

**EASTERN CARIBBEAN SUPREME COURT
ANGUILLA**

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

CLAIM NO: AXAHCR2024/0002

BETWEEN:

REX

-and-

STEPHEN HUGHES

Before: His Lordship The Honourable Justice Ermin Moise

Appearances:

Ms. Erica Edwards for the Crown.

Ms. Nakishma Rogers for the Defendant.

2024: July 24.

Decision on Sentencing

- [1] **Moise, J.:** On 1st July 2024, the defendant was sentenced to 6 years and 6 months and 8 years in prison, respectively, on two counts of possession of firearm without a valid permit. As a result of various submissions made at the sentencing hearing, I undertook to put my reasons in writing. I noted then, and continue to do so now, that various trends have emerged in the submissions put forward by defendants who are before the court for sentencing in firearm matters. Given the nature of those submissions and the precedent which the court inherently sets if it were to entertain or uphold those submissions, it is important to ensure that the court's position on such matters is clear.
- [2] Anguilla, like most of the countries of the Eastern Caribbean, has been gripped by increased levels of gun violence. As a result of this, this court is more frequently called upon to sentence persons found guilty, or who have pleaded guilty, to possession of firearms without a valid

permit. As a result of this increase in violence, and due to the shift in approach to sentencing initiated by the promulgation of the new sentencing guidelines, it is also now accepted that terms of imprisonment are most appropriate for the illegal possession of firearms. However, three important trends have emerged in submissions before this court.

- [3] The first is that it is becoming customary for counsel to argue that there are exceptional circumstances which warrant a suspension of the prison sentence which the court deems appropriate. In fact, I note that in 3 of the last 4 occasions where the court has embarked on a sentencing hearing, it is submitted that the sentences ought to be suspended. Secondly, and in conjunction with the first, defendants have become more likely to submit that there are pre-existing medical conditions which makes it difficult to withstand the challenges of prison life. This is often the ground upon which the sentence is arguably to be suspended. The court is also called upon to consider the extent to which pre-existing medical conditions should operate as a mitigating factor in the sentencing of firearm offenders. The third and final trend which has emerged is the submission that defendants have decided to possess illegal firearms in order to protect themselves against the threats of violence which is prevalent in the society. In light of this, I thought it was important for the court to address each of those issues.

Suspended Sentences

- [4] Section 45(1) and (2) of the **Criminal Code**¹ sets out the powers of the court insofar as it relates to suspended sentences. The section states as follows:

(1) Subject to subsection (2), where a court passes a sentence of imprisonment for a term of not more than 2 years for an offence, it may order that the sentence shall not take effect unless, during a period specified in the order, being not less than one year or more than 2 years from the date of the order, the offender commits in Anguilla another offence punishable with imprisonment.

¹ R.S.A. c. C140

(2) A court shall not deal with an offender by means of a suspended sentence unless it is of the opinion that—

(a) the case is one in which a sentence of imprisonment would have been appropriate even without the power to suspend the sentence; and

(b) the exercise of that power can be justified by the exceptional circumstances of the case.

[5] There are 3 general observations which must be made in relation to this section. Firstly, the court must determine whether a term of imprisonment is appropriate in the first place. This much is now trite and needs little elaboration, except to say that a suspended sentence is not another way of imposing a lesser penalty. If a term of imprisonment is not warranted in the first place, then a suspended sentence is not a tool to mitigate against the harshness and inappropriateness of such a sentence. Secondly, the court cannot consider a suspended sentence if the appropriate term of imprisonment is more than 2 years. This underscores the fact that the more serious the crime for which a defendant is being punished, the less appropriate a suspended sentence is likely to be. Thirdly, the court should only order a suspended sentence if the exercise of that power can be justified by exceptional circumstances.

