



**IN THE CAYMAN ISLANDS COURT OF APPEAL ON
APPEAL FROM THE GRAND COURT OF THE CAYMAN
ISLANDS CRIMINAL DIVISION**

**CICA (Crim) APPEAL No. 0011 of 2023
(Grand Court Cause No. Ind. 0036 of 2021)**

BETWEEN

MICHAEL CONRAD EBANKS

APPELLANT

V

HIS MAJESTY THE KING

RESPONDENT

BEFORE:

**The Rt Hon Sir John Goldring, President
The Rt Hon Sir Michael Birt, Justice of Appeal
The Hon Clare Montgomery KC, Justice of Appeal**

**Appearances: Mr. Philip Rule KC instructed by James Stenning of Stenning's Chambers
for the Appellant**

**Mr. Neil Kumar of the Office of the Director of Public Prosecutions for the
Respondent**

Date of hearing: 5 September 2024

Judgment delivered: 11 October 2024

JUDGMENT

BIRT JA:

1. On 7 June 2023 the appellant appeared for sentencing before St John Stevens J (Actg) in the Grand Court. There were two counts on the indictment. Count 1 was an offence of possession of an unlicensed firearm contrary to section 15(1) and 15(5) of the Firearms Act (2008 Revision) (“the Act”) and count 2 was an offence of possession of ammunition for the firearm in question contrary to the same sections of the Act. The appellant was sentenced to 7 years’ imprisonment on count 1 and two years concurrent on count 2.

2. On the same occasion the appellant was sentenced for three offences committed at the same time as the two offences on the indictment, which had been sent to the Grand Court for sentence pursuant to section 88(a) of the Criminal Procedure Code. They were possession of ganja, driving without being qualified and driving without insurance. For these offences the appellant was sentenced to concurrent prison sentences of one month, two months and two months respectively and disqualified from driving for 12 months. The appellant has long had a ganja habit and in Grand Cayman, he has been convicted of offences of possession of ganja and motoring offences. However he has no convictions for any firearms offences, public order offences or offences of violence. No appeal is brought against the sentences imposed for these offences, but they form part of the factual background.

3. The appellant now seeks leave to appeal against the sentence of 7 years imposed on count 1. At the conclusion of the hearing on 5 September, we granted leave to appeal, allowed the appeal and substituted a sentence of 4 years’ imprisonment. We now give the reasons for that decision.

Factual Background

4. It is necessary to record the relevant background leading up to these offences.

5. The appellant was aged 38 at the time of sentencing. In March 2010, he witnessed the murder of a friend of his, Mr Alrick Peddie, who was shot outside an address in West Bay. There is no suggestion that the appellant was involved in any way in this offence or with gang activities; he simply happened to be with Mr Peddie at the time.
6. The appellant subsequently provided two witness statements to the police under a pseudonym 'Tom Cruise'. Three individuals were charged in connection with the murder of Mr Peddie.
7. In April 2010, because of the perceived danger to the appellant, he and his family entered formal witness protection through a RCIPS written agreement and were relocated in the United States.
8. The prosecution applied for the appellant to give his evidence anonymously in the murder trial of the three individuals. This was ultimately rejected by the Court of Appeal (2010 (2) CILR 242) but, in the course of his judgment, Chadwick P said at [25] and [26]:

“[25] The confidential material contained evidence that the police were satisfied from their checks, enquiries and intelligence that the witness Tom Cruise was not involved in any “gang” activity..... The police were unable to identify any reason or motive which would lead the witness to give false evidence against the accused: there was nothing to suggest that he bore ill- will against any of them. Nor was there anything to suggest any collusion between this witness and the witness James Brown.

[26] In his witness statement dated March 26th, 2010, the witness Tom Cruise had stated that, although he was willing to give information as it relates to the murder of Alrick Peddie, he did not wish for his identity to be revealed at any

time. As he put it: “I would like justice for Alrick while the same time I fear for the safety of myself and my family.” It is clear from the confidential information provided to us that the police regarded that fear as well-founded: there had been numerous instances where witnesses to suspected gang killings had been threatened or killed. The police had thought it necessary, in the present case, to relocate the witness, Tom Cruise, off-island, pending trial, for his safety....”

