



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

3
4 **INDICTMENT NO: 0074 of 2023**
5

6
7 **THE KING**

8
9 **v.**
10

11 **FRITZ ALBERTH MCPHERSON**
12

13 **Appearances:** **Ms. Shauna-Kaye James, Crown Counsel of the Office of the**
14 **Director of Public Prosecutions for the Prosecution**

15 **Mr. Crister Brady for the Defence**

16 **Before:** **Justice Cheryll Richards K.C.**

17 **Sentence Hearing:** **30th September 2024**

18
19 **Sentence Judgment:** **6th December 2024**
20

21
22 ***Criminal Law*** – *Sentencing, Possession of an Unlicensed Firearm contrary to sections 15 (1) and (5)*
23 *of the Firearms Act (2008 Revision), Mandatory minimum sentence, whether fact of momentary*
24 *possession amounts to an exceptional circumstance alone or in combination with other circumstances.*
25
26
27
28
29

SENTENCE JUDGMENT

30 1. The defendant is before the Court for sentencing following his guilty plea to three counts
31 on the Indictment.
32

33 2. Count One charges the defendant with Possession of an Unlicensed Firearm contrary to
34 sections 15 (1) and (5) of the ***Firearms Act*** (2008 Revision). The particulars are that he

1 on the 15th day of July 2023 at 245 Pedro Castle. Grand Cayman, Cayman Islands, had
2 in his possession an unlicensed firearm, namely one Taurus nine millimeter PT92AF
3 semi-automatic pistol, which was not under and in accordance with the terms of a
4 Firearms User's Restricted Licence.

5
6 3. Count Two charges the defendant with Possession of an Unlicensed Firearm
7 (Ammunition) contrary to sections 15 (1) and (5) of the *Firearms Act* (2008 Revision).
8 The particulars are that he on the 15th day of July 2023 at 245 Pedro Castle, Grand
9 Cayman, Cayman Islands, had in his possession an unlicensed firearm, (ammunition)
10 namely seven rounds of Blazer nine-millimeter FMJ cartridges, which was not under
11 and in accordance with the terms of a Firearms User's Restricted Licence.

12
13 4. Count Three charges the defendant with Possession of an Unlicensed Firearm
14 (Ammunition) contrary to sections 15 (1) and (5) of the *Firearms Act* (2008 Revision).
15 The particulars are that he on the 15th day of July 2023 at 245 Pedro Castle. Grand
16 Cayman, Cayman Islands, had in his possession an unlicensed firearm, (ammunition)
17 namely ten rounds of .40 millimeter cartridges, and thirty-one rounds of nine millimeter
18 cartridges which was not under and in accordance with the terms of a Firearms User's
19 Restricted Licence.

20
21 5. The maximum sentence is 20 years imprisonment in each case. By section 39 of the
22 *Firearms Act* where the firearm is a lethal barreled weapon, there is a mandatory
23 minimum sentence of 7 years imprisonment upon a guilty plea unless the relevant court
24 is of the opinion that there are exceptional circumstances relating to the offence or to the
25 offender which justify its not doing so.

26
27 6. The defendant's plea of guilty came after an initial plea of not guilty on the 15th
28 September 2023 and the setting of three trial dates on the 12th February 2024, 18th March
29 2024 and 22nd July 2024. On the 19th July 2024, the defendant was re-arraigned and
30 pleaded guilty. A Social Inquiry Report was ordered.



1 7. The defendant was granted bail on the 26th July 2023 with an electronically monitored
2 curfew from 8pm to 6am. He remained on bail up to the date of the hearing of the
3 sentencing submissions.



4
5 **THE FACTS**

6
7 8. The facts are summarised by the prosecution as follows. On Saturday the 15th July 2023
8 at 5:50am, a joint search operation was conducted by the Royal Cayman Islands Police
9 Service Crime Task Force and various other units, at the home of the defendant at Pedro
10 Castle Road in Savannah.

11
12 9. Upon arrival at the premises, the police cordoned off the dwelling house, knocked on
13 the rear door and shouted "armed police" in a loud tone. While the police were knocking
14 on the door, they saw a window to the office area of the house, which is accessible via
15 the defendant's bedroom open and close at least three times. On a fourth occasion when
16 the window of the office was opened, police saw the defendant appear. The defendant
17 was instructed to approach them with his hands in the air, and he complied. He exited
18 the dwelling through the same window and approached the police. He was detained for
19 the purpose of a search.

