



1 **IN THE GRAND COURT OF THE CAYMAN ISLANDS**
2 **CRIMINAL SIDE**
3

4 **INDICTMENT NO: 63 of 2024**

6 **THE KING**

7 **V.**

8 **MITCHELL CHEAN EBANKS**

9
10 **Appearances:** **Ms. Sarah Lewis, Senior Crown Counsel, Office of the Director of**
11 **Public Prosecutions, for the Prosecution**

12 **Mr. John Furniss for the Defence**

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

14 **Submissions Heard:** **8th November 2024**

15 **Sentence Judgment:** **12th November 2024**
16
17

18 ***Criminal Law – Sentencing, Possession of a Prohibited Firearm and Possession of Firearm (Ammunition),***
19 ***contrary to sections 15(1) and 15(5) of the Firearms Act (2008 Revision). Minimum Sentence, Aggravating***
20 ***Circumstances.***
21
22
23

24 **SENTENCE JUDGMENT**
25

- 26 1. The defendant is before the Court for sentencing following his guilty pleas to the three counts
27 on this Amended Indictment. The Indictment was amended on the 4th October 2024 to add a
28 third Count.
29



- 1 2. Count One charges the defendant with the offence of Possession of an Unlicensed Firearm,
2 contrary to sections 15(1) and 15(5) of the *Firearms Act* (2008 Revision). The particulars are
3 that he on the 30th day of May 2024, at 15 Rennie Ebanks Road, West Bay, Grand Cayman, had
4 in his possession an unlicensed firearm, namely a Glock 17 handgun, which was not under and
5 in accordance with the terms of a Firearm User's (Restricted) Licence.
6
- 7 3. Count Two charges him with the offence of Possession of an Unlicensed Firearm
8 (Ammunition), contrary to sections 15(1) and 15(5) of the *Firearms Act* (2008 Revision). The
9 particulars are that he on the 30th day of May, 2024, at 15 Rennie Ebanks Road, West Bay,
10 Grand Cayman, had in his possession twenty-nine (29) rounds of 9mm ammunition.
11
- 12 4. Count Three charges him with Possession of a Prohibited Firearm, contrary to sections 15(1)
13 and 15(5) of the *Firearms Act* (2008 Revision). The particulars are that he on the 30th day of
14 May 2024, at 15 Rennie Ebanks Road, West Bay, Grand Cayman, had in his possession a
15 submachine gun, namely a 9mm Luger "Glock 17" handgun fitted with an automatic sear and
16 a 9mm "Glock" high capacity (extended) magazine.
17
- 18 5. The defendant was first before the Grand Court on the 5th July 2024. His attorney was not
19 present, which caused the case to be adjourned to the 12th July 2024. On that date the defendant
20 entered pleas of Guilty to Counts One and Two. At that time the prosecution indicated that there
21 were two other magazines to be examined. A Social Inquiry Report was ordered.
22
- 23 6. On the 4th October 2024 the prosecution applied for an amendment to the Indictment to add the
24 third Count. The application was not opposed. The defendant was arraigned and pleaded guilty.
25
- 26 7. The prosecution has indicated that no evidence is to be offered on Count One of the Indictment
27 so that the defendant does not face double sentences for the same firearm. The plea on Count
28 One is therefore formally vacated, the fact that no evidence is offered is entered and the
29 defendant is discharged on this Count.
30
- 31 8. It is accepted that the Defendant entered guilty pleas to all counts at the earliest opportunity.
32
- 33 9. A prohibited Firearm is defined in the *Act* as meaning any artillery, machine gun, submachine
34 gun or automatic rifle.
35



1 10. Section 15 provides a maximum penalty of 20 years imprisonment and or a fine.

2
3 11. Section 39 provides for minimum sentences of 7 years imprisonment on a guilty plea where
4 the offence is in respect of any machine gun, sub machine gun, rifle, shot gun pistol or any
5 lethal barreled weapon from which any shot, bullet or other missile can be discharged unless
6 the court is of the opinion that there are exceptional circumstances relating to the offence or the
7 offender which justify its not doing so.

8
9 **THE FACTS**

10
11 12. The prosecution has provided a summary of facts which is not disputed.

