

**THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
ANGUILLA CIRCUIT
(CRIMINAL)
AD 2020**

CLAIM NO. AXAHCR 2020/0001

REGINA

v

DELRAO HARRIGAN

Appearances:

Mrs. Tona Simpson-Whyte, Astaphan's Chambers, of Counsel for the Defendant
Ms. Erica L. P. Edwards, Senior Crown Counsel, Attorney General's Chambers for
the Crown

2020: May 7;
May 19.

JUDGMENT

- [1] **INNOCENT, J.:** The defendant, Mr. Delrado Harrigan ('Mr. Harrigan'), stood indicted for the offences of possession of a firearm without a firearm user's license and possession of ammunition for a firearm without a firearm user's license contrary to section 20(1) (b) of the Firearms Act.¹
- [2] Mr. Harrigan was arraigned on 3rd March 2020. Upon his arraignment he entered pleas of guilty to both counts in the indictment.
- [3] The court, being of the view that offences of this nature typically result in the imposition of a custodial sentence, ordered that a Presentence Report ('PSR') be prepared by the Department of Probation. A PSR filed 27th March 2020 was submitted to the court.

¹ R.S.A. c. F30

- [4] The undisputed facts which form the basis of the plea are as follows. On 22nd February 2019, members of the Royal Anguilla Police Force ('RAPF') executed a search warrant at Mr. Harrigan's residence in Island Harbour, Anguilla. A search was conducted in the bedroom occupied by Mr. Harrigan's grandmother which led to the discovery of a .380 handgun and a single magazine containing four rounds of ammunition. In an interview under caution with the RAPF, Mr. Harrigan admitted to being in possession of the interdicted items.
- [5] In sentencing Mr. Harrigan, the court will first arrive at a starting point sentence. In order to arrive at a starting point that is commensurate with the seriousness of the offence, the court will assess Mr. Harrigan's degree of criminal culpability in the commission of the offence, and the degree of harm caused by the commission of the offence.
- [6] The starting point sentence arrived at will be adjusted upwards or downwards depending on the aggravating and mitigating factors in the case in order to arrive at a notional sentence.
- [7] The court will then consider whether any deduction or discount from the notional sentence is required to account for Mr. Harrigan's guilty plea, his cooperation with the police investigation, or for any other reason the court determines is deserving of a discount from the notional sentence.
- [8] The court will then apply the totality principle, in light of the fact that Mr. Harrigan is charged with two separate offences arising from the same transaction, in order to ensure that the overall sentence meets the totality of Mr. Harrigan's offending.
- [9] In constructing the sentence, the court will then go on to consider whether Mr. Harrigan is entitled to credit for any time spent on remand.
- [10] Ultimately, the court will factor into its considerations the subjective factors that may have influenced Mr. Harrigan in the commission of the offence in light of the permissible aims of punishment. This will permit the court to determine what kind

of sentence ought to be imposed. In other words, whether either a custodial sentence or a noncustodial sentence would be sufficient to punish Mr. Harrigan while at the same time meeting the permissible aims of punishment. The court will also consider whether a fine should be imposed or whether Mr. Harrigan ought to be dealt with by some alternative means of sentencing.

- [11] Ms. Edwards, in the Crown's written submissions, alluded to the fact that the Draft Eastern Caribbean Supreme Court Sentencing Guidelines (Firearm Offences) (the 'Sentencing Guidelines') should inform the court's approach to sentencing. Unfortunately, the Guidelines are not currently in force in Anguilla, therefore, the court cannot apply the same.

The Starting Point

- [12] The maximum penalty prescribed by statute² for the commission of the subject offences is a fine or imprisonment for 14 years or both on conviction on indictment. The court accepts that the penalty prescribed by statute is not necessarily the starting point.

Seriousness - Degree of Culpability

- [13] In assessing Mr. Harrigan's degree of criminal culpability, the court formed the view that it may be categorized as a moderate level of criminal culpability. This was a case of a single firearm. The cartridge was found to contain four rounds of ammunition and was found separately from the associated firearm.

