

**IN THE SUPREME COURT OF GRENADA
AND THE WEST INDIES ASSOCIATED STATES**

IN THE HIGH COURT OF JUSTICE

CLAIM NO. GDAHCR2015/0069

BETWEEN:

THE QUEEN

V

**CLINDON DENNY ST. BERNARD
KESTON TOUSSAINT**

Appearances:

Ms. Crisan Greenidge for the Crown
Mr. Prime for both Accused

2017: October 16.

SENTENCING JUDGMENT

Criminal Law – Sentencing – Firearm and Ammunition Offences - Firearms Act s.20(1) and s.20(4)(b) – Sentencing Methodology – Aggravating and Mitigating Factors – Serious Offences – Immediate Imprisonment – Court Considerations – Principles of Sentencing – Undesirability of imprisoning young first time offenders – Financial penalty and term of imprisonment.

[1] **AZIZ, J.:** This Court now comes to sentence both convicted men, Mr. Clindon Denny St. Bernard and Mr. Keston Toussaint, both of whom were initially indicted by the Learned Director of Public Prosecutions on the 7th January 2016 for the offences of possession of firearm and possession of ammunition. On the 12th January 2016, they both entered not guilty pleas to the indictment.

- [2] On the 1st February 2017, an amended indictment was filed and the now convicted man, Mr. Keston Toussaint, entered guilty pleas to the offences alleging possession of firearm and ammunition, whilst Mr. St. Bernard maintained his not guilty pleas to the offences of a similar nature and the trial was set down to be heard.
- [3] A final further amended indictment was filed on the 25th May 2017, and the now convicted man Clindon Denny St. Bernard, was re-arraigned and maintained his not guilty plea. He was convicted by the jury on the 13th October 2017, the trial lasting just under 5 days.

Facts

Keston Toussaint

- [4] Ms. Ann Marie Hillaire lived in Mardigras, and is the mother of Keston Toussaint. The co-accused Clindon Denny St. Bernard is Keston's friend and they both lived in the same yard with her, although Keston had his own house. Ann Marie Hillaire called her son Keston over before he left for work on the 21st May 2015 and told him that:

"Friends bring you go and they doesn't bring you back and when you meet up in trouble they does take off their self."

Keston was told that this was his homework to work out for the day, based on what she had heard.

- [5] The following day, the 22nd May 2015, Ann Marie spoke to her other son Joshua, and went over to Keston's house, and as Keston wasn't at home, she called him over to ask about a gun, and further asked him to bring it for her. Keston Toussaint went to his house and returned with a black plastic bag, opened it and he pulled out a gun. The handle was silver and the gun was about 6 inches long. Keston also had about 8 bullets inside an onion bag. He did not give the firearm

and ammunition to his mother but left with it. Keston Toussaint vehemently denied having a firearm and ammunition but later pleaded guilty to the offence.

Clindon Denny St. Bernard

- [6] On the night of the 22nd May 2015, some boys were out by the Greens and in between two shops known as “Marseal’s shop” and also “Pablo’s shop”. There seemed to be some bravado between two persons in the shop (Nanny and Keston(Toussaint)) and they bumped shoulder into shoulder and were about to fight. A short while later Keston Toussaint left and went in the direction of his home but returned a short while later with the co-accused Clindon Denny St. Bernard.
- [7] Marsha Samantha Mitchell saw the both men, having recognized them, as Clindon Denny St. Bernard had a “swag” when he walked and she also knew Keston all his life, and followed them. Other persons on the Greens, including Mr. N-Kenge Latham and Marvin John saw both the accused men as no one seemed to be more than 20 feet away from each other. Clindon Denny St. Bernard, commented “is you I come for” towards Marvin John and then pulled a trigger. N-Kenge Latham stated he saw sparks, and then Clindon Denny St. Bernard pulled again before he realized that it was a gun. Clindon Denny St. Bernard then fired another two shots, which caused people to run.
- [8] Marsha Samantha Mitchell also described seeing the gun that Clindon Denny St. Bernard had in his hand and furthermore saw the way that Clindon Denny St. Bernard was cranking the gun and also saw fire coming from the gun. She described the gun that Clindon Denny St Bernard had as a short gun and also recalled hearing four shots fired.
- [9] Angelo Latham gave evidence that he heard gun shots and was awakened from his sleep. He spoke to his son N-Kenge Latham and they returned to the scene of

the incident where Angelo found one spent shell and kept it, later handing it over to the police.

