IN THE GRAND COURT OF THE CAYMAN ISLANDS
CRIMINAL DIVISION

IND. 0049 OF 2022

THE CROWN

-V-

EDDIE MARLON EBANKS

Coram: **Hon. Mrs. Justice Marlene I. Carter**

Appearances: **Mr. John Furniss for the Defendant**

Mr. Kenneth Ferguson, Crown Counsel for the prosecution

Heard: **18 September 2023**

Ruling Delivered: **02 October 2023**

HEADNOTE

Application to vacate guilty plea - advice of previous counsel before plea – lethality of firearm

RULING

1. This is an application by the Defendant for leave to vacate his plea of guilty to the offence of possession of an unlicensed firearm.

The facts as alleged by the Prosecution.

2. The written submissions by Counsel for the Prosecution contain an account of the allegations against the Applicant which led to his being charged for the offence of possession of an unlicensed firearm. The following account is taken largely from those submissions but has been condensed considering the nature of the application before the court. The Prosecution alleges that:
   (i) On Friday the 1st day of July 2022 the police executed a search warrant at the Applicant's home in George Town.

(ii) While the search was being conducted inside the master bedroom, the Applicant told the officers that he had a firearm inside his bedroom having found it days earlier. The Applicant then showed the officers a chest of drawers in the master bedroom, pointed to the top drawer, and stated that the gun would be found in the drawer.

(iii) The police recovered a two-toned pistol; the receiver or lower section of the gun being of an olive colour and the slide being black from the drawer indicated by the Applicant. The pistol was a 9mm Luger "Polymer 80" model PF940C pistol with an empty magazine. It had no serial number inscribed on it.

(iv) The Applicant was arrested on suspicion of possession of an unlicensed firearm and cautioned. After the Applicant was cautioned, he told the officer that the firearm did not belong to him as he had found it on the beach a few days prior and without thinking, he brought it home with him.

3. On July 5, 2022, the RCIPS Integrated Ballistic Identification System (IBIS) Technician Leesa Mullings examined the said firearm. After examination, she concluded that the pistol was in good working condition and capable of discharging deadly bullets from its barrel by firing 9mm Luger cartridges on semi-automatic action. Ms. Mullings also concluded that the 'Polymer 80" pistol is a firearm under the Cayman Islands Firearms Act and was in operable condition.

4. The Applicant is not a registered owner of a firearm in the Cayman Islands. The Applicant entered the plea of guilty to the offence of possession of an unlicensed firearm on September 30, 2022.

The Applicant's application for leave to vacate his plea.

5. The Applicant rested his application to vacate his plea on the following:

(a) That his previous Counsel has misrepresented certain facts to him which led to him pleading guilty.

(b) That there was an absence of evidence that the firearm is capable of discharging a bullet at the kinetic energy force of one Joule necessary to cause harm or death similar to that necessary under the UK provisions regarding muzzle velocity.

(c) That the item was manipulated by the Expert to have become capable of or of being in working condition to be able to discharge a live round. He submits that had the item not been manipulated, it may not have discharged at all.

(d) That there was a breach of the rules surrounding disclosure.

(e) That there was evidence of "Police Procedural impropriety" as the firearm was in an altered state.

6. Counsel for the Applicant in oral argument largely rested his submissions on the issue of the lethality of the pistol. Counsel stated that the Crown's expert and even the Defence expert had looked at the pistol and it was agreed that the trigger had to be pulled before it would engage, it was disassembled and reassembled. He went on to state that it appeared from the reports of the IBIS technician that blanks were fired from the pistol. Counsel argued that lethality was an essential issue since it had to be shown that the pistol was able to cause injury sufficient even to cause death. He submitted that in this case it appeared that no one had fired the pistol in its now adjusted state to test for lethality.

7. While Counsel noted that in the United Kingdom, there was a requirement that the pistol be able to produce at least one joule of kinetic force, he conceded that since the same was not required by the Cayman Islands legislation, no such checks were usually made in this jurisdiction.

