

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

3
4 **INDICTMENT Nos: 7 & 32/2022**

5
6
7 **REX**

8
9 **v**

10
11 **KEVAN MAXHOWARD SMITH**

12
13 **SHARIS ALEXANDRA FORD**
14



15 **Appearances:**

Mrs. Nicole Petit for the Crown

16
17 **Mr. Jonathon Hughes of Samson Law for**
18 **the Defendant Kevan Smith**

19
20 **Mr. Crister Brady of Brady Attorneys for**
21 **the Defendant Sharis Ford**

22 **Before:**

Justice Frank Williams (Actg.)

23 **Heard:**

10th March 2023

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27 **HEADNOTE**

28 ***Criminal Law – Possession of an unlicensed firearm and ammunition –***
29 ***Sections 15 (1) and 15(5) of the Firearms Act – Exceptional circumstances***
30 ***argued - Sentences following jury trial.***
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33 **SENTENCE JUDGMENT**
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1 1. The defendants - Kevan Maxhoward Smith and Miss Sharis Alexandra Ford -
2 pleaded not guilty to the offences of possession of an unlicensed firearm, and,
3 possession of an unlicensed firearm (ammunition), contrary to s.15(1) and s.15(5) of
4 the *Firearms Act* (2008 Revision) and elected trial by jury. I presided over the trial,
5 which ran for five days – from Wednesday the 2nd November to Tuesday the 8th
6 November 2022. On the 8th November, the jury rendered guilty verdicts in relation
7 to both offences for both defendants. Therefore, the defendants now appear before
8 me for sentencing.

9
10 2. The conviction came about on the jurors' accepting that a Tanfoglio nine-millimeter
11 (9 mm) pistol was found in a compartment of a stove beneath the oven when the
12 police conducted a search of an apartment leased to the second defendant, Miss Ford.
13 On the evidence of the condominium manager, Miss Blanca Banks, the apartment
14 was occupied by both defendants - Miss Ford and Mr. Smith.

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16 3. A further part of the case against the defendants, accepted by the jury, was that
17 deoxyribonucleic acid (DNA) evidence belonging to both defendants was also found
18 on the firearm and ammunition.



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20 **SUBMISSIONS ON SENTENCING**

21 4. At the mention for sentencing (MFS) hearing, several submissions were made on
22 behalf of both defendants.

23
24 5. On behalf of the first defendant, Kevan Maxhoward Smith, it was submitted by
25 Counsel, Mr. Hughes, that the Court should regard the possession of the firearm on
26 the part of Mr. Smith as a kind of fleeting possession, as:

27
28



1 a. there is no real evidence as to how long the defendant would have had the firearm
2 and ammunition in his possession, and

3
4 b. the jury rejected, by returning a not-guilty verdict, the evidence in respect of the
5 other charge which the Crown had proffered against Mr. Smith (causing
6 harassment, distress and alarm pursuant to s.88B(1) of the *Penal Code* (2017
7 Revision)).

8
9 6. It is important to note that, pursuant to s.39(2)(b) of the *Firearms Act*, there is a
10 mandatory minimum sentence that the Court should apply where a conviction occurs
11 after a trial. The mandatory minimum for a conviction following a trial is ten (10)
12 years' imprisonment. Had it been the case that there were guilty pleas by both
13 defendants, the mandatory minimum sentence would have been seven (7) years'
14 imprisonment.

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16 7. In this case it is important to note what the relevant section of the *Act* states in
17 relation to the circumstances in which the court is permitted to go below the
18 mandatory minimum sentence. The relevant part of the section reads as follows:

19 *"Minimum sentences for certain offences*

- 20
21 39. (1) *This section applies where-*
22 (a) *an individual is convicted following a trial or a plea of*
23 *guilty, by a court of summary jurisdiction or the Grand*
24 *Court, of an offence under section 3(3), 15(5) or 18(6);*
25 (b) *the offence was committed on or after 15th November,*
26 *2005; and*
27 (c) *the offence is in respect of a machine gun, sub-machine*
28 *gun, rifle, shot gun, pistol, or any lethal barrellled*
29 *weapon from which any shot, bullet or other missile can*
30 *be discharged.*
31 (2) *Notwithstanding sections 6(2) and 8 of the Criminal Procedure*
32 *Code (2006 Revision), the court of summary jurisdiction or the*
33 *Grand Court before which the individual pleads guilty or is*
34 *convicted, shall-*

