



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

4 **INDICTMENT No: 40 of 2023**
5
6

7
8 **R**

9
10 **V**
11

12 **JERRY DANIEL ARCHER**
13

14 **Appearances:** **Mr. Orrett Brown, Crown Counsel, Office of the Director of Public**
15 **Prosecutions for the Prosecution**
16

17 **Mrs. Prathna Boddan of Samson Law for the Defendant**
18

19 **Before:** **The Hon. Justice Cheryll Richards KC**

20 **Submissions Heard:** **31st August 2023**

21 **Sentence Judgment:** **3rd November 2023**
22
23
24

25 **HEADNOTE**
26

27 *Criminal Law - Section 15(1) and (5) of the Firearms Act, (2008 Revision) Possession of Unlicensed*
28 *Firearm and Ammunition – Section 39 of the Firearms Act - Minimum Sentence – Issue of*
29 *Exceptional Circumstances.*
30



SENTENCE JUDGMENT

- 1
- 2
- 3 1. The defendant is before the Court for sentencing following his guilty pleas in the Grand Court to
- 4 two offences on Indictment 40 of 2023 and in the Summary Court to three offences. Counsel are
- 5 agreed that following the guidance in the case of *R. v. Lobo and Others*¹ this Court may pass
- 6 sentence in respect of all the offences.
- 7

8 **THE OFFENCES**

9

- 10 2. Count 1 of Indictment 40 of 2023 charges the defendant with the offence of Possession of an
- 11 Unlicensed Firearm contrary to s.15 (1) and (5) of the *Firearms Act* (2008 Revision). The
- 12 particulars are that he on the 29th day of April 2023 at Apartment No. 6, 22 Leroy Fredericks
- 13 Drive, Bodden Town, Grand Cayman, Cayman Islands, had in his possession a firearm, namely
- 14 a .25 Beretta semi-automatic pistol bearing serial number BER 87755V and model number 950-
- 15 BS, which was not under and in accordance with a Firearm User's License.
- 16
- 17 3. The maximum penalty for this offence is twenty years imprisonment. Section 39 of the *Firearms*
- 18 *Act* prescribes a minimum sentence of 7 years imprisonment with or without a fine where there
- 19 is a guilty plea in respect of a machine gun, sub-machine gun, rifle, shot gun, pistol, or any lethal
- 20 barreled weapon from which any shot, bullet or other missile can be discharged. The minimum
- 21 sentence may not be imposed where the court is of the opinion that there are exceptional
- 22 circumstances relating to the offence or to the offender which justify it's not doing so.
- 23
- 24 4. Count 2 of the Indictment charges the defendant with the offence of Possession of an Unlicensed
- 25 Firearm (Ammunition) contrary to s.15 (1) and (5) of the *Firearms Act* (2008 Revision). The
- 26 particulars are that he on the 29th day of April 2023 at the same location, had in his possession,
- 27 ammunition, namely seven (7) rounds of FC.25 auto FMJ ammunition, which was not under and
- 28 in accordance with a Firearm User's License.
- 29
- 30 5. The maximum penalty for this offence is twenty years imprisonment. A minimum sentence is not
- 31 applicable in respect of this offence.
- 32

¹ Grand Court Indictment 100/2017 - Unreported Judgment dated 29th March 2019



1 6. On charge 00635/2023- (3), the defendant is charged with Possession of Ganja contrary to
2 s.3(1)(k) of the *Misuse of Drugs Act* (2017 Revision). The particulars are that he on the 29th day
3 of April 2023 at the same location, without lawful excuse had in his possession a controlled drug,
4 namely ganja.

5
6 7. On charge 00635/2023-(4), the defendant is charged with Possession of Utensils Used in the
7 Consumption of Ganja contrary to s.3(1)(k) of the *Misuse of Drugs Act* (2017 Revision). The
8 particulars are that he on the 29th day of April 2023 at the same location, had in his possession a
9 utensil used in the consumption of a controlled drug, namely a grinder.

10
11 8. On charge 00635/2023-(5), the defendant is charged with Consumption of Ganja contrary to
12 s.3(1)(l) of the *Misuse of Drugs Act* (2017 Revision). The particulars are that he on the 29th day
13 of April 2023 within the Cayman Islands, consumed a controlled drug, namely ganja.

14
15 9. The maximum penalty for these three offences is set out in s. 16 of the *Misuse of Drug Act*. It is
16 a fine of twenty thousand dollars and or imprisonment for seven years.

