

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

4 **INDICTMENT NO: 11 OF 2022**

5  
6  
7 **R**



8  
9 **V.**

10  
11 **THALIA ASHANTI BARNES**  
12

13  
14 **Appearances:** **Mr. Scott Wainwright, Assistant Director of Public**  
15 **Prosecutions for the Prosecution**

16  
17 **Mr. Crister Brady of Brady Law for the Defence**

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

19 **Submissions Heard:** **27<sup>th</sup> June 2023**

20  
21 **Sentence Judgment:** **29<sup>th</sup> June 2023**  
22

23  
24 ***Criminal Law - Section 15 and Section 39 of the Firearms Act (2008 Revision), Possession of***  
25 ***Unlicensed Firearm, Sentencing After Trial, Whether Exceptional Circumstances.***  
26  
27



## SENTENCE JUDGMENT

1  
2 1. The defendant was convicted after trial of two counts of Possession of an Unlicensed  
3 Firearm contrary to s.15 of the *Firearms Act* (2008 Revision). Count 1 charges her  
4 jointly with Marcus Manderson with possession of a .380mm Hi-point semi-automatic  
5 pistol which was not under and in accordance with the terms of a firearm user's  
6 restricted license. Count 2 charges her jointly with Marcus Manderson with possession  
7 of one round of .380mm ammunition which was not under and in accordance with the  
8 terms of a firearm user's restricted license. The maximum penalty is 20 years  
9 imprisonment in respect of both counts.

10  
11 2. In respect of Count 1, s.39 of the *Act* provides for the imposition of a mandatory  
12 minimum sentence of 10 years imprisonment after trial, unless the Court is of the  
13 opinion that there are exceptional circumstances relating to the offence or to the  
14 offender which justify it not doing so.

### 15 16 **ANTECEDENT HISTORY**

17  
18 3. The defendant has one previous conviction in April 2021 for Possession of Ganja with  
19 Intent to Supply for which she received a sentence of imprisonment of 12 months,  
20 which was suspended for 2 years. This offence for which she is now before the Court  
21 was committed during the concurrence of that suspended sentence.

### 22 23 **THE FACTS**

24  
25 4. The brief facts are that on the night of the 9<sup>th</sup> December 2021, the firearm which was  
26 loaded with a single round of ammunition was found in a printer in a bedroom which  
27 she occupied with the co-defendant, her gentleman friend Marcus Manderson.

28  
29 5. A swab of the sights and grips of that firearm ("SH 1") before fuming produced a  
30 mixture of DNA which was analysed. The defendant could not be excluded therefrom

1 to an estimated ratio of 17 million times more likely if they originated from the  
2 defendant and two unknown people, than if they originated from two unknown people  
3 unrelated to her.



4  
5 **SOCIAL INQUIRY REPORT**  
6

7 6. The Department of Community Rehabilitation (“DCR”) has provided a Social Inquiry  
8 Report “SIR”) dated the 4<sup>th</sup> May 2023 in respect of the defendant. The Court has read  
9 the Report in its entirety and takes into account everything written therein in favour of  
10 the defendant.

11  
12 7. The defendant is twenty-five years old. She has a young child who is only six years  
13 old. The defendant was in full-time employment for four years up to the point in time  
14 of her arrest.

15  
16 8. Her background history is noted. This includes traumatic childhood issues as set out on  
17 page 3 of the SIR and the relationships as detailed on page 5 and the nature of them.  
18 The details under the heading Community Institutional Functioning are particularly  
19 noted together with the fears that she has expressed.

20  
21 9. The defendant is assessed by the Probation Officer as being at medium risk of re-  
22 offending. There is one criminogenic factor in the Very High category. It is  
23 Companions. The Officer states, *“It would seem though that she has criminal*  
24 *associates and is drawn to persons with a history of criminality.”*  
25

26 **LETTER TO THE COURT**  
27

28 10. The defendant has also written a letter to the Court dated 5<sup>th</sup> May 2023 which the Court  
29 has read and takes into account. In the letter, the defendant explains her circumstances,  
30 takes full responsibility for ‘bad partner choice’ and asks for leniency so that she can  
31 raise her young son: -