1 (a) in a case where the individual pleads guilty, impose a
2 sentence of imprisonment for a term of at least seven
3 years (with or without a fine); or

4 (b) in any other case, impose a sentence of imprisonment
5 for a term of at least ten years (with or without a fine),
6 unless the relevant court is of the opinion that there are
7 exceptional circumstances relating to the offence or to the
8 offender which justify its not doing so; and such exceptional
9 circumstances shall be stated by the relevant court. (Emphasis
10 added)

11 (3) ...”



14 **EXCEPTIONAL CIRCUMSTANCES EXAMINED**

15 8. Section 39(2) allows a Court to go below the statutory minimum in certain limited
16 circumstances. The main circumstance pursuant to which the court can impose a
17 sentence below the mandatory minimum is where there exists in any particular case
18 what the law refers to as “exceptional circumstances”.

19
20 9. The meaning of the phrase “exceptional circumstances” has been explored in a
21 number of cases and, among them is the case of *R v Kelly*¹. In that case, at para 11,
22 it was observed as follows:

23 *“We must construe 'exceptional' as an ordinary, familiar English*
24 *adjective, and not as a term of art. It describes a circumstance which is*
25 *such as to form an exception, which is out of the ordinary course, or*
26 *unusual, or special, or uncommon. To be exceptional a circumstance*
27 *need not be unique, or unprecedented, or very rare; but it cannot be one*
28 *that is regularly, or routinely, or normally encountered.”*

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31 10. In the Concise Oxford English Dictionary, the word “exceptional” is defined as:
32 “unusual; not typical”.

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¹ [2000] QB 198

1 11. Also referred to by both Crown and Defence Counsel before me is the case of **R v**
2 **Avis**², which discussed the considerations to be borne in mind when trying to decide
3 on what sentence is appropriate. The following is the dictum of Lord Bingham of
4 Cornhill:

5 *‘The appropriate level of sentence for a firearms offence, as for any*
6 *other offence, will depend on all the facts and circumstances relevant to*
7 *the offence and the offender, and it would be wrong for this court to seek*
8 *to prescribe unduly restrictive sentencing guidelines. It will, however,*
9 *usually be appropriate for the sentencing court to ask itself a series of*
10 *questions:*

- 11
- 12 (1) *What sort of weapon is involved? Genuine firearms are more*
13 *dangerous than imitation firearms. Loaded firearms are more*
14 *dangerous than unloaded firearms. Unloaded firearms for*
15 *which ammunition is available are more dangerous than*
16 *firearms for which no ammunition is available. Possession of a*
17 *firearm which has no lawful use (such as a sawn-off shotgun)*
18 *will be viewed even more seriously than possession of a firearm*
19 *which is capable of lawful use.*
- 20 (2) *What (if any) use has been made of the firearm? It is necessary*
21 *for the court, as with any other offence, to take account of all*
22 *circumstances surrounding any use made of the firearm: the*
23 *more prolonged and premeditated and violent the use, the more*
24 *serious the offence is likely to be.*
- 25 (3) *With what intention (if any) did the defendant possess or use the*
26 *firearm? Generally speaking, the most serious offences under*
27 *the Act are those which require proof of a specific criminal*
28 *intent (to endanger life, to cause fear of violence, to resist arrest,*
29 *to commit an indictable offence). The more serious the act*
30 *intended, the more serious the offence.*
- 31
- 32 (4) *What is the defendant's record? The seriousness of any firearm*
33 *offence is inevitably increased if the offender has an established*
34 *record of committing firearms offences or crimes of violence.”*
35
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37 12. In addition to this guidance on which Counsel for the Crown and Counsel for the
38 Defence agree, Counsel cited a number of cases. These will be considered briefly
39 further on in this judgment.

40
41 13. I note here that I have read the Social Inquiry Reports (SIRs) in relation to both
42 defendants.



