturbed. Accordingly, as a single judge, I refused leave to appeal against convictions. But I granted leave to both applicants to appeal against sentences. Gordon was sentenced on count 1 to seven years' imprisonment with hard labour and on count 2, to two years' imprisonment with hard labour; these sentences to run together. Graham was at the time of the commission of the offence

a juvenile. He was ordered to be detained, pursuant to the provisions of section 29 of the Juvenile Law, for a period of ten years.

Both applicants applied to the full court for a consideration of their applications for leave to appeal against convictions. These applications were considered by the court on the 14th of December, 1973, and refused. Pending a report from the probation officer, the full court adjourned the appeal which I had allowed in respect of sentence. Written reports in respect of each appellant have been made. We have read the reports. The Probation Officer, Mr. Davis, has also attended on the court and verified the information in his written reports. The appellants were given the opportunity of making any suggestions or asking any questions they wished of Mr. Davis.

We have given very careful consideration to the sentences passed. In all the circumstances, we consider that in relation to the sentences passed on Gordon, there had been no error in principle. Neither are these sentences manifestly excessive. So we leave the sentences which had been passed on him undisturbed. In relation to Graham, we have also given careful consideration to the facts of the case and the probation officer's report. The element in the factual situation seriously adverse to Graham, is that he was the person armed with the gun. This is the factor which we have allowed to be decisive in the course which we take. We do not propose to disturb the order of detention which has been made, but we wish to say that the report of the probation officer has favourably impressed the bench. We think that the material in this report is relevant for the considerat ion of the Governor-General when he comes in due course to determine whether the discretion which he has should be favourably exercised towards Graham, and the direction in which the discretion should be exercised. We think that the problem of Graham's future and, in particular, the matter of his rehabilitation, is essentially a matter for executive and not judicial concern. We were also favourably impressed with the demeanour of Graham's mother

who attended upon the Court at the Probation Officer's request.

The appeals in respect of sentences are dismissed.