

IN THE CAYMAN ISLANDS COURT OF APPEAL

CRIMINAL APPEAL 25 of 2017

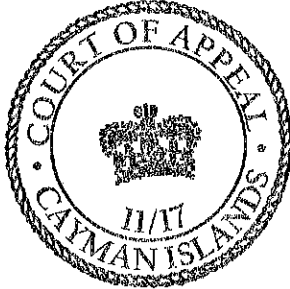
IND 52/2015 & IND 3/2016

SC#04210/2015 & SC#6162/2015

BETWEEN:

**Jose Sanchez**

**Appellant**



- and -

Her Majesty the Queen

**Respondent**

BEFORE:

**The Rt. Hon Sir John Goldring, President  
The Hon. Sir Richard Field, Justice of Appeal  
The Hon. C Dennis Morrison, Justice of Appeal**

Date of Hearing: Thursday 4<sup>th</sup> April 2019

Appearances: Mr. Oliver Grimwood of Richard Barton, for the Appellant  
Mr. Patrick Moran, of DPP for the Respondent

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JUDGMENT

Transcript of oral judgment dated 4th April 2019  
Approved for Release 11th June 2019

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GOLDRING, PRESIDENT:

1. The applicant applies for leave to appeal against sentence. He faced two indictments, both alleging possession of the same unlicensed, 9 millimetre semi-automatic pistol,

contrary to section 15(2) and 15(5) of the *Firearms Law (2008 Revision)*. The first offence was allegedly committed on 8 June 2015 in Cruz Lane George Town ("the Cruz Lane offence"), the second on or before 4 July 2015 at the Everglo Bar in Bodden Town ("the Everglo offence").

2. The Everglo offence was tried first. On 17 August 2016 the Honourable Justice Quin sitting alone convicted the applicant of that offence. He adjourned sentence.

#### *The Goodyear indication*

3. On 7 October 2016 there was a Goodyear hearing. The applicant was contemplating a plea of guilty in respect of the Cruz Lane offence. In broad terms, the judge indicated that if he pleaded guilty that day, the maximum sentence in respect of the Cruz Lane offence would be 8 years' imprisonment and that it would be concurrent with the Everglo offence. He gave no specific indication in respect of the Everglo offence. We shall come shortly to the detail and implications of what he said.
4. The applicant pleaded guilty to the Cruz Lane offence.

#### *The sentences imposed*

5. On 20 December 2016 the judge imposed a sentence of 14 years imprisonment in respect of the Everglo offence and 8 years concurrent in respect of the Cruz Lane offence, a total sentence of 14 years' imprisonment. It is in respect of that sentence that the applicant seeks leave to appeal.

#### *The facts of the offences*

##### *The Cruz Lane offence*

6. The background was tension between the applicant and a man called David Bodden. For present purposes, the detail does not matter. One witness said he had been present in Cruz Lane at about 2100 hours one evening. He saw a vehicle driving in the area of Cruz Lane. He observed the applicant and someone else get out of the vehicle, asking about the

whereabouts of David Bodden. He said the applicant produced a firearm, discharged two shorts into the air and a third into the ground before leaving, stating words to the effect of, "tell David Bodden we are looking for him".

7. Another eyewitness described the applicant taking a gun from his waist and discharging it three or four times.
8. The applicant was arrested. He submitted a prepared statement denying any involvement. He answered no questions.

#### *The Everglo offence*

9. Not long afterwards, the applicant had the same pistol with him. It was again loaded, on this occasion with seven live rounds of ammunition. It was tucked into his belt. The woman security officer at the Everglo Bar felt and saw it. She refused him entry. The police were called. The applicant, having unsuccessfully tried to off-load the firearm to someone called Dunbar, pushed it into the possession of a woman called Ashley Terry, in circumstances to which we shall come when referring to the judge's sentencing remarks. Her boyfriend then took possession of it. The applicant gave himself up to the police. The woman and her boyfriend were arrested. They implicated the applicant. His DNA was found on the weapon. When arrested for possession of the firearm, he made no comment. At trial, he denied the weapon was his. He blamed the man and woman. He claimed they were falsely implicating him to deflect from their criminality. He claimed the security guard was lying about him having a pistol. He was refused entry, he said, because he had a bottle of wine. The security guard was lying because she was looking for a reward. After a nine-day trial he was convicted.