Seriousness - Degree of Harm

- [14] In the present case, the court categorized the degree of harm as low. There was no injury to anyone involving the use of the firearm and ammunition. The offence was not accompanied by an offence involving the discharge of the firearm in public to inflict injury or fear, or in the commission of any other associated criminal

² Section 50 (b) Firearms Act

offence; the firearm was of a moderate caliber. This was a case of simple possession.

- [15] Having assessed Mr. Harrigan's degree of culpability as moderate and the degree of harm as low, the court will adopt a starting point of 6 years imprisonment.

The Notional Sentence – Aggravating Factors

- [16] The court has taken the view that there are no aggravating factors associated with the commission of the offences warranting an upward adjustment of the starting point, save and except that Mr. Harrigan has a previous conviction for the offence of attempted robbery.
- [17] However, sufficient information was not made available to the court with sufficient particularity regarding the circumstances attendant on the commission of this previous offending to enable the court to properly assess this as an aggravating factor. It was not disclosed to the court whether the commission of the previous offence of attempted robbery by Mr. Harrigan involved the use of a weapon; and whether it involved the infliction of fear and violence in the commission of the same. In the absence of such crucial information, the court is placed in a position of great difficulty in deciding what weight to attach to Mr. Harrigan's previous offending as an aggravating factor.
- [18] Therefore, the court will treat with Mr. Harrigan's previous conviction for the offence of attempted robbery in this way. Mr. Harrigan committed the offences for which he is being presently sentenced just shy of four(4) months subsequent to him being sentenced to time served, which was equivalent to the four(4) years and four (4) months that he had spent on remand. In the circumstances, the court is minded to uplift the notional sentence by one(1) year to take account of Mr. Harrigan's previous offending as an aggravating feature of the case.

Notional Sentence – Mitigating Factors

- [19] The court was unable to distill the presence of any mitigating factors in the instant case. Nevertheless, the court is cognisant of the socio-psychological factors that may have influenced Mr. Harrigan in the commission of the present offences. However, this aspect of Mr. Harrigan's personal circumstances is deserving of other treatment elsewhere and will not be considered as a mitigating factor. This is simply because the court is not clothed with information that suggest that Mr. Harrigan's present offending is in any way linked to his socio-psychological disposition.
- [20] In the circumstances, this aspect of the case will be reserved as a factor to be considered when dealing with the type of sentence likely to be imposed and will therefore, not be treated as a mitigating factor. Therefore, the court is of the view that there are no mitigating factors present in the instant case.

Discount for Guilty Plea

- [21] The court has determined that Mr. Harrigan has entered his guilty plea at the earliest opportunity and is therefore entitled to a full discount of one-third from the notional sentence that the court is minded to impose.

Cooperation with Investigation

- [22] In addition, Mr. Harrigan shall benefit from a reduction in sentence of one(1) year to take account of his cooperation with police authorities in their investigation of the offence.

Time Spent on Remand

- [23] It appears that prior to being bailed for the present offences, Mr. Harrigan had spent a period of 25 days on remand. This period of time spent on remand will be deducted from the overall sentence.

[24] The court is of the view that a sentence of 1 year, 11 months and 5 days imprisonment, together with a fine of EC\$5,000.00, is sufficient to reflect the totality of Mr. Harrigan's offending.

Custodial or Noncustodial Sentence

[25] In sentencing Mr. Harrigan, the court has pondered upon the question of whether a custodial sentence ought to be imposed in all the circumstances of the case, particularly in light of what is contained in the PSR.

[26] In considering the matter, the court took into account the subjective factors that might have influenced Mr. Harrigan in the commission of the offence and his personal characteristics.

[27] The court has also deliberated over the question of whether the permissible aims of punishment may properly be met by the imposition of a custodial sentence and whether the same objectives are attainable by the imposition of a noncustodial sentence, a combination of both, or some other form of alternative sentencing.