8. He sought to distinguish the instant facts from those of local authorities on a similar issue, the cases of *Marcus Manderson v The Queen (CICA No. 5/2013)* and *Michael Fernando Jefferson v Her Majesty The Queen (CICA No. 27/2017), or 2018 (2) CILR 278.*

9. Counsel submitted that it would be unjust not to allow the Applicant to change his plea, since if it was found that because the pistol had never been fired to test for lethality with the result that the lethality issue could not be conclusively dealt with or was not specified, in such circumstances the question would then emerge whether the pistol is an imitation firearm only. He emphasized that if it were only an imitation firearm, a charge of possession of an imitation firearm could not be substantiated since there was no crime that was being committed at the time that the Applicant was found in possession of the pistol, a requirement for the commission of that offence.[1]

10. Counsel also submitted that there may be a question of whether the pistol was disassembled and then reassembled, and whether this would render the item not a firearm for purposes of the law. He submitted that the Applicant should be entitled to raise this issue before a jury.

11. Counsel submitted that the issue of lethality would remain to be decided even if the disassembling and reassembling issue was decided against the Applicant. Counsel argued that because the facts spoke to the pistol having fired two blanks, the issue of lethality was a material question to be considered in this case.

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[1] Section 18 (6) of the Firearms Act states: *"(6) Whoever has with him a firearm or imitation firearm with intent to commit an offence, to resist arrest or to prevent the arrest of another person, in either case while he has the firearm or imitation firearm with him, is guilty of an offence and , subject to Section 39 is liable on conviction to a fine of one hundred thousand dollars and to imprisonment for twenty years."*

He argued further that the fact that the pistol fired blanks did not answer the question of whether if a bullet cartridge was put into the chamber, it would have fired.

12. Counsel submitted that the guilty plea was entered by the Applicant at a time when he was unaware that the Defence expert had simply received documents from the Cayman Islands, and he had not examined the pistol itself.

13. For these reasons, Counsel submitted that there was incomplete legal advice provided to the Applicant in this case, to the extent that once the pistol was reassembled and blank-fired this was not enough on the part of the Prosecution to sustain a guilty verdict. He concluded that there was incorrect, incomplete legal advice given to the Applicant which caused him to enter his plea of guilty.

14. Counsel for the Applicant also noted, regarding the issues of the incomplete advice received by the Applicant, that it appeared that when the Defence's UK expert was furnished with the reports of the Cayman firearms expert, the entire report may not have been sent. It is not clear to the court whether the Applicant was raising this matter by way of inadvertence or if he was seeking to have the court consider it as an aspect of the misrepresentation by his former Counsel. I have considered it as the latter.

The Crown's response

15. Counsel for the Prosecution submitted that the case against this Applicant was a very strong one. He emphasized that at all material times, the Applicant was represented by competent counsel. Counsel for the Prosecution noted that the Applicant's previous counsel, Mr. Dennis Brady, filed an affidavit setting out his dealings with the Applicant and in which he clarified the Applicant's instructions to him.[2] Mr. Brady denied the assertions of misrepresentation made against him by the Applicant.

16. Counsel for the Prosecution submitted that what is clear from the Brady affidavit is that the Applicant entered his plea of guilty after he received the firearms report from the Defence's expert. There is no issue that the report of the Defence expert, Philip John Boyce, Senior Forensic Scientist, states that he is of the opinion that the pistol in question has been shown to be capable of discharging a projectile with lethal potential, and therefore, it is a firearm as defined by the Cayman Islands Firearms Act (2008 Revision).

17. Counsel submitted that there was no merit to the submission that there was police impropriety relating to the handling of the weapon by APS Peter Maragh. He recounted the officer's statement and submitted

[2] No issue arises regarding confidentiality or privilege. These were waived by the applicant for the purposes of the instant application.

that the officer did not interfere with the pistol either by adding or subtracting from any of its component parts nor did he manipulate it in any way other than squeezing the trigger readily multiple times.