20
21 10. The officers then conducted a brief walkthrough of the residence. An officer took the
22 defendant to the office window where the defendant was seen earlier. While inside the
23 room, the officer looked through the window and saw a black object in the bushes
24 outside. It was immediately below the same window to the right. The police escorted the
25 defendant outside by the said window and conducted a search of the area where the black
26 object was seen. During the search a Taurus 9mm pistol with no ammunition in the
27 chamber was found and a magazine for a Taurus 9mm pistol containing 7 rounds of
28 ammunition was found underneath the pistol. The firearm was made safe and the items
29 were recovered by the police.
30

- 1 11. Further searches were conducted inside the house. During a search of a bedroom
2 occupied by the defendant, a water bottle marked 'Valvoline' was found containing
3 cornmeal and 41 additional rounds of ammunition were found therein.
4
5 12. All the items were shown to the defendant, and he was asked if he knew anything about
6 them and whether they belonged to him. He exercised his legal right and replied, "no
7 comment".
8
9 13. The defendant was taken into custody and transported to the police Detention Centre.
10
11 14. Fingerprints and evidential buccal samples were collected. No fingerprints were found
12 on the items recovered. DNA examination produced the following results: -
13
14 i) Swab of textured areas of firearm – DNA Mixture 1 – 2.2 billion times more
15 likely if DNA Mixture 1 originated from the defendant and two unknown
16 people, than if it originated from three unknown people, unrelated to him.
17
18 ii) Swab taken from the firearm after placement in fuming chamber– DNA
19 Mixture 2 – 190,000 times more likely if DNA Mixture 2 originated from
20 the defendant and two unknown people, than if it originated from three
21 unknown people, unrelated to him.
22
23 iii) Swab of magazine – Profile 1 – 1.4 sextillion times more likely if Profile 1
24 originated from the defendant than if it originated from an unknown person,
25 unrelated to him.
26
27 15. The defendant was interviewed by the police on Sunday the 16th July 2023. He responded
28 "no comment" to all the questions related to the unlicensed firearm and ammunition.
29
30 16. The defendant is not a registered owner or user of any firearm in the Cayman Islands.
31



1 17. The Taurus 9mm pistol was examined by an authorised firearms officer and firearms
2 instructor employed to the police service and found to have all the characteristics and
3 performance of a fully functioning firearm. The rounds of ammunition were also
4 examined and found to be viable.

5
6 18. Nine photographs of the items and scene were tendered and received in evidence for the
7 purpose of this hearing as Exhibit 1.



8
9 **ANTECEDENT HISTORY**

10
11 19. The defendant has no previous convictions for serious offences recorded against him.
12 He has convictions for traffic offences and self-reported to the Probation Officer that he
13 has one prior conviction in the United States for Disturbing the Peace.

14
15 **SOCIAL INQUIRY REPORT**

16
17 20. The Department of Community Rehabilitation (“DCR”) has provided a Social Inquiry
18 Report (“SIR”) dated 25th September 2024. The defendant is forty-five years old. He has
19 three children, two are ten years old and the third is three years old.

20
21 21. In his background history to the Probation Officer, the defendant reports a stable and
22 positive upbringing where he was protected and cared for. His childhood was free from
23 negativity, and he excelled academically through to tertiary studies. He participated in
24 extracurricular activities and won several awards. He represented the Cayman Islands
25 in drama in the Caribbean, also winning several acting awards. He started working from
26 an early age during after school breaks and on weekends. He has been gainfully
27 employed at various jobs since completing tertiary education through to 2020 when he
28 became self-employed and began operating his own business.

29
30 22. He is described by community contacts as of good character, involved in the community
31 and as having a good work ethic, a hard worker, motivating, creative and caring.



1
2 23. He was assessed as being at low risk of re-offending with none of the eight criminogenic
3 factors in the very high or high categories.
4

5 **DEFENDANT'S ACCOUNT**

6

7 24. The account of the defendant comes from his Counsel and as recounted by him to the
8 Probation Officer.