[6] What constitutes exceptional circumstances is obviously a matter for the individual facts of each case. However, there have emerged various principles in case law which underscore some of the factors which the court may consider in determining whether a sentence should be suspended. In the case of **DPP v. Elvis Richardson**², Ramdhani J(ag) noted that he **“would consider that a suspended sentence might be suitable in cases where a custodial sentence is appropriate but where such a sentence might have the effect of derailing the stability and future prospects of a man of good character in a case of**

² SKNHCR2013/0025

strong mitigating factors.” Whilst the legislation considered by Ramdhani J did not include the need for exceptional circumstances in considering a suspended sentence, I generally agree with this perspective and make two comments in relation to it.

- [7] Firstly, it would be difficult to justify a suspended sentence in circumstances where a defendant's antecedent history is significantly blemished. Where an individual has persisted in committing various crimes, especially one similar to the offence for which he is currently being sentenced, it would be a tall order for the court to decide that there are exceptional circumstances which warrant a suspension of the sentence. Secondly, the mitigating circumstances would have to be sufficiently strong in order for the court to consider them as exceptional. I am also of the view that if the mitigating factors are already considered in coming to an appropriate sentence of imprisonment, then they ought not to be considered in determining whether the sentence should be suspended. As it relates to section 45 of the **Criminal Code**, the court should not use the mitigating factors to reduce the sentence below 2 years purely as a means of suspending it. That would not be an appropriate way to exercise this discretion. The appropriate sentence and the suspension of that sentence are matters which ought to be considered separately.
- [8] The court can also consider the nature of the offence when balanced against a defendant's personal circumstances in order to determine whether there are exceptional reasons to suspend the sentence. This can include the level of disruption which may be caused to his family life and his employment. In the case of **R. v Bowen (Ashley)**³ the court of appeal of England and Wales noted that:

“A sentence of 16 months' imprisonment imposed following a guilty plea to dangerous driving, where the offender had driven his car at a man fighting the offender's brother, was reduced to a suspended sentence of six months. The judge should have avoided immediate custody, given the risk that would have posed to the offender's employment, home and family, and where, although he had a criminal record, that was well in the past.”

³ [2013] EWCA Crim 376

- [9] Here the court is referring to a dangerous driving case and an offence which appears to be designed to protect a close family friend from immediate harm. The defendant's previous convictions were said to be "well in the past" and the risk posed to his employment, home and family life in such circumstances ought to have been considered. On the other hand, as this court has found in the more recent case of **Rex v. Javard Clarke**⁴ persons ought not to be indifferent about the impact serious crime may have on their own families prior to the commission of offences which are premeditated. Possession of an illegal firearm is not a trivial matter, and it is important for the court to weigh in the balance the effect on family life with the willful and persistent disregard for the law which is becoming all too prevalent in our society.
- [10] Counsel for Mr. Hughes also referred the court to the case of **R v. Rehman**⁵ where the English courts noted that the court should consider whether there are exceptional circumstances which, if not considered, may result in punishments that are excessively harsh in the circumstances. In that case, the court considered an elderly offender who was unfit to serve a 5-year sentence as a result of his advanced age.
- [11] The court was also referred to the case of **R v. Alfonso Carty**⁶ which emerged from this jurisdiction. In that case, the defendant had pleaded guilty to one count of possession of a firearm and one count of possession of 111 rounds of ammunition. He was sentenced to 2 years imprisonment. The sentence was suspended on account of the fact that the defendant's mother was suffering from kidney failure and was taking dialysis on a regular basis. She was entirely dependent on him. It was also found that the defendant was 7 feet tall and over 300 pounds in weight. The size and nature of the prison cells in Anguilla were inadequate to house him. He also had no antecedent history. It was found that to imprison him would amount to cruel and inhuman punishment. His sentence was suspended.

⁴ AXAHCR2024/0010

⁵ [2005] EWCA Crim 2056

⁶ unreported

- [12] In general, therefore, it must be underscored that the suspension of a sentence of imprisonment should only be considered in exceptional circumstances. Exceptional does not necessarily mean rare. However, given the frequency with which this court is called upon to exercise this discretion in relation to firearm matters, it is important to reiterate the general principles. Given the circumstances of this case and the submissions filed on behalf of Mr. Hughes, I would also wish to make a few comments on the existence of pre-existing health conditions as an exceptional circumstance to warrant a suspended sentence.

