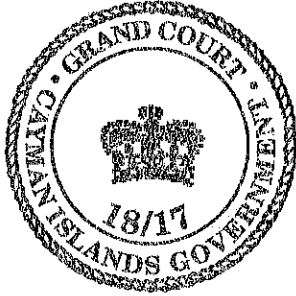


1 IN THE GRAND COURT OF THE CAYMAN ISLANDS
2 CRIMINAL SIDE



INDICTMENT NO: 58 of 2015

REGINA

v.

ROBERT AARON CRAWFORD

13 **Appearances:**

Mr. Trevor Burke, Q.C. with Mr. Lewis-Hall of Priestleys, attorneys-at-law for the Defendant

Ms. Darlene Oko, Senior Crown Counsel for the Prosecution

17 **Before:**

Hon. Justice Marlene Carter (Actg.)

19 **Sentence Delivered:**

21 January 2020 [to the Parties only under embargo]

21 **Released for Publication:**

6 February 2020

23 **HEADNOTE**

24 *Attempted murder, possession of unlicensed firearm;*
25 *serious aggravating factors; category of harm; concurrent sentence*
26

27 **SENTENCE JUDGMENT**

28 **Facts**

- 29 1. The defendant was convicted after trial by judge alone of two counts of attempted murder and one
30 count of possession of an unlicensed firearm. The defendant entered the home of Donovan Ebanks
31 in the early morning hours of the 4th July 2015 armed with a gun which he proceeded to load as he
32 approached the door to Daric Ebanks' bedroom. He fired five rounds through the door to the
33 bedroom. The occupants at the time were Daric Ebanks and Errolyn Thompson. The defendant
34 then entered the bedroom with the gun. A fight ensued between the defendant and Daric Ebanks
35 for the gun. During the fight in the room, both the defendant and Daric Ebanks were injured.
36 Errolyn Thompson suffered superficial cuts.
37

1 2. The defendant was eventually subdued by Daric and Donovan Ebanks and was taken outside where
2 he was found when Police and Ambulance services arrived at the residence. The defendant
3 admitted going the residence however, he denied being armed or discharging shots from the
4 weapon through the bedroom door. These offences were committed on the 4th July 2015.

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6 **Cayman Islands sentencing guidelines**

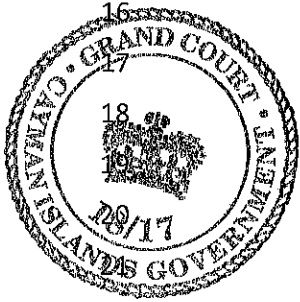
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8 3. There are no sentencing guidelines specific to the offences of possession of an unlicensed firearm
9 or attempted murder in the *Cayman Islands Sentencing Guidelines* which assist in identifying a
10 specific starting point or range of sentence based on the assessment of culpability and harm.

11

12 4. Some assistance is found in the 2002 guidelines of the Chief Justice in the *Statement of Tariffs and*
13 *Guidelines for Sentencing for Certain Offences*, where the Chief Justice stated the following
14 regards to the offence of possession of an unlicensed firearm:

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"As regards to firearm offences contrary to the Firearms Law, the legislation is quite clear that the possession or use of any unlicensed lethal barrel firearm is an extremely serious offence. Under the Firearms law, the maximum penalty for possession of an unlicensed firearm is 20 years and a fine of CI\$100,000. The tariff for that offence unless there are very mitigating circumstances will be 10 years. If, on the other hand, aggravating circumstances exist, for instance, the use of the firearm for the commission of a serious offence, the tariff will be in keeping with decided cases and will be significantly higher."

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25 5. These comments predate the amendment to the *Firearms Law* whereby, pursuant to Section 39(1),
26 in the absence of a guilty plea, a person found guilty of possession of an unlicensed firearm is liable
27 to a minimum period of imprisonment of 10 years. The Crown submits that the use of a firearm in
28 the commission of a serious offence must attract a sentence that is significantly higher than the 10-
29 year minimum.