9. Despite there being no anonymity, the appellant came back to Grand Cayman to give evidence over several days at the murder trial of the three individuals. He explained his attitude in a statement to the police dated 15 August 2010 as follows:

“I believe if I do not testify against them they will walk and if they walk someone will get kill again it might be an innocent person or someone from my family. My heart will never settle to know that..... they walk because I did not testify.... I hope and pray that justice will be done.”

10. The three individuals were acquitted and the appellant returned to witness protection in the USA. The judge found (at p 81) that it was clear that the appellant experienced extreme stress, anxiety and fear not only for his own welfare and life, but also that of his immediate family. Whilst in witness protection in the USA he fell into depression and consumed alcohol as a self-medicated response to his position. In early 2014, he was required to leave the USA following, it would seem, a 30 day sentence for certain minor offending. The RCIPS arranged for the appellant and his family to be relocated in witness protection to another jurisdiction. However, the family did not settle there and in late August 2014 his wife and children moved back to Grand Cayman.
11. In November 2014 his wife was approached with what the appellant took to be a threat. The appellant returned to Grand Cayman at which point all witness protection and financial support was removed.

12. According to a statement to the police by the appellant's wife, the appellant's anxiety about his safety was exacerbated when the son of one of the three individuals referred to above said (referring to his father) "*He has a fat shot for Michael and will make an example out of him*".
13. In June 2021 the appellant's cousin was shot. The appellant believed it was a reprisal attack because of the assistance the cousin had given to the prosecution in a murder trial. This exacerbated his fear of violence being used against him or his family and it was in these circumstances, according to the appellant, that he decided to and did acquire the firearm in question, namely a Smith & Weston .38 calibre revolver with three live rounds of ammunition.
14. A few days later, on 10 June 2021, he was driving a car when armed police officers sought to stop him. The appellant tried to evade the police by driving backwards and forwards but the police brought this to an end by firing a single shot which deflated the left rear tyre. On arrest, he was found to have the revolver, loaded with three rounds of ammunition, tucked into his waistband. A backpack containing 2.5 ounces of ganja was on the front passenger seat. It also transpired that he was driving the car whilst disqualified and therefore without insurance; hence the three additional offences referred to earlier.
15. After caution, the appellant explained why he was carrying the revolver as follows:

"I was in wit pro. I should never have come out. Them kill my friend in front of me. I know they want to kill me too. It's better I have that and get caught then not have it at all and them kill me. I had it for my own protection, I know them want to kill me. So, if anything, I can get them first."
16. The appellant was remanded in custody following his arrest and of course remains in prison following his sentence. There was before the judge a risk assessment from the prison service, given that the three individuals charged with Mr Peddie's murder were and are still also detained at the prison, albeit on other charges. Having described the arrangements to

keep these individuals apart from the appellant, the prison service considered that the risk to the appellant would be greater in the community, but nevertheless concluded that there was a medium risk of an incident in prison occurring involving violence towards the appellant.

17. There was also a psychological report before the judge which concluded that the appellant was suffering from Post Traumatic Stress Disorder (PTSD) which started after he witnessed the killing of his friend Mr Peddie in 2010 and had been exacerbated by his experience in witness protection. The report concluded that there was a correlation between the impact of this mental illness on the appellant and the offending in this case i.e. his decision to acquire and carry the firearm. The judge accepted (p 85 of the transcript) that this reduced the appellant's culpability for the offending.