12
13 13. On the 30th May 2024 the police executed a search warrant at the home address of the
14 defendant. In a closet was a backpack which contained the firearm and cartridges, together with
15 three magazines: one standard size magazine, an extended-capacity magazine and a drum-style
16 magazine. Also found in the closet in a brown bag, was a wrapped parcel of cocaine weighing
17 11.6oz. In addition, a ziplock bag containing 1.8oz of ganja was found in the refrigerator.

18
19 14. The firearm recovered displayed the part number “PF940V2”, which indicates that this firearm
20 is based on the Glock 17 framework. The lower receiver is of the brand Polymer80. This is an
21 aftermarket brand that produces polymer firearms that are 80% built. The design is based on
22 the Glock platform and follows either the Glock 19 framework or the Glock 17 framework
23 which are striker-fired pistols.

24
25 15. Polymer80 firearms fall under the category of firearms which are commonly known as “Ghost
26 guns”. This term was coined because these firearms have no serial numbers or tracing
27 mechanism.

28
29 16. Affixed to the rear of the slide of the firearm was a device known as an automatic sear which
30 is more commonly known as a “Glock switch” or a “chip”.

31
32 17. A semi-automatic pistol is only able to fire one round of ammunition with every pull of the
33 trigger. The addition of the automatic sear turns the pistol into a fully automatic weapon which
34 means that the gun will discharge multiple rounds of ammunition with one pull of the trigger
35 and will stop firing only when either the magazine is empty, or the trigger is released.



1
2 18. Of the three magazines found, one was a Glock magazine with a holding capacity of thirty
3 rounds, the second was a KCI-USA magazine with a holding capacity of seventeen rounds. The
4 third magazine was a drum-style magazine which could hold up to one hundred rounds of
5 ammunition.

6
7 19. Also recovered from the backpack were twenty-nine rounds of 9mm ammunition.
8

9 20. The firearm was test fired, and the automatic capability functioned properly. The firearm
10 discharged seven rounds from the magazine without issue. The conclusion of the Firearms
11 Officer is that the firearm is a viable automatic pistol within the definition of the *Firearms Act*.
12

13 21. The defendant was interviewed under caution on the 31st May 2024 in the presence of his
14 attorney. He admitted to knowing that the backpack contained the firearm and said that he had
15 found the backpack in East End last Monday (the 27th May 2024) on the beach and that when
16 he found it, it contained the firearm and the cocaine. He said that he decided to keep the cocaine
17 because he is a user. He was not sure what he was going to do with the firearm at the time,
18 maybe to keep it for his protection.
19

20 22. The defendant is not the holder of a firearm users restricted license.
21

22 ANTECEDENT HISTORY

23

24 23. The defendant has an antecedent history of twenty-three previous convictions, mostly for drug
25 offences. This includes convictions for Importation of Ganja for which he was sentenced to 8
26 years imprisonment in 2002 and to 15 months imprisonment in 1997. In 1997 he was also
27 sentenced to 3 and ½ years imprisonment for the offence of Grievous Bodily Harm. He has no
28 previous convictions for firearm offences.
29

30 SOCIAL INQUIRY REPORT

31

32 24. The defendant declined to participate in interviews for the preparation of a Social Inquiry
33 Report and insisted that reference be made to past reports. The Department of Community
34 Rehabilitation (“DCR”) has provided a short report dated 18th September 2024. To this report
35 is attached the most recent full report in respect of the defendant which is dated 5th April 2016.



1 25. The defendant is 55 years old. He has a long history of drug and alcohol abuse. He grew up in
2 a home where there was abuse. He is described as a good person except for his drug problem.
3 His risk of re-offending was assessed then as very high with six of the eight criminogenic
4 factors in the high or very high categories.

5
6 **THE SENTENCE**

7
8 26. The Court is mindful of the dicta in the case of *R v. Avis*¹, in which the English Court of Appeal
9 stated that the appropriate level of sentence for a firearm offence will depend on all the facts
10 and circumstances relevant to the offence and the offender. It will usually be appropriate for
11 the sentencing court to ask itself a series of questions:

12
13 What sort of weapon is involved?

14 “Genuine firearms are more dangerous than imitation firearms. Loaded
15 firearms are more dangerous than unloaded firearms. Unloaded firearms
16 for which ammunition is available are more dangerous than firearms for
17 which no ammunition is available. Possession of a firearm which has no
18 lawful use such as a sawn off shot gun will be viewed even more seriously
19 than possession of a firearm which is capable of lawful use.”