17
18 **THE PROCEEDINGS**

19
20 10. The prosecution has provided a history of the proceedings. The defendant was arrested by the
21 police on the 29th April 2023. Following his appearance in the Summary Court on the 1st May
22 2023 and a short form preliminary inquiry on that day, the firearm charges were committed to
23 the Grand Court. The drug charges remained in the Summary Court at that time.

24
25 11. The defendant first appeared in the Grand Court on the 12th March 2023. He was arraigned and
26 pleaded guilty to the two firearm charges.

27
28 12. On the 26th May 2023, the defendant was arraigned in the Summary Court on the three drug
29 charges and entered pleas of guilty. These charges were thereafter transferred by the Summary
30 Court to the Grand Court for sentencing.



1 **THE FACTS**

2

3 13. The prosecution has provided a summary of facts which is not disputed by the defence. On
4 Saturday the 29th April 2023, police officers executed a search warrant at the home of the
5 defendant. This is an apartment, the address of which is stated in the charges. The defendant
6 resided there with his wife and another person. The apartment was cleared of persons by the
7 officers from the Firearm Response Unit. In doing so the defendant was escorted from the
8 apartment by officers and handed over to Detective Sergeant Ronald Francis. The defendant was
9 wearing short black pants. DS Francis noticed that the right back pocket of the defendant’s pants
10 appeared to be heavy. DS Francis held on to the pocket and felt a firearm inside it. He pushed up
11 the pocket and saw a small black firearm protruding from it. He said to the defendant “*you bring*
12 *the firearm out in your pocket*”. The defendant looked up to the heavens and gasped. The
13 defendant was arrested and cautioned by DC Thomas for the offence of Possession of an
14 Unlicensed Firearm. He replied, “*My wife don’t know nothing about that.*”

15

16 14. DC Thomas removed the firearm from the defendant’s pocket and in the presence of Scene of
17 Crime Officer Hough, he removed the magazine from it. He observed that the magazine contained
18 ammunition. The firearm and magazine with the ammunition were handed over to SOCO Hough.

19

20 15. Subsequently DC Thomas reminded the defendant that he was under caution and asked him if he
21 knew anything about the firearm. The defendant said that he had found it but that it is not his, he
22 had it in his possession “*to turn over to you all*”. The officer made a note of this in his notebook
23 and the note was signed by the defendant.

24

25 16. The search of the defendant’s home continued. Before this continued search began the defendant
26 stated that he had ganja in the kitchen and the bedroom. He pointed out a drawer inside the kitchen
27 to DC Thomas. When DC Thomas opened the drawer, the defendant pointed out a Ziplock bag
28 which when opened contained a cigarette box and a grinder. Both items contained ganja. The
29 defendant also pointed out to DC Thomas a bottle which was inside a drawer of a bedroom table.
30 The bottle contained ganja. The defendant was arrested and cautioned. He said that the ganja
31 was for his personal use. The total weight of the ganja found was 12.5 grams or 0.441 ounces.

32

33 17. On the 29th April 2023, the firearm was examined by PC Anthony Stewart, a firearm officer of
34 the Royal Cayman Islands Police Service. He found the firearm and ammunition to be



1 functioning and viable and to come within the meaning of the *Firearms Act*. He found the firearm
2 to be a semiautomatic .25 mm Beretta pistol bearing a serial number and model number². He
3 states that it appeared to be in a very good state with slight rust in various areas on the slide.
4 There were no visible signs of damage or of broken or missing parts. It appeared fully functional
5 when dry fired.

6
7 18. The magazine also appeared functional and in good condition. It contained seven rounds of
8 ammunition which appeared to have been exposed to moisture and showed signs of staining to
9 both the casings and the projectiles. However, all seven rounds appeared viable.

10
11 19. The officer test fired the firearm using two rounds from the magazine and two from ammunition
12 stock. All were discharged without issue and the firearm was intact.

13
14 20. The firearm was traced with the assistance of the National Tracing Center in the United States
15 and identified as having been purchased on the 2nd June 1982.

16
17 21. The defendant is not a registered owner or user of any firearm within the Cayman Islands.