The Judge's Decision

18. Section 15(5) of the Act provides that the maximum sentence for possession of an unlicensed firearm is 20 years' imprisonment. Section 39 provides that the court shall impose a minimum sentence of 10 years (following a not guilty plea) and 7 years (following a guilty plea) "*unless the court is of the opinion that there are exceptional circumstances relating to the offence or the offender which justify its not doing so*".
19. Before the judge, Mr Stenning, on behalf of the appellant, submitted that a combination of the circumstances in which the offences were committed (namely fear for the lives of himself and his family following his giving of evidence in the murder trial), the assistance he had given in relation to the murder trial, the lack of any previous offending suggesting any tendency to use violence, all the mitigation before the judge and his early guilty plea meant that the court should find that there were exceptional circumstances and impose a sentence of less than 7 years.

20. The judge's sentencing process as reflected in his judgment was as follows. He began by taking 10 years as a minimum starting point on a not guilty plea given the statutory minimum sentence. He considered that there were a number of aggravating features in the case, namely the fact that the firearm was a multi-firing weapon which was loaded and ready for use; that it was being carried in a car in a public place; that the appellant intended to use it to kill or seriously injure any individual who posed a threat to him in the context of the threats to him and his family arising from his giving of evidence in the murder trial; and that the firearms offences were committed when committing other offences, namely possession of ganja and driving when not qualified and uninsured. In the light of these aggravating features the judge moved the starting point up from 10 years to 15 years.
21. Turning to mitigation, the judge considered that the main mitigation was intrinsically interlinked to the assistance he had given in relation to the murder trial. He accepted that the risk of reprisal was 'patent and obvious'. He held that the notional sentence should be reduced by one half to reflect the mitigation and his assistance in the round. That brought the sentence down to 7 1/2 years.
22. The next step was consideration of the reduction for the guilty plea. He found that the appellant should be afforded the full one third reduction. This would of course have brought the sentence down to one of 5 years.
23. However, the judge then considered whether there were exceptional circumstances which would allow him to pass a sentence on a plea of guilty of less than 7 years. He reminded himself of the observation of Quin J in *R v Justin Alvin Ebanks* [2016 (2) CILR 132] that the fact that an unlicensed firearm was carried for the purpose of self-defence could not amount to exceptional circumstances. He concluded that a sentence of 7 years would not be arbitrary or disproportionate and that there were no exceptional circumstances which would allow him to reduce the sentence below the statutory minimum. Accordingly he imposed a sentence of 7 years on count 1.

Grounds of Appeal

24. In his written grounds of appeal, Mr Philip Rule KC, for the appellant, listed six grounds, which can be summarised as follows:

(i) The judge took too high a starting point. He should have considered the appropriate sentence given the particular facts and circumstances (including aggravating and mitigating factors) and then checked the provisional term against the minimum sentence requirement. Alternatively, given the early guilty plea, this was a case where a starting point of 7 years was appropriate.

(ii) In any event, the judge was wrong to increase the sentence from his starting point of 10 years by a further 50% (to 15 years) on account of the identified aggravating factors.

(iii) The judge wrongly held that the conditional intention of the appellant (that he might fire the gun to defend his life and so use it to shoot someone who threatened his life) was a significant aggravating factor.

(iv) The judge passed a sentence that failed either to:

- (a) give sufficient credit for the ‘substantial and significant’ assistance to the police and prosecution at considerable danger to himself and his family, which warranted a deduction of two-thirds or at least one half; or
- (b) give sufficient credit for the guilty plea. In effect, the one-third discount to which the appellant was entitled was reduced to 6 months.

(v) The judge failed to give proper regard or sufficient weight to the strong personal mitigation, including mental health and familial circumstances and the degree of danger that the appellant continued to be at risk of in custody.

(vi) The judge was wrong to find that exceptional circumstances justifying a sentence of less than 7 years were not present. In particular, the judge was wrong in principle to regard the assistance to the police and consequences for the appellant and his family as only requiring a reduction from the notional starting point, rather than also informing and cumulatively providing exceptional circumstances justifying a sentence below the statutory minimum. His decision was incompatible with the decision of Quin J in *Justin Alvin Ebanks* (supra).