9
10 25. On the defendant's account he was at his home on the evening of the 14th July 2023 when
11 he was visited by a male who he did not know before. His tenants referred to the male
12 as "Rasta". Rasta showed him a gun. He advised Rasta to consider using the gun amnesty
13 programme to safely dispose of the firearm. Rasta remained at the home and was talking
14 to his tenants. The defendant said that he was feeling unwell, excused himself from the
15 group, went inside and went to sleep. In the early hours of the morning, he was awakened
16 by the sound of loud banging on his door. He went to his bedroom window and saw a
17 gun on the window ledge. In a panic he picked it up and threw it outside along with some
18 ganja that he had. He said that the police searched the first time and on a second search
19 recovered the firearm outside and ammunition in his house. He said that the items did
20 not belong to him. He only handled them when he threw them out the window.
21

22 **THE SUBMISSIONS**

23

24 26. Counsel for the prosecution relies on the case of *R v Dean Ryan Derby*¹ and the cases
25 cited therein including *R v Dawson*² and *R v Moffat*³. Counsel submits that
26 notwithstanding the assertion of temporary possession there are no exceptional
27 circumstances in this case and the mandatory minimum term applies.
28

¹ Grand Court Ind. 15/2020 - Unreported Judgment dated 15th September 2020

² 2017 EWCA Crim 2244

³ 2014 EWCA Crim 332

1 27. Counsel for the defence argues that the Court may properly find that there were
2 exceptional circumstances where the mandatory minimum may not be imposed.

3
4 28. Counsel submitted that the defendant accepts culpability on the basis of having
5 knowledge and possession for a brief period. This is the period between the time when
6 he discovered the items to the time that he threw them out of his bedroom window, just
7 moments after the arrival of the police.

8
9 29. Counsel said that the defendant accepts that earlier in the night, the firearm was present
10 at his home and was the subject of discussion among guests and tenants at the home.
11 There was smoking of ganja and drinking. The defendant says that he does not know
12 how the items got into his house. He was awakened by the arrival of the police and in a
13 panic made the decision to throw both the firearm and suspected ammunition out through
14 his bedroom window for fear of them being discovered inside his house by the police.
15 When he was seen by the police, he was unable to throw the rest of the ammunition out
16 through the window.

17
18 30. Counsel explains that at the time of the interview the defendant was unsure of the details
19 as to who had stayed overnight or whether anyone had taken responsibility for the items.

20
21 31. Counsel said that the items were found by the Police in the bushes outside some thirty
22 minutes thereafter and that in these circumstances the defendant pleads that his
23 possession was momentary.

24
25 32. Reliance is placed on the case of *R v Ashley Terry, Jose Sanchez and Sean Dunbar*⁴.
26 In that case the defendant Dunbar was sentenced to eighteen months imprisonment
27 suspended for two years. The firearm in question had been given to his girlfriend Ashley
28 Terry by a man, Jose Sanchez at the parking lot of the Everglo Bar.

29
30 33. When the police arrived at the Bar, Mr. Dunbar took the firearm from Ms. Terry and
31 drove away from the scene, intending to later dispose of it. The Grand Court found that

⁴ Grand Court Ind. 50/2015, 52/15, 59/15 and 3/16 - Unreported Judgment dated 20th December 2016



1 Mr. Dunbar had made an error of judgment in failing to hand it over immediately to the
2 police.

3
4 34. Counsel submitted that the defendant in the instant case accepts that he should have
5 immediately handed over the firearm to the police before he was arrested. He had hidden
6 the container with ammunition in the hope that he would have disposed of them later.
7 He had been afraid of the repercussions of the firearm being found in his home if no one
8 was prepared to accept that they had brought it there or was otherwise responsible for
9 taking it from or keeping it for the person who had brought it there.

10
11 35. Counsel sought to distinguish the cases of *Dawson* and *Moffatt*. Counsel said that the
12 disposal in the first case was in a child's playground area where it potentially may have
13 had a serious effect. Counsel urged that this defendant had no such choice. Counsel said
14 that there is a distinction between making a decision to take and maintain possession of
15 a firearm and what happened here. There was no decision to maintain possession of the
16 firearm. It was thrown out the window in a fit of panic. The defendant made an error of
17 judgement similar to the defendant Dunbar.

18
19 36. In mitigation Counsel submitted that the defendant has had an exceptional career until
20 now. The defendant started working at an early age continuing through to his college
21 years. Thereafter he continued working and attained managerial positions at various
22 local organisations. He has multiple undergraduate and post graduate degrees in
23 Electrical Engineering, Computer Studies and Business Administration. In later years he
24 established his own businesses. He is heavily involved in the local community and in the
25 Caribbean in the performing arts and is said to be well known and beloved.

