

**EASTERN CARIBBEAN SUPREME COURT  
ANGUILLA**

**IN THE HIGH COURT OF JUSTICE  
(CRIMINAL)**

**CLAIM NO. AXAHCR2025/0015**

**BETWEEN**

**REX**

**AND**

**BRANDON CARTY**

**Before: His Lordship The Honourable Justice Ermin Moise**

**Appearances:**

Ms. Erica Edwards for the crown.

Ms. Nakishma Rogers for the defendant.

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2025: December 12; 18.

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**JUDGMENT ON SENTENCING**

[1] **Moise, J.:** This is the court's decision on sentencing. The defendant (Mr. Carty) pleaded guilty to one count of possession of a firearm and 2 counts of possession of ammunition. I have considered the information provided in the Pre-Sentence Report as well as the submissions of counsel. I have determined that the defendant will serve a term of imprisonment of 4 years and 6 months on each count on the indictment to run concurrently.

[2] However, an issue has arisen regarding the minimum sentence of 7 years which has been recently imposed by the **Firearms (Amendment) Act 2024** where a defendant convicted of firearm possession has a previous conviction. The issue is that Anguilla has no legislative provision for spent convictions. In this case, although Mr. Carty has previous convictions, the most recent was over a decade ago. I have therefore determined that where the previous conviction is of some vintage, that amounts to an

exceptional circumstance within the provision of section 2(6) of the Act. I have therefore declined to impose the minimum sentence in this case.

[3] I have provided the reasons for my decision in the remaining paragraphs of this judgment.

### **The Facts**

[4] The parties have presented an agreed set of facts.

[5] On 31<sup>st</sup> July 2024, officers of the Royal Anguilla Police Force (RAPF) executed a search warrant at Mr. Carty's residence. During the search, the police observed a plywood board on the western side of the house. Beneath this board, the police discovered a green can. Upon removing the green can from under the plywood, officers found a purple shirt and plastic bag in the can. A search of the content of the can also revealed a black Glock and a clear plastic which contained ammunition. Mr. Carty was cautioned and arrested for possession of firearm and ammunition. A check was made of the RAPF's firearms licensing database, and it was determined that Mr. Carty had not been issued a firearms license.

[6] Mr. Graham Husbands, Firearm and Toolmark Examiner for the RAPF, examined the firearm and ammunition and noted that the pistol was a model 26 Glock, 9 mm caliber semi-auto handgun with serial number CXY821 manufactured by Glock of Austria. It was also noted that ninety-seven (97) of the cartridges were GM3 7.62 X 39 mm caliber jacketed hollow point boat tail cartridges. Mr. Husbands also noted that of the ammunition recovered Twenty-four (24) were Star 9 mm caliber+ P silver tip jacketed hollow point cartridges, sixteen (16 ) were Ammo Inc. 9 mm caliber jacketed hollow point cartridges, Nine (9) were Hornady 9 mm caliber jacketed hollow point cartridges and three (3) were MXT 9 mm caliber full metal jacket cartridges.

[7] Mr. Husbands determined that the pistol and cartridges are a firearm and ammunition respectively.

### **The Pre-Sentence Report**

[8] Mr. Carty is 32 years old. He is the youngest of four children, one of whom has since died. The Pre-Sentence Report (PSR) states that Mr. Carty resided with both parents and his two brothers in North Side until approximately seven years ago, when his mother migrated to St. Maarten. He reported that

everyone in the household had a good relationship with each other and that his upbringing was generally positive. He has no children and reported to the Probation Department that he is not affiliated with any gangs.

[9] The PSR states that Mr. Carty indicated that, prior to his incarceration, he smoked cannabis regularly. And by that he meant approximately five marijuana cigarettes per day. He also consumed alcohol occasionally. He stated that since his imprisonment, he has abstained from smoking and drinking and has used this opportunity to learn how to think more clearly and remain calm without the use of cannabis.

[10] Mr. Carty's father was interviewed in preparation for the PSR. He stated that his relationship with his son was strained. He spoke negatively about Mr. Carty's attitude, which he states took a turn for the worse after his brother died. He stated that Mr. Carty began associating with negative company from a young age, and as a father he did not approve of those friendships. Mr. Carty's father also stated that he has the potential to be a "good child," as he is naturally reserved, quiet, and prefers solitude. He also stated that Mr. Carty is diligent and enjoys manual tasks, noting that he is skilled at working with his hands. Interviews with Mr. Carty's sister and cousin revealed that they both describe Mr. Carty as reserved, quiet and dependable.

[11] Mr. Carty attended the Albenia Lake-Hodge Comprehensive School. He is reported to have displayed a poor attitude towards his work and was disruptive in class. His attendance was inconsistent. At one point, Mr. Carty was suspended from school for disrespectful behaviour. He was involved in an incident where he was stabbed.