18. In aid of his submission on the issue of whether an object is a firearm pursuant to section 2 of the Firearms Act (2008 Revision), Counsel for the Prosecution drew to the court's attention cases wherein the Cayman Islands Court of Appeal had considered this issue of what was sufficient to constitute an object a firearm. These cases, *Her Majesty the Queen and Marcus Steve Manderson [CICA 5/2013] and Michael Fernando Jefferson v Her Majesty the Queen {2018] 2 CILR 278,* are both dealt with in greater detail later in this judgment.

19. Based on these authorities, Counsel for the Prosecution submitted that on the evidence of the Prosecution, no repairs were required to cause the pistol to discharge a shot, bullet, or missile. All that was required to make the pistol dischargeable was multiple rapid pulls of the trigger.

20. Regarding the submissions relating to disclosure, Counsel for the Prosecution pointed to the fact that there had been no complaint by the Defense of outstanding disclosure prior to arraignment.

Court's considerations

21. Counsel for the Prosecution in written submissions set out the general position concerning a court's discretion to vacate a guilty plea. I set these out here:

> *"A Judge has a discretion to allow a defendant to change his plea from guilty to not guilty at any time prior to sentence being imposed. It is for the court to decide whether justice requires that the change of plea should be permitted.* ***[See S. (an Infant) v. Recorder of Manchester and Others [1971] A.C. 481***
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> *The discretion exists even where the plea of guilty was unequivocal. However, this discretion must be exercised judicially [**R v. Dodd (1982) 74 Cr. App. R 50].** Only rarely would it be for a judge to exercise this discretion, particularly where the accused has been represented by experienced counsel. In general, it has been said that the discretion "must be exercised sparingly and circumspectly". **[See R v. Sorhaindo [2006] EWCA Crim 1429]**.*
>
> *The relevant principles governing the discretion to permit a change of plea were considered in **Reviit v. DPP [2006] EWHC 2266 (Admin).** It was held that a refusal to allow the withdrawal of an unequivocal plea of guilty, and to treat such a plea as conclusive of guilt, does not breach the right of an accused person, under Art.6 of the European Court of Human Rights, to be presumed innocent until proven guilty according to law."*

22. In ***R v Bruce George Peter Lee [1984 1 WLR 578*** at 583 the court observed:

> *"Thus, the fact that (an appellant) was fit to plead; knew what he was doing; intended to make the pleas he did; pleaded without equivocation after receiving legal advice although highly relevant considerations to whether a conviction was unsafe or unsatisfactory, cannot of themselves deprive the court of the jurisdiction to hear the applications* [to vacate his guilty pleas]."

23. In ***Tierney – Campbell [2020] EWCA Crim 1194***, a defendant sought to argue that he had entered a guilty plea following erroneous legal advice. The court found that the facts must be so strong as to show that the plea of guilty was not a true acknowledgement of guilt. This required the advice to be fundamental to the plea or alternatively, if it can be shown that, with the benefit of correct advice, there would probably have been an acquittal.

24. In ***T v R [2022] EWCA Crim 108***, the court acknowledged this formulation in Tierney-Campbell stating that the erroneous advice "*must go to the heart of the plea, so that [...] the plea would not be a free plea and what followed would be a nullity.*"

25. The court went further to state that an appeal can succeed…

> *"if vitiated by erroneous legal advice or a failure to advise as to a possible defence, even where the advice may not have been so fundamental to have rendered the plea a nullity, if its effect was to deprive the defendant of a defence which would probably have succeeded.*"

26. The court referred *to* ***R v PK [2017] EWCA*** **486** in which it was emphasized that:

> *"the Court of Appeal would only intervene on the basis that the conviction was unsafe when it believed that the defendant had been deprived of what was in all likelihood a good defence in law, which would quite probably have succeeded and, as a result, a clear injustice has been done."*

27. The Crown and the Defence referred to two authorities considered by the Cayman Islands Court of Appeal which are relevant to the instant application. In ***Jefferson v R***, the appellant was convicted of offences of possession of an unlicensed firearm ammunition and of possession of an unlicensed firearm otherwise than in accordance with the terms of a Firearm Users Restricted Licence. Upon a search of his home, the police had recovered a semi-automatic pistol and two rounds of ammunition.