#### *The Goodyear direction in respect of the Cruz Lane offence*

10. Having been requested to give a Goodyear direction (see *Goodyear [2005] EWCA 888*) in respect of that offence, the judge said:

*"My Goodyear direction for that count would be 8 years' imprisonment if you plead today. I would be prepared, if that is to be dealt with with the Everglo indictment, clearly to consider submissions on the totality principle and the facts that you have set out of the proximity in time between the two and also the fact it is the same firearm. And my Goodyear indication would be, I wouldn't make the two - whatever the sentence for the Everglo Bar - to be consecutive to the sentence of the Cruz Lane, but before I could ever obviously find a sentence, I will have to hear full submissions from both Crown and the defence on both indictments, so - and I don't want to make it any more complicated than that - but there are some assurances built into what I say which may assist the defence. So in other words, we wouldn't just add up a minimum or whatever the sentence the Everglo attracts and make it consecutive to the sentence imposed in indictment number 3".*

11. The judge had before him the antecedent history of the applicant. It included offences of carrying an offensive weapon and two offences of assault occasioning actual bodily harm.

12. In his sentencing remarks, about the Cruz Lane offence, the judge said:

*"The defendant drove to Cruz Lane and the evidence shows he was looking for David Bodden...[Shooting off the pistol]...was menacing and violent and clearly intended to frighten people. It did frighten people and the RCIPS found it very difficult to persuade those who witnessed the act to come forward and provide statements".*

13. About the Everglo offence he said:

*"Some four weeks after the Cruz Lane incident, where the defendant is firing shots in Cruz Lane, the defendant is found in possession of a loaded firearm at the Everglo Bar in East End. There are no mitigating features. There is no information from the defendant as to how he came into*

*possession of the unlicensed firearm, nor is there any information about how and when he acquired the ammunition.*

*Although there is evidence that in trying to persuade the security officer to allow him entrance to the bar that evening, he said, in an effort to persuade her, that they will kill him. However, the defendant is in possession of a loaded firearm in a public place. He did not appear deterred or in any way intimidated by the security officer discovering the firearm and refusing him entry on at least three occasions. Far from being afraid, the defendant displayed an arrogant attitude to his illegal possession of his semi-loaded automatic firearm. Generally speaking, loaded firearms are used either to kill or cause grievous bodily harm. This is not at the lower end of the seriousness scale, as would be the discovery of a hidden, unloaded illegal firearm. This is a man who shows no fear in walking into a public bar with a loaded semi-automatic pistol.*

*There are two very serious aggravating features;*

- 1. The defendant made three different attempts to off-load the firearm on to Sean Dunbar, who physically had to resist and prevent the defendant carrying through with transferring his possession of the firearm to Mr. Dunbar; and,*
- 2. After Sean Dunbar physically and verbally withstood the defendant's determined efforts to off-load the gun, he alighted on the unsuspecting Miss Ashley Terry. He managed to push it under her blouse or under her skirt before she even knew what was happening, before she even knew it was a firearm. The court recalls her reaction being one of shock, terror and of complete confusion".*

14. Among other things, the judge later referred to, as he put it, the serious escalation of gun crime in the Cayman Islands: that the use of guns had caused the death of too many young Caymanians.