Relevant Principles

25. Before turning to the grounds of appeal, we remind ourselves of the applicable principles in relation to the giving of assistance to the police or prosecuting authorities and to the existence of ‘exceptional circumstances’ under section 39 of the Act.
26. As to the giving of assistance, it has long been well-established, for the reasons summarised by Sir Igor Judge P in *R v P and Blackburn*, [2008] 2 Cr App (S) 5, that a court will give a substantial discount from the sentence which would otherwise have been passed in order to reflect assistance which the defendant has given to the authorities. Unlike previously, any such discount is separate from and in addition to any discount for a guilty plea; see *Cayman Islands Sentencing Guidelines (October 2015)* at 10.2 and at section 5 entitled ‘The sentencing decision making process’, and *Blackburn* at [39]. The same two authorities also make it clear that it is necessary first to assess the discount for assistance and then to discount further the notional sentence so achieved for the guilty plea.
27. As to the level of discount, this is very fact specific, but at 11, the *Cayman Sentencing Guidelines* adopt the observation of Judge P at [41] in *Blackburn* to the effect that only in

the most exceptional case would the appropriate level of reduction exceed three quarters of the total sentence which would otherwise be passed, and the normal level should be a reduction of somewhere between one half and two thirds of that sentence.

28. Among the matters which will influence the level of discount are (i) the quality, quantity and accuracy of the material disclosed by the defendant; (ii) the willingness or otherwise of the defendant to confront other criminals and to give evidence against them in court if required; and (iii) the degree to which he has put himself and his family at risk by reason of the information he has given, in other words the risk of reprisal; see *R v King* [1986] Cr App R 120 at 122.
29. Turning to exceptional circumstances, there have been a number of cases in England and Wales which have considered this expression in the equivalent statutory provision concerning the possession of unlicensed firearms in that jurisdiction, which, although it provides for a minimum of 5 rather than 10 years, is otherwise in identical terms, so far as material, to section 39 of the Act. In our judgment, the applicable principles are helpfully and accurately summarised in the judgment of the Court of Appeal in *R v Nancarrow* [2019] 2 Cr App R (S) 4 at [19] in the following terms:

“ (1) the purpose of the mandatory minimum term is to act as a deterrent (R v Rehman (Zakir) and Wood [2005]EWCA Crim 2056....at [12];

(2) circumstances are exceptional for the purposes of subs.(2) if to impose five years’ imprisonment would amount to an arbitrary and disproportionate sentence (Rehman at [16];

(3) it is important that the courts do not undermine the intention of Parliament by accepting too readily that the circumstances of a particular offence or offender are exceptional. In order to justify the disapplication of the five-year minimum, the circumstances of the case must be truly exceptional (R v Dawson (Robert) [2017 EWCA Crim 2244 at [12] and [19];

(4) it is necessary to look at all the circumstances of the case together, taking a holistic approach. It is not appropriate to look at each circumstance separately and conclude that, taken alone, it does not constitute an exceptional circumstance. There can be cases where no single factor by itself will amount to exceptional circumstances, but the collective impact of all the relevant circumstances make the case exceptional (Rehman at [11];

(5) the court should always have regard, amongst other things, to the four questions set out in R v Avis [1998] 2 Cr App R (S) 178, namely: (a) what sort of weapon was involved? (b) what use, if any, was made of it? (c) with what intention did the defendant possess it? (d) what is the defendant's record? (see, for example, R v McCleary [2014] EWCA Crim 302 at [11];

(6) the reference in the section to the circumstances of the offender is important. It is relevant that an offender is unfit to serve a five-year sentence or that such a sentence may have a significantly adverse effect on his health (Rehman at [15]; R v Shaw [2011] EWCA Crim 167.....at [6]-[7];

(7) each case is fact-specific and the application of the principles dependent upon the particular circumstances of each individual case. Limited assistance is to be gained from referring the court to decisions in cases involving facts that are not materially identical (see, for example, R v Stoker [2013] EWCA Crim 143.....at [22]; and

(8) unless the judge is clearly wrong in identifying exceptional circumstances where they do not exist or clearly wrong in not identifying exceptional circumstances where they do exist, this court will not readily interfere (Rehman at [14].”