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

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

22 What is the defendant’s record?

23 “The seriousness of any firearms offence is inevitably increased if the
24 offender has an established record of committing firearm offences or
25 crimes of violence.”

26
27 27. In this case the weapon is a genuine firearm in working order. It is a semiautomatic firearm
28 with three magazines. There were twenty-nine live rounds of ammunition. There is no evidence
29 that any use was made of the firearm.

30
31 28. There is evidence from the defendant that he possessed the firearm, having found it, but had
32 not made up his mind as to what to do with it. The defendant has no record of firearm offences.
33

¹ 1998 1 CR. App. R. 420

1 29. The prosecution submitted that there are no exceptional circumstances in this case and that the
2 imposition of the mandatory minimum would not be arbitrary or disproportionate for the
3 following reasons: -

4
5 i. The gravity of gun crime cannot be exaggerated and public protection is a
6 paramount consideration, thus a deterrent sentence is required in this case.

7
8 ii. The circumstances of this case are that a lethal-barreled weapon with three
9 magazines and twenty nine rounds of ammunition were left unsecured in a
10 wardrobe.

11
12 iii. The firearm was an untraceable ghost gun.



13
14 iv. The firearm was fitted with an automatic sear turning the pistol into a fully
15 automatic weapon.

16
17 v. There are no circumstances which suggest exceptionality in terms of the
18 defendant's personal circumstances.

19
20 vi. Large quantities of illegal drugs (cocaine and ganja) were found at the premises
21 suggesting that the firearm was associated with other criminal activity, namely
22 drug dealing.

23
24 30. Defence Counsel does not seek to argue that there are exceptional circumstances in this case
25 such that there should be a reduction from the mandatory minimum.

26
27 31. This Court has given consideration to all the personal circumstances of the defendant and of
28 the offence and applying the test set out in the case of *R v. Zakir Rehman and Gary Wood*²,
29 concludes that there are no exceptional circumstances in this case. The submissions of the
30 prosecution as to the serious nature of the offending are accepted. The imposition of the
31 minimum term would not be arbitrary or disproportionate in the instant case.
32

² 2006 1 Cr. App. R. (S) 77



1 32. It is agreed by Counsel that the defendant having entered pleas of guilty is entitled to receive
2 at least the mandatory minimum of 7 years imprisonment.

3
4 33. The single area of disagreement on sentencing in this case between Counsel is the extent to
5 which the minimum sentence should be increased to reflect the aggravating factors in this case.
6

7 34. The prosecution submitted that the aggravating factors include the nature of the firearm, the
8 connection of the firearm with illegal drugs and the defendant's criminal record. It is argued
9 that these should warrant an uplift of at least three years.
10

11 35. Counsel for the prosecution drew to the Court's attention the following cases and statements
12 made therein:
13

14 36. In the case **R v Jonathan Welcome**³ Dobbs J (Acting) stated, "*Gun crime is the scourge of*
15 *the Caribbean. The Cayman Islands has not escaped that trend. Gun crime is becoming a*
16 *serious problem here.*"
17

18 37. In **Rehman v Wood** the Court noted that the policy behind the imposition of mandatory
19 minimum sentences is to send out a deterrent message. The mere possession of firearms can
20 create dangers to the public. It might result in a firearm going into circulation which could then
21 come into the possession of someone other than the offender and in whose hands the firearm
22 would be a danger to the public.
23

24 38. In the case of **Chavarria-Atily v. R**⁴ the Cayman Islands Court of Appeal considered **Rehman**
25 **and Wood** and stated that: -
26

27 *"In the Cayman Islands it has been the massive increase in offences under the Firearms*
28 *Law that has led Parliament to enact the minimum sentences in respect of those offences,*
29 *while at the same time making special provision for cases of exceptional circumstances.*
30 *The mere possession of a firearm even without any intention to use it for a criminal offence*
31 *can still be a danger to the public for the reason that it could get into the hands of someone*
32 *who does have that intent".*

³ [2016] CIGC J 1215-3

⁴ [2009] CILR 118 (see p.41).