18
19 22. The defendant was interviewed under caution on the 30th April 2023, in the presence of his
20 attorney. He provided a prepared statement in which he stated the following: -

21
22 *“Carlos Russell was the only father I knew all my life and he raised me along with my*
23 *mother...when he was released from prison, he resumed living with my mother. He died in*
24 *June of 2021.*

25
26 *He was an electrician by profession, and he had left a tool bag in my home before he passed*
27 *away. It was in a pantry in my house. I did not move it from where he had left it and sort*
28 *of kept it there in memory of the man who raised me.*

29
30 *I never felt the need to look into it, until last Thursday when I was looking for a wrench to*
31 *fix a hot water line on a new waterless water heater that I had installed; because the old*
32 *one had exploded. I was then looking through the bag for a wrench because I wanted to*

² BER877557V model 950-BS



1 *adjust the hot water flow. That was when I came upon this small black handgun in the*
2 *bottom of the bag.*

3
4 *I believe it was either a.22 or .25 calibre firearm. I took it out and looked at it and I was*
5 *a bit panicked. Knowing the history of my stepfather and his use of firearm, I started to*
6 *wonder and become suspicious as to whether it might have been used in some crime*
7 *possibly. I also started to run in my mind, what should I do, should I take it to the Police,*
8 *but I did not want to do so, because I feared that I might then be associated with this*
9 *firearm, if it was involved in any crime.*

10
11 *I then thought that maybe I should wait for some announced amnesty, so I could*
12 *anonymously hand it in; but ended up being confused deciding how I was going to get it*
13 *out of my possession and my house. As I said, I only went into this tool bag to look for a*
14 *wrench last Thursday and that was when I saw the firearm.*

15
16 *It therefore came as a direct surprise to me when the Police came to my home yesterday*
17 *morning before daybreak. I was awakened by the sound of a hard pounding, accompanied*
18 *by someone saying "Police open the door!" So because I knew of the presence of the*
19 *firearm in my house and the fact that my wife and son lived in the house as well, I did not*
20 *want either of them being involved and getting arrested in relation to this firearm.*

21
22 *Because of this concern I went to where it was in the house, in one of my hanging jacket*
23 *pockets and I removed it, placing it in my rear shorts pocket in an effort to remove it from*
24 *inside the house and to avoid my wife and son being mixed up and get arrested in relation*
25 *to it.*

26
27 *I now realize that I should have dealt with this differently.*

28
29 *As for the ganja found in my house, I accept responsibility for that as well, and it was for*
30 *personal use, as since my stepfather passed, I have been encountering severe pains and*
31 *depression and I should have sought medical intervention in this regard, but took it on*
32 *myself to self-medicate.*

33

1 *I am truly sorry and apologise for all that has gone on and this is the first time in my life*
2 *that I am being in a situation like this in all my forty-four years of living on this earth.”*

3
4 **ANTECEDENT HISTORY**



5
6 23. The defendant has no previous convictions.
7
8

9 **SOCIAL INQUIRY REPORT**

10
11 24. The Department of Community Rehabilitation (“DCR”) has provided a Social Inquiry Report
12 (“SIR”) dated 18th July 2023 in respect of the defendant. The Court has read this report in its
13 entirety and takes into account everything said therein in favour of the defendant. He is 44 years
14 of age, married with two children, the youngest of whom is 17 years old.
15

16 25. There are no reported major childhood issues. The conclusion of the Probation Officer is that the
17 defendant grew up in a supportive household. The defendant completed high school and has been
18 gainfully employed through to the date of his arrest. He is presently productively employed in
19 the Prison and has incurred no infractions whilst on remand.
20

21 26. His family speak highly of him, describing him as kindhearted and as a good and supportive
22 father and provider for his family. His overall risk of re-offending was assessed as Medium. A
23 factor in this assessment is his use of the illegal substance ganja. He told the Officer that he uses
24 this as a coping mechanism to relieve stress and to alleviate back pain.
25

26 **CHARACTER REFERENCES**

27
28 27. The Court is in receipt of eleven character references³ in respect of the defendant which have
29 been provided by defence Counsel. The Court has read and takes all of these into account.
30

³ Ruby Rita Douglas dated 16th May 2023, Denise Archer dated 16th May 2023, Tanya Archer undated, Jaida Archer undated, Cindy Garcia dated 16th May 2023, Eziethamae Bodden dated 16th May 2023, Pastor Elizabeth Powery Bowen dated 15th May 2023, Sandra Archer dated 16th May 2023, Christine Solly dated 15th May 2023, Jeffrey DaCosta dated 16th May 2023 and Gill Gordon dated 10th May 2023.



