



**IN THE GRAND COURT OF THE CAYMAN ISLANDS
CRIMINAL DIVISION**

IND0005 OF 2024

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THE CROWN

-V-

JAY CALVERT EBANKS

Coram: Hon. Justice Marlene Carter
Crown: Mr. Scott Wainwright, Assistant Director of Public Publications
Defence: Mr. Oliver Grimwood of Samson Law
Hearing: 25 October 2024
Sentence: 12 November 2024

Criminal Law – Possession of unlicensed firearm – Sections 18 (6) and Sections 39 (2) of the Firearms Act (2008 Revision), Possession of Cocaine with Intent to Supply - Sections 3 (1) (k) and (m) of the Misuse of Drugs Act (2017 Revision), Concurrent sentences

SENTENCE JUDGMENT

Background

1. The Defendant faces an indictment containing three counts. His first appearance in the Grand Court was on the 2nd of February 2024. On the 7th of March 2024, pleas were entered to the first two counts on the indictment. These counts were as follows:
 - i. Count 1: Possession of an unlicensed Firearm contrary to section 15(1) and (5) of the Firearms Act (2008 Revision) in that on the 10th of January 2004 within the jurisdiction of the Cayman Islands, [the Defendant], had in his possession a firearm, namely a 9mm Glock 26 pistol, serial number HBH019, otherwise in accordance with the terms of a Firearms Users (restricted) licence.
 - ii. Count 2: Possession of an unlicensed firearm contrary to section 15(1) and (5) of the Firearms Act (2008 Revision) in that on the 10th of January 2004 within the jurisdiction of the Cayman Islands [the Defendant] had in his possession, seven rounds of ammunition,



otherwise in accordance with the terms of a Firearms Users (restricted) licence.

2. As to the third count on the Indictment, the Crown has indicated that the pleas to Counts 1 and 2 are acceptable to the Prosecution in full satisfaction of the Indictment.
3. The Defendant is also to be sentenced with regard to the following offences which were transmitted to the Grand Court by virtue of section 88A of the Criminal Procedure Code:
 - i) Possession of ganja contrary to Section 3 (1) (k) of the Misuse of Drugs Law (2017 Revision), the quantity of drugs being 120.3 grams or 4.24 oz.
 - ii) Possession of cocaine contrary to Section 3(1) (k) of the Misuse of Drugs Law (2017 Revision) the quantity of drugs being 26.89 grams or .95 oz.
 - iii) Possession of cocaine with intent to supply contrary to Section 3 (1)(m) of the Misuse of Drugs Law (2017 Revision) the quantity being 287.75 grams or 10.15 oz.
4. On the 13th of March 2024, the Defendant entered guilty pleas with respect to those offences.
5. The following facts are taken from the Prosecution's note on sentence. The Defendant takes no issue with the facts presented:
 6. *On the 10th of January 2024 officers from the RCIPS conducted an operation in the Pedro Castle area with a view to recovering a firearm(s).*
 7. *A blue Honda Fit vehicle being driven by the defendant was stopped. The defendant then reversed into oncoming traffic and sped away, colliding with a police vehicle and a CUC pole in the process.*
 8. *Officers gave pursuit. The defendant was seen to open the driver's door and throw a brown backpack into a nearby hedgerow.*
 9. *When the backpack was recovered and searched it was found to contain a 9mm Glock-26 pistol. Also within the backpack was an ammunition box containing seven (7) rounds of 9mm ammunition.*
 10. *The vehicle was followed to #86 West Lane, Savannah, the home address of the defendant, where he was detained by the police.*



11. *A quantity of cocaine and ganja was recovered from the vehicle and from the defendant's person. An electronic scale was also recovered from the vehicle.*

Interview under caution

12. *The defendant was interviewed under caution, in the presence of an Attorney, on the 11th of January 2024.*
13. *[In interview the defendant submitted a prepared statement in which he denied possession of the firearm or drugs found in the vehicle.]*

DNA evidence

14. *The firearm and ammunition were swabbed. A DNA profile was obtained from the swab of the overall firearm. A match was obtained with a DNA profile obtained from a buccal swab taken from the defendant.*
15. *The probability ratio was 1 in 150,000.*

Firearms examination

16. *On the 11th of January 2024, the recovered firearm and ammunition were examined by RCIPS firearms examiner Anthony Stewart. The Glock pistol was test fired with three of the recovered rounds. The firearm discharged with no issue.*
17. *It was further discovered that the firearm had been fitted with an "autosear" accessory which converts the weapon from a semi-automatic to an automatic. The automatic capacity of the weapon was tested and it fired flawlessly.*
18. *In the opinion of Mr. Stewart, the items constituted a firearm and ammunition for the purposes of the Firearms Act."*