- 1 39. Counsel for the prosecution submitted that the defendant was in possession of a real, semi-
2 automatic ghost firearm which was kept with multiple magazines, including a high-capacity
3 magazine and live rounds of ammunition. Counsel said that there is no evidence before the
4 Court as to the use of the firearm, but an inference can be drawn from the proximity of the
5 firearm to the illegal drugs also found in the wardrobe, that the defendant possessed the firearm
6 in connection with other criminal activity, namely the possession/supply of drugs. The fact that
7 the weapon was an anonymous firearm made its criminal use more attractive and presupposes
8 a nefarious purpose being the avoidance of detection by law enforcement agencies.
9
- 10 40. Counsel said that whilst the defendant does not have an established record of committing
11 firearm offences, the defendant does have a history of crimes of violence and a long record,
12 spanning decades.
13
- 14 41. Defence Counsel submitted that the defendant was at his residence when the police arrived and
15 carried out the search. In the bedroom at the bottom of the bed on the floor was a bag. Inside
16 that bag was the firearm, ammunition and the drugs. The defendant was arrested and
17 subsequently interviewed. In the interview he explained how and where he had found the bag
18 and that once he realised that there were drugs in the bag, he had taken the bag to his residence.
19
- 20 42. Counsel said that the defendant is a user of cocaine and so this finding was very opportune for
21 him. Apart from the drugs he made no use of either the firearm or the ammunition. At no time
22 had he fired the weapon nor used it in any criminal activity. He does not have any prior
23 involvement with firearms. His criminal history is in the main drug related and is in relation to
24 importation of drugs.
25
- 26 43. Counsel submitted that the nature of the weapon as now found by the expert may very well be
27 viewed as an aggravating feature even though the defendant did not use or attempt to use the
28 weapon.
29
- 30 44. Counsel said that the drugs have been charged separately in the Summary Court which Court
31 is awaiting the outcome of the Grand Court proceedings.
32
- 33 45. Counsel accepts that there are aggravating factors but submits that these should warrant an
34 uplift in the region of no more than 12 to 18 months rather than 3 years. Counsel argues that
35 the latter would be excessive where there is no evidence as to the use of the firearm. Counsel

1 submits that the defendant is not a young man and that on release from prison, life will be that
2 much harder for him.

3
4 46. This Court notes that in the *2002 Statement on Tariffs and Guidelines for Sentencing for*
5 *Certain Offences*, the Chief Justice stated: -

6
7 *“As regards to firearm offences contrary to the Firearms Law, the Legislation is quite clear*
8 *that the possession or use of any unlicensed lethal barreled firearm is an extremely serious*
9 *offence. Under the Firearms Law, the maximum penalty for possession of an unlicensed*
10 *firearm is 20 years and a fine of \$100,000. The tariff for that offence unless there are very*
11 *mitigating circumstances will be 10 years. If on the other hand aggravating circumstances*
12 *exists, for instance, the use of the firearm for the commission of a serious offence, the tariff*
13 *will be in keeping with decided cases and will be significantly higher.”*

14
15 47. The Court considers that in this case the automatic nature of the weapon is an aggravating
16 factor and even more so that it is a ghost gun making it untraceable if used in the commission
17 of a criminal offence. This is dangerous. It is a weapon which is inferentially linked to the drug
18 trade given the quantity of drugs found in the house. However, there is no evidence of use of
19 the firearm.

20
21 48. Consequently, the minimum sentence is increased from 7 years by 24 months to one of 9 years
22 imprisonment.

23
24 49. Having regard to a) the nature of the offences to which the previous convictions relate and
25 their relevance to the current offence; and b) the time that has elapsed since those convictions,
26 no additional sentence is imposed in respect of these. These will no doubt be taken into account
27 by the Sentencer when sentencing for the drug offences.

28
29 50. In respect of Count Two, the offence of Possession of Ammunition, the sentence is 3 years
30 imprisonment to run concurrently to the sentence on Count Three.



1 51. The conclusion is thus as follows: -
2 Count 1 - Possession of an Unlicensed Firearm. The Guilty plea is vacated. No evidence
3 is offered by the Prosecution. A formal verdict of Not Guilty is entered and the defendant
4 is discharged.
5 Count 2 - Possession of an Unlicensed Firearm (Ammunition) - 3 years imprisonment.
6 Count 3 - Possession of a Prohibited Firearm - 9 years' imprisonment to run concurrently.

7
8 52. Any time served is to be deducted.

9
10 53. The scheduled offences of Possession of Cocaine with Intent to Supply and Possession of Ganja
11 are remitted to the Summary Court for sentence hearing on Thursday the 14th November 2024.
12

13 **Dated this the 12th day of November 2024**



14
15
16 **Honourable Justice Cheryll Richards K.C.**
17 **Judge of the Grand Court**