26
27 37. Counsel said that the defendant's talents have been recognised by the award of several
28 Caribbean Awards for his acting. He has participated in 'Youth to Youth' programmes
29 and was a Scout member for twenty-five years. Counsel said that it is fair to say that he
30 has been a model citizen and a pillar in the Caymanian community up until now.

31



1 38. Counsel said that this “*is a fall from grace that has hit hard and the defendant has lived*
2 *with regret since then, awaiting the consequences that his own cowardice has wrought*”.
3 The defendant accepts that he should have dismissed any such persons with connections
4 to firearms and ganja from his house and should have forbidden any tenants from
5 entertaining any such characters. Counsel said that the defendant believes that while this
6 would have been a difficult feat he should have tried harder to do so.

7
8 39. Counsel said that the defendant is fully engaged in the lives of his children and any time
9 away from them will be the real punishment to him. He has feared this day and has spent
10 all the time he can over the last year with the children trying to prepare for the inevitable.
11 Counsel asked the Court to note that any punishment for the defendant will also impact
12 the children significantly and that the youngest who is three years old, a boy, will miss
13 time bonding with his father.

14
15 **THE SENTENCE**

16
17 40. In the *Statement on Tariffs and Guidelines for Sentencing for Certain Offences* dated
18 the 16th January 2002, the Chief Justice stated: -

19
20 “As regards FIREARM OFFENCES contrary to the Firearms Law: The
21 legislation is quite clear that the possession or use of any unlicensed lethal barrel
22 firearm is an extremely serious offence. Under the Firearms Law the maximum
23 penalty for possession of an unlicensed firearm is 20 years and a fine of
24 C\$100,000. The tariff for that offence unless there are very mitigating
25 circumstances will be 10 years. If on the other hand aggravating circumstances
26 exist, for instance, the use of the firearm for the commission of a serious offence,
27 the tariff will be in keeping with decided cases and will be significantly higher.”

28
29 41. In the case of *R v Avis*⁵ the English Court of Appeal stated that the appropriate level of
30 sentence for a firearm offence will depend on all the facts and circumstances relevant to

⁵ 1998 1 Cr. App. R. 420



1 the offence and the offender. It will usually be appropriate for the sentencing court to
2 ask itself a series of questions:

3 “What sort of weapon is involved?

4 Genuine firearms are more dangerous than imitation firearms. Loaded
5 firearms are more dangerous than unloaded firearms. Unloaded
6 firearms for which ammunition is available are more dangerous than
7 firearms for which no ammunition is available. Possession of a firearm
8 which has no lawful use such as a sawn-off shot gun will be viewed
9 even more seriously than possession of a firearm which is capable of
10 lawful use.

11 What if any use has been made of the firearm?

12 With what intention, if any, did the defendant possess or use the firearm?

13 What is the defendant’s record?

14 The seriousness of any firearms offence is inevitably increased if the offender
15 has an established record of committing firearm offences or crimes of violence.”
16

17 42. In this case this was a genuine firearm which was unloaded. There was ammunition for
18 use in the firearm. There is no evidence that the firearm was used. The defendant’s stated
19 intention was to dispose of the firearm and ammunition. The defendant has no previous
20 convictions and is of good character.

21
22 43. In the case of *Chavarría-Atily v R*⁶, the Cayman Islands Court of Appeal considered the
23 issue of exceptional circumstances following the Appellant’s sentence for the offence of
24 Unlawful Possession of an Air Rifle. The Court stated: -
25

26 “In the Cayman Islands it has been the massive increase in offences under
27 the Firearms Law that has led Parliament to enact the minimum sentences
28 in respect of those offences, while at the same time making special provision
29 for cases of exceptional circumstances. The mere possession of a firearm
30 even without any intention to use it for a criminal offence can still be a

⁶ 2009 CILR 118



1 danger to the public for the reason that it could get into the hands of someone
2 who does have that intent”.

3
4 44. The Court referred in its judgment to the case of *R v. Zakir Rehman and Gary Wood*⁷.
5 In that case the English Court of Appeal considered section 51A of the United Kingdom
6 *Firearms Act 1968*. This provided for a minimum term of 5 years’ imprisonment unless
7 there were exceptional circumstances relating to the offence or the offender. The Court
8 noted that the rationale for the section, that is, the policy behind it, was to send out a
9 deterrent message. The mere possession of firearms could create dangers to the public.
10 It might result in a firearm going into circulation which could then come into the
11 possession of someone other than the particular offender, in whose hands the firearm
12 would be a danger to the public.