Pre-Existing Health Conditions

- [13] I have specifically highlighted the issue of pre-existing health conditions for a number of reasons. Firstly, I am speaking here of a condition which the defendant knew about before he took a decision to commit a crime which involves a certain measure of premeditation. The law must certainly place a great measure of responsibility on those who commit crimes to think about the consequences of their actions before they commit such crimes in the first place. As I will highlight later on in this decision, Mr. Hughes has previous convictions for firearm possession. He has been incarcerated before. He would have known what prison life was like. Yet, he reoffended and committed the offence of obtaining not one, but two firearms without obtaining a permit. One of those firearms was an AM16 assault rifle. Surely, he ought to have given consideration to his own medical condition and his past antecedent history before making such a decision.
- [14] The second issue which I wish to highlight about pre-existing medical conditions is that health challenges in and of themselves are not exceptional. The sentencing guidelines indicate that a health issue can only be considered as a mitigating factor of the offence if it can be related to the offence in some way. It can none-the-less be considered as a mitigating factor of the offender. But that does not mean that health conditions are exceptional. Insofar as it relates to suspended sentences, the correct test to apply here is not whether the defendant will suffer some discomfort in serving a prison sentence with a specific health condition. After all, prison is meant to be a place of punishment as well as rehabilitation. It is only if the health condition is certified as being one which would make the defendant unfit to serve a sentence should the court consider this as a factor. When balanced against the nature of the offence,

it may be that to incarcerate would be inhuman and degrading. Therefore, the court must also balance the health condition with the nature of the offence and the other potential circumstances of the case. However, one must not lose sight of the fact that if a prison sentence is warranted the health condition must be such that it would be exceptional to meet the requirements of section 45 of the **Criminal Code**.

Self-Protection

- [15] One other issue which emerges quite often is the excuse of obtaining an illegal firearm for the purpose of protecting oneself. Indeed, the sentencing guidelines highlight this as a mitigating factor. It is not clear to me as to whether counsel submits that this is an exceptional circumstance to warrant a suspended sentence. However, it is emerging as a consistent submission that this ought to operate as a mitigating factor in favour of various defendants. I make just two observations in relation to that issue.
- [16] Firstly, whilst a defendant generally carries no burden of proof in a criminal case, where there has been a guilty plea or a conviction in a case of possession of firearm, the court must surely demand more from him than a mere assertion that he possessed an illegal firearm to defend himself. There is no doubt that there are rising levels of crime and violence in the country. The court can certainly appreciate a rash decision taken by a concerned citizen who has perhaps been the victim of a violent crime to arm himself. However, where a defendant has persisted in breaking the law, to the extent of being convicted for the third and fourth time of illegal firearm possession and has at least one previous conviction for an offence of a violent nature, surely more must be demanded of him in showing precisely why the court should look favourably upon him in committing yet another offence of this nature.
- [17] With these broad statements regarding the issues raised, I turn to consider the particular facts of this case, which have been agreed by the parties.

The Facts

- [18] On 3rd August, 2023, a tactical team of the Royal Anguilla Police Force executed a search warrant at the residence of Mr. Stephen Hughes. In a bedroom acknowledged to be that of Mr. Hughes, a black and green object, which appeared to be a rifle, was found on a dressing table. After being cautioned, Mr. Hughes acknowledged that the firearm belonged to him. He stated at that time that it was for his protection. A total of 20 rounds of ammunition was found in the firearm. Mr. Hughes was then arrested on suspicion of firearm possession.
- [19] Mr. Hughes was then taken to the motor vehicle he was driving at the time he was first observed by the police. In that vehicle a black and blue backpack was found. The police conducted a search of that backpack and recovered what appeared to be a silver and brown handgun. Mr. Hughes again acknowledged that this was a firearm and that it belonged to him. 6 rounds of ammunition was found in that firearm.
- [20] The firearms recovered were examined by Mr. Graham Husbands, who is a firearm and toolmark examiner. He found that one of the firearms were a rifle AM15 model .223/5.56 caliber, assault rifle bearing serial number 21048590. The other firearm was a security-six model Ruger.357 magnum caliber handgun bearing serial number 15193302.
- [21] Mr. Hughes was remanded into custody from 13th August, 2023, until the date of his sentence. On 8th April, 2024, Mr. Hughes pleaded guilty to two counts of possession of firearm without a valid permit. The remaining two counts of possession of ammunition were withdrawn by the crown.