28. The Judgment of Morrison JA noted, to the facts in that case, that the evidence of one of the witnesses for the prosecution who was tasked with testing the pistol by checking it and carrying out a "test shoot" of it was:

> *"...when he attempted to do this, the pistol would not fire. He then realized that it was defective, in that "a bit of the firing pin had been sawn off, so the weapon did not discharge." The pistol was, he testified, in "a depreciated state," and "unkempt." However, its working parts all appeared to be in order and, apart from the missing bit of the firing pin, everything else about it appeared to be normal. He said that, if the firing pin were intact, the pistol would operate normally and, on this basis, he concluded that it was in fact a firearm.*

29. A second witness for the Prosecution, a firearms and tool mark expert, had also testified that:

> *"...as a result of the broken firing pin, the pistol was inoperable. But it was, in her view, a firearm and it was lethal barrelled. She said that it was very easy to repair the firing pin: all that was needed was a screwdriver and, armed with that, it would take less than five minutes to change that part of the pistol and make it work properly. She said that the cost of the part was $17, and it could be ordered online and sent by post to any address in the United States. She also said that, with very basic knowledge, one could get it on YouTube or the internet."*

30. On appeal, it was submitted on behalf of the Appellant, inter alia, that the weapon allegedly seized was not a firearm within the meaning of the Firearms Act. It was contended that the fact that, in order for the pistol to be rendered operable, it required a component, that is, a firing pin, that was not in the Appellant's possession or control but needed to be sourced and acquired from elsewhere, which meant that it could not be considered capable of discharging any shot, bullet or other missile as required by the Act.

31. The Court reviewed various authorities including ***R v Manderson***. The reasoning of the court appears in the judgment of Morrison JA:

> *"Lastly, we will mention R. v. Manderson (9), a case tried before Quin, J. in the Grand Court, in which the defendant was found in possession of a modified flare gun. The modification involved the attachment of a rubber tube, allegedly for the purpose of sufficiently increasing the force of the hammer to allow it to fire modified .38 ammunition. The firearms expert said that it would not require significant knowledge of firearms to modify the ammunition or the flare gun. Further, that with the modification, the gun, if fired, could cause serious injury or death. At the close of the Crown's case, the defence submitted that, as the flare gun was inoperable as a firearm without undergoing a conversion and was therefore not a lethal*

barrelled weapon within the meaning of s.2(1) of the Act, there was no case to answer. Quin, J. rejected this submission on the basis that the flare gun was capable of being a firearm; it was a question of fact for the jury; and the jury would be entitled to find that the flare gun was a firearm within the statutory definition if, as the judge considered to be the case, it could be adapted to discharge a missile without specialist equipment or skill.

32. It was argued by Counsel for the Appellant that ***Jefferson*** could be distinguished from ***Manderson***, "given the extent of the conversion or adaptation required to make the pistol operable in the instant case…" The Court agreed with the Crown that ***Manderson*** provided an appropriate comparison. The Court went on to make the following observations and findings:

"41 … we note in passing that the appellant's experienced trial counsel made no submission to the judge at the close of the Crown's case that the evidence proffered by the prosecution at that stage was insufficient to prove that the pistol was a firearm. In our view, he was plainly right to do so. The issue of whether the pistol was a lethal barrelled weapon within the meaning of s.2(1) of the Act was a question of fact. In such a case, as the learned editors of Blackstone's Criminal Practice 2016 indicate (para. B12.14, at 739–740), "[t]he correct approach is for a judge to determine whether the device is capable of amounting to a firearm and then to leave to the jury the question of whether it is actually a lethal weapon." [Emphasis in original.]