30. An additional matter not mentioned in the above passage is that the fact that an unlicensed firearm is possessed for the purpose of self defence cannot of itself amount to exceptional circumstances for the purpose of section 39; see *Justin Alvin Ebanks* (supra) per Quin J approving *R v Shaun Smith* [2007] EWCA Crim 1434 in England and Wales.

Discussion

31. Given that the judge would have imposed a sentence of 5 years but for the statutory minimum, the real issue, in our judgment, is whether he was clearly wrong not to find exceptional circumstances. However, before turning to that, we should consider grounds (i) – (iv) as set out above.
32. As to ground (i), Mr Rule submitted that the judge was wrong to take a starting point of 10 years by reference to the statutory minimum on a not guilty plea. He prayed in aid a number of English cases where the Court of Appeal has criticised this approach. The effect of these cases was summarised by the Court of Appeal in *R v Woofe* [2020] 2 Cr App R (S) 6 in the following terms at [5(1)]:

“the right approach for the sentencing judge is to start by applying the relevant sentencing guidelines to determine the appropriate sentence without reference to the minimum sentence provisions. Only then should the judge consult those provisions to ensure that the sentence complies with the statute...”

33. We are not entirely sure that this approach is readily transferrable to a jurisdiction such as this where there are not such detailed sentencing guidelines in many cases. But, even if it is, we do not think that the judge’s decision to take 10 years as a starting point can be criticised even if his reason for selecting it was not consistent with the approach described in *Woofe*. That is because, even ignoring the statutory minimum and having regard only to existing sentencing guidance, 10 years was an appropriate starting point. Although the *Cayman Sentencing Guidelines* are silent about sentencing levels for possession of a

firearm, guidance is contained in the *Statement on Tariffs and Guidelines for Sentencing for Certain Offences* (“the Chief Justice’s Statement”) issued by the Chief Justice on 16 January 2002 where at page 3 in relation to firearms offences it states:

“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 sentence for possession of an unlicensed firearm is 20 years.....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.”

34. Although he did not refer to the *Chief Justice’s Statement*, we are of the clear view that, given the increasing use of firearms in this jurisdiction, the Grand Court is perfectly entitled to take a starting point of 10 years before consideration of any aggravating factors which will move that starting point upwards.
35. We take grounds (ii) and (iii) together as they both concern the judge’s decision to increase the starting point from 10 to 15 years.
36. The judge correctly considered the four questions articulated in *R v Avis* [1998] 2 Cr App R (S) 77 summarised at (5) in the passage from *Nancarrow* quoted at para 29 above and found that there were four aggravating factors as set out at para 20 above. It is clear that the judge placed considerable weight on the fact that the appellant was carrying the firearm for self defence and was prepared to use it if attacked. But, in concluding that this was a significant aggravating factor, the judge failed, in our view, to make allowances for the circumstances in which this occurred. This was not the normal case of someone involved in gang or other criminal activities carrying a firearm in case the other side decide to attack him; this was a witness who had fulfilled his public duty by giving evidence at the murder trial, thereby putting the lives of himself and his family at risk, but who, in view of recent,

reasonably founded fears of reprisal had made the decision to acquire a firearm and then carry it with him. We also consider that, on the facts of this particular case, the fact that the firearm offences were committed at the same time as other offences was not a significant aggravating factor, given that the other offences were motoring offences and possession of ganja.