1 28. In summary these are from persons who are family to, have known the defendant over many
2 years or have come to know him very well. They are able to attest to his good personal qualities.
3 He is described as a disciplined and humble young man, family oriented and caring, a person of
4 high moral standards who strives to do the right thing in all situations, a dedicated husband and
5 father, and a reliable and trustworthy individual who is consistently genuine and kind.
6
7

8 **ISSUE**

9

10 29. The primary issue on sentencing in this case is whether there are exceptional circumstances such
11 that the Court may depart from the mandatory minimum sentence of 7 years which is prescribed
12 by law.
13

14 **THE SUBMISSIONS**

15

16 30. Counsel for the prosecution submitted that while there is much mitigation in this case, the
17 imposition of the minimum sentence would not be arbitrary or disproportionate. Counsel submits
18 that the Court can conclude that the case against the defendant is overwhelming. The defendant
19 had discovered the firearm two days before the Police went to his home. He removed it from
20 where it was and failed to surrender or declare it. He was prepared to await an amnesty of an
21 unknown and future date and to remain in possession of it. The possession was not fleeting in
22 contrast to the circumstances in the case of *R. v. Moffatt*⁴. The defendant took no positive steps
23 to surrender it as in the case of *R. v. Harrison (Raymond)*⁵ Counsel said that the defendant is a
24 mature man, he must have been aware that there was a lawful means of surrendering the firearm
25 without attracting suspicion. Counsel also referred to the case of *R. v. Michael Hugh Powell*⁶, a
26 decision of the Cayman Islands Court of Appeal.
27

28 31. Counsel also submitted that potentially aggravating factors are that the defendant failed to
29 securely store the loaded firearm when he placed it into a pocket of his jacket after he discovered
30 it. There were other persons living in the house including his wife and 17 year old child and the

⁴ [2014] EWCA Crim 332

⁵ [2006] EWCA Crim 345

⁶ CICA Criminal Appeal No, 009/2013, Ind. 107/2012, Unreported Judgment dated 2nd September 2013



1 defendant tried to conceal the firearm by putting it in his pocket and removing it from the house
2 on the morning of the search.

3
4 32. Counsel for the defence submitted that there are exceptional circumstances in this case. Counsel
5 referred to the case of *R. v. Andy Errol Barnes*⁷ in which the Court found that there were special
6 circumstances which made a reduction from the minimum term appropriate. This Court notes
7 that one such circumstance in that case was that the defendant Barnes was found to be gravely
8 affected by the death of his child for which he had not yet received justice. There was the
9 additional factor in that case of the mental condition of the defendant Barnes as attested to by
10 various reports.

11
12 33. Defence Counsel in the instant case submitted that the defendant Mr. Archer, is of good personal
13 character. He is a family man who is dependable and gainfully employed. He is the financial
14 provider for his family. He has no previous convictions, is educated and comes from a stable and
15 supportive family. He has been employed for his entire adult life and even now is employed as a
16 Wing Office Orderly while on remand. Counsel asked the Court to note that the firearm was not
17 at a separate location and taken to his home and that the defendant had made no criminal use of
18 it. There is no evidence of the use of the firearm. His possession of it was for a very short time.
19 He simply panicked. Counsel noted that the firearm was confirmed to have been purchased many
20 years ago. With respect to the defendant's behaviour on the morning of the search, Counsel
21 submitted that the defendant moved the firearm in a panic when the police arrived because he did
22 not want his family to be involved. Counsel asked the Court to note that the defendant is of good
23 character. He did not run from the police. He assisted them in every way that he could and pleaded
24 guilty at the earliest opportunity. Counsel said that this Court can confidently find exceptional
25 circumstances in this case both to the offence and the offender where the possession was for a
26 brief time with no malicious intent or actual harm followed by exemplary conduct with the police
27 and the Court together with the good personal circumstances of the defendant.

28
29
30
31
32

⁷ Grand Court Ind. 59/2016, Unreported Judgment dated 15th July 2021



1 **THE SENTENCE**

2
3 34. There are no offence specific Guidelines for firearm offences in the Cayman Islands. In the **2002**
4 ***Statement on Tariffs and Guidelines for Sentencing for Certain Offences***, the then Chief Justice
5 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. 00. The tariff for that offence unless there are*
11 *very mitigating circumstances will be 10 years. If on the other hand aggravating*
12 *circumstances exist, for instance, the use of the firearm for the commission of a serious*
13 *offence, the tariff will be in keeping with decided cases and will be significantly higher.”*

14
15 35. These **Guidelines** pre-dated the Amendment to the **Firearms Act** which imposed a minimum
16 term of 10 years imprisonment following conviction after trial and 7 years imprisonment after a
17 guilty plea.

18
19 36. In the case of **R v. Avis**⁸, the English Court of Appeal stated that the appropriate level of sentence
20 for a firearm offence will depend on all the facts and circumstances relevant to the offence and
21 the offender. It will usually be appropriate for the sentencing court to ask itself a series of
22 questions: -

23
24 i. What sort of weapon is involved?