- [10] Clindon Denny St. Bernard was arrested, cautioned, interviewed and charged but denied having possession of a firearm and ammunition. He stated that he was present at the Greens in the early hours of the morning on the 23rd May 2015, but never had any firearm or ammunition. He further gave evidence by way of a short unsworn statement from the dock.

Maximum Sentence for Firearm Offences on Indictment in Grenada

- [11] The Laws of Grenada states that the maximum penalty for possession of firearm or ammunition on indictment is to a fine of not less than twenty thousand dollars and not more than sixty thousand dollars and to imprisonment for not less than five and not more than twenty years¹.

Sentencing Principles

- [12] I have considered all of the sentencing principles as set out in the well known and cited case of **Desmond Baptiste v The Queen**² being, retribution, deterrent, prevention and rehabilitation.

General Considerations on Firearm Offences

- [13] These types of offences must be marked by sentences that show that society has intolerance for firearm offences. There is also a need for a general deterrent sentence to prevent other potential criminal offenders. As rightly stated in the appeal of Dwight Bibby, a person does not carry a loaded gun into a place of amusement for the purposes of having fun.

¹ The Firearms Act, CAP 105, S.20(1) and 20(4)(b)

² Criminal Appeal No. 8 of 2003

[14] The Courts have a duty to protect society from these types of offences being committed and to consider those committing these crimes to determine whether there should be short sharp sentences in which the “clanging of the prison gates” may have worked its magic and prevent those convicted from repeat offending or whether a protracted sentence³ is required for the public’s protection as the person may be a repeat or even a dangerous offender.

[15] This Court has also referred itself to other cases within the OECS on firearms and also considered the combined effect of the cases of **R v Avis**⁴ and **R v Sheen** and **Sheen**⁵ in which it was stated that the sentencing court should ask itself six questions:

1. What sort of weapon is involved? Possession of a firearm which has no lawful use, such as a sawn-off shot gun, is more serious than possessing a firearm capable of lawful use.
2. What use, if any, was made of the firearm?
3. With what intention, if any, did the defendant possess the firearm?
4. What is the defendant’s record?
5. Where was the firearm discharged, and who and how many were exposed to danger by its use
6. Was there any injury or damage caused by its discharge, and if so how serious was it?

³ Although the courts and previous authorities have established that the old biblical concept of “an eye for an eye” is no longer tenable in the law.

⁴ [1998] 1. Cr.App.R. 420, CA

⁵ [2012] 2. Cr.Ap.R.(S.) 3, CA

Aggravating and Mitigating Factors

- [16] This Court has listened carefully to the submissions made by Ms. Greenidge and Mr. Prime respectively. Mr. Prime indicated that the convicted men both had good schooling and did well. They both he states have positive attitudes and have goals which they want to achieve and the court hopes that upon their release from prison they will achieve positive things.
- [17] The Court has considered the following aggravating factors in relation to the offence generally. They include, the fact that a real weapon and ammunition is involved; the firearm is unlicensed; a clear intention that the firearm will be use to cause fear, damage or injury; multiple shots were fired in public place; it was in the early hours of the morning with many people exposed to danger as they were on a late night out and enjoying themselves; deliberate and intentional plan to possess the gun; sophisticated operation and ammunition and the firearms not being recovered. As mentioned above these are general aggravating factors and not all apply to the current case under consideration.
- [18] There are no mitigating factors of the offending in this case that the Court is considering.
- [19] The Court having considered the aggravating factors and lack of any mitigating factors of the offence only, in this case has determined that the starting point is six years imprisonment in the case of Clindon Denny St. Bernard and five years' imprisonment for Keston Toussaint.
- [20] This Court has also considered the mitigating factors relating to the offenders, and they include (in the case of Keston Toussaint), he is 19, his admission of the offences, guilty plea, remorse and no previous convictions.

- [21] In the case of Clindon Denny St. Bernard, he is 22, with no previous convictions. As they are both relatively young first time offenders with the, the Court will adjust the starting point downwards by one year.