The Pre-Sentence Report

- [22] Mr. Hughes is 32 years old and resided in North Valley, Anguilla at the time of his arrest. Based on information received in the Pre-Sentence Report (PSR), Mr. Hughes noted that he had a nurturing, christian upbringing with his parents and two siblings. He was initially active in church in his childhood days but reduced his attendance over the years. He has no children and migrated to the United Kingdom in 2018. He returned to Anguilla in 2023 and indicated that he was no longer comfortable with his housing arrangements in the UK. During his time

in the UK, Mr. Hughes worked with a local pub, Weatherspoon, as a shift leader and manager. He states that he enjoyed his work there and his employer has spoken favourably of him. It was intimated to the court that if Mr. Hughes were to be released from custody he would return to the UK and would be able to regain his employment there.

[23] Mr. Hughes' mother was interviewed in preparation for the PSR. She described him as being affectionate with a compassionate demeanour and as having a harmonious relationship with the members of his household. She, however, acknowledged that there were issues with Mr. Hughes in school and outside of the home in general. It was brought to Mrs. Hughes' attention that the report from the secondary school he attended indicated that he had displayed deviant behaviour at school. He was skipping classes and had poor attendance. She was surprised at this and stated that she was not informed. She recalls, however, that Mr. Hughes would complain that he was being referred to by his brother's name at school. This apparently upset him.

[24] Mrs. Hughes states that her son often expressed fear for his safety. She stated that prior to his incarceration Mr. Hughes remained primarily indoors and that people were generally surprised that he was even on the island.

[25] Mr. Glenford Hughes is Mr. Hughes' father. He described his son as loving and cooperative. He has a close bond with his siblings. He expressed shock at his son's involvement in firearm possession and stated that he was willing to invest in his future. He proposed to establish a car rental business to assist him. Mr. Hughes' siblings also referred to him in a similar manner to their parents.

[26] The PSR also contained information from Ms. Diaz Mussington, who was in a romantic relationship with Mr. Hughes for the last 5 years. She described him as caring and generous, resilient and committed. She did not feel threatened in his company. Discussions with the community revealed that people were generally not aware of his presence on the island.

[27] Mr. Hughes attended the Adrian T. Hazel Primary School and the Albenia Lake-Hodge Comprehensive Secondary School. There was at one point, at primary school, a physical altercation with a teacher which resulted in Mr. Hodge being placed in special needs. He

recalls subsequently having a lack of interest in education. At the secondary school there were several altercations which subsequently led to his expulsion in form 4.

- [28] The school report stated that Mr. Hughes attended secondary school between the years 2003 to 2008. He was recorded as having notable cases of rudeness and below average academic performance. He, however, displayed commendable performance in physical education. His behaviour deteriorated over time with frequent absences, tardiness and involvement in various forms of misconduct. This included breaching security and jumping the fence. After a parent-teacher conference, Mr. Hughes was referred to the Pupil Referral Unit in form 4 due to deviant behaviour.
- [29] After leaving school, Mr. Hughes worked occasionally with his father in construction and with “Mr. Electric” for some time. That was prior to his migration to the UK.
- [30] Mr. Hughes indicated that he has a spinal injury and an affected knee as a result of a biking incident which was confirmed by his mother. It is not clear when this injury occurred. Due to submissions put forward by his counsel, the court enquired as to his medical condition. A report was obtained from the prison on any impact this has had on him during incarceration. A medical report was also commissioned as it was indicated that Mr. Hughes had been examined by a medical practitioner whilst in prison.
- [31] Dr. Deslyn Hughes, in her report dated 27th June, 2024, stated that Mr. Hughes was examined at the prison on 2nd April, 2024. He complained then of back and “gas pains.” He reported symptoms of weakness, low energy and malaise when he received breakfast late. He also experiences back pain when feeling hungry. Mr. Hughes reported a prior history of arthritis, having been diagnosed in the UK between 2020 and 2021. He stated that he was unable to straighten his back at times. He was referred to complete an X-Ray of the thoracic and lumbar spine and advised to do back stretching exercises.
- [32] Mr. Hughes complained of back pains again on 7th May, 2024. The X-Ray results had not yet been obtained. He complained of difficulty sleeping on a narrow mattress due to his back pain. Mr. Hughes was again examined at the prison clinic on 4th June, 2024. The X-Ray results revealed mild thoracic spondylosis, mild lumbosacral spondosis and a fracture of the