25 Genuine firearms are more dangerous than imitation firearms. Loaded firearms are
26 more dangerous than unloaded firearms. Unloaded firearms for which ammunition
27 is available are more dangerous than firearms for which no ammunition is
28 available. Possession of a firearm which has no lawful use such as a sawn off shot
29 gun will be viewed even more seriously than possession of a firearm which is
30 capable of lawful use.

31
32 ii. What if any use has been made of the firearm?

33
34 iii. With what intention, if any, did the defendant possess or use the firearm?

⁸ 1998 1 Cr. App. R. 420



1
2 iv. What is the defendant's record?

3 The seriousness of any firearms offence is inevitably increased if the offender has
4 an established record of committing firearm offences or crimes of violence.
5

6 37. In this case the weapon is a genuine firearm in working order. It was loaded with seven rounds
7 of ammunition. There is no evidence that any use was made of the firearm. There is evidence
8 from the defendant that he possessed the firearm with the intention to hand it over the police
9 during an amnesty but was confused as to what he should do. The defendant has no previous
10 convictions.
11

12 38. The prosecution has referred the Court to the case of *R. v. Dean Ryan Derby*⁹. In that case the
13 Court reviewed a number of cases on this issue. One such case was that of *Chavarria-Atily v.*
14 *R.*¹⁰ In that case the appellant appealed his sentence of 2 years imprisonment for the offences of
15 Importation and Possession of an Unlicensed Firearm. This sentence had been imposed by the
16 Grand Court following a finding that the circumstances were exceptional such that the mandatory
17 minimum of 7 years imprisonment need not be imposed. The appellant had purchased the firearm,
18 an air rifle, from a Walmart store while in Miami. Having returned to the Island he became aware
19 that a license was needed for the weapon and took preliminary steps to obtain this. Before
20 obtaining the license he took the firearm outside his own premises in order to shoot vermin. The
21 sentencing Judge found that there were exceptional circumstances which included that the
22 appellant was of good character and had taken steps to register the firearm, was only shooting at
23 vermin, co-operated with the police, the nature of the firearm, being an air weapon, the fact that
24 it was bought openly, the offence was unlikely to be repeated, and a conviction would mean that
25 his intended career would be ruined.
26

27 39. On the hearing of the appeal as to the sentence, the Cayman Islands Court of Appeal (“CICA”)
28 said that it is the opinion of the court that is critical as to what constitutes exceptional
29 circumstances and referred with approval to the judgment of Lord Woolf C.J, in the case of *R v.*
30 *Zakir Rehman and Gary Wood*¹¹. The CICA concluded that given the circumstances of the
31 offence, including the nature of the firearm, the appellant's antecedents, and his plea of guilty,

⁹ Grand Court Ind. 15 of 2020 Unreported Judgment dated 15th December 2020.

¹⁰ [2009] CILR 118

¹¹ 2006 1 Cr. App. R. (S) 77



1 the sentence of two years was manifestly excessive. A sentence of 12 months on each count was
2 substituted.

3
4 40. In the case of ***Rehman and Wood***, the English Court of Appeal considered the meaning of a
5 similar provision, s.51A in the United Kingdom ***Firearms Act*** 1968, as to exceptional
6 circumstances. The Court held that when considering whether circumstances are exceptional, it
7 is not appropriate to look at each circumstance separately, a holistic approach was needed. There
8 would be cases where there was one striking feature but others where the combination of
9 circumstances made the case truly exceptional. The Court stated: -

10
11 *“There would be cases where there was one single striking feature, which related either to*
12 *the offence or the offender, which caused that case to fall within the requirement of*
13 *“exceptional circumstances”. There could be other cases where no single factor by itself*
14 *would amount to an exceptional circumstance, but the collective impact of all of the*
15 *relevant circumstances truly made the case exceptional.”*

16
17 41. The Court noted that the rationale of s.51A of the ***Firearms Act***, the policy was to send out a
18 deterrent message. The message was that the mere possession of a firearm by itself would be
19 sufficiently serious to require the imposition of a minimum term irrespective of the personal
20 circumstances of the offence or of the offender unless these were exceptional. The Court stated:

21
22 *“So far as the Court could determine the rationale of the Firearms Act 1968, s.51A, the*
23 *policy was to send out a deterrent message. The mere possession of firearms could create*
24 *dangers to the public. The possession of a firearm might result in a firearm going into*
25 *circulation. It could then come into the possession of someone other than the particular*
26 *offender, in whose hands the firearm would be a danger to the public. Parliament had*
27 *therefore said that usually a consequence of merely being in possession of a firearm would*
28 *itself be sufficiently serious to require the imposition of a term of imprisonment of five*
29 *years, irrespective of the circumstances of the offence or the offender, unless they passed*
30 *the “exceptional” threshold to which the section referred. This made the provision capable*
31 *of being arbitrary, a possibility which was increased because offences contrary to s.5 of*
32 *the Firearms Act 1968 were absolute offences which did not require an intention on the*
33 *part of the offender to commit the offence.”*



1 42. The Court said that the reference in the section to the circumstances of the offender was most
2 important. Relevant circumstances would include where the offender was of very advanced years
3 or was otherwise unfit to serve a five-year sentence. When read in context, the circumstances
4 would be exceptional if it would mean that to impose the mandatory minimum would result in
5 an arbitrary and disproportionate sentence.

6
7 43. The Court applied the discussed principles in the following way. In the case of the appellant
8 Rehman, he had been sentenced to the mandatory minimum in respect of a replica blank firing
9 handgun which could be altered to fire live ammunition. He was a collector of models and had
10 openly purchased the replica for display purposes. The Court held that the imposition of the
11 mandatory minimum in his case was wrong. The exceptional circumstances included his
12 background, the fact that he did not know that the possession of the weapon which he had was
13 unlawful, he had pleaded guilty at the first opportunity, he was of previous good character, had
14 co-operated throughout the search and arrest and he was a valued employee at his place of
15 employment. The Court noted that the weapon was a blank firing replica, it had not been
16 converted and no blank ammunition had been found with it. It had not been fired and was found
17 in its original wrapping under the appellant's bed where he had placed it upon receiving it. The
18 appellant was not aware that it was capable of being converted. The Court said that the collective
19 circumstances made it possible to conclude that this was a case where the court was not required
20 to impose the minimum term.

21
22 44. In the case of the appellant Wood, the Court concluded that the imposition of the mandatory
23 minimum was appropriate. The appellant was also a collector. He was charged in respect of a
24 number of weapons. One of the weapons in question was a single barrelled shotgun. The Court
25 said that the appellant should have understood that the weapon should not have been in his
26 possession and did not take action to check whether it was lawful to possess it. He had also
27 committed other offences which showed carelessness with respect to firearms, and which
28 demonstrated that he did not attach sufficient significance to the strict statutory provisions. The
29 Court said that while there was a great deal to be said in Mr. Wood's favour these circumstances
30 prevented the Court from treating the circumstances as exceptional.

31
32 45. In the case of *R. v. Harrison*, the appellant's car was stopped by the police. In the pocket of his
33 coat was found a converted 8mm Bruni handgun containing six rounds of ammunition. The



1 appellant's explanation, which was accepted, was that he had found the gun the day before. He
2 said that it belonged to the boyfriend of his niece, a person whom he named as Anthony Cox and
3 that when he was stopped, he was on his way to dispose of the gun in a lake. The appellant, when
4 released on bail before he was sentenced, had been stabbed by Mr. Cox and accused of being an
5 informant.

6
7 46. The Appellate Court, in referring to the case of **Rehman and Wood** considered that the sentencing
8 judge had placed too much emphasis on the nature of the weapon rather than looking at the overall
9 circumstances. These included the way in which the appellant had initially come into possession
10 of the gun, how long he had had it, what he had done with it and what he intended to do with it.
11 The Court concluded that there were exceptional circumstances in that case. The Court said this:

12
13 *"In the present case it is not challenged that the appellant was on his way to remove this*
14 *handgun from circulation permanently when he was stopped. He was doing so on the very*
15 *day that the gun and the ammunition had come into his possession. No doubt it would have*
16 *been better for him, at least from one point of view, if he had gone straight to the police*
17 *without more ado, but the reaction of the owner of the gun when he found out what the*
18 *appellant had done makes it understandable why the appellant may well have felt reluctant*
19 *so to do. There may in any case be circumstances where someone who unwillingly and*
20 *unexpectedly finds himself with a prohibited firearm foisted upon him may feel impelled to*
21 *dispose of it so that it can never be used again, rather than involving himself in the*
22 *upheaval and disturbance of a police inquiry. We are bound to observe, however, that*
23 *anyone who chooses the latter course must be prepared to justify himself should his*
24 *involvement with the weapon come to light."*

25
26 47. In the case of **R. v. Michael Powell**, the CICA considered the application of the principles in
27 **Rehman and Wood**. The appellant had been sentenced to the minimum term. He had found a
28 loaded firearm in the bushes. He had retrieved it and taken it home where he kept it for some two
29 months. He said that had there been an amnesty he would have taken advantage of it. He said that
30 he had tried to make contact with an officer that he knew but was unable to do so.