13
14 45. The Court held that by the statute Parliament had said that the usual consequence of
15 merely being in possession of a firearm would itself be sufficiently serious to require the
16 imposition of a term of imprisonment of 5 years irrespective of the circumstances of the
17 offence or the offender unless they passed the exceptional threshold which the section
18 required.

19
20 46. In considering exceptional circumstances, the Court concluded that it was not
21 appropriate to look at each circumstance separately and then to conclude that it did not
22 amount to an exceptional circumstance. A holistic approach was needed. The Court held
23 that there would be cases where there was one single striking feature which related either
24 to the offence or the offender which caused that case to fall within the category of
25 exceptional circumstances. There could be other cases where no single factor by itself
26 would amount to an exceptional circumstance, but the collective impact of all the
27 relevant circumstances truly made the case exceptional.

28
29 47. The Court determined that in the case of the appellant *Rehman*, there were exceptional
30 circumstances. The Court noted that his guilty plea was entered at the first opportunity,

⁷ 2006 1 Cr. App. R. (S) 77



1 he was of previous good character, he co-operated throughout the search and arrest and
2 continued in gainful employment with a public authority where he was a valued
3 employee. Additionally, the weapon was a replica which had not been converted for use.
4 It had not been fired prior to its being tested after it was seized and no ammunition had
5 been found. The weapon was still in its original wrapping. The appellant had done
6 nothing to disguise his identity as a purchaser. He had purchased it as a collector's model
7 and had not been aware that it could be converted until he was told this by the police. In
8 the Court's view, all these circumstances taken together, made it possible to conclude
9 that the Court was not required to impose the minimum term.

10
11 48. In the case of *R v. Nancarrow*⁸, the English Court of Appeal stated:

12
13 “Under section 51A (2) of the Firearms Act 1968, the Court must impose a
14 minimum term of five years for an adult offender convicted of such an
15 offence unless “the court is of the opinion that there are exceptional
16 circumstances which in the opinion of the court justifies not doing so”.

17
18 49. The Court identified eight principles from decided cases which apply: -

19 “19. The authorities in this court establish the following principles as to
20 the application of section 51A(2):

21
22 (1) The purpose of the mandatory minimum term is to act as a
23 deterrent (*R v Zakir Rehman and Wood*) [2005] EWCA Crim 2056;
24 [2006] 1 Cr App R 77 at paragraph 12.

25
26 (2) Circumstances are exceptional for the purposes of subsection (2)
27 if to impose five years' imprisonment would amount to an arbitrary
28 and disproportionate sentence (*Rehman* at paragraph 16).

29

⁸ 2019 EWCA Crim 470





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

7
8 (4) It is necessary to look at all the circumstances of the case
9 together, taking a holistic approach. It is not appropriate to look at
10 each circumstance separately and conclude that, taken alone, it does
11 not constitute an exceptional circumstance. There can be cases
12 where no single factor by itself will amount to exceptional
13 circumstances, but the collective impact of all the relevant
14 circumstances makes the case exceptional (Rehman at paragraph
15 11).

16
17 (5) The court should always have regard, amongst other things, to
18 the four questions set out in R v Avis [1998] 2 Cr App R (S) 178,
19 namely: (a) What sort of weapon was involved? (b) What use, if
20 any, was made of it? (c) With what intention did the defendant
21 possess it? (d) What is the defendant's record? (See, for example, R
22 v McCleary [2014] EWCA Crim 302 at paragraph 11.)

23
24 (6) The reference in the section to the circumstances of the offender
25 is important. It is relevant that an offender is unfit to serve a five-
26 year sentence or that such a sentence may have a significantly
27 adverse effect on his health (Rehman at paragraph 15; R v Shaw
28 [2011] EWCA Crim 167 at paragraphs 6-7).

29
30 (7) Each case is fact-specific and the application of the principles
31 dependent upon the particular circumstances of each individual

1 case. Limited assistance is to be gained from referring the court to
2 decisions in cases involving facts that are not materially identical
3 (see, for example, R v Stoker [2013] EWCA Crim 1431 at
4 paragraph 22).

5
6 (8) Unless the judge is clearly wrong in identifying exceptional
7 circumstances where they do not exist or clearly wrong in not
8 identifying exceptional circumstances where they do exist, this
9 Court will not readily interfere (Rehman at paragraph 14).”

