

**THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
(ANGUILLA CIRCUIT)
(CRIMINAL)
A.D. 2019**

CASE NO. AXAHCR 2019/0017

BETWEEN:

REGINA

v

RAYSHAWN BROWN

Appearances:

Ms. Nakishma S.A. Hull, Senior Crown Counsel, Attorney General's Chambers of
Counsel for the Crown

2019: December 13.

SENTENCING JUDGMENT

- [1] **INNOCENT, J.:** The defendant was arrested and charged for the offences of possession of firearm and possession of ammunition. The defendant is 27 years old. He has no children. Prior to the commission of the subject offences he resided with his mother and three other siblings. The defendant dropped out of Secondary School in Form 4 and appears to have no formal certification. At the time of his arrest, he was employed as a labourer in the construction industry. Apart from one previous conviction for possession of cannabis and theft committed in 2018 and 2012 respectively, the defendant has no previous convictions for any similar offence. He is unrepresented by Counsel in these proceedings. The defendant has been remanded in custody from the date of his arrest.
- [2] The court has had the benefit of Crown Counsel's written submissions on sentencing. The court has also had the benefit of a pre-sentence report (the

'PSR'). The Crown has presented a report of the defendant's antecedent offending.

Indictment and plea

- [3] The defendant stands indicted for the following offences, namely: -
1. Possession of a firearm without being the holder of a firearms user's licence contrary to section 20 (1) (b) as provided for by section 20 (4) of the Firearms Act¹ ('Count 1');
 2. Possession of ammunition without being the holder of a firearms user's licence contrary to section 20 (1) (b) as provided for by 20 (4) of the Firearms Act ('Count 2')
- [4] The defendant was arraigned, and, upon his arraignment he entered pleas of guilty to both counts on the indictment.

Factual matrix

- [5] The charges contained in the indictment arose out of an incident that occurred on 12th February 2019 at North Valley, in Anguilla. At the material time police officers on patrol accosted the defendant who was standing next to a vehicle with a black bag slung around his neck. As the police approached, the defendant fled on foot and one of the officers gave chase. The defendant dropped the bag that he was carrying. He was eventually apprehended by one of the officers. When questioned as to the contents of the bag, the defendant was uncooperative. The bag was retrieved in the defendant's presence and was found to contain a loaded handgun. During this intervention by the police, the defendant became belligerent and assaulted two of the officers resulting in personal injury to one of the officers. In the struggle that ensued, the defendant attempted to reach for the service weapon of one of the officers which he managed to retrieve, while threatening to shoot him.

¹ R.S.A. c. F30

He was eventually subdued, disarmed and detained. The defendant again became belligerent and attempted to flee. On examination, the firearm was loaded with five rounds of ammunition. The defendant refused to cooperate with police authorities.

Seriousness of the offence

- [7] In determining the benchmark or starting point the court will have regard to the seriousness of the offence.
- [8] The seriousness of this class of offence is reflected in the statutory penalty prescribed for the commission of the same. Section 50 (b) of the Firearms Act prescribes a penalty of a fine or imprisonment for a term of 14 years or both on conviction upon indictment.
- [9] The court adopts the view, that the maximum statutory penalty for the commission of this offence is not necessarily the starting point or benchmark to be adopted. The court retains the discretion to impose a lesser penalty than that prescribed by law for the commission of the offence.
- [10] In determining the seriousness of the offence, the court will have regard to the degree of harm and the degree of criminal culpability of the defendant in the commission of the offence. The court is also mindful of the fact that the sentence likely to be imposed must be commensurate with the seriousness of the offence.

Harm

- [11] The court assessed the degree of harm in the commission of the offence to be moderate. The defendant did not commit any offence with the weapon but merely had it in his possession.

Culpability

- [12] However, in assessing the defendant's degree of criminal culpability in the commission of the offence, the court took into account the following factors: -

- (a) Possession of a highly dangerous and potentially lethal weapon.
- (b) The firearm and ammunition were unlawfully in his possession.
- (c) The firearm and ammunition were concealed and carried in a public place.
- (d) The firearm was loaded at the material time.

[13] In arriving at a suitable benchmark the court also paid regard to sentences imposed for similar offences in this jurisdiction. In this regard the court is grateful to counsel for providing the necessary authorities.

[14] The court has discerned that although these decisions give an indication of the final sentence, they do not assist the court in distilling the approach to sentencing taken by the sentencer, when imposing the sentence. Also, no indication is given with respect to the starting point adopted.

[15] Therefore, in the absence of any definitive sentencing guidelines from this jurisdiction, the court will be left to construct a sentence that is based on a suitable benchmark that reflects the seriousness of the offence and one that is based on the principles of judicial sentencing.

[16] Nevertheless, it appears that the sentencing range for the commission of this type of offence is 2 years imprisonment to 7 years imprisonment.

[17] In determining the seriousness of the offence the court sought guidance from the dicta of Lord Bingham CJ in the case of **R v Avis and Others**² cited in **Kashorn John v The Commissioner of Police**³ where his Lordship said:

“The appropriate level of sentence for a firearm offence, as for any other offence will depend on all the facts and circumstances relevant to the offence and the offender, and it would be wrong for this Court to seek to

² [1998] 1Cr App Rep 420

³ [2008] ECSCJ No. 87

prescribe unduly restrictive sentencing guidelines. It will however, usually be appropriate for the sentencing court to ask itself a series of questions:

(1) What sort of weapon is involved? Genuine firearms are more dangerous than imitation firearms. Loaded firearms are more dangerous than unloaded firearms. Unloaded firearms for which ammunition is available are more dangerous than firearms for which no ammunition is available. Possession of a firearm which has no lawful use (such as a sawn-off shotgun) will be viewed even more seriously than possession of a firearm which is capable of lawful use.