L1 right traverse process. At the time, Mr. Hughes denied any recent injury to his back but indicated that he had been injured in the past. He complained of additional knee pain.

- [33] The doctor indicated that, upon examination of Mr. Hughes, he displayed no red flag symptoms and is able to mobilize with a normal gait pattern. It was recommended that he be further evaluated with a CT scan or an MRI of the thoracic and lumbar spine as well as orthopedic spinal specialist consultation. Mr. Hughes also wrote a note to the court complaining about his back pain, which I have taken into account. He also presented another hand written note, the contents of which I have read and considered.

Antecedent History

- [34] Mr. Hughes has a previous antecedent history. He has two prior convictions for firearm possession. His first conviction was on 12th October, 2010. He pleaded guilty to possession of a firearm without a valid permit and was placed on probation. Mr. Hughes breached his probation and was thereafter imprisoned for a period of 9 months. On 26th July, 2012, Mr. Hughes again pled guilty to firearm possession and was sentenced to one year imprisonment. On that day he was also sentenced to one year imprisonment for possession of ammunition. The evidence suggests that on 30th April, 2013, Mr. Hughes was again sentenced to prison for a period of 6 months for unlawful assault.
- [35] Whilst I appreciate that the last offence was committed in 2013, I note firstly that the law in Anguilla contains no provision relating to spent convictions. It is left to the discretion of the judge as to how to treat such convictions. Normally the court would consider a 10 year gap between convictions to weigh significantly in favour of a defendant. I note, however, that Mr. Hughes left the jurisdiction in 2018. That would have been 5 years after his last term of imprisonment. He returned in 2023 and immediately upon his return committed the offence of firearm possession for a third and fourth time in this jurisdiction. This time there were two firearms. One was an assault rifle. Therefore, whilst there has been a 10-year gap between convictions, Mr. Hughes spent more than half of that time out of the jurisdiction. I take those factors into account.

Risk Assessment

- [36] In assessing the issues raised during the various interviews and the assessment of Mr. Hughes' circumstances, the Department of Social Services concluded that, whilst there was a low risk of harm posed by Mr. Hughes to himself and those in close interpersonal relationships, there was a high risk of re-offending if not adequately supported and guided upon release.

The Sentencing Guidelines

- [37] I deal firstly with the second count on the indictment, as it is the most serious. I accept the submissions of counsel for the crown that this offence falls within category 1 of the guidelines as it relates to the consequences of the offence. Here we are speaking of an assault rifle. This is a particularly dangerous firearm. Insofar as it relates to the level of seriousness, I consider this to fall within level A of the guidelines. There were 20 rounds of ammunition in this weapon. Given that the maximum penalty for firearm possession is 14 years imprisonment, the starting point is therefore 10 years and 6 months imprisonment with a range of 8.4 to 12.6 years.
- [38] I have considered the aggravating and mitigating factors of the offence in coming to the range of sentence which is appropriate, save and accept that I now consider the fact that two separate firearms were found in two separate locations controlled by the defendant. However, being in possession of more than one firearm is certainly an aggravating factor. Insofar as it relates to the mitigating factors of the offence, I find that none exist. Although Mr. Hughes acknowledged that the firearms were his at the point of being discovered by the police, there is nothing here to suggest that he had voluntarily surrendered the firearms. I have read Mr. Hughes' note in relation to his personal protection. However, I do not accept that there is sufficient evidence to prove that the defendant was in need of this firearm to protect himself. Other than that submission I find nothing to mitigate the effect of this offence.
- [39] As it relates to the mitigating factors of the offender, I consider also the issue of Mr. Hughes' medical condition. The medical report has been assessed earlier and I would not repeat its

