

**EASTERN CARIBBEAN SUPREME COURT
ANGUILLA**

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

**CLAIM NO: AXAHCR2024/0010
BETWEEN:**

REX

v

JAVARD CLARKE

Before: His Lordship The Honourable Justice Ermin Moise

Appearances:

Ms. Erica Edwards for the Crown
Mr. Devin Hodge for the Defendant

2024: May 27.

Decision on Sentencing

- [1] **Moise, J.:** The Defendant, Mr. Javard Clarke, was indicted on one count of possession of a firearm and one of possession of ammunition. On 8th April 2024 he pleaded guilty to the charge of possession of a firearm and the crown thereafter withdrew the second count on the indictment. He is therefore before the court for sentencing.

The Facts

- [2] The agreed facts presented to the court are that on 25th August, 2022 members of the Royal Anguilla Police Force searched Mr. Clarke's car in the parking lot of the Albert Lake's Supermarket. Mr. Clarke was the driver of the motor car and there was one other passenger in the vehicle at the time. During the search, a 12-gauge shot gun was recovered between the passenger seat and the center console of the car. The firearm was partially covered with a black jacket. This firearm was later examined by Mr. Graham Husbands, who is an expert firearm and toolmark examiner. He determined that the shot

gun was a Mossberg 12 gauge caliber shot gun. It bears serial number NV58655E on the left side of the receiver. During the examination of the firearm Mr. Husbands was able to successfully discharge rounds of ammunition from it. He determined that this was a firearm as defined in the **Firearms Act**¹.

- [3] Mr. Clarke, in an interview under caution, acknowledged possession of the firearm and accepted that it was his. In an affidavit filed during the sentencing hearing, Mr. Clarke indicated that he possessed this firearm because of genuine fear. He states that whilst he does not participate in a lifestyle of violence, there is an increased level of violence in West End, Anguilla where he lives. He states that the violence is purely territorial and that he has had peers and close relatives who have been injured or killed in this violence. He therefore took possession of a firearm in order to protect himself.
- [4] Mr. Clarke states that his sole focus in more recent years was his professional development and the ability to provide for his family. Mr. Clarke is the father of two children. His previous girlfriend now has custody of his daughter and lives in St. Martin. Mr. Clarke has kept custody of his son. He states that his ex-girlfriend is not gainfully employed and is therefore not capable of providing financially for the children. He is the one mainly responsible for their financial wellbeing.
- [5] In the Pre-Sentence Report, Mr. Clarke's mother speaks positively of him. Although she acknowledges some troubles in his past, she indicated that she thought he was over that phase in his life as he was older and now had children. She states that she helps him out with the children and has noticed that he has become more mature and has settled down. She describes her son as being generally jovial but with a temper. Once he is angry, she does not engage with him. Mr. Clarke's sister was also interviewed by the social worker, and she states that she has a close relationship with him. She was of the view that he is a good person and has matured since he became a father. Interviews with members of the community also indicated that Mr. Clarke was seen as a jovial person and never being angry. However, persons in the community were also aware of him getting into trouble in the past.
- [6] Mr. Clarke attended the Albenia Lake Hodge Comprehensive School. The school record indicates that he displayed a bad temper and would be disruptive or fight at school. His academic performance was below average. He spent a considerable amount of time at the Ronald Webster Park near the

¹ CHAPTER F30

school instead of attending classes. There were incidents of disrespect to teachers and Mr. Clarke was eventually referred to the Pupil Referral Unit. He was reintegrated into the former Campus A in January, 2011 but thereafter reverted to negative patterns of behaviour.

- [7] Mr. Clarke is currently employed with Mr. David Ebanks as a Boat Captain, Fisherman and Diver. He earns a salary of roughly \$1,000.00US weekly. Mr. Ebanks has spoken very highly of Mr. Clarke and states that he would remain in his employment if he is not sent to prison as a result of this offence.
- [8] Mr. Clarke has an antecedent history. On 7th October, 2014 he was convicted of Robbery and sentenced to 3 years in prison. It is noted that at the time of the offence he was 16 years old and was 18 at the time of sentencing. It is unclear as to when Mr. Clarke was released from prison. However, given the sentence, and the possibility of only service two-thirds of the time, it is likely that he would have been released sometime in 2016 at the earliest. That was 7 years ago. At the time of this offence, Mr. Clarke was considered an adult for the purpose of criminal responsibility. There was no diversionary legislation for persons below the age of 18, as there is now. It is, therefore, within the discretion of the court to determine how to treat this particular offence in light of Mr. Clarke's age at the time.
- [9] Since leaving prison Mr. Clarke has been convicted of a number of offences for possession of marijuana. However, on 20th December, 2018, he was convicted of possession of marijuana with an intent to supply. For that he was fined the sum of \$5,000.00EC.

The Sentencing Guidelines

- [10] It is agreed by counsel on both sides that the facts of this case fall within category 3 in stage 1 of the sentencing guidelines for firearm possession. This is a lesser offence because the firearm was concealed within the car. However, there is disagreement on Stage 2 of the process. The crown submits that this is a serious level B offence in that there was ammunition found in the firearm and that it was taken into a public place. Mr. Hodge, for the defendant, argues that the ammunition charges were withdrawn and therefore cannot be used as an aggravating factor. It is also argued that although the firearm was taken into the supermarket parking lot it was still concealed and was therefore not in a public place as argued by the crown. Mr. Hodge's submission is that the offence falls within level C in terms of its seriousness.