1  
2 *“I write to you today very apologetically. I am not the type of person to get in*  
3 *a situation like what I am being accused of. Some people might have their own*  
4 *pre-conceived idea of me looking at the choice of partner I made, and now the*  
5 *seriousness of the offences for which I have been found guilty. I take full*  
6 *responsibility for the bad choice of a partner I made, but I truly wanted better*  
7 *for him. I suggested we go counselling to better our relationship, but this did*  
8 *not work because I was not the problem and because of school. His choice was*  
9 *associating with bad company. And there are moments he would threaten to kill*  
10 *me when we fought, and I called the police every time he did this. I am sorry*  
11 *again for being in this terrible situation especially growing my little one, I beg*  
12 *you as a young woman working towards building a bright future for myself and*  
13 *young one, which I was focused on doing for leniency and any other help other*  
14 *than imprisonment. I am no harm to anyone; I abide by the law, and I told the*  
15 *truth and nothing but the truth when I said that the gun was not mine. I have*  
16 *never owned a gun before and do not intend to ever own one. I cannot speak*  
17 *for anyone else, but I am 100% sure of myself. I don’t want this to tarnish my*  
18 *reputation and the opportunities I have built for myself. This experience has*  
19 *taught me to open my eyes to what bad associations can cause and moving*  
20 *forward I will share my experience with my son to ensure that he does not make*  
21 *the same mistakes I have made. I want to continue to grow and be a great*  
22 *influence to him and others. I would like to be able to affirm his needs and wants*  
23 *and provide him with opportunities while helping him to internal controls.*  
24 *Overall, I want to help raise my little one and guide him on the right path. I*  
25 *want to be able to support and encourage him as he grows. Once again, I beg*  
26 *The Honorable Court to be lenient with my situation.”*  
27

## 28 THE SUBMISSIONS

- 29
- 30 11. Before this Court, Counsel on the defendant’s behalf submitted that her circumstances  
31 are not typical of most defendants. Counsel submits that the defendant’s fear of  
32 repercussions and consequences to her is real, particularly so in light of the killing of  
33 her former partner. Counsel submits that the defendant feared being killed if she left  
34 the co-defendant or gave evidence against him.
- 35
- 36 12. Counsel adopts the SIR in its entirety and submits that all the circumstances taken  
37 together are exceptional.
- 38



1       13.     The prosecution submitted that there are no exceptional circumstances in this case and  
2             referred the Court to the unreported judgment in the case of *R v Dean Ryan Derby*<sup>1</sup>.

3  
4     **THE SENTENCE**

5  
6       14.     Under the *2002 Statement of Tariffs and Guidelines* which predated the imposition of  
7             mandatory minimum terms, the then Chief Justice said this: -

8  
9             *“As regards to firearm offences contrary to the Firearms Law, the legislation is*  
10            *quite clear that the possession or use of an unlicensed lethal barrelled firearm is*  
11            *an extremely serious offence. Under the Firearms Law the maximum penalty for*  
12            *possession of an unlicensed firearm is 20 years and a fine of \$100,000. The tariff*  
13            *for that offence unless there are very mitigating circumstances will be 10 years.*

14  
15            *If on the other hand aggravating circumstances exist for instance, the use of the*  
16            *firearm for the commission of a serious offence, the tariff will be in keeping with*  
17            *the decided cases and will be significantly higher.”*

18  
19       15.     This Court has also considered the case of *Chavarría-Atily v R*<sup>2</sup>. A decision of the  
20             Cayman Islands Court of Appeal in which the Court said this: -

21  
22            *“In the Cayman Islands, it has been the massive increase in offences under the*  
23            *Firearms Law that has led Parliament to enact the minimum sentences in respect*  
24            *of these offences, while at the same time making special provision for cases of*  
25            *exceptional circumstances.*

26  
27            *The mere possession of a firearm even without any intention to use it for a criminal*  
28            *offence can still be a danger to the public for the reason that it could get into the*  
29            *hands of someone who does have that intent.”*

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<sup>1</sup> Ind. 15 of 2020, Unreported Judgment dated 15<sup>th</sup> September 2020