[28] In conducting this assessment, the court has considered in depth the matters contained in the PSR.

[29] Mr. Harrigan is now 24 years old. He was 23 years old at the time of the commission of the offences. He is unmarried and has fathered no children.

[30] According to the PSR, Mr. Harrigan confirmed in his interview with the Probation Officer that he has a history of cannabis use which he commenced at the age of 18. He admitted to smoking three cannabis cigarettes daily. Mr. Harrigan denied the consumption of alcohol which, according to the Probation Officer, conflicts with the reports obtained from investigations carried out by the Probation Officer in the community.³

³ At para. 2.5 PSR

- [31] The PSR also disclosed that the records of the Department of Social Development ('DSD') revealed that Mr. Harrigan has been known to the DSD from June 2005 to May 2013 as a result of Mr. Harrigan being the victim of sexually related offences and his display of antisocial behavior at home and at school.
- [32] In October 2007, a care plan was created for Mr. Harrigan to deal with his antisocial behavior and to deal with the psychological effects of the sexual assaults. He was referred to Dr. Linda Banks, who is a clinical psychologist, to partake in individual and family counselling sessions.
- [33] However, according to the PSR, despite these interventions Mr. Harrigan continued to display his antisocial traits and rarely showed remorse for his conduct. He continued to present with these challenges throughout his teenage years.⁴
- [34] Mr. Harrigan has not benefited from the completion of any formal schooling. This appears to be in large measure the result of his continued display of antisocial behavior while attending educational establishments. He is currently employed as a landscaper and also engages in small maintenance projects with a local contractor. He commenced employment sometime in March 2020.
- [35] The PSR also disclosed that the records of the DSD revealed that Mr. Harrigan was diagnosed with Attention Deficit Hyperactive Disorder ('ADHD') in November 2007 and was prescribed medication for the same. In 2008 Mr. Harrigan presented with a conduct disorder, and in 2009 a substance abuse disorder.⁵
- [36] Based on the foregoing, it cannot be disputed that Mr. Harrigan presents as a convincing case for urgent rehabilitation in the form of professional clinical intervention. The issue with which the court is faced with, however, is whether the necessary and required rehabilitative process can be accomplished within or without the confines of a prison.

⁴ At para. 2.10 PSR

⁵ At para. 5 PSR

- [37] In determining this issue the court is mindful of the fact that offences of this nature, save and except very exceptional circumstances, are generally punished by the imposition of a custodial sentence. However, the court is also mindful of the fact that the imposition of a custodial sentence is likely to derail or impede any progress towards rehabilitation. It may also very well be that the prison environment may not be conducive to much needed clinical intervention that it appears Mr. Harrigan requires.
- [38] In any event, the court is also concerned with the question of whether Mr. Harrigan will comply with any order that the court is likely to make with respect to his rehabilitation on his own without supervision compelling him to do so.
- [39] In the circumstances, the court is tasked with constructing a sentence that is best suited to deal with the many variables and permutations highlighted above. In this regard, the court has sought assistance from the provisions of the Probation Act.⁶
- [40] Having considered the contents of the PSR, the court has decided to treat with Mr. Harrigan by means of a probation order. The commission of the present offences are not attended by damage, injury or loss to any victim. There is no evidence presented of the need to protect the public from harm from Mr. Harrigan.
- [41] In deciding to make a probation order, the court has also considered the one aggravating factor relating to the offences and the offender. Essentially, the court has considered all of the matters that a sentencing court is required to consider when arriving at a decision to make a probation order, particularly what is mandated by section 12 of the Probation Act.⁷

⁶ R.S.A. c. P96

⁷ 12. In determining whether to make a probation order, the Court may consider the contents of the pre-sentence report, the victim impact statement if any, and the following—