15. Finally, he said that the court:

*"Must impose a sentence which will deter others who may be thinking of obtaining unlicensed firearms.*

*I cannot ignore the aggravating fact that four weeks earlier the defendant was in another section of the island with the same loaded firearm, firing shots and telling those listening that he was looking for David Bodden".*

16. Having set out these features, the judge imposed the sentence of 14 years' imprisonment.

*The grounds of appeal*

17. In his submissions on behalf of the applicant, Mr. Grimwood makes two broad points. First, he is critical of the Goodyear indication which the judge gave. He should, he submitted, have given a global indication of sentence or none at all. Moreover, the applicant was led to believe he would receive a lesser sentence than was in fact imposed. Second, Mr Grimwood submits that a sentence of 14 years' imprisonment for this offending was, in any event, manifestly excessive.

18. In support of his first submission, Mr Grimwood submits that the Goodyear process having been engaged, it was not open to the judge to give anything less than a global indication of sentence. It was not open to him merely to give an indication in respect of the Everglo offence. In support of that submission, he relies on a decision of the Court of Appeal in England and Wales in the case of *R v Kunle Omole* [2011] EWCA Crim 1428.

19. In the course of giving the judgment of the court, Mr. Justice Sweeney said at paragraph 13 that the first instance judge,

*"...should have treated the request for an indication as if he was being asked to indicate the maximum sentence on the defendant at that stage in relation to all the matters that were before him, including the passport offence".*

20. The situation contemplated by Mr Justice Sweeney in those observations was quite different from that confronting Mr Justice Quin here. In this case, the judge was specifically being asked to give an indication in relation to the offence in respect of which the applicant had pleaded not guilty, namely, the Cruz Lane offence. There had been a conviction in respect of the Everglo offence. He was entitled to restrict his indication to the Cruz Lane offence. It is not the case, as it seems to us, that a judge, when requested to give a Goodyear indication, is invariably required to consider the case as a whole; in other words, to have what JA Field referred to in argument as "*a full dress rehearsal*". Provided the limits of what the judge says are unambiguous and clear, he may give an indication in more limited terms.
21. Mr. Grimwood further submits that once the judge had given the figure of 8 years for the Cruz Lane offence, the applicant was entitled to infer that the sentence on the Everglo offence would bear some relationship to it. He submits that the indication of 8 years after a plea suggested a sentence after trial of the Cruz Lane offence of some 11 to 12 years. The applicant, he submits, was entitled, on the basis of what the judge said, to conclude that the maximum sentence in relation to the Everglo offence would be no more than that.
22. We cannot accept that submission. It seems to us that the terms of the indication the judge gave were unambiguous and clear. It was limited to the Cruz Lane offence. He said in terms could not give an indication in respect of the Everglo offence. He said what the maximum sentence for Cruz Lane would be. He said that sentence would be concurrent to whatever sentence was imposed for the Everglo offence. There was no reason to infer from what the judge said anything about the maximum sentence in respect of the Everglo offence would be.
23. The submissions in relation to the Goodyear indication fail.

24. We turn to the second aspect of the grounds of appeal: that the sentence of 14 years was manifestly excessive for Everglo offence. In support of that submission, reference is made to a decision of this court in the case of *Terry* [2012] 2 CILR 119. In that case, there was reference to a starting point of between 13 and 14 years for possession of an unlicensed firearm in the course of an aggravated trespass. That was a case in which there had been a previous conviction in respect of a firearm, an aggravating feature, submitted Mr. Grimwood, which suggested that the present sentence was excessive.
25. We do not agree. Firstly, these cases are fact specific. We cannot accept that what the court said in *Terry* renders the sentence in the present case manifestly excessive. Secondly, for the reasons that the judge carefully set out, there were significant aggravating features in respect of the Everglo offence. We cannot conclude that in all the circumstances 14 years imprisonment was manifestly excessive.
26. In all the circumstances, we refuse leave to appeal.
27. Before we leave the case, we would just make this observation. It is one with which no doubt the judiciary is very familiar. It is obviously very important indeed when giving a Goodyear direction to be as clear and unequivocal as possible. Each word of such a direction may subsequently be subject to scrutiny.

