

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

**CICA (Crim) APPEAL No. 0001 of 2022  
(Grand Court Cause No. Ind. 0039 of 2019)**

**BETWEEN**

**CARLOS BUSTILLO**



**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 Clayton Phuran of CP Attorneys for Appellant  
Mr Neil Kumar of the Office of the Director of Public  
Prosecutions for Respondent**

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**JUDGMENT**

**Transcript of Judgment commenced on 5<sup>th</sup> September 2024 Approved for release 4**

**December 2024**

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**GOLDRING, PRESIDENT:**

1. On the 13th of January 2022 following a trial in the Grand Court before Justice Carter (Actg), the applicant was convicted of possession of an unlicensed firearm. He had earlier pleaded guilty to an offence of conspiracy to commit burglary.
2. He was a young man, then 21 years old, with previous convictions including for an offence of burglary. He was sentenced to 10 years' imprisonment in respect of a firearms offences with 19 months' concurrent for the conspiracy.
3. He applies for an extension of time in order to seek leave to appeal against that sentence of 10 years' imprisonment, albeit, a few reasons have been advanced as to why there was a delay. He has abandoned his application for leave to appeal against conviction.

**The Facts**

4. They were set out by the judge in her sentencing judgment in the following terms:
  - "2. *These offences arise out of the following facts which come principally from the evidence of the complainant in this case, Jamar Timothy, who described events that took place on the evening of the 25th of April 2019 into the early morning hours of the 26th of April.*
  3. *On the 25<sup>th</sup> of April 2019, Timothy was driven to the Defendant's home in West Bay on two occasions, first during the day and thereafter during the night-time hours. During his visits to the Defendant's home, Timothy and the Defendant discussed a plan to burgle premises for financial gain. The discussion was initiated by the Defendant. At that time Timothy was*

*unaware that a firearm would be involved in the plan to burgle the premises.*

4. *After Timothy's last visit to the Defendant's home on the night of the 25<sup>th</sup> of April, the Defendant and another male picked Timothy up from his home in a vehicle driven by the Defendant. The three of them travelled into George Town to an open lot across from the residence situated at No 877 West Church Street in George Town in pursuance of the plan to burgle premises.*
5. *When they arrived at the open lot at approximately 1 a.m. on the 26<sup>th</sup> of April, Timothy saw a firearm in the Defendant's possession. The Defendant discharged the firearm in Timothy's presence and then handed it to the other male. Timothy and the other male then left the vehicle and went in the direction of the apartments across from the lot in pursuance of the plan to burgle the premises. The Defendant remained in the vehicle.*
6. *Whilst heading towards the apartments Timothy saw that there were residents at the apartment and decided to abandon the plan to burgle the premises. Timothy was shot twice by the other male using the same gun that had earlier been in the possession of the Defendant. The other male ran to the vehicle and was driven away from the location by the Defendant.*
7. *The Defendant turned himself into police custody and was interviewed twice on the 1<sup>st</sup> and 3<sup>rd</sup> of May 2019. The Defendant admitted that he planned to burgle the premises between the 25 and 26<sup>th</sup> April 2019.*
8. *The Defendant admitted that he had possession of a firearm which he discharged on the 26<sup>th</sup> of April 2019 however he stated that he had only taken possession of the firearm as he was in fear of the other male. The Court rejected that evidence at trial and found the Defendant guilty of possession of the unlicensed firearm.*
9. *The Defendant pleaded guilty to the offence of conspiracy to commit burglary on the 15<sup>th</sup> of November 2019 and was found guilty after trial of*

*the offence of possession of an unlicensed firearm on 12<sup>th</sup> February 2021.*”

5. Before sentence was to be passed, there was prepared a detailed Social Inquiry Report. It assessed the risk of re-offending as very high. It suggested that a psychological report be prepared. On the 6th of May 2021, the judge ordered that such a report be prepared. By the 13th of January 2022 - now some 12 months after the conviction, and some seven months after it had been ordered - no such report was on the horizon. The judge, understandably, decided that the applicant should be dealt with.
6. Ultimately, when this case came before us, and not without hesitation, this court ordered the preparation of such a report which, after further inordinate delay, we now have. In those circumstances, it is unnecessary to go into the reasoning of the judge in sentencing without a report, or Mr. Phuran's criticism of her decision to do so.
7. In imposing the sentence of 10 years' imprisonment, the judge rejected a submission that there were ‘exceptional circumstances’ justifying a reduction in the mandatory sentence of 10 years' imprisonment. She said this at paragraphs 37 and 38 of her sentencing remarks:

*"I've considered all relevant matters raised in this case. As counsel for the defendant accepts, each matter raised may not in and of itself in this case cause such a finding. I have considered the matters individually and holistically. While it is clear to the court that the defendant has mental or emotional challenges, as well as physical and/or medical issues, and these have all been considered, there is no basis upon which this court finds that there are exceptional circumstances made out in relation to this defendant.*

*For the offence of possession of an unlicensed firearm, the court will take as its starting point a sentence of 10 years' imprisonment. The defendant does not have any previous conviction for firearms-related offences".*

8. The judge reduced the sentence by the periods the applicant had been in custody and then tagged. The chronology is as follows.
9. The offending took place in April 2019. Sentence was imposed on the 13th of January 2022. The applicant was in custody between the 30th of April 2019 and the 18th of March 2020 - some 325 days - which the judge set off against the 10-year sentence. He was then on bail, tagged for some further 667 days which entitled him to a further reduction of 180 days.
10. To reflect her concern about the delay, the judge went further than that, however. At the Crown's suggestion, she reduced the sentence by a further 667 days. That resulted in an overall reduction of some two and three-quarter years.

### **The Contents of the Psychological Report**

11. Ms. Gayle has produced a helpful and realistic report. Although Mr. Phuran argues to the contrary, its contents do not in our judgment reveal anything which might have led to the judge finding exceptional circumstances or in any way reducing the sentence which she imposed.
12. The report reveals somebody with a conduct disorder or, as it is sometimes described, an antisocial personality. The applicant lacks basic social skills. His cognitive abilities are well below average. He overreacts to minor stress and shows intense feelings of anger and hostility towards others. There is a high potential for explosive behaviour when he is angry. He lacks confidence and has the personality which frequently leads others to take advantage of him.
13. Mr. Phuran emphasises that last aspect. He refers the court to the defence of duress, which the applicant, unsuccessfully, advanced at trial. Mr Phuran also emphasises the

substantial mental issues which the applicant has.

14. Mr Phuran also brought to our attention the failure of the prison authorities to arrange for treatment for a serious eye problem which the applicant has.
15. In the result, Mr Phuran, as it seems to us, wholly unrealistically, submits that the mental disabilities suffered by the applicant and the fact he is so easily led, mean that the sentence of 10 years' imprisonment was arbitrary. He submits that in all the circumstances, viewing it "holistically", the case is exceptional meriting a reduction in sentence.

### **The Court's View**

16. These were serious offences. The applicant initiated the discussion leading to the decision to go into George Town to burgle the apartments. It was he who produced the firearm. The judge rejected his claim that he had it because he was afraid of one of those with him. He fired it before handing it over to someone else. The firearm was later used to shoot someone. The applicant drove the gunman away.
17. The fact that someone may be easily led does not begin to amount to an exceptional circumstance. Neither do any of other matters referred to by Mr. Phuran. We decline to extend time in which to appeal against sentence. The application for the leave to appeal fails.