

**EASTERN CARIBBEAN SUPREME COURT
ANGUILLA**

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

CLAIM NO. AXAHCR2025/0008

BETWEEN

REX

AND

DESHAWN CORBETT

Defendant

Before: His Lordship The Honourable Justice Ermin Moise

Appearances:

Ms. Erica Edwards for the Crown.

Mr. Devin Hodge for the Defendant.

2025: July 15, 16

JUDGMENT ON SENTENCING

[1] **MOISE, J.:** This is the court's decision on sentencing. The defendant (Mr. Corbett) pleaded guilty to one count of possession of a firearm and one count of possession of ammunition. The court ordered a Pre-Sentence Report which was provided by the Department of Probation. Counsel for the Crown and defence have both addressed the court on the appropriate sentence to be imposed.

The Facts

[2] On 19th March 2024 officers of the Royal Anguilla Police Force executed a search warrant on Mr. Corbett's home. At the time of the execution of the warrant, Mr. Corbett and his father were present at the residence. They were cautioned and during a search of the premises the police recovered a 23 Glock .40 S&W caliber semi-auto handgun with serial number XXZ427 on the slide and serial number on the

barrel CPU265. The police also recovered a magazine with twelve (12) .40 S&W caliber rounds attached to it. Both the firearm and the magazine were recovered in a toilet tank at the residence.

- [3] According to the evidence presented, upon recovery of the firearm and ammunition Mr. Corbett was cautioned and he stated "It's mine but not really mine, but I'm holding it for somebody, but I can't say who. I not getting involved in that." Mr. Corbett was arrested and taken into custody. He was interviewed by the police, and he stated that he was in possession of this firearm for one week as he was given the firearm by an individual "to hold". He also admitted that he was not the holder of a valid firearms licence. The firearm and ammunition were examined by a ballistics expert. The court is satisfied that the items recovered from Mr. Corbett's residence fall within the definition of the **Firearms Act**. Mr. Corbett was remanded into custody and subsequently pleaded guilty to both counts on the indictment.

The Pre-Sentence Report

- [4] It is noted that Mr. Corbett was 18 years old at the time of the commission of the offence. He has no previous convictions. In summary, the PSR indicates that he has strong family ties and is not known to be involved in gangs and, according to his mother, purchased a video game in order to ensure that he would spend more time at home prior to his arrest. The report suggests that at some point in his youth, Mr. Corbett's parents broke up. The home became somewhat disruptive, and this had an impact on him.
- [5] Mr. Corbett has had regular visits by his sisters whilst in prison. The report from prison personnel indicates that he has been cooperative and there is no evidence of bad or inappropriate behaviour whilst in prison. Inquiries of persons within the community of South Hill where Mr. Corbett resides, reveal that he is not known to be a troublemaker and largely keeps to himself.
- [6] Mr. Corbett attended the Albenia Lake-Hodge Comprehensive School, from where he was suspended in his final year. He completed his secondary education in a private institution. Mr. Corbett also worked as a fisherman since leaving school, earning himself an average of \$1,500.00 United States Dollars (USD) per month.

[7] The authors of the PSR concluded that Mr. Corbett poses a low to medium risk of reoffending, a low risk of harm to others and a low risk of harm to himself.

The Law on Sentencing

[8] According to section 50 of the **Firearms Act**¹ the penalty for possession of a firearm and ammunition without a valid licence upon indictment is a fine or imprisonment for a period of 14 years, or to both. In a more recent amendment to the **Firearms Act** the legislature in Anguilla has 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 for the offences for which Mr. Corbett has pleaded guilty. However, the Act goes on to state in section 7 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.”

[9] In accordance with the changes to the legislation, a minimum sentence of 7 years should be imposed on Mr. Corbett. However, given that at the time of the offence he was 18 years old and has no previous convictions, the law gives a discretion to the court as to whether the minimum sentence should be imposed. The legislation does not go on to set any criteria which the court should use in the exercise of this discretion. This is therefore a matter for the court to determine. In doing so the court will consider the aggravating and mitigating factors as outlined in the sentencing guidelines of the Eastern Caribbean Supreme Court.

[10] I am satisfied that the offences in this case fall within category 3 of the sentencing guidelines. The firearm, as well as the ammunition, was concealed in a toilet tank at Mr. Corbett’s home and the ammunition was not found in the firearm.

¹ RSA Ch F30

[11] I am of the view that the level of seriousness of the offence is category B. The firearm was found with 12 rounds of live ammunition in the vicinity. Although the ammunition was not in the firearm, this is a factor which falls to be considered under level B. Therefore, the starting point in sentencing is 5 years and 6 months with a range of 3 years and 6 months to 7 years and 8 months.