<sup>2</sup> [2009] CILR 118



- 1
- 2 16. In the case of *R v Zakir Rehman and Gary Wood*<sup>3</sup> the English Court of Appeal said
- 3 that in considering whether there are exceptional circumstances in a case such as this
- 4 one, a holistic approach is needed. There would be some cases where there is one single
- 5 striking feature relating to the offence or the offender and others in which there is no
- 6 single factor by itself but the combination of all circumstances may be of such
- 7 collective impact as to amount to exceptional circumstances.
- 8
- 9 17. Consideration has also been given to the relevant principles as set out by the English
- 10 Court of Appeal in the case of *R v Nancarrow*<sup>4</sup> as cited in the Judgment of the Court
- 11 in *R v Derby*.
- 12
- 13 18. In coming to a decision in the instant case, this Court has asked the relevant questions
- 14 as set out in the case of *R v Avis*<sup>5</sup>.
- 15
- 16 19. What sort of weapon is involved in this case? It is a genuine firearm that was loaded,
- 17 and as the Court in *R v Avis* noted, genuine firearms are more dangerous than imitation
- 18 firearms. Loaded firearms are more dangerous than unloaded firearms. Unloaded
- 19 firearms for which ammunition is available are more dangerous than firearms for which
- 20 no ammunition is available.
- 21
- 22 20. There is no evidence that any use was made of this firearm or with what intention if
- 23 any, the defendant possessed the firearm.
- 24
- 25 21. In relation to the fourth question, the defendant has no record of convictions for firearm
- 26 offences.
- 27

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<sup>3</sup> [2006]1 Cr. App. R. (S) 77

<sup>4</sup> [2019] EWCA Crim 470

<sup>5</sup> [1998] 1 Cr. App. R. 420



1 22. Is the fact of an abusive relationship and fear of a partner an exceptional circumstance?  
2 In this Court's view, regrettably it is not. The defendant could have made the choice  
3 to seek help to end the relationship.  
4

5 23. Is the fact that the defendant felt unable through fear to leave the relationship or to  
6 speak out because of her past history an exceptional feature? In this Court's view,  
7 regrettably it is not. The defendant is an adult and could have made the choice to seek  
8 help.  
9

10 24. In the case of **R v Nancarrow**, in respect of similar mandatory minimum provisions for  
11 firearm offences in the United Kingdom, the Court identified eight (8) principles from  
12 decided cases which apply: -  
13

14 "19. *The authorities in this court establish the following principles as to the application*  
15 *of section 51A (2):*

16  
17 (1) *The purpose of the mandatory minimum term is to act as a deterrent*  
18 *(R v Zakir Rehman and Wood) [2005] EWCA Crim 2056; [2006]*  
19 *1 Cr App R 77 at paragraph 12.*  
20

21 (2) *Circumstances are exceptional for the purposes of subsection (2) if to*  
22 *impose five years' imprisonment would amount to an arbitrary and*  
23 *disproportionate sentence (Rehman at paragraph 16).*  
24

25 (3) *It is important that the courts do not undermine the intention of Parliament*  
26 *by accepting too readily that the circumstances of a particular offence or*  
27 *offender are exceptional. In order to justify the disapplication of the five-*  
28 *year minimum, the circumstances of the case must be truly exceptional (R*  
29 *v Robert Dawson [2017] EWCA Crim 2244 at paragraphs 12 and 19).*  
30

31 (4) *It is necessary to look at all the circumstances of the case together, taking*  
32 *a holistic approach. It is not appropriate to look at each circumstance*  
33 *separately and conclude that, taken alone, it does not constitute an*  
34 *exceptional circumstance. There can be cases where no single factor by*  
35 *itself will amount to exceptional circumstances, but the collective impact*  
36 *of all the relevant circumstances makes the case exceptional (Rehman at*  
37 *paragraph 11).*  
38

39 (5) *The court should always have regard, amongst other things, to the four*  
40 *questions set out in R v Avis [1998] 2 Cr App R (S) 178, namely: (a) What*  
41 *sort of weapon was involved? (b) What use, if any, was made of it? (c)*



1 is satisfied that imposing the minimum term in this case would not result in such a  
2 sentence.

3  
4 29. The sentence therefore in respect of Count 1 is the minimum term of 10 years  
5 imprisonment.

6  
7 30. In respect of Count 2, the sentence is 12 months imprisonment, which is to be served  
8 concurrently.

9  
10 31. Time served on remand is to be deducted.

11  
12 32. The defendant was on a curfew for the period, 24<sup>th</sup> December 2021 to 2<sup>nd</sup> December  
13 2022. Time spent on curfew is credited to her of 171½ days. The time credited is 50%  
14 of the total number of curfew days.

15  
16 33. The firearm and ammunition are ordered forfeited to the Crown to be destroyed.

17

18 **Dated this the 29<sup>th</sup> day of June 2023**

19 

20 **The Hon. Justice Cheryll Richards KC**  
21 **Judge of the Grand Court**