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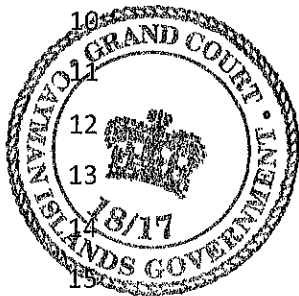
31 6. The Crown submits that on the facts of this case the Court should view the defendant's culpability
32 at Category 1, where there is an intention to cause harm here the intention to kill which is a requisite
33 element of the offence of murder. As to culpability the Crown submits that the relative

1 dangerousness of the offender’s conduct must be considered and assessed, here the likelihood of
2 harm occurring and the gravity of the harm that could have resulted.

3

4 7. The Crown referred to the UK *Sentencing Guidelines Council Definitive Guideline* on attempted
5 murder. These guidelines set out 3 potential categories of Culpability and Harm. The Crown
6 submitted that the defendant should be viewed as falling within Category I – the most serious
7 offence when some physical or psychological harm has been caused. Within Category 1, the
8 starting point and range of sentence is further defined by the level of harm caused to the victim.

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- For serious and long term physical or psychological harm, the starting point is 30 years with a range of 27-35 years.
- For some physical or psychological harm the starting point is 20 years with a range of 17-25 years; and
- For little or no physical or psychological harm the starting point in 15 years with a range of 12 to 20 years.

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17 8. The Crown’ submission is that: “... *it is open to the Court to find there has been “some physical*
18 *or psychological harm” caused to both victims based on the totality of evidence as to the terrifying*
19 *circumstances of this case and the fear and trauma caused to the victims particularly as evidenced*
20 *by the 911 recording and the subsequent reluctance and fear of the victims to testify against the*
21 *offender. The psychological harm caused to the victims can be inferred by the Court ...”¹*

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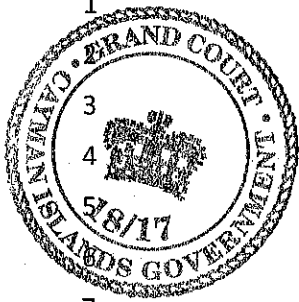
23 9. Referring to the *Cayman Islands Sentencing Guidelines*, counsel submitted that the Court could
24 also assess harm by reference to the relative dangerousness of the offender’s conduct and
25 considerations of the likelihood of harm occurring and the gravity of the harm that could have
26 resulted.

27

28 10. Crown Counsel referred the Court to the evidence in the case to highlight that this was not a
29 Category 3 harm case. She stated the significant evidence of planning associated with the
30 commission of the offence was such that the Court could not find that the defendant’s actions were
31 spontaneous. Counsel pointed to the evidence of;

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¹ See R. v. Rae-Smith, Myles and Kelly CICA Criminal Appeals 15/2017 at par. 57 and 58



- 1 (a) threats to kill Errolyn Thompson 4 days prior to the shooting;
- 2 (b) concerted efforts made to locate the victim throughout the night immediately prior
- 3 to the shooting by telephone;
- 4 (c) the distance travelled by the offender to arrive at the Ebanks residence as admitted
- 5 in the offender's statement
- 6 (d) the offender's arrival at the Ebank's residence pre-armed with a functional and
- 7 fully loaded firearm.
- 8 (e) the use of a hood as an attempt to disguise his identify during the commission of
- 9 the offence
- 10 (f) gloves found in his possession immediately after the commission of the offence
- 11

12 11. A Category 1 culpability offence of attempted murder with some degree of physical or

13 psychological harm, attracts a starting point of 20 years with a range of sentence of 17-25 years.

14 The Crown's position is that *"The presence of the serious aggravating circumstances in this case*

15 *as outlined below thereby justify a starting point in this case of 30 years with a range of sentence*

16 *of 27-35 years..."* The Crown's position is that a starting point of 30 years with a range of sentence

17 of 27-35 years is appropriate and proportional to the gravity of the offence and the degree of

18 responsibility of the offender.