1 48. The CICA cited with approval a decision of the English Court of Appeal in the case of **Attorney**
2 **Generals' Reference (No. 23 of 2009)**¹². The CICA noted the reference therein to the care that
3 must be taken by a court to have at the forefront of its mind that parliament has decided that
4 deterrent sentences be passed to ensure that the possession of guns is strictly controlled. The
5 Court stated: -

6
7 “ 14. Further consideration was given to the proviso by the Court of Appeal of England
8 and Wales, more recently, in *Attorney General's Reference (No. 23 of 2009)*,
9 [2009] EWCA Crim. 1683, reported at [2009] WL 2207494. In that case, the judge
10 had found the “exceptional circumstances” test satisfied. The Court of Appeal
11 disagreed. It said this, at paragraph 13 of the judgment delivered by Lord Justice
12 Thomas:

13
14 “It is clear from the decision of this court in *Rehman and Wood* [2005] EWCA
15 Crim. 2056, [2006] 1 Crim. App. R (S) 77, that the court must have at the forefront
16 of its mind that Parliament has decided that deterrent sentences be passed to
17 ensure that the possession of guns is strictly controlled and guns are not brought
18 into this country unlawfully. It is well known what a scourge guns are to any
19 society and the Courts must, in accordance to the will of Parliament, make sure
20 that the policy of Parliament is carried out in the sentencing of offenders, even
21 though in a particular case, apart from the minimum term, an offender might not
22 merit a sentence of such severity. It is in circumstances such as those before the
23 judge that the Courts must be very, very careful to have regard to this policy”.

24
25 Lord Justice Thomas then cited the passage in the judgment of Lord Woolf, Chief Justice,
26 in *Rehman* which I have already set out; and went on to say this: -

27
28 “We have no doubt in this case that the learned judge was in error in treating this
29 case as one amounting to exceptional circumstances where there were none. This
30 was a case where the offender had deliberately attempted to bring a weapon into
31 this country. It is, in our judgment, not a case where there is any doubt but that
32 the conduct was deliberate, that his previous good character, (although relevant in

¹² [2009] EWCA Crim 1683



1 *not increasing the sentence beyond the minimum) cannot amount to exceptional*
2 *circumstances, nor can the fact that he did not intend to use the pistol or any of the*
3 *guns held unlawfully for criminal purposes. All the circumstances identified by the*
4 *judge were irrelevant. A minimum sentence of five years should have been*
5 *imposed”.*

6
7 49. The CICA noted that while it was considered that it was an exceptional circumstance that one of
8 the Appellant’s children was suffering from an aggressive illness, the English Court of Appeal
9 cautioned against applying a wide approach and stated: -

10
11 *“Those who in any way contravene the Firearms Act, must for the good of society, whatever*
12 *the consequences are to their family, expect to receive the minimum sentence from*
13 *Parliament. Judges must not feel sorrow or sympathy for any offender. The protection of the*
14 *public demands nothing less than the imposition of minimum sentences. It is only in*
15 *exceptional circumstances of the kind that have occurred in this case, rare as it is, that the*
16 *court can exercise a degree of mercy.”*

17
18 50. In respect of the instant case, this Court has given the most anxious consideration to whether
19 exceptional circumstances arise. The defendant Mr. Archer is of good character with no previous
20 circumstances. He has good personal qualities which have been outlined in the SIR, in the
21 character references and by his Counsel. He has good family values, is hard-working and is a
22 dependable husband and father. He co-operated with the police and made early admissions. He
23 pleaded guilty at the first opportunity. He is at medium risk of re-offending. There is no evidence
24 of the use of the firearm and no evidence of any intention to use it for criminal purposes. The
25 possession of it was for a limited time, a two-day period. All of this is strong mitigation however
26 as the authorities make clear, mitigation is not the same as exceptional circumstances. In the case
27 of *Chavarría-Atily* the CICA said this: -

28
29 *“10 In the Cayman Islands, it has been the massive increase in offences under the*
30 *Firearms Law that has led Parliament to enact minimum sentences in respect of those*
31 *offences, while at the same time making special provision for cases of exceptional*
32 *circumstances. The mere possession of a firearm, even without any intention to use it for a*



1 *criminal offence, can still be a danger to the public for the reason that it could get into the*
2 *hands of someone who does have that intent.”*