The Firearm Offences

6. Section 39 of the Firearms Act (2008 Revision) imposes a mandatory minimum sentence on a plea of guilty to Possession of an Unlicensed Firearm. Section 39 (2) states as follows:

"(2) Notwithstanding sections 6(2) and 8 of the Criminal Procedure Code (2006 Revision), the court of summary jurisdiction or the Grand Court before which the individual pleads guilty or is convicted, shall —



(a) in a case where the individual pleads guilty, impose a sentence of imprisonment for a term of at least seven years (with or without a fine); or

(b) in any other case, impose a sentence of imprisonment for a term of at least ten years (with or without a fine),

unless the relevant court is of the opinion that there are exceptional circumstances relating to the offence or to the offender which justify its not doing so; and such exceptional circumstances shall be stated by the relevant court.”

7. The mandatory minimum sentence applies with respect to the Count 1 for Possession of Unlicensed Firearm, but there is no mandatory minimum sentence in respect of the offence of Possession of Ammunition, Count 2 of the Indictment.
8. Counsel for the Defendant has submitted that there are factors that could amount to exceptional circumstances in this case. The Crown does not agree with those submissions. The Court has considered these and does not agree that its discretion should be exercised in this case.
9. The most relevant authority to be considered in sentencing for an offence of this sort is that of *Tony Avis and others [1998] 1 Cr. App. R. 420*, in which the English Court of Appeal stated that the appropriate level of sentence for a firearm offence will depend on all the facts and circumstances relevant to the offence and the offender. It will usually be appropriate for the sentencing court to ask itself a series of questions:
 - i) **What sort of weapon is involved?** In this case the weapon which the Defendant had in his possession was a 9mm Glock 26 pistol. The firearm had been fitted with an “*auto-sear*” accessory. This converted the firearm from a semi-automatic weapon to a fully automatic weapon. The weapon, as adapted, was thereby made more dangerous than as originally manufactured.
 - ii) **What, if any, use has been made of the firearm?** There is no evidence of the weapon having been used to commit any other offence.
 - iii) **With what intention, if any, did the Defendant possess or use the firearm?** There is no evidence of the Defendant’s intention.
 - iv) **What is the Defendant’s record? The defendant does not have any conviction for a firearm offence nor for offences of violence.**

The Drugs offences

10. The Chief Justice’s Statement on Tariffs and Guidelines for Sentencing for Certain Offences, published in 2002, remains the most relevant guide to the sentencing Court:



“At the other end of the scale of gravity, that is to say, trafficking in hard drugs in any quantity as defined in the Misuse of Drugs Law, the maximum penalty prescribed for offences involving 2 ounces or more is 20 years for the first offence and 30 years for a second or subsequent offence with an unlimited fine in each case. That of course is the maximum – the sentence for the worse possible offence by the worse possible offender.

The tariff for a first such offence, involving less than 2 ounces of cocaine or less than 4 grams of cocaine base without mitigating circumstances, will be 8 years. For offences involving 2 ounces or more or 4 grams or more of cocaine base without mitigating circumstances the tariff will be 10 to 12 years. 15 years or more will be imposed where such an offence involves substantial importation or dealing in anyway either in powder or crack cocaine. We would define ‘substantial importation or dealing’ as any transaction involving several ounces or kilo quantities.”

11. The Crown submits that for the offence of Possession of cocaine with intent to supply, based on the quantity of drugs, here 10.15 oz, the starting point could be between 10-12 years and 15 years. Very properly, counsel for the Prosecution submitted that given the sentence to be imposed in respect of that count, the Court may consider that the sentences on the possession simpliciter offences could be ordered to run concurrently to the greater sentence.
12. Counsel submitted that the Court in seeking to arrive at an appropriate sentence and in support of the Defendant dealing in cocaine, should consider the finding of the electronic scale in the Defendant’s vehicle. Counsel identified as aggravating factors that the drugs recovered from the person and vehicle of the Defendant were found in proximity to the firearm for which he is charged and the fact that the Defendant had both in a public place.
13. In mitigation, counsel for the Defendant submitted, regarding the suggestion of the Defendant being in possession of the cocaine for substantial dealing, that the scales that were recovered were not connected to drugs in particular, alluding to there being was no forensic evidence regarding the scales. He submitted too that the Court should consider that this was a case where there was no telephone evidence to support a case for significant drug dealing. Neither was there any other drug paraphernalia present, debtors list or substantial cash recovered, all factors which would go to support an assertion of substantial dealing.
14. Counsel also referred to the personal circumstances of the Defendant. The Defendant suffers from an autoimmune disease, multiple sclerosis (MS). As such, he will need proper care while incarcerated. The SIR notes that the Defendant was diagnosed with MS in 2020. He must receive infusions every six months and must have certain tests as part of his treatment for that condition. The Defendant reported to the Probation Officer that he has not had any physical challenges since



his diagnosis. Counsel submitted that the nature of the Defendant's condition was significant and serious and that the time that this Defendant will spend in custody will be significantly more onerous because of his condition.