19

20 12. For the Defence, Learned Queen's Counsel submitted that the Court should view this offence as a

21 spontaneous attempt to kill with some physical/psychological harm. Counsel submitted that the

22 Court should view carefully the Crown's submission on the matter of the level of harm caused.

23 Counsel expressed that the factors identified by the Crown are not such as to put the defendant in

24 the highest level and instead stated that the defendant's actions were as a result of being provoked

25 by the actions of the second complainant Errolyn Thompson. He asked the Court to view the

26 defendant's actions and the harm caused in this context.

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28 13. He stated that the correct sentencing range for a single count would be between 6-14 years.

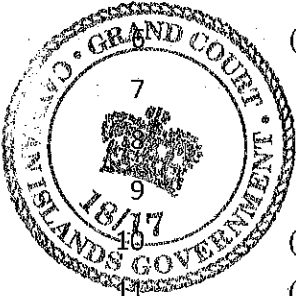
29 However, Queen's Counsel accepted there were a number of aggravating factors in this case that

30 would increase that range dramatically.

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Aggravating Features

14. The aggravating factors
- (i) Previous conviction for possession of an unlicensed firearm.
 - (ii) The defendant was on bail and subject to an EMD for a firearm related offence at the time of commission of the offences
 - (iii) The use of a loaded firearm to commit the offences of attempted murder. The firearm was discharge during the commission of the offence. It is not in dispute that five live rounds were discharged from the firearm through the bedroom door on the night of the incident
 - (iv) Multiple victims were involved.
 - (v) The prevalence of offences involving gun violence in the Cayman Islands
 - (vi) Entry into the victims' residence at night in order to commit the offence.

Mitigating Factors

15. The defendant's relative youth, at 27, was highlighted by his counsel. This defendant is not a first time offender. He is an adult with previous convictions for serious offences. I do not view his relative youth as a mitigating factor. There are no relevant mitigating factors for this Court's consideration.

The Authorities

16. The Crown also referred the Court to the various local authorities to assist in the determination of the appropriate sentence. These were *R. v. Smith and Webster [2004-05 CILR Note 43]* and *R. v. Ramoon and Douglas [2016 (2) CIRC 429]* and *Ramoon v. R. and Douglas v. R (CICA Criminal Appeal 34 and 35 of 2016)*

17. In *Smith and Webster*, Henderson, J. imposed an 18 year sentence for attempted murder involving the use of a firearm where the victim was shot 3 times by offenders who were 17 and 18 years of age at the time of the commission of the offence, had no history of mental illness and no related criminal convictions. It was held in that case:

"In imposing sentence, regard had to be had to the following principles: deterrence of the offenders and others from similar conduct; protection and safety of the public; and the prospects of rehabilitation of each offender – which at their young



ages it would be wrong to reject outright. As there had been a significant increase in shootings, particularly over drugs, on Grand Cayman, and especially in the West Bay area, protection of the public was, however, paramount. A sentence of life imprisonment would be inappropriate only because of their ages, and each would therefore be sentenced to 18 years imprisonment.”

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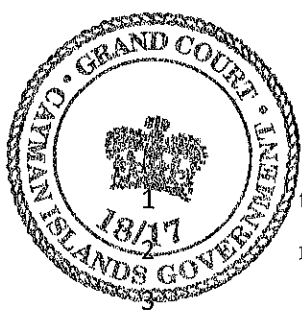
18. In *Ramoon and Douglas*, J. Quin imposed the mandatory life sentence on two offenders convicted of the murder of a man in an “execution style” killing. As mandated by section 14(1) of the *Conditional Release Law 2014*, the Court then evaluated the appropriate determinative sentence for each offender and set the sentence for both at 30 years imprisonment before they were eligible for release which was upheld by the CICA in December of 2018.

Court’s considerations and sentence

19. Counsel for the Defendant did not offer much in the way of personal mitigation. The defendant at 27 years old is a relatively young man. He is the father to two children, now 4 and 5 years old. He left formal schooling at sixteen and has held only odd jobs between periods in custody for various offences. In any event the nature of the offences for which this defendant has been found guilty would cause this Court to be less inclined to discount its sentence for personal mitigation. At the conclusion of the trial no Social Inquiry Report was sought on the defendant’s behalf and none was ordered.