[12] The court does not consider that there are additional aggravating or mitigating factors in relation to the offence to be considered. As it relates to the offender, I consider that there are no additional aggravating factors. In mitigation I consider that Mr. Corbett has no previous convictions. He has strong family ties and is not known to be a troublemaker in the community. As it relates to Mr. Corbett's youth, I note that the guidelines require that the court takes youth into consideration where it explains the offending. There is nothing here to suggest that Mr. Corbett's age of 18 years at the time of the offence provides any explanation for the offence of possession of a firearm. I note that he stated to the police that he was merely holding the firearm and didn't go on to explain for whom and under what circumstances he did so. I do not consider this to be mitigating. Possession of a firearm with 12 rounds of ammunition is not a matter to be taken lightly. I have also given full consideration to the submissions of counsel for Mr. Corbett in mitigation.

[13] In the circumstances I would consider an appropriate sentence in this case to be 4 years and 6 months in prison. I would reduce the sentence by one-third on account of the guilty plea and impose a sentence of 3 years in prison. It is important therefore to consider the minimum sentence of 7 years required by the legislation. Given that Mr. Corbett was 18 at the time of the offence, there is a discretion to impose a sentence which is lower than the minimum. The question is what is the criteria for doing so? The legislature must have intended to provide for some measure of leniency for first time offenders unless there is some aggravating feature about the offence which warrants the minimum sentence. In the circumstances of this case, where there are no aggravating factors pertaining to the offence or the offender. I find this to be an appropriate case for the defendant to be sentenced within the guidelines and outside of the minimum of 7 years. I therefore sentence Mr. Corbett to 3 years in prison. The question is how to treat the time which he has spent on remand.

Time on Remand

[14] The footnote to the sentencing guidelines states that the judge will declare the precise time spent on remand which is to be credited to the sentence passed and it is for the prison to calculate the earliest date of release taking into account the time on remand. This issue has, however, been the subject of some judicial debate and it is important for this court to express its own views on the applicable approach to be taken in Anguilla.

[15] In the recent decision of **Omari Phillips v. The King**², the Court of Appeal of the Eastern Caribbean Supreme Court came to consider the issue of time on remand in judicial sentencing. After citing the decision of the Privy Council in the case of **Callachand v The State**³ and that of the Caribbean Court of Justice in **Da Costa Hall v. The Queen**⁴, the Court of Appeal concluded that:

Accordingly, it should be clearly understood that the appropriate sentence I would have imposed on the appellant for manslaughter would have been 19 years imprisonment, but as he has already served four thousand, six hundred and four days (4604) or twelve years, seven months and seven days in custody I deduct that period, so that the sentence I pass is six years, five months 23 days.

[16] In that case, the Court of Appeal proceeded to impose and declare a sentence of 6 years, 5 months and 13 days for the offence of Manslaughter after “deducting” the time spent on remand from the sentence which the court “would have imposed”. At paragraph 82 of the judgment, the court noted as follows:

In Callachand, the Board stated at paragraph 9:

“It seems to be clear too that any time spent in custody prior to sentencing should be taken fully into account, not simply by means of a form of words but by means of an arithmetical deduction when assessing the length of the sentence that is to be served from the date of sentencing.”

² ANUHCRA2016/0008

³ [2008] UKPC 49 (4 November 2008)

⁴ [2011] CCJ 6 (AJ)

[17] Given that the Privy Council is the final court of appeal in Anguilla, it is important to take a closer look at what the decision in **Callachand** and subsequent decisions of the Privy Council actually said on the issue. The full extent of paragraph 9 of the decision in **Callachand** states that:

“The Board is not concerned in the present case with time spent by a person in custody as an appellant. So, their Lordships need not consider the need to deter frivolous appeals. BUT THEY ARE CONCERNED WITH THE BASIC RIGHT TO LIBERTY. In principle it seems to be clear that where a person is suspected of having committed an offence, is taken into custody and is subsequently convicted, THE SENTENCE IMPOSED SHOULD BE THE SENTENCE WHICH IS APPROPRIATE FOR THE OFFENCE. It seems to be clear too that any time spent in custody prior to sentencing should be taken fully into account, not simply by means of a form of words but by means of an arithmetical deduction WHEN ASSESSING THE LENGTH OF THE SENTENCE THAT IS TO BE SERVED FROM THE DATE OF SENTENCING. We find it difficult to believe that the conditions which apply to prisoners held on remand in Mauritius are so much less onerous than those which apply to those who have been sentenced that the time spent in custody prior to sentence should not be taken fully into account. But if that is thought to be the position there should be clear guidance as to the extent to which time spent in custody prior to sentence should not be taken fully into account because of the difference between the prison conditions which apply before and after sentence. That is something which, as it seems to their Lordships, should now be considered by the Supreme Court, as it is familiar with local conditions and will be able to apply its own knowledge to this case.” (Emphasis added).