37. However, the fact remains that the appellant was carrying a loaded multi-firing firearm tucked into his waistband and was doing so in a public place. Gun crime is a serious threat to the way of life in this jurisdiction and, in the circumstances, an uplift of 5 years was not manifestly excessive.
38. Turning to ground (iv), Mr Rule's first submission was that the judge should have given a two thirds rather than a one half reduction for the appellant's assistance. In our judgment, there is force in this submission. As set out in *Blackburn* and the *Cayman Sentencing Guidelines*, whilst the level of reduction is very fact specific, the normal level is between one half and two thirds. As the judge said, the assistance in this case was substantial and significant. Given all that the Court knows about the appellant, we consider that a reduction of only one half was inadequate. In our view, a reduction of 9 years (i.e. closer to two thirds) was appropriate rather than only one half.
39. Mr Rule's second submission was that, having accepted in principle that the appellant was entitled to a one third reduction for his guilty plea (which would have been 2.5 years), the judge did not in fact allow more than 6 months by only reducing the figure of 7.5 years to the statutory minimum of 7 years.
40. In our judgment, this is not a good point. It is inherent in the concept of a statutory minimum that a court may have to sentence an offender to more than it would have in the absence of a statutory minimum. Thus, the fact that a court considers that a reduction for a guilty plea should be given and that this would result in a sentence of less than the minimum, does not entitle the court to pass a sentence below the minimum. Inevitably

therefore, imposition of the statutory minimum may result in less reduction for a guilty plea than the court would otherwise consider appropriate.

41. That brings us to ground (vi) which can be considered together with ground (v), namely should the judge have found that there were exceptional circumstances?
42. In that connection we would mention two local cases to which we were referred and which addressed the issue of exceptional circumstances. The first is *R v Barnes* (15 July 2021), a decision of McDonald- Bishop J (Actg). In that case the defendant was convicted after a trial of possession of an unlicensed revolver loaded with six rounds of ammunition. The revolver was found in a search of the apartment the defendant shared with others. As the defendant pleaded not guilty, there was no explanation of his intention in connection with any use of the firearm. The judge took a starting point of 10 years which she increased to 11.5 years in view of the aggravating factors, including that, among numerous previous convictions, the defendant had two previous convictions for possession of an imitation firearm. She then found that there were exceptional circumstances relating to his mental state – he had witnessed his four year old son being shot and killed some nine years earlier – and delay in the sentencing and reduced the sentence to one of 8 years 3 months rather than the statutory minimum of 10 years. We have to say that, from the matters set out in the judgment, the defendant should consider himself extremely fortunate, not only that the judge limited the increased starting point to 11.5 years, but also that she then found exceptional circumstances. We would not have been surprised if the prosecution had applied for a review on the ground that the sentence was unduly lenient.
43. The second case is that of *Justin Alvin Ebanks* referred to earlier. In that case, the defendant was found in possession of a semi-automatic pistol with three rounds of ammunition when riding his bicycle in a public place. He immediately said that the firearm was for his own protection and he subsequently pleaded guilty. The background, as accepted by Quin J, was that the defendant had been present as an innocent bystander to the murder of a man by shooting and had responded to an appeal for witnesses by the police. He subsequently gave evidence in the trial of the two men charged with the murder and they were convicted.

As a result he was threatened and feared for his life, which had had a seriously detrimental effect on his health and wellbeing. It was against that background that he acquired the firearm to protect himself. He was aged 22 and had one previous conviction for inflicting grievous bodily harm. Quin J held that the assistance he had given over a lengthy period whilst under considerable threat and stress and which had led to the conviction of two offenders for murder constituted exceptional circumstances justifying a sentence below the statutory minimum of 7 years. Although he did not explain how this figure was reached, Quin J concluded that in all the circumstances a sentence of 18 months imprisonment was appropriate.

