





3. Following a trial before Justice Carter, the applicant was convicted of four counts, namely, robbery, count one; possession of a firearm with intent to commit an offence, count two; unlawful use of a firearm, count three; and possession of a prohibited weapon, namely, a canister of pepper spray, count four.
4. The facts giving rise to these convictions were as follows:
5. Shortly after 11:00 pm on 3<sup>rd</sup> March 2018, two men entered the Czech Inn Grill restaurant. Present were the owner, his wife, their nine-year-old son, and two members of staff. They were cleaning up the restaurant at the time. The two men were hooded, and their faces were covered. One of the men, described as the taller man, was armed with a handgun. The other, described as the shorter man, was armed with a canister of pepper spray. The taller man demanded to know where the takings were kept and fired a shot into the wall or the ceiling, no doubt to ensure compliance. The shorter man sprayed pepper spray into the owner's face. The robbers took the takings from the cash register, which contained some \$700. They then got into a stolen car and made off, with the shorter man driving and the taller man with the gun in the passenger seat.
6. The police were contacted, and two officers spotted the car in the area of Savannah. The car failed to stop when directed and a car chase ensued.
7. Eventually, on Victory Avenue in Prospect, the car stopped and the two robbers ran off on foot pursued by the police officers also on foot. One of the robbers fired a shot at the officers and one of the officers returned fire. Nevertheless, the two men escaped. A can of pepper spray was dropped at the scene and recovered by the police.
8. DNA profiles matching the applicant were found on the steering wheel of the stolen car and on the recovered can of pepper spray.
9. When arrested, the applicant denied being one of the robbers. The second man has never been caught.
10. The prosecution case at trial was that the applicant was the shorter man, in other words, the man with the pepper spray, not the man with the gun. The applicant denied any involvement and said



he had been elsewhere.

11. The judge found the applicant guilty of all counts on the basis that this was a joint enterprise and the two robbers were acting in concert. She was satisfied that the applicant was one of the robbers, largely on the basis that DNA matching his was found on the pepper spray can and on the steering wheel of the stolen car.
12. There is no appeal against conviction.
13. The sentences imposed by the judge were as follows:
  - 1) On count one, 10 years' imprisonment;
  - 2) on count two, 10 years' imprisonment;
  - 3) on count three, 4 years' imprisonment;
  - 4) and on count four, 3 years' imprisonment.
14. The sentences on counts one, two and four were concurrent, but the sentence of 4 years on count three was ordered to be consecutive; hence, the total sentence of 14 years' imprisonment referred to earlier.
15. As already stated, this application was brought some 16 months out of time. One might, therefore, have expected the skeleton argument of the applicant to explain the reasons for this lengthy delay and why leave to appeal should nevertheless be granted despite the delay. However, the issue of the application being out of time is not even mentioned in the applicant's skeleton argument, nor, for that matter, is it touched upon in the respondent's skeleton argument.
16. In oral submissions today, Mr Myers explained that the delay was caused by the applicant seeking a new attorney. Well, if that is the reason, it should have been explained in detail in the skeleton argument with explanations as to when and what attempts were made.
17. When deciding whether to extend time in which to seek leave to appeal, the court considers the length of the delay, any reasons given for that delay, and the merits of any potential appeal. This was a long delay and despite what Mr Myers has said this morning, no satisfactory explanation for the long delay has been given to us. So these two aspects certainly count against the application being granted, but we must, of course, look at the merits.



18. As to the merits, Mr Myers has not contended that the total sentence of 10 years' for counts one, two and four was manifestly excessive or wrong in principle and nor could he possibly do so. His sole argument before us is that the sentence of 4 years for count three should have been made concurrent rather than consecutive, thereby leading to a total sentence of 10 years rather than 14 years.
19. Now, count three relates to the firing of the gun at police officers in Victory Avenue as they gave chase to the two robbers after they had got out of the car. Mr Myers submits that the shooting at the police officers was all part and parcel of the robbery and arose out of the same overall set of facts. The sentence should, therefore, have been concurrent with the sentence imposed for the robbery.
20. We have to say that this submission is untenable. Police officers are entitled to the protection of the courts as they perform their lawful duties. It is well established that if an offender commits a further offence in the course of trying to escape arrest, the sentence for such offence should normally be consecutive to that imposed for the original offence. It is not part and parcel of the original offence. It is a separate offence committed for the separate purpose of trying to evade capture.
21. This particular attempt to evade arrest could hardly have been more serious. It involved shooting at the police officers, thereby putting their lives at risk. The idea that there should be no extra penalty for behaving in such a manner is astonishing. The applicant was fortunate not to have faced a more serious charge with a higher maximum sentence than the offence actually charged as count three.
22. In our judgment, the judge was absolutely correct to make the sentence on count three consecutive. Indeed, the applicant could not have complained if the overall sentence for all the offences had in fact been more than 14 years.
23. It is, of course, the case that on the prosecution case it was not the applicant himself who fired the gun at the police officers, but the judge found that this was a joint enterprise and the applicant is, therefore, to be sentenced on that basis.

24. In our judgment, any appeal against sentence would be doomed to failure. In the circumstances, we refuse to extend the time within which the applicant may apply for leave to appeal against the sentence.