[18] It is this court’s view that the Privy Council is clearly drawing a distinction here between the **“sentence imposed”** on the one hand and the length of that sentence which **“is to be served from the date of sentencing”** on the other. Here the Board is stating that in principle **where a person is suspected of having committed an offence, is taken into custody and is subsequently convicted, the sentence imposed should be the sentence which is appropriate for the offence.** This is important as the public have a vested interest in clearly understanding that appropriate sentences are imposed by the court and that the nature of the sentence is transparent and understandable. To my mind, the decision in

Callachand does not stand for the proposition that the court should deduct the time spent on remand from the actual sentence imposed. That would lead to the imposition of a sentence which is not appropriate for the offence and, as I will outline later on, deny Mr. Corbett the full benefit of remission for the period he has spent on remand. This would deny what the Privy Council described as a concern with the basic right to liberty.

[19] The Privy Council then goes on to consider how the sentence is to be served from the date of sentencing. That is not the same as the imposition of a sentence. The Board said that ***“[i]t seems to be clear too that any time spent in custody prior to sentencing should be taken fully into account, not simply by means of a form of words but by means of an arithmetical deduction when assessing THE LENGTH OF THE SENTENCE THAT IS TO BE SERVED FROM THE DATE OF SENTENCING”*** (my emphasis). Assessing the length of time to be served from the date of sentence is not the same as the imposition of a sentence. Where the Privy Council speaks of arithmetical deduction it does so in considering the length of time left to be served from the date of sentence and not the imposition of the sentence itself. These appear to me to be two different issues.

[20] In the subsequent decision of ***Dookee v. the State***⁵, the Privy Council again grappled with this issue. In **Callachand**, the Board left the approach to accounting for the time served on remand to be clarified by the Court of Appeal of Mauritius. By the time of **Dookee** there was some legislative intervention. However, the Privy Council noted there as follows:

It is important too that this credit be given in such a way as properly gives effect to the fact that, as the Board understands it, all determinate sentences save in drugs cases attract remission of one-third of the sentence imposed. Assume, therefore, that the appropriate sentence is six years imprisonment and the defendant has spent 15 months on remand in custody awaiting trial. He should (save in an exceptional case) be given 12 months credit for the time spent in custody and his sentence should be backdated by a year. That way he will obtain the full two years remission on his six year sentence. Were the sentencing judge instead to sentence him to five years imprisonment to start at the date of sentence, the sentence would attract only 20 (instead of 24) months remission.

⁵ [2012] UKPC 21

[21] The first observation to be made here is that the Privy Council recognized the importance of ensuring that full credit is given for the time which a defendant spends on remand so as to ensure that he is not disenfranchised in the calculation of his remission. The Privy Council went on to backdate the sentence; something which is not available under Anguillian law⁶. However, as I conclude later on, the proper approach to preserve the defendant's constitutional right to his liberty is to credit time on remand as part of his sentence as we are required to do in the sentencing guidelines.

[22] It is important to also give consideration to the decision of the Caribbean Court of Justice in the case of **Da Costa Hall v. The Queen**⁷. This case was also considered and relied on in the case of **Omari Phillips**. I start off with the dissenting judgment of JCCJ Jacob Witt not merely for the areas in which he disagreed with the majority, but in how he succinctly outlines the areas of agreement of all the judges in that case. He states as follows in paragraph 30:

“For the most part I am in agreement with the majority judgment delivered by Nelson J. ... We ... agree, in principle, that time spent in custody should fully or at least substantially be taken into account by the sentencing judge when calculating the length of a custodial sentence. We further agree that this constitutes a prima facie rule from which the judge may only depart in a limited number of cases. We agree, moreover, that there are basically three methods by which credit can be given for time spent in custody, to wit (a) reducing the sentence, (b) backdating the sentence or (c) imposing the proper sentence while declaring that the time spent in custody will count as time served under the sentence. It would appear that we all agree that method (c) is the most preferable and that method (a), to say the least, is flawed. Nevertheless, the majority has settled on the latter approach, somewhat uncomfortably and reluctantly it would seem, on the ground that the other two methods are not available in Barbados as there are no statutory provisions allowing either of them.”