3
4 51. The CICA in the case of **Michael Powell**, in applying the dicta from decided cases to the case on
5 appeal said this: -

6
7 “17 *It is important, in our view, to keep in mind that this appellant deliberately chose*
8 *to go back to the place where he had found the gun on order to take it into his possession;*
9 *and having done so, and having appreciated that it was a firearm, deliberately chose not*
10 *to turn it in to the police. He kept it in the sort of circumstances that were referred to in*
11 *Attorney Generals Reference (No. 23 of 2009); that is to say, wrapped in a towel under his*
12 *bed where it would have been prone to theft should any ill-intentioned criminal have broken*
13 *into his apartment. The vice lies not in his intention to use the gun illegally in the future:*
14 *there was no evidence of him having that intention. The vice lies in having possession of a*
15 *firearm which could come into the possession of a criminal who did intend to use it. That*
16 *is just this sort of case that the statutory minimum sentence is intended to deter. There is*
17 *nothing exceptional about the nature of the offence. The judge’s conclusion cannot be*
18 *criticised on that ground.*

19
20 18 *The issue really comes down to whether the defendant’s previous good character*
21 *– indeed his exemplary character – is an exceptional circumstance. The judge, in our view,*
22 *was entitled to take the view which received support from the passage in the judgment of*
23 *Lord Justice Thomas to which I have referred: that good character – indeed even*
24 *exemplary character – is not, of itself, to be treated as an exceptional circumstance. The*
25 *Legislature cannot have thought that good character was to be treated as exceptional. No*
26 *doubt, despite many disappointments, it took the view that people could be expected to be*
27 *of good character. Something more than that is required. There are circumstances where*
28 *the particular family relationships or infirmity or old age in connection with the offender*
29 *may amount to an exceptional circumstance. But the fact that he has previously not merely*
30 *kept out of trouble but has been a useful and valuable member of society is not. The judge*
31 *was entitled to reach the conclusion that there were no exceptional circumstances relating*
32 *to the offender and this Court cannot say that he was clearly wrong to do so.”*



1 52. It is evident from these cases that personal circumstances, by themselves, are not necessarily
2 exceptional. As to the circumstances of the offence, in this case this was a loaded firearm with
3 seven live rounds. The defendant expressed fear that he may be associated with the firearm if he
4 handed it in. He is an individual of some maturity. He removed the firearm from where it was
5 and placed it in the pocket of his jacket in the closet. This was undoubtedly a place where it could
6 be easily accessible to the wrong hands. The possession of it was not for a matter of minutes or
7 fleeting. This was for two whole days. He did not contact the police and made no attempt to do
8 so. He made no attempt to dispose of the firearm. While there is mitigation on the part of this
9 defendant, the position as set out in the cases is clear. While being mindful that each case must
10 be decided on its own facts, there appears to be nothing exceptional in relation to the
11 circumstances of the offence or to the circumstances of the offender, the defendant, such as to
12 justify a reduction in the mandatory minimum sentence.

13
14 53. In the Court's view looking at all the circumstances holistically, the conclusion is that there is
15 nothing in these circumstances taken as a whole which may be regarded as exceptional either in
16 relation to the offender or to the offence. Neither is there any single striking feature which would
17 justify such a finding. This Court has also given consideration to whether the imposition of the
18 minimum sentence would be disproportionate or arbitrary in light of all the circumstances of this
19 case and has concluded that it would not. Thus, in respect of Count 1, the defendant is sentenced
20 to the minimum sentence of 7 years imprisonment as prescribed by law.

21
22 54. In respect of Count 2, Possession of Unlicensed Firearm (Ammunition), from a starting point of
23 24 months, with 6 months for mitigating circumstances and one third credit for his guilty plea,
24 the sentence is 12 months imprisonment.

25
26 55. For each of the drug offences, the sentence is 7 days imprisonment.

27
28 56. The Court bears in mind the principle of totality. All the sentences are to run concurrently.

29
30 57. Any time served is to be deducted.

31
32
33
34
35

1 **ANCILLARY ORDERS**

2

3 58. There appears to be no lawful owner of this firearm. Thus, pursuant to s.41 (c) of the *Firearms*
4 *Act* the firearm is forfeited to the Crown.

5

6 59. The drugs and the grinder are also ordered forfeited to the Crown to be destroyed.

7

8 **Dated this the 3rd day of November 2023**

A handwritten signature in blue ink, consisting of a series of connected loops and curves, positioned above the name of the judge.

9

10 **The Hon. Justice Cheryll Richards KC**
11 **Judge of the Grand Court**