Time Spent on Remand

- [22] The total time that both Mr. Keston Toussaint and Mr. Clindon Denny St. Bernard has spent in custody on remand, amounting to 869 days or two years 4 months and 16 days shall also be taking into consideration and count towards their sentences.

Credit for Plea

- [23] As to credit, Keston Toussaint he entered his guilty plea after the matter had been set down for trial. The Court did indicate that he would receive some credit for his plea as it was not entered at the door of trial and therefore he will receive 20% credit.
- [24] There is no credit to be awarded to Mr. Clindon Denny St. Bernard as he had a full trial and was convicted unanimously by the jury.

Young Offenders

- [25] A sentencer should be mindful of the general undesirability of imprisoning young first offenders. For such offenders, the Court should take care to consider the prospects of rehabilitation and accordingly give increased weight to such prospects. Where imprisonment is required, the duration of incarceration should also take such factors into account. In the same vein, in cases where the offender is a mature individual with no apparent propensity for commission of the offence, the sentencer may also take this circumstance into account in weighing the desirability and duration of a prison sentence.

As with first time offenders, the more serious the offence, the less relevant will be these circumstances⁶.

- [26] The Court of Appeal⁷ have already stated and it is re-iterated as it is important, that it be clearly understood that in general, anyone convicted of possession of a firearm is very likely to serve prison time. It should also be noted that in this jurisdiction of Grenada, the law imposed by Parliament states that the sentence for possession of firearm and ammunition under s.20(1) and s.20(4)(b) of the Firearms Act, CAP 105 is a fine and imprisonment. The legislation states that a person who contravenes these sections:

“shall be liable....on conviction on indictment, to a fine of not less than twenty thousand dollars and not more than sixty thousand dollars and to imprisonment for not less than five and not more than twenty years.”

- [27] Mr. Prime sought to advance that construing the legislation and conjunctive would bring about an unjust result as it would be “piling” on the sentence. Ms. Greenidge agreed that the legislation was clear and that the Court ought to impose a fine and term of imprisonment.

- [28] This Court through its own research reminded counsel of the case of **Derek Parke**⁸ in which counsel for the appellant Mr. Cajeton Hood, argued that the imposition of a term of imprisonment was not mandatory and furthermore in that case that a term of imprisonment for two years was excessive. Sir Dennis Byron, Chief Justice of the Eastern Caribbean Supreme Court at the time, adjudicated on the interpretation of the statutory provisions. He stated that:

⁶ Desmond Baptiste v The Queen *ibid*

⁷ *Ibid* at paragraph [34]

⁸ Magisterial Criminal Appeal No 1 of 2003

“The wording of the section did not give counsel much wriggle room as the section⁹ clearly evinced a legislative intention to require the imposition of a financial and custodial punishment within the minimum and maximum levels prescribed. So long as those statutory provisions exist the court is bound to apply them.”

It is crystal clear that the sentence that must be imposed in Grenada for firearm and ammunition offences is a term of imprisonment and a financial penalty under section 20(4), until a time when that specific law no longer applies.

Conclusion

- [29] The sentence that this Court imposes on Mr. Clindon Denny St Bernard is as follows on count 1 possession of firearm five years imprisonment. On count 2, the sentence is five years imprisonment concurrent to count 1. There is also a financial penalty to be paid of twenty thousand dollars within 3 years of his release, in default a term of 2 years imprisonment to be served.
- [30] The sentence that this court imposes on Mr. Keston Toussaint on count 1 is three years and 2 months imprisonment. The sentence on count 2 is also 3 years and 2 months imprisonment concurrent to count 1. There is also a fine of twenty thousand dollars to be paid within 3 years of his release, in default a term of 2 years imprisonment to be served.
- [31] The full time spent on remand for both convicted men amounting to 869 days (2 years 4 months and 16 days) each, shall be taken into consideration and credited towards their sentence.

⁹ Referring to section 20(4)(a) of the Firearms Act, CAP 105, Grenada

[32] This Court thanks both Ms. Greenidge and Mr. Prime for their helpful oral submissions on sentence, and for conducting the trial in a proper manner with courtesy, and professionalism throughout.

Shiraz Aziz
High Court Judge

By the Court

Registrar