⁶ See section 60 of the Criminal Procedure Act R.S.A. c. C150

⁷ [2011] CCJ 6 (AJ)

[23] There are a number of issues emerging from this judgment which stand out to this court. Firstly, as noted by Witt J, the majority of the judges of the CCJ in **DaCosta Hall** were never particularly comfortable with the idea that the time spent on remand should be literally deducted from the sentence to be imposed. In fact, a perusal of the decision of the majority will show that this was expressed to be the least favourable of the approaches to be adopted in addressing this issue. The CCJ only felt compelled to adopt this approach because, in the view of the majority, there was no legislative provision in Barbados which allows for counting or crediting the time spent on remand. In light of that it is important to give some consideration to the case of **Omari Phillips** where the court noted that:

“I am not unmindful that in Antigua and Barbuda, Section 63A of the Criminal Procedure Act provides that where a person has been remanded in custody in connection with an offence or a related offence for which he is charged, the number of days for which the person was remanded in custody in connection with the offence or related offence shall count as time served by the person as part of the sentence imposed by a Court, and such time shall be credited by the Superintendent of Prison as time served by him as part of the sentence imposed by a Court.”

[24] It would seem therefore, that even where the legislature had intervened in Antigua and Barbuda to address the very discomfort which the CCJ expressed, the courts in the ECSC are still encouraged to adopt the CCJ's least favoured approach to deal with a problem which touches and concerns the constitutional rights of a person within the jurisdictions to not spend more time in custody than is necessary in order to serve an appropriate sentence and be fully credited for remission for time spent on remand where he has behaved himself during his time in prison. I do not mean to be disrespectful in any way, but I express concern about this.

[25] Witt J went on to note the following in the case of **DaCosta Hall**:

Besides the countries of the Commonwealth Caribbean there are some other common law countries that do not have statutory provisions for crediting time spent on remand, notably Botswana, South Africa and Mauritius. Clearly, these countries acknowledge that at common law their courts have a discretionary power to give or to decline credit for time

spent on remand when sentencing a convicted person. But even so, since the 1980s it has been the practice of the courts in Botswana that, as a rule, time spent on remand is to be taken fully into account, although, in exceptional cases and for compelling reasons to be stated in the judgment departure from that practice is possible

[26] In my view, there is nothing offensive to the law or the constitution for time spent on remand to simply be credited as part of the sentence. That is not the same as backdating. Contrary to what was stated by the majority in ***DaCosta Hall***, as far as I am aware, the practice in Anguilla has never been to deduct from the sentence rather than simply crediting the time spent on remand. This has, to my knowledge, never been offensive to the defence or the prosecution in submissions put before this court. In fact, this court's own research has shown that Witt J was right when he stated that in Mauritius, the jurisdiction from which the decision from which ***Callachand*** emerged, they "***would seem to have adapted their practice in that they now give full credit for time spent on remand except when there are compelling reasons not to do so.***" I have also taken into consideration the approach of Morley J at paragraph 12 of the decision in the case of ***Rex v Anthony Adams***⁸ and agree that this is the approach most in line with the Privy Council's decision in ***Callachand***.

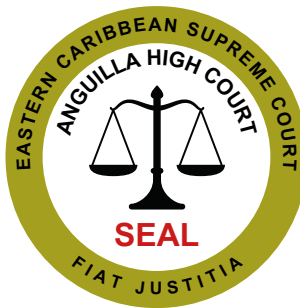
[27] When one examines the circumstances of the case before me, the evidence suggests that Mr. Corbett has been a model prisoner during his time on remand. If his time on remand is to be credited towards the serving of his sentence in accordance with section 7 of the ***Prison Regulations***, then, provided that there are no infractions from this date on, he would have an earliest estimated date of release eight months from today's date. If, however, the court were to deduct the 482 days which he has spent on remand and declare a lower sentence, taking any possible early release into consideration, he would have to serve an additional one year and one month in prison. This is unfair, and to my mind, unconstitutional. Further, it is contrary to what has been expressed by the Privy Council in the cases of ***Callachand*** and ***Dookie*** regarding crediting the time spent on remand.

[28] In the circumstances therefore I impose a sentence which, in my view, is appropriate to the crime for which Mr. Corbett has pleaded guilty; that is 3 years on each count on the indictment to run concurrently. Secondly, it is declared with arithmetical precision that Mr. Corbett has spent 482 days on remand. This

⁸ SKBHCR2023/0017

time is to be credited towards his sentence. He is therefore to serve an additional 613 days in custody. This is subject to any remission which the prison officials will calculate on the full extent of his time in custody since his time on remand in accordance with section 7 of the Prison Regulations.

Ermin Moise
High Court Judge



BY THE COURT

REGISTRAR