20. Applying the UK *Sentencing Guidelines Council Definitive Guideline* on attempted murder, the circumstances of this offence place the offending within Category 1 for culpability and harm with some degree of physical or psychological harm. The circumstances of the offence and the obvious fear and trauma caused to both complainants in this case, caught in real time by the 911 recording which formed a crucial part of the prosecution’s case, as well as the fear expressed by both complainants to attend at court to testify at trial all present facts from which some degree of psychological harm can be inferred.

21. Crown counsel stated that the Court should view the defendant’s actions as evidence of an escalation in the scale of his offending. For whereas the defendant was previously convicted for possession of an unlicensed firearm *simpliciter*, these present offences, wherein the loaded firearm was deliberately discharged and intended to cause the ultimate harm to the two complainants, point



to this defendant being a real and present danger to society. This Court must move to protect members of this society.

4 22. Two complainants could have easily and innocently lost their lives on the night of this incident.
5 The defendant went to that residence intending to do irreparable harm. His actions: breaking down
6 the kitchen door to enter the residence; going armed and loading the firearm once he was inside the
7 residence as he moved toward the bedroom; firing unhesitatingly and indiscriminatingly through
8 the door into the bedroom, are all consistent with that unchecked intention. These all point to the
9 defendant's total disregard for human life.

10
11 23. The starting point for the offence of attempted murder with some physical or psychological harm
12 is 20 years imprisonment with a range of sentence of 17-25 years. In this case, the Court does not
13 find that the aggravating factors identified justify a movement outside of the range and into the
14 next category with a starting point of 30 years and a range of sentence of 27-35 years. However,
15 the gravity of the offences themselves and the degree of responsibility of the offender does cause
16 the Court to find that the sentence must be at the upper end of the range of sentence. These coupled
17 with the nature and number of the aggravating factors and the lack of mitigating factors warrant an
18 upward lift to the starting point from 20 years to 24 years custody. This is a sentence after trial.
19 There is no personal mitigation to mitigate the sentence. For each count of attempted murder the
20 defendant is sentenced to a term of imprisonment of 24 years custody to run concurrently.

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23 **Possession of Unlicensed Firearm**
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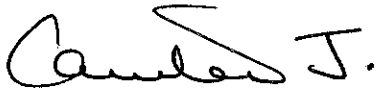
25 24. It has been noted by the Court of Appeal that: "*There is no dispute that the use of guns, at least in*
26 *the cases of murder, is frequent. The concern in the Cayman Islands regarding gun crime is also*
27 *illustrated by the statutory requirement upon the courts to impose severe, mandatory sentences for*
28 *the possession of firearms.*" These sentiments are pertinent and bear repeating. For the offence of
29 possession of an unlicensed firearm in circumstances where the firearm has been discharged the
30 sentence of the court is 14 years imprisonment.

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32 25. Mindful that the defendant is being sentenced for a number of offences that arise out of one
33 incident, the sentence for possession of the unlicensed firearm will run concurrent to the sentence
34 for the attempted murders.
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Time spent in custody

26. The defendant is presently serving a sentence of 10 years for possession of an unlicensed firearm, an offence committed in November 2011. His appeal against conviction and sentence for that offence was allowed in the Court of Appeal in the 10th July 2013. The defendant was released from custody. In September 2013, the defendant was arrested for possession of an unlicensed firearm and possession of ammunition. He was released on bail. While on bail, in July 2015, he committed the offences presently before the Court.
27. The conviction and sentence for the offence committed in November 2011 was restored by the Privy Council on appeal on the 9th December 2015. The defendant is therefore only entitled to time spent in custody, relating to these present offences, between the 4th July 2015 and December 9th 2015. This period of custody is to be deducted from the sentence of 24 years imprisonment.
28. The defendant is currently serving a term of imprisonment of 10 years which would have commenced from the date of restoration of the sentence by the Privy Council. For the avoidance of doubt the instant sentence of 24 years will take effect from today's date and run concurrent to the balance of the current sentence under Indictment 93/2011.



Justice Marlene I. Carter
Judge of the Grand Court (Ag.)