- [11] In my view, even if the court were to have regard to the fact that the ammunition charges were withdrawn, I would still consider this to be a level B offence in terms of seriousness. The location of the firearm within the car doesn't take away the fact that it was brought into a public place. The location within the car, though concealed, doesn't mean that there was no danger to the public in having this firearm in the defendant's possession in the supermarket parking lot. There is a distinction to be drawn between the open brandishing of a firearm and taking a firearm to a public place. Even if it is concealed it does not take away from the fact that this firearm was in a car in a public parking lot.
- [12] I agree therefore with the submissions of counsel for the crown in that the offence falls within level C and Category B of the guidelines. The starting point therefore is a sentence is 5 years and 6 months, given the fact that the maximum available sentence is 14 years. There is therefore a range of 3.5 years to 7 years, 7 months in prison, depending on the aggravating and mitigating circumstances.
- [13] In terms of the aggravating factors of the offence, I have already considered the fact that the firearm was in a public place in coming to the range of sentence and would not therefore consider it as an aggravating factor at this stage in the process. There are therefore no further aggravating factors. There is nothing mitigating about this offence either.
- [14] In terms of the aggravating factors of the offender, I would not consider Mr. Clarke to have a clean record. Insofar as it relates to the previous offence of Robbery, I consider that Mr. Clarke was only 16 years old when that offence was committed. He would have left prison around aged 18. I would not generally hold this against him so as to increase the median sentence arrived at. I give further consideration to the fact that the offences of possession of cannabis are different in nature to that of Robbery or possession of firearm. However, Mr. Clarke was also found guilty of possession of cannabis with intent to supply. This is not a minor offence and though different in nature, it is nonetheless an offence to be taken into account. There will however be no increase in the sentence on account of this past antecedent history.
- [15] In mitigation, I consider that Mr. Clarke has pleaded guilty, though not at the first opportune moment. None-the-less, he admitted to the police that the firearm was his. I would therefore reduce the

sentence by one-third on account of his guilty plea. This would result in a sentence of 3 years and 8 months.

[16] In terms of other mitigating factors, I considered Mr. Clarke's evidence in relation to his children. He is a provider for his family and the evidence suggests that he is gainfully employed. His employer has given a glowing reference for him. Counsel has asked that I consider the defendant to have taken steps of self-correction after his last major conviction. He has over the years become a responsible father.

[17] However, I am of the view that although being a parent can be mitigating, the law should also place responsibility on parents to ensure that they do not commit serious crimes. The defendant was in possession of a 12 gauge shot gun without any license to own one. That is not the act of a responsible parent. In my view, he admitted to taking possession of this firearm. Therefore, Mr. Clarke was not displaying any regard for the welfare of his own children. Parents to young children must be called upon to set the right example. One cannot commit such serious crime and claim to be a good parent.

[18] In his affidavit, Mr. Clarke states that he got the firearm for his own protection, given the nature of crime in his community. I would not accept this as a mitigating factor. There is nothing to suggest that the defendant was the target of any violence. To accept that it is mitigating to be in possession of such a firearm for such reasons would be a step too far and set the wrong precedent. He broke the law willingly and there is insufficient evidence here to provide any justification for this.

[19] However, in considering the Pre-Sentence Report and the other mitigating factors contained therein, I am prepared to reduce the sentence by a further period of 8 months. I would however make just one observation at this stage. The court has had the unfortunate task in more recent months of sentencing a number of young men to prison for firearm possession. In doing so a common thread throughout the pre-sentence reports is that the first sign of deviant behaviour emerged during the secondary school years. All of those defendants were the subject of suspension or some form of diversion from the normal school process during their teenage years. It suggests to me that we are in a position to identify at quite an early enough stage, the young men who need intervention to prevent a life of crime. Something must be done to address this.

[20] I have considered the issue of deterrence and am of the view that the nature of the offence is serious enough to warrant an element of deterrence in the sentence. An unlicensed firearm in a car in a public parking lot is a serious offence. There is not much to consider here by way of retribution as there is no allegation that the gun was used in any crime. There is perhaps a need for rehabilitation as the defendant must be brought to understand the seriousness of the offence and the need not to commit further offences in the future. He may also wish to address his frequent arrests for marijuana possession.

[21] Counsel for Mr. Clarke has asked that the court consider a suspension of his sentence in keeping with the provisions of section 45(1) and (2) of the **Criminal Code of Anguilla**. However, I make two points here. Firstly, such a sentence is only applicable if the term of imprisonment is not more than 2 years. Despite counsel's rather forceful submission for a lower custodial sentence, I have concluded that a 3 year sentence is appropriate in this case and would therefore be unable to order a suspension of this sentence. Secondly, even if I had not come to a 3 year sentence, I do not accept that there is anything exceptional here to warrant a suspension of the sentence. Mr. Clarke is an adult who understands right from wrong and being a parent who is gainfully employed is not an exceptional reason to not hold him adequately accountable for having a 12 gauge shot gun in a car which was parked in a supermarket parking lot. I am also not convinced of the other submissions of him turning his life around upon becoming a parent. His actions in committing this offence clearly show otherwise.

[22] In light of the foregoing I have sentenced Mr. Clarke to 3 years in prison. He spent a total of 12 days on remand before being admitted to bail. These days will count towards the computation of his time in prison.

Ermin Moise
High Court Judge

By the Court

Registrar