10
11 50. In the instant case the Court adopts a starting point of 10 years imprisonment on Count
12 One of the Indictment. This is based on the *Statement of Tariffs and Guidelines*
13 referenced above. The offending is aggravated by the fact that a large quantity of
14 ammunition was found separately from the firearm. This increases the sentence to one
15 of 12 years.

16
17 51. In mitigation the Court considers the personal circumstances of the defendant which are
18 said to be exceptional. He has no previous convictions and is of good character. He is
19 remorseful. He is at low risk of reoffending. Imprisonment will mean that he is separated
20 from his young children, and they will not have the support of a father figure. He had
21 been on restrictive bail conditions for some time. The sentence is reduced by 30 months
22 because of the mitigating circumstances.

23
24 52. The plea was entered after a trial date was set. The defendant is not entitled to full credit.
25 He is given a reduction of 25% for a sentence of 7 years.

26
27 53. The issue is whether there are exceptional circumstances such that the defendant should
28 be sentenced to less than the minimum prescribed by Law.

29
30 54. The defence urge that momentary possession of the few minutes after the defendant was
31 awakened by the banging on the door should constitute exceptional circumstances.



1 55. On the defendants’ own account the police searched for some time before finding the
2 weapon and the ammunition.

3
4 56. In the case of *Terry and Others* in paragraph 79 of the judgment, Quinn J. said in relation
5 to the defendant Sean Dunbar:

6
7 “He made one error in judgment. He should have handed the gun over to the
8 police at the Everglo Bar and should not have waited until he was arrested
9 to hand it over. However, it is the possession of an unlicensed firearm and
10 for that I impose a sentence of 18 months imprisonment. Time in custody is
11 NOT to be taken into account/deducted. However, because of his
12 exceptional, ready and immediate assistance to the police, and his evidence
13 in court, I am going to suspend it for two years.”

14
15 57. This is not a case of similarity. There is no assistance provided. The defendant well knew
16 from earlier in the night that an illegal weapon was on his premises. He did nothing about
17 it. On the arrival of the police, he did nothing except to hide it. He threw it into the
18 bushes, a place where but for the diligence of the police it was likely to have fallen into
19 the wrong hands.

20
21 58. He maintained his innocence through the setting of multiple trial dates and very likely it
22 is only the strength of the DNA evidence which led to his change of heart. He is
23 described as an exceptional citizen, but his behaviour appears to be entirely inconsistent
24 with that description.

25
26 59. I refer to two of the cases cited in the case of *Derby* and summarised as follows: -

27
28 “ 24. In the case of the *R v. Dawson*⁹, the Appellant pleaded guilty to an offence
29 of possessing a prohibited firearm, a pistol contrary to s.5 (1)(A) of the United
30 Kingdom *Firearms Act 1968* and possessing ammunition without a firearms

⁹ 2017 EWCA Crim 2244



1 certificate, namely, seven live cartridges. He was 26 years old at the time of the
2 offences.

3
4 25. The police went to his home address to execute a search warrant. They
5 knocked. The Appellant did not open the door, so they entered the premises by
6 force. At the time of entering two persons had escaped through a window and
7 were never identified. When the officers looked through the window of the
8 bedroom they saw a hand gun lying in the grass which was part of a children's
9 play area and there were five unfired cartridges in the magazine of the gun. In
10 a drawer in the bedroom they found two more unfired cartridges.

11
12 26. The gun was found to be a .32 calibre automatic self-loading pistol with a
13 broken firing pin which when replaced was found to be in working order. The
14 Appellant gave a detailed prepared statement in which he said that the two men
15 who had escaped through the window had given him the gun only moments
16 before they escaped when they realised that the police were at the door. The
17 sentencing Judge concluded that there were no exceptional circumstances. In
18 reviewing the matter, the appellate Court stated: -

19
20 *“As the single judge rightly observed in granting leave, it is important that the*
21 *courts do not undermine the intention of Parliament by accepting too readily*
22 *in cases of this kind that the circumstances of a particular offence or offender*
23 *are exceptional and that the minimum sentence would be unjust. It must also*
24 *be borne in mind that as this court has said the fact that an offender is*
25 *subjected to pressure and threats cannot in itself be regarded as unusual or*
26 *exceptional (see Attorney General's Reference, No. 37 of 2013 R. v*
27 *Culpeper).”*