42 The evidence given by both Mr. Stuart and Ms. Lawton clearly supported the view that the only thing which rendered the pistol inoperable at the time it was found at the appellant's house was the missing firing pin. Both witnesses testified that this deficiency could be easily cured without the need for any expert or particularly technical intervention. None of the authorities to which we have been referred supports the distinction for which Mr. Rule contended, between a minor repair achievable by the use of some part or implement already in the defendant's possession, and one which needed to be sourced from elsewhere. Although they may each have expressed themselves slightly differently on the point, both experts appeared to agree that, with the insertion of the firing pin, the pistol would be capable of operating as a lethal barrelled weapon.

43 Against this background, it appeared to us that the judge's decision to leave to the jury the question of whether they could be satisfied that the pistol was in fact a firearm could not be faulted. Nor can any complaint be made about the judge's directions to the jury, in which he was at pains to tell them that the final decision was theirs, having regard to all the evidence, including the expert evidence."

33. The facts surrounding the examination of the pistol in this case come from the statements of two prosecution witnesses. Peter Maragh an officer of the Royal Cayman Islands Police Service who is also a trained and qualified national police firearms instructor examined the weapon the 02 July 2022:

> *"The weapon had features resembling the Glock pistol and I could tell this by the Takedown lever, Trigger Assembly, the Slide Stop, and the Extractor. After making the weapon safe, I squeezed the trigger, but it did not feel as how a trigger should feel or sound when the weapon is unloaded. Based on my experience I made a reasonable assumption that the weapon was faulty. I then attempted to disassemble the weapon as I would a Glock Pistol but this did not work. As the trigger would not fully depress (which is one of the steps to disassemble this type of weapon). After squeezing the trigger multiple times at a fast rate, the trigger became fully depressed. After disassembling the weapon (field strip), I observed that it had most if not all the parts similar to the Glock Pistol. I observed the striker assembly on the slide which moved when the Striker Pin was depressed. Upon seeing this, I concluded that the weapon can discharge a round.*
>
> ...
>
> *Due to safety concerns, about 8:45pm I loaded Two Fiocchi Blank cartridges taken from the RCIPS armory in the said firearm. I then squeezed the trigger, and nothing happened. I then squeezed the trigger multiple times rapidly before it discharged both blank rounds.*
>
> ...
>
> *The test shoot was not recorded or evidence in any fashion. The recovered Firearm was no[t] manipulated or assisted other than squeezing the trigger rapidly multiple times.*
>
> *The Service Armorer may have to retest the live rounds at a later date in a safer environment.*
>
> *In conclusion, I can confirm in my professional opinion, experience and judgment that the exhibit RL/EE2, Tan and black Firearm with no serial number has all the characteristics, parts and performance of a functioning semiautomatic pistol and fits the definition of a Firearm as per the Cayman Islands Firearms Act."*

34. The expert's report of Ms. Mullings as far as relevant states:

> *"**Examination and Test***

Visual and physical examination conducted on the P80 pistol in item Ref # RL/EE2 revealed that the pre-travel/trigger taken up (the initial distance the trigger moves prior to sear movement) was being affected with each pull on the trigger and the connector was not being properly engaged by the transfer bar.

P80 piston in Item Ref # RL/EE2 was test-fired with two 9mm Luger cartridges from RCIPS ammunition stock. The firearm failed to discharge after four pulls on the trigger but subsequently discharged on the fifth pull on the trigger. Bullets and cartridge cases were removed, retained and labelled LMJ#1.

Further examination was conducted on the P80 pistol in item Ref # RL/EE2 by partially disassembling the firearm by removing the slide containing the barrel and examine the transfer bar and the firearm reassembled. It was test-fired using another two 9mm Luger cartridges from RCIPS ammunition stock. The firearm discharged on the first pull on the trigger. Bullets and cartridge cases were recovered, retained and labelled LMJ#2.