[12] In 2007, Mr. Carty ceased attending school regularly. His absenteeism became more chronic, and he was later referred to the Pupil's Referral Unit (PRU). Despite this, his teachers reported that his work skills were considered "good" although his attitude varied and his self-management remained poor. His attendance later improved, reaching 91%, and he continued attending sessions at the Workshop Initiative for Secondary Education (WISE), where his performance and conduct were regarded as generally fair.

[13] Mr. Carty worked in construction and also worked at a car rental company for some time. Other than that, there is not much provided regarding his employment history and prospects.

[14] Mr. Carty has a number of previous convictions, including a conviction for assault for which he was sentenced to a fine of \$500 in 2014. He was also convicted of firearm and ammunition possession in 2014 and was sentenced to 3 years imprisonment on each charge.

### **The Law on Sentencing**

[15] The penalty for possession of a firearm and ammunition without a valid licence, as contained in section 50 of the **Firearms Act**<sup>1</sup>, is a fine or imprisonment for a period of 14 years, or to both. Recently, the legislature in Anguilla made amendments to the **Firearms Act** which introduced a mandatory minimum sentence for firearm possession. In particular, section 2 of the **Firearms (Amendment) Act 2024** introduces an amendment to section 49 of the Act and, by virtue of subsection (4), introduces a minimum sentence of 7 years imprisonment.

[16] Section 2(7) of the **Firearms (Amendment) Act 2024** states that “[w]here a person who is 18 years or older commits an offence under sections 10 (3) to (6), 11, 20, 21 or 22 and such person has no previous convictions, the court may determine that the mandatory sentence specified in subsections (4) and (5) of this section shall not be imposed and the court shall impose an appropriate sentence in accordance with the aforementioned sections.”

[17] In the circumstances of the present case, Mr. Carty is over the age of 18 and does in fact have previous convictions. The difficulty which arises, however, is that the convictions which are relevant to this sentencing exercise are both 11 years old at this time. Anguilla, unlike many other commonwealth jurisdictions, has not passed legislation introducing the concept of spent convictions. However, section 2(6)(b) of the **Firearms (Amendment) Act 2024**, states that “[w]here a person is convicted of an offence... under sections 10 (3) to (6), 11, 20, 21, 22, the court shall impose a custodial sentence for a term of at least the required minimum term (with or without a fine) unless the court is of the opinion that there are exceptional circumstances relating to the offence or to the offender which justify its not doing so.”

[18] Having taken the time to carefully consider this issue, I am of the view that, in the absence of legislation addressing the issue of spent convictions, the imposition of a minimum sentence on the basis of a

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<sup>1</sup> RSA Ch F30

conviction which is now over 11 years old is not in keeping with the principles of fairness and proportionality. These are constitutional principles which underpin the judicial exercise of sentencing. It is my view that the circumstances of this case fall within the discretion afforded the court in section 2(6)(b) of the **Firearms (Amendment) Act 2024** and amounts to an exceptional circumstance which warrants a departure from the imposition of the minimum sentence.

### **The Sentencing Guidelines**

[19] The parties generally agree that the offences in this case fall within category 3 of the sentencing guidelines. The firearm, as well as the ammunition, was concealed on the outside of Mr. Carty's residence. The court is also satisfied that the level of seriousness of the offence is category A. There were more than 20 rounds of ammunition found during the police search of the premises. Therefore, the starting point in sentencing is 7 years with a range of 4 years, 10 months to 9 years, 1 month imprisonment.

[20] I do not find there to be any additional aggravating or mitigating factors of the offence. Insofar as it relates to the aggravating and mitigating factors of the offender, the only issue raised in aggravation are his previous convictions. I note that the defendant does have previous convictions for firearm offences. However, these are now over a decade old. Given the age of the convictions I would not increase the sentence. Insofar as it relates to Mr. Carty's personal circumstance, the only issue which was raised in his favour are the views of the members of his family. Having considered these, I do not find there to be mitigating factors of the offender sufficient to reduce the sentence in any way.

[21] In my view, the appropriate sentence to be imposed on Mr. Carty would therefore be 7 years in prison. However, the defendant is entitled to a one-third reduction of his sentence on account of the guilty plea. I therefore sentence the defendant to 4 years and 6 months in prison on each count on the indictment to be served concurrently.

[22] The defendant has spent a total of 504 days in pre-trial custody. This is to be credited towards his sentence and taken into account in determining any remission he may be afforded.

**Ermin Moise**  
**High Court Judge**

**BY THE COURT**



**REGISTRAR**

