



[2020] GCHCD 1

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE GUN COURT DIVISION

CASE NO. CAHC2019GC00223

BETWEEN

REGINA

CROWN

AND

GARY CHERRINGTON

DEFENDANT

Ms Sophia Thomas, Assistant Director of the Office of the Director of Public Prosecutions for Crown.

Mr. Johnathan Williams for Defendant.

Heard: 9th and 10th, 17th, 23rd, 29th and 31st January, 4th and 6th, 7th, 13th, 20th and 24th February, 19th March, 21st of April, 23rd October and 6th November, 2020.

L. Shelly-Williams, J

Criminal law – Gun Court – Sentence - illegal possession of firearm - illegal possession of ammunition

Background

[1] On the 1st day of July 2019, the defendant was in an area that was referred to by the witnesses as Tel Aviv in the parish of Kingston, when he was observed placing something wrapped in a plastic bag under the wheel of a station wagon vehicle. One of the two police officers who were travelling in a marked police vehicle, observed the actions of the defendant. The officer who made the observation

caused the marked service vehicle to stop. The defendant was ordered to stop, one of the police officers then retrieved the bag from behind the wheel of the station wagon. The contents of the bag were removed in the presence of the defendant and it was found to contain a firearm containing ammunition.

- [2] The firearm was sent to the Government laboratory and was tested. The certificate detailing the findings by the ballistic expert was tendered into evidence as an exhibit. The firearm was found to be a nine-millimetre dual action auto-loading pistol with seventeen nine-millimetre rounds. The firearm was found to be in good working condition. The ammunition was found to live rounds.
- [3] In considering the sentence in this matter I had regard to the relevant statute which is the Firearms Act, the Sentencing Guidelines as well as case law.

The Statute

- [4] The relevant statute in relation to this case is the Firearms Act and for this particular case, the relevant section of that act is section 20. Section 20 states that:-

Possession and use of Firearms and Ammunition

20. (1) *A person shall not.*

(a) save as authorized by a licence which continues in force by virtue of any enactment, be in possession of a prohibited weapon; or

(b) subject to subsection (2), be in possession of any other firearm or ammunition except under and in accordance with the terms and conditions of a Firearm User's Licence.

(4) Every person who contravenes this section shall be guilty of an offence, and shall be liable-

(a) if the offence relates to the possession of a prohibited weapon

(i) on summary conviction before a Resident Magistrate to imprisonment with or without hard labour for a term not exceeding five years;

(ii) on conviction before a Circuit Court to imprisonment for life with or without hard labour;

Sentencing guidelines

[5] A Sentencing Guideline was issued in December 2017 and it detailed numerous offences and suggested the approach the courts should adopt in these matters. In relation to the offences of illegal possession of firearm and illegal possession of ammunition, the sentencing guidelines detailed that Section 20 of the Firearms Act applies. The maximum sentence stipulated by the statute is life, however the normal range of sentences is between seven and fifteen years with the usual starting point being ten years. This is the position for the two offences of illegal possession of firearm and illegal possession of ammunition.

Case Law

[6] There are a number of cases that have shown a range of sentences as it relates to these offences. Prior to the Sentencing Guidelines the sentences for illegal possession of firearm mostly ranged from ten years as in the cases of **Joel Deer v R** [2014] JMCA Crim 33 and **Ian Wright v R** [2011] JMCA Crim 11 to fifteen years in the case of **Paul Kennedy v R** [2015] JMCA Crim 5. In the case of **Mavrick Marshall v R** [2020] JMCA Crim 20 Phillips JA opined that a sentence of seven years placed the appellant at the lower end of the range as it related to the sentencing guidelines and as such could not be considered to be manifestly excessive.

[7] In the case of **Natalie Williams v R** [2020] JMCA Crim 19 after a plea of guilty the sentence that was arrived at by the Court of Appeal was five years and six months. This was held not to be manifestly excessive. The court relied not only on decided cases but also on the Sentencing Guidelines issued in December 2017.

The Sentence

Illegal possession of firearm

[8] This is a case where on the approach of a police vehicle the defendant sought to conceal a firearm, which contained ammunition. In light of the circumstances of this case, I will abide by the Sentencing Guidelines and utilise the starting point of ten years.

[9] Aggravating circumstances

1. There is a prevalence of this type of crime in society.
2. This is a deadly weapon in good working condition.
3. There was the act of concealment on the approach of the police party and the denial of the knowledge that the firearm belonged to him.

[10] Mitigating factors

1. He has no previous conviction.
2. He has a good social enquiry report especially his community report.

[11] In arriving at a starting point, I have taken into consideration the plea in mitigation, age of the defendant, as well as the overall circumstances of this case. In light of that, I will abide by the Sentencing Guidelines with my starting point being ten years. Due to the abovementioned aggravating circumstances, the sentence would be increased by one year. There would be a reduction of one year for the good social enquiry report and one year for the fact that he has no previous conviction. In keeping with the decision of **Meisha Clement v R** [2016] JMCA Crim 26, the sentence would be further reduced for the time the defendant was in

custody which is one year and four months. The defendant is sentenced to seven years and eight months.

[12] Illegal possession of ammunition

The starting point suggested by the Sentencing Guidelines for this offence is ten years. In light of the number of rounds involved ie seventeen, the fact that the rounds were not utilised to commit another offence and the age of the defendant, the starting point in this case will be five years.

[13] Aggravating factors:-

1. There is a prevalence of this type of crime in society.
2. These are to be utilised in a deadly weapon.
3. There was an attempt to conceal the ammunition.

[14] Mitigating factors :-

1. Good social enquiry report.
2. No previous conviction.

[15] The starting point in relation to this offence is five years. I will increase the sentence by one year due to the abovementioned aggravating factors. The sentence would be reduced by one year for the good social enquiry report and one year for the fact that the defendant has no previous conviction. Full credit would be given for the time the defendant spent in custody which is one year and four months. The sentence of the defendant for illegal possession of ammunition is three years and eight months.

[16] The sentences are to run concurrently.