Results and Remarks

Evidence with Case File #: 2022-017995 and Item Ref # RL/EE2 a 9mm Luger "Polymer 80" model PF940C, pistol that is in good working condition and capable of discharging deadly bullets from its barrel by firing 9mm Luger cartridges on semi-automatic action (A repeating firearm that requires a separate pull of the trigger for each cartridge/shot fired, and which uses the energy of discharge to perform a portion of the operating or firing cycle).

According to Cayman FIREARMS LAW (2008 Revision) the "Polymer 80" pistol with Item Ref # RL/EE2, is a firearm that was in operable condition.

35. The test to be applied is whether this court is satisfied that it should exercise its discretion to allow a defendant to vacate a plea of guilty because it appeared that to not do so would cause the defendant to be deprived of what was in all likelihood a good defence in law, which would probably have succeeded and, as a result, a clear injustice would have been done were the court to determine otherwise.

36. This is an application made before trial and sentence. The Court is mindful that:

"The issue of whether the pistol was a lethal barrelled weapon within the meaning of s.2(1) of the Act was a question of fact and as such, at trial, the correct approach where this issue is to be determined by a jury "is for a judge to determine whether the device is ***capable*** *of amounting*

to a firearm and then to leave to the jury the question of whether it is actually a lethal weapon." [Emphasis in original.]"

37. This court must consider whether, on the facts, there is an obvious likelihood that this Applicant has a good defence to the offence for which he is charged. The evidence of Maragh and Mullings make it clear that this was not a situation as in ***Jefferson*** where something was required to be done to make the pistol operable.

38. The Maragh statement is clear that it was not written for the purpose of being deemed expert evidence.

39. However, the Prosecution's evidence from its expert also reached the same conclusion. Ms. Mullings test-fired two 9mm Lugar cartridges from the pistol. She noted that although the pistol failed to discharge after four pulls on the trigger it subsequently discharged on the fifth pull of the trigger.

40. This is significant and relevant to the application under consideration. Ms. Mullings' evidence of having disassembled the firearm came ***later,*** upon further examination when she "adjusted" the connector. She had earlier observed that the connector was not being properly engaged by the transfer bar. After this adjustment, she again inserted two 9mm Luger cartridges into the pistol and the firearm discharged on the first pull of the trigger. She determined based on both of these tests that the pistol was in good working condition and capable of discharging deadly bullets from its barrel. Contrary to the submission of counsel for the Applicant that it appeared that the pistol had not been tested except by the firing of blanks, it is clear that although Mr. Maragh test fired only blanks, the expert Ms. Mullings test-fired 9mm Lugar cartridges from the pistol. Her report notes that the pistol discharged one of those cartridges ***before*** she adjusted the connector and again after such adjustment.

41. Counsel for the Prosecution submitted that *"On the facts of this case there was no deficiency noted in the firearm.* I agree with this submission. On the facts of this case there was no deficiency that needed to be cured. The pistol discharged a 9mm bullet just upon the trigger being depressed.

42. The submission by the Applicant is that "*the item was manipulated by the Expert to have become capable of or of being in working condition to be able to discharge a live round."* He submits that had the item not been manipulated, it may not have discharged at all.

43. This Court must consider whether there is evidence of manipulation in order to have the pistol discharge a live round. The evidence of manipulation suggested by the Applicant is not borne out by an examination of the statements of the Crown witnesses. The expert is clear that she pulled the trigger five times when it was test-fired. On the first four pulls of the trigger, the firearm failed to discharge but it did so on the

fifth pull discharging one of the 9mm Lugar cartridges. As noted above at paragraph 41, Ms. Mullings' evidence of having disassembled the firearm came after this test. In any event, her statement notes that she "adjusted" the connector because it appeared to not be properly engaged. There was nothing missing that needed to be added as in ***Jefferson*** nor need for a further attachment as in ***Manderson***. The adjustment was sufficient so that when she again inserted two 9mm Luger cartridges into the pistol it discharged on the first pull of the trigger. The expert determined, based on these tests, that the pistol was in good working condition and capable of discharging deadly bullets from its barrel.