content. On account of the fact that prison life is likely to be more uncomfortable for him due to his injury I am prepared to consider a reduction in his sentence. I would also consider the sentiment expressed by his family and his employer in the UK. In all I would consider a 6 month reduction in the sentence on account of those facts. That would further reduce the sentence to 10 years imprisonment.

[40] However, as it relates to the aggravating factors of the offender, I considered the issue of his prior convictions. These two offences mark the 3rd and 4th convictions for firearm possession. Even after serving time for firearm possession, Mr. Hughes was again imprisoned by a magistrate on an assault charge. On one of those firearm offences, he breached the probation order and had to be incarcerated. He again committed a similar offence in a short space of his release from prison. As I have said earlier, I appreciate that his last offence was 10 years ago, but Mr. Hughes spent more than half of that time out of the jurisdiction. When he left Anguilla in 2018, his convictions could have hardly been considered as spent (there being no provisions in the legislation for such). Upon his immediate return to Anguilla, however, he re-engaged in the commission of two very serious offences for which he had two previous convictions.

[41] I am of the view that the sentence handed down in this particular case must be commensurate with the persistence in committing firearm possession offences. The sentence should therefore fall within the upper limits of the range as outlined in the guidelines, notwithstanding the mitigating factors. I believe that these aggravating factors are enough to increase the sentence within that range. A period of 12 years and 6 months imprisonment would be appropriate. The persistence in committing firearm offences is too much to ignore in this case. I would none-the-less credit Mr. Hughes for his early guilty plea and reduce the sentence on account of this. I therefore sentence Mr. Hughes to a term of imprisonment of 8 years, on the second count on the indictment.

- [42] As I have already stated, I am of the view that a separate and distinct sentence is necessary for the first count of the indictment. Whilst this may be seen as a lesser offence, it is not directly related in any way to the other offence. These were two separate firearms. The assault rifle was found in the house whilst the revolver was found in the car he was seen driving earlier. He should therefore be sentenced separately for each offence.
- [43] In considering the guidelines, I find that offence to fall within Category 2 as it relates to the consequences of the offence. This is one of two offences of firearm possession discovered on the same day. In terms of the level of seriousness, I find that this falls within level B. The firearm had more than 5 rounds of ammunition in it. There is therefore a starting point of 7 years imprisonment with a range of 4.9 years to 9.1 years.
- [44] Having already considered that there was more than one firearm discovered on that day and that the firearm contained ammunition in it, I find no further aggravating factors of this offence. There is also nothing here to mitigate this offence.
- [45] The aggravating and mitigating factors of the offender are the same as I have already outlined in my previous assessment. However, I am of the view that the previous convictions weigh heavily in favour of an increased sentence. I repeat my view that the persistence in committing firearm offences cannot be ignored in this case. A sentence at the upper limit of the range is appropriate. I would none-the-less credit the defendant for his guilty plea and reduce the sentence. I would therefore sentence the defendant to 6 years and 6 months in prison on the first count one the indictment. I consider the totality principle and I am of the view that concurrent sentences would be enough to ensure that the sentences imposed reflects the overall crime and is proportionate in the circumstances.
- [46] I understand that Mr. Hughes has spent 10 months and 14 days on remand. His time on remand is to be credited to his sentence. The two sentences are to run concurrently.

[47] I also order that Mr. Hughes is to undergo the medical assessment and treatment as recommended in the report dated 27th June, 2024 at the expense of the government. He is to also be provided with ongoing medical treatment as occasionally recommended by a certified medical practitioner. Quarterly reports on Mr. Hughes medical condition and treatment is to be provided to the court commencing 3 months from the date of his sentencing.

Ermin Moise
High Court Judge

By the Court

Registrar