44. We remind ourselves that, as stated in *Nancarrow* at (8) in the passage quoted earlier, this Court will not interfere with a trial judge's conclusion that exceptional circumstances do not exist unless satisfied that the judge was clearly wrong. We also remind ourselves that, as also stated at (3) in the passage from *Nancarrow*, it is important that the courts do not undermine the intention of the legislation by accepting too readily that the circumstances are exceptional. In order to justify the disapplication of the statutory minimum, the circumstances must be truly exceptional.
45. However, we have no hesitation in concluding that that is the position here and that the judge was plainly wrong not to have found that exceptional circumstances existed. A sentence of 7 years in the circumstances of this case would be disproportionate. As stated at (4) in the passage from *Nancarrow*, one must take a holistic approach and look at all the circumstances of the case together. Adopting that approach, the combination of the following matters has convinced us that exceptional circumstances are present in this case;
 - (i) The appellant has given significant assistance to the authorities by giving evidence in the murder trial. This was at considerable risk to himself and his family. As the judge said, the risk of reprisal was patent and obvious. The police considered the risk to be such that the appellant and his family were placed in witness protection outside the Cayman Islands.

- (ii) As in the case of *Justin Alvin Ebanks*, this was not the perhaps more common situation of a participant in criminal behaviour giving information about his fellow participants with a view to a reduction in his sentence. On the contrary, the appellant was an innocent bystander who witnessed a murder and who was then willing to come forward as a witness and assist the course of justice by giving evidence in court. Such assistance is strongly to be encouraged.
- (iii) The lives of the appellant and his family have been seriously adversely affected by the threats to them and by being uprooted from Grand Cayman to go into witness protection off island. Not surprisingly, given the continuing fear and stress, the appellant's mental health has been affected as described in the reports before the judge, which supported the judge's conclusion that what had happened in connection with the murder trial and witness protection had contributed to the appellant's decision to acquire the firearm and that his culpability for doing so was therefore reduced.
- (iv) His decision to acquire the firearm was driven by his fear of reprisal merely for acting as a good citizen by giving evidence. Whilst he intended to use the firearm to defend himself from attack if necessary, there is no suggestion that he had any other intention, e.g. to use it in criminal activity. The acquisition of the firearm was provoked by recent threats coupled with the shooting of his cousin in apparent reprisal for assistance the cousin had given in relation to other matters.
- (v) The appellant remains fearful of a reprisal attack in prison. The report from the prison service confirms that there is an ongoing threat to him in prison as well as in the community and that there is a medium risk of an attack in prison despite measures to try and reduce the risk.
- (vi) He has no previous convictions for violence, for firearms offences or for public order offences. His previous convictions are for possession

of ganja and for motoring offences. There is no suggestion that he is involved in any gang or violent activity.

(vii) There was other powerful mitigation before the judge which it is unnecessary to set out.

46. Having concluded that the judge was clearly wrong not to have found that there were exceptional circumstances, the question then arises as to the appropriate sentence. Applying the reduction of 9 years for the assistance and a further one third for the guilty plea from the starting point of 15 years referred to above leads to a sentence of 4 years. As the court made clear in *Blackburn* at [39], in this type of sentencing, a mathematical approach is liable to produce an inappropriate answer. The court must consider the matter in the round. Having done so, we concluded that a sentence of 4 years was appropriate.
47. Accordingly, we gave leave to appeal and allowed the appeal to the extent of varying the sentence on count 1 from 7 years to one of 4 years. The remaining sentences remain unaltered and are to be served concurrently with sentence on count 1. As did the judge, we ordered that time spent in custody on remand fell to be deducted.
48. We conclude by stating that we would not wish this sentence to be misunderstood. It turns on its own special facts which, as we have said, included very powerful mitigating features that amounted to exceptional circumstances. In the absence of exceptional circumstances the legislative intention is clear, namely that even for the least serious cases of possession of a firearm, minimum sentences of 7 or 10 years (depending on the plea) will be imposed. Those who possess firearms for use in criminal activities can expect sentences well above the minimum statutory levels and approaching the maximum where appropriate. We would endorse the remarks of the judge in this case when he said at the conclusion of his sentencing judgment:

“Every single firearm that is carried on the streets brings or has the potential for bringing death and serious violence which engenders fear to all that live on the island or visit the island. This island has seen guns used to kill and maim,

engendering a tit-for-tat response and another life lost. The carrying and use of firearms is the scourge of our society.....Those carrying must expect long sentences of imprisonment.”