15. This Court has had the benefit of the SIR of the 9th of May 2024, prepared by the Department of Community Rehabilitation. The SIR paints a picture of a young man who had a good upbringing, with involvement and support from his mother and close relationships with his siblings and the company of friends whom he described as smart, hardworking, trustworthy and determined. He had never known these close friends to be involved with the law or to use illegal drugs. It is obvious and as noted by the probation officer that the Defendant has other friends who are involved in offending behavior and who seem to have had negative influences on his actions.
16. The Defendant had a sound education, he was variously employed and, in the years leading to the commission of the offences before the Court, had been working as a boat captain for approximately three years and had started his own company. The Defendant did not report being heavily involved in the use of alcohol or hard drugs and had, during the period of his work life, an income that never went below \$2,500.00.
17. This is a man who had received and taken advantage of opportunities in his life. This Court notes that the Defendant did acknowledge in the SIR that the offences for which he is to be sentenced are very serious in nature. The SIR noted that he expressed remorse for his actions. The Defendant was assessed as being at Medium risk of reoffending based on the LS/CMI Risk/Need Assessment Tool.
18. In arriving at the appropriate sentence in this case, the Court is mindful that it must be a sentence that takes fully into account the offence and the offender. In particular, the Court must look at the aims of sentencing as well as the principle of proportionality and totality.
19. Section 39 (2) of the Firearms Act prescribes the mandatory minimum sentence on a guilty plea for Possession of an Unlicensed Firearm of 7 years imprisonment. This Court has found that the appropriate sentence for the offence of Possession of an Unlicensed Firearm is 8 years imprisonment, applying the *Avis* principles and in light of the aggravating factor here, that this was a firearm converted from a semi-automatic to a fully automatic weapon. For the second count on the Indictment, Possession of Ammunition, the sentence of the Court is 3 years, reduced to 2 years imprisonment for his guilty plea, which sentence will run concurrent to the sentence for the Possession of Firearm.
20. For the offence of Possession of cocaine with intent to supply, the quantity of cocaine recovered in the Defendant's vehicle, 10.15 oz, is sufficient to sustain the offence as charged. The guidelines indicate that a range of 10-12 years going up to 15 years as a starting point would not be inappropriate in this case.



21. I assume a starting point of 12 years imprisonment. Taking into account the aggravating factors identified, the starting point is raised to 14 years. The Defendant will receive the full discount for his guilty plea of 1/3 to take the sentence to 9 years and 3 months imprisonment. I consider the defendant's medical condition, and I take this into account and reduce that sentence by 6 months for person circumstances. This takes the sentence to 8 years and 9 months imprisonment. For the offence of Possession of ganja, 4.24 oz, the sentence is 1 year and 6 months custody. For his guilty plea, this will be reduced to 1 year custody.
22. For the offence of Possession of cocaine, here .95 oz, a hard drug less than 2 oz, the tariff maximum sentence of 8 years imprisonment. For this offence, the sentence is 3 years imprisonment. For his guilty pleas, this will be reduced to 2 years custody.
23. The sentences for the offences of Possession of ganja and Possession of cocaine will run concurrently to the sentence for Possession of cocaine with intent to supply.
24. The Cayman Islands Sentencing Guidelines state that it is wrong in principle to impose sentences to run consecutively where those offences, though distinct in law, arose out of a single act so that the overall criminality for the offender can be represented by concurrent sentences. These offences are offences which arose out of a related incident or facts. The Court is mindful of the overriding principle in sentence that the overall sentence must be just and proportionate.
25. With these in mind, the determination of the Court is that the sentences for Possession of an Unlicensed Firearm and that of Possession of cocaine with intent to supply should run concurrently. This will take the overall sentence to 8 years and 9 months custody. In all the circumstances I find that this is the appropriate sentence in this case. Time in custody to be deducted.
26. The drugs and firearms are ordered forfeited to the Crown.

Handwritten signature of Marlene I. Carter in black ink.

Hon. Justice Marlene I. Carter
Judge of the Grand Court