- (a) the nature and seriousness of the offence, including any physical or emotional harm done to the victim;
- (b) any damage, injury or loss caused by the offender;
- (c) the need for the community to be protected from the offender;
- (d) the prevalence of the offence;
- (e) the presence of aggravating circumstances relating to the offence and the offender;

[42] However, having taken into account all of the factors prescribed by section 12 of the Probation Act, the court will exercise the discretion which it has pursuant to section 13(1)(b) of the Probation Act which empowers the court to impose a fine on an offender, and also direct that he complies with the conditions set out in the probation order. This is to ensure that the court does not send out the signal that offences of this kind will be treated with a slap on the wrist. The court, in its own experience, had discerned the prevalence of this kind of offence in Anguilla. The possession of a potentially lethal weapon is a serious infraction of the law that ought not to be treated with lightly.

Sentence

[43] In the circumstances, Mr. Harrigan shall be sentenced as follows:

1. Mr. Delrado Harrigan is fined the sum of EC\$5,000.00 to be paid in six (6) months; in default six (6) months imprisonment.
2. Mr. Delrado Harrigan shall comply with the following conditions which constitute a probation order:
 - (a) not to commit another offence during the period of the probation order;
 - (b) to appear before the court when required to do so by the court;
 - (c) to notify the Department of Probation in writing in advance of any intended change of address; and to promptly notify the Department of Probation of any change of employment or occupation;
 - (d) to report to the Department of Probation within the times stated in the order and thereafter when required by the Department of Probation and in the manner directed by the Department of Probation;
 - (e) not to leave Anguilla without the written permission of the Department of Probation; and

(f) the presence of mitigating circumstances relating to the offence and the offender;
(g) where appropriate, any diminished responsibility of the offender;
(h) a plea of guilty and any assistance the offender gave to the police;
(i) a voluntary apology, compensation or restitution provided to the victim by the offender;
(j) the offender's plea in mitigation;
(k) any comments made in relation to the pre-sentence report; and
(l) any other matter the Court thinks is appropriate.

- (f) to maintain employment with an employer approved by the Department of Probation, and or to attend an educational institution, as appropriate.
- 3. In addition to the conditions mentioned above, Mr. Delrado Harrigan shall comply with the following conditions which constitute part of the probation order:
 - (i) to submit to drug and alcohol testing as directed by the Department of Probation and to abstain from the consumption of controlled drugs within the meaning of the Drugs (Prevention of Misuse) Act and the consumption of alcohol;
 - (ii) to participate in a drug or alcohol treatment or rehabilitative programmes approved by the Department of Probation;
 - (iii) to participate in other rehabilitative programmes designed to correct the offending behaviour, improve social skills and reduce the risk of re-offending as directed by the Department of Probation;
 - (iv) to submit to drug and alcohol testing as directed by the Department of Probation;
 - (v) Without prejudice to the foregoing, Mr. Delrado Harrigan shall undergo psychological evaluation and counselling by Dr. Olufunmike M. Banks-Devonish, Clinical Psychologist employed with the Ministry of Social Development;
 - (vi) Dr. Olufunmike M. Banks-Devonish shall submit a Psychological Assessment Report to the court every six (6) months in relation to Mr. Delrado Harrigan.
- 4. If Mr. Delrado Harrigan is subsequently imprisoned in relation to an offence committed prior to the making of the probation order, the order is suspended during the period of imprisonment and shall, at the court's direction, continue in force when he is released from prison, save when he is released from prison pursuant to a parole license granted under the Parole of Prisoners Act, in which case the probation order shall cease to have effect.
- 5. The probation order shall continue in force for a period of three (3) years from today's date unless suspended in accordance with section 21(3) of the Probation Act.
- 6. If Mr. Delrado Harrigan is convicted of an offence committed during the term of the probation order, in addition to any punishment that may be

imposed for that offence, the court shall, after hearing the prosecutor and Mr. Delrado Harrigan or his counsel, exercise its powers under section 34(3) of the Probation Act.

Shaw Innocent
High Court Judge

By the Court

Registrar