28
29 27. The Court noted that the circumstances in the case of ***R v. Culpeper***¹⁰

¹⁰ 2013 EWCA Crim 1466



1 were plainly more serious than in the case before the Court in which the
2 possession of the gun was fleeting. The Court also referred to the case of **R v.**
3 **Moffat**¹¹ and stated that fleeting possession is a factor which has been
4 recognised as being capable at least in combination with other factors of
5 amounting to or contributing to exceptional circumstances. The Court stated
6 further:

7
8 *“Possession merely with an intention to dispose of the firearm may also be*
9 *capable of amounting to or contributing to exceptional circumstances see*
10 *R. v. Harrison 2006. Citation..... In that case the police officers stopped the*
11 *defendant’s car and found he was in possession of a handgun and live*
12 *ammunition. He was sentenced on the basis that he was on his way to*
13 *dispose of the gun by throwing it into a lake. It was accepted that he intended*
14 *to remove it permanently from circulation and that the gun and ammunition*
15 *came into his possession only that day. The Judge imposed the minimum*
16 *term of five years imprisonment and on appeal a sentence of two years was*
17 *substituted.”*

18
19 28. The Court in the case of **Dawson** concluded that it was appropriate and
20 important to focus on the nature and outcome of the Appellant’s possession of
21 the firearm rather than the fact that it was of a fleeting duration. The Court stated
22 that assuming that he was handed the gun by one of the men just before they left
23 the flat by climbing over the balcony, rather than throwing it out of the window,
24 he could simply have put it on the floor so that when the police entered they
25 could recover it without any risk of it falling into the wrong hands. Instead in
26 order to obstruct the police and to help the two men, the Appellant chose to
27 throw the gun out of the window and, having thrown it, he threw it into a
28 children’s play area with the obvious risk that it could be found by children or
29 fall into the hands of those who might use it for criminal purposes. The Court

¹¹ 2014 EWCA Crim 332





1 concluded that there were no exceptional circumstances in that case such as to
2 avoid the imposition of the minimum term of five years' imprisonment.”

3
4 60. In this case the Court has considered the outcome of the defendant's possession together
5 with all his personal circumstances as raised by his Counsel to include his good
6 background, character and gainful employment.

7
8 61. The Court has also considered the question of momentary possession, in light of all the
9 cases cited, to include the case of *R v Dawson*. Consideration has also been given to
10 whether the fact that his possession was for a limited period of time, would constitute a
11 striking feature such as would justify a finding that exceptional circumstances are present
12 when taken into account with his personal circumstances and all the other circumstances
13 of this case. The important focus is on the nature and outcome of the possession rather
14 than merely its fleeting duration.

15
16 62. This is a serious offence in which the defendant was in possession of a dangerous
17 weapon and multiple rounds of ammunition. He claimed to have been in unwilling and
18 temporary possession yet did not seize the opportunity which he had for at least thirty
19 minutes, to hand it over to the authorities. Instead, he left it unsecured in the bushes after
20 the arrival of the police leading to the possibility that it could have fallen into the hands
21 of those who might use it for a criminal purpose.

22
23 63. In my view, there is nothing in the circumstances looked at holistically which can be
24 regarded as exceptional, either in relation to the offence or to the offender. Neither is
25 there any single striking or specific feature which would justify such a finding.

26
27 64. I have considered whether the minimum sentence would be disproportionate or arbitrary
28 in light of all the circumstances of this case and am satisfied that imposing the minimum
29 term herein would not result in such a sentence. I am mindful that care must be taken not
30 to lower the threshold for exceptional circumstances and as discussed in the judgment
31 of the Court in the case of *R v Dawson*, to “*blunt the effect of the scheme of deterrent*

1 *sentences for which Parliament has made clear provision and which the courts have*
2 *repeatedly emphasized is necessary.”*

3
4 65. The sentence is therefore in respect of Count One, the minimum term of 7 years’
5 imprisonment as is set by the Law.

6
7 66. In respect of Counts Two and Three a sentence of 2 years imprisonment is imposed on
8 each count to run concurrently to each other and to the sentence on Count One.

9
10 67. Time served is to be deducted.

11
12 68. The firearm and ammunition are ordered forfeited to the Crown.
13

14 **Dated this the 6th day of December 2024**

15 

16
17 **Honourable Justice Cheryll Richards K.C.**
18 **Judge of the Grand Court**