44. The result of the court's determination regarding lethality and manipulation is that the factors noted at paragraph 5 (b) and (c) fail as being capable of causing this court to allow the Applicant to vacate his guilty plea.

45. Regarding the issue of misrepresentation by previous counsel, this took three distinct points. One referred to the incomplete advice furnished by Mr. Brady on the lack of evidence of lethality on the Crown's case, the second concerned the fact that at the time that the Applicant entered his guilty plea, he was unaware that his expert had not actually examined the weapon or that his expert may not have received all of the documentation from the Cayman witnesses regarding the firearm. The third aspect relates to the applicant's contention that he "was not furnished with full disclosure of the facts [both used and unused material] surrounding the circumstances of the case and was therefore misinformed of the nature and extent of the allegation, to which his former Counsel then advised him to enter a guilty plea in that regard."[3]

46. As to the first aspect there is evidence of lethality in the Crown's case as noted at paragraph 40 above. As to the second aspect, the Prosecution case does not of course depend on the findings of the Defence expert. In any event, those findings align with that of the Prosecution that the weapon is a lethal barreled weapon. If the Defence expert was furnished with incomplete documents and he had been unable to render his opinion, as an expert one would expect that he would have made that indication and sought the further documentation, or such limitation would have been reflected when he reached his conclusion on the question of whether the weapon was a firearm for the purposes of the Firearms Act. Neither of these positions was taken by the Defence expert.

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[3] See page 1 of the Skeleton Submission of the Applicant

47. As to the third, previous Counsel, Mr. Brady has tendered an affidavit in these proceedings, in which he asserts that: the claim being made by the Applicant is "vexatious, malicious, and devoid of merit." Mr. Brady stated further:

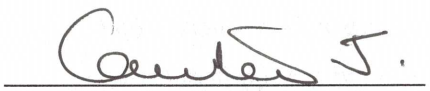
> *"7. That having received the report from Forensic Equity, I met with the Applicant at Northward Prison, presented him with copies of the several exhibits referred hereto and together we perused and discussed the several findings, and I asked the Applicant what was his decision in the given circumstances.*
>
> *8. That there and then he told me, that he would plead guilty and seek mitigation as relates to any sentence."*

48. Counsel also stated that he furnished the Applicant with all relevant materials. In any event, Counsel for the Applicant has not shown how, if the Applicant was not furnished with a statement of any of the Prosecution's witnesses or other disclosure apart from these reports, this would amount to this Applicant being deprived of what was in all likelihood a good defence in law, which would quite probably succeed and therefore result in a clear injustice if he were not allowed to change his plea.

49. Similarly, the actions of Officer Maragh as recorded in his statement are not, without more, sufficient to amount to police procedural impropriety. Officer Maragh describes pulling the trigger a number of times and a field strip of the pistol. This is the assembling and reassembling that was complained of by the Applicant. The officer did not add or remove anything from the pistol's component parts. On this point, counsel for the Applicant all but conceded in his submissions before this Court that, *"a court may very well conclude that even despite all of that, that what was found, what was in the drawer [*the weapon in question*] may well constitute a firearm."* On the authorities as considered herein there is no merit to this submission.

50. This Court must determine whether the Applicant has shown that in all likelihood he has a good defence in law to the charge of possession of an unlicensed firearm and whether this defence would probably succeed. As the authorities emphasize the discretion to allow the Applicant to vacate his guilty plea is only to be exercised sparingly and it is only rarely that a court would find it appropriate to exercise such a discretion. This court's view, for the reasons outlined above, is that none of the matters raised on this application are such that this Applicant would to be deprived of what was in all likelihood a good defence in law, which would probably have succeeded and, as a result, a clear injustice would have been done were the Court to determine that it would not allow him to vacate his plea.

51. The application to vacate the guilty plea entered on September 30, 2022, for the offence of possession of an unlicensed firearm is dismissed.



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