(2) What if any use has been made of the firearm? It is necessary for the court, as with any other offence, to take account of all circumstances surrounding any use made of the firearm: the more prolonged and premeditated and violent the use, the more serious the offence is likely to be.

(3) With what intention (if any) did the defendant possess or use the firearm? Generally speaking, the most serious offences under the Act are those which require proof of a specified criminal intent (to endanger life, to cause fear of violence, to resist arrest, to commit an indictable offence). The more serious the act intended, the more serious the offence.

(4) What is the defendant's record? The seriousness of any firearm offence is inevitably increased if the offender has an established record of committing firearm offence or other crimes of violence."

[18] In the circumstances, after assessing the degree of harm and the defendant's degree of criminal culpability the court adopts a benchmark of 9 years imprisonment. The court finds the defendant's culpability to be high based on the factors that the court has taken into account. The court also finds that the degree of harm, although not resulting in actual physical harm or damage to property, to be moderate given the circumstances in which the offence was committed. Therefore, the court finds that the benchmark of 9 years imprisonment is justified in all the circumstances of the case.

The notional term

[19] In arriving at the notional sentence, the court weighed the aggravating and mitigating factors present in the instant case. The court finds that the aggravating factors outweigh the mitigating factors. Therefore, the court considers it necessary

to scale the benchmark upwards to take account of this. Therefore, the court will scale the benchmark of 9 years imprisonment upwards by 3 years thereby arriving at a notional sentence of 12 years imprisonment.

Aggravating factors

- [20] The court has identified the following aggravating factors present in the case: -
- (a) The defendant sought to avoid detection and apprehension by the police authorities.
 - (b) The defendant's conduct at the time that he was apprehended which included an attempt not only to evade detection but also to evade apprehension.
 - (c) The assault on two police officers.
 - (d) The threat to one of the police officers.
 - (e) The defendant's attempt and success in retrieving the firearm belonging to one of the officers.
 - (f) The defendant's lack of cooperation with police authorities.

Mitigating factors

- [21] The court was unable to identify any mitigating factors present in the instant case. However, the court accepts that the defendant has no previous conviction for a similar offence.
- [22] Having weighed the aggravating and mitigating factors in the present case the court will fix the notional sentence at 12 years imprisonment. There is no likelihood of this sentence being scaled downwards, on account of any mitigating factors that can be distilled from the circumstances surrounding the commission of the offence.

Permissible aims of punishment

- [23] In determining the length of the custodial sentence, and the type of sentence to be imposed, the court took into account the permissible aims of punishment, namely,

retribution, rehabilitation and deterrence. The court considered whether any of the permissible aims of punishment would be better met by the imposition of a custodial sentence as opposed to a noncustodial sentence.

Punishment

- [24] This permissible aim of punishment is premised on the principle that the sentence imposed should reflect society's abhorrence for the commission of the offence. This kind of offence will almost invariably attract a custodial sentence unless there are substantial mitigating factors that warrant a non-custodial sentence such as the defendant's age and lack of previous convictions for similar offences. This was indeed a serious offence particularly in light of the defendant's conduct when apprehended by the police. Therefore, the court is of the view that the only sentence that can serve this permissible aim of punishment is a custodial one.

Deterrence

- [25] In this regard the court is concerned with both specific and subjective deterrence. Therefore, the overall sentence imposed by the court must serve to deter the defendant from engaging in this type of conduct in the future.
- [26] The court is also mindful of the serious spate of gun related offences in the jurisdiction. In the absence of empirical data to substantiate the rate of such offending, the court is well placed based on experience to make a determination on its own having regard to the number of gun related offences that come before the court in this jurisdiction. In the circumstances, the court must tailor a sentence that reflects the need to deter others from engaging in conduct that involves the unlawful possession and use of firearms in the commission of offences.

Rehabilitation

- [27] The PSR does not suggest that there is a serious need for the rehabilitation of this defendant. The question that arises is whether this permissible aim of punishment

would be better served within the prison environment. The court is of the view that given the personal characteristics of the defendant as evidenced in the PSR the process of rehabilitation may be better served within the walls of the prison.

[28] The matters canvassed in the PSR, satisfies the court that any rehabilitation of this defendant will have to be supervised rehabilitation within an institutionalized environment.

[29] The court has formed the view that any period of imprisonment so imposed is not likely to derail the defendant in his future prospects.

Discount for guilty plea

[30] The defendant having pleaded guilty at this stage of the proceedings will be entitled to a full 1/3 discount from the notional sentence that the court is minded to impose. Therefore, a period of 4 years imprisonment will be deducted from the notional sentence of 12 years imprisonment.

Time spent on remand

[31] The defendant will be entitled to a discount from the notional sentence for all the time spent on remand. The defendant has spent a period of 10 months (a total of 302 days) on remand. This period of remand will be deducted from the overall sentence imposed. Therefore, the period of 10 months or 302 days will be deducted from the sentence of 8 years imprisonment.

Sentence

[32] The court will therefore impose a sentence of 8 years imprisonment. From this period of 8 years imprisonment a period of 10 months or 302 days will be deducted. Therefore, the defendant will serve a period of 7 years 2 months imprisonment commencing from today's date. The sentences are to run concurrently.

[33] During this period of incarceration the defendant shall be required to undergo counselling and rehabilitation programs offered by the prison to deal with his anger management issues. The defendant will also be required to enroll in all or any of the vocational and technical educational opportunities available at the prison.

Shawn Innocent
High Court Judge

By the Court

Registrar