² [1998] 1 Cr. App. R. 420

1 14. Against the background of all the foregoing, there is nothing that would make me
2 deviate from what the Crown has put forward in relation to the first defendant, Mr.
3 Smith, for the imposition of a sentence which ties in with the *Firearms Act* and the
4 usual sentences imposed.

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6 15. In relation to the defendant Mr. Smith, I have taken into account some of the positive
7 features of his SIR, such as, (a) the fact that he has, for some time, been, (up to the
8 time of trial), gainfully employed and, (b) the fact that he has no criminal convictions
9 that are relevant.

10
11 16. However, in terms of there being anything put before me that would qualify as
12 exceptional circumstances in relation to the first defendant, I find that there are no
13 exceptional circumstances in relation to the first defendant.

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15 17. I have looked at the cases cited and referred to by counsel Mr. Hughes, on the one
16 hand, and, on the other hand, I have also looked at those cited and referred to by Mrs.
17 Pettit in her written submissions. After examining these cases, I am of the view that
18 the circumstances of the case before me do not lead to a proper finding of exceptional
19 circumstances existing in the case of the first defendant, Mr. Smith.

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21 18. This is a summary of the cases cited by Mrs. Pettit:

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Case	Plea	Sentence
1. <i>R v Jordan Powell</i> – Ind #10/17	Guilty	Nine years
2. <i>R v Kylan Hunter</i> – Ind # 55/16	Guilty	Nine years
3. <i>R v Robert Terry</i> – Ind #46/11 & CICA 29/11	Guilty	12 years – reduced by CA to nine years
4. <i>R v Rohan Marshall</i> – Ind # 21/09	Guilty	Seven years
5. <i>R v Leon Hydes</i> – Ind # 28/08 & CICA 26/2008	Guilty	Eight years – affirmed by CA
6. <i>Richard Parsons v R</i> – SCA 17/11	Guilty	Nine years – reduced to seven years in CA
7. <i>R v Christopher Ebanks</i> – 14/11/2008	Not guilty	10 years – affirmed on appeal
8. <i>R v Seymour Ramsay</i> – Ind # 88/12	Guilty	Seven years
9. <i>R v John Smith</i> – Ind # 37/17	Guilty	Seven years

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19. In seeking to persuade the Court to treat the circumstances of possession in this case as exceptional and thus impose a sentence below the mandatory minimum stipulated for sentences after trial, Mr. Hughes made the following submission at paragraph [10] of his written submissions and cited two cases:

“[10] The Grand Court has found on numerous occasions that ‘fleeting possession’ is a category of exceptional circumstance capable of warranting a sentence below the statutory minimum. I (Footnote 1: See by way of example: R v Kayla Powery Hewitt (sentence of 18 months suspended for 2 years imposed by Quin J on Ind 61/17), and R v Sean Luke Dunbar (sentence of 18 months suspended for 2 years imposed by Wood J on Ind 59/15).”





- 1 20. On behalf of the second defendant, Ms. Ford, submissions from Counsel, Mr. Brady,
2 that exceptional circumstances exist are to be found in his written submissions and
3 seem to have at their centre the suggestion that the second defendant is, and has been,
4 in fear of the first defendant, Mr. Smith.
- 5
6 21. With the exception of *R v Christopher Ebanks*, the cases cited by Mrs. Pettit for the
7 Prosecution, show sentences of between seven and nine years imposed in
8 circumstances of guilty pleas, and not after a trial, as in the instant case.
- 9
10 22. Those cited by Mr. Hughes, although meant to show sentences in cases in which
11 exceptional circumstances were found, both deal with guilty pleas, as well. Those
12 cases also involved cooperation with the police.
- 13
14 23. On the information available to this court:
- 15 a. In the *Powery-Hewitt* case, Ms. Powery-Hewitt pleaded guilty and explained the
16 circumstances in which she came to be in possession of the firearm.
- 17
18 b. In the *Sean Luke Dunbar* case, Dunbar testified for the Crown against another
19 person with whom he was charged as to the circumstances in which he came to
20 be in possession of the firearm. He also cooperated with the police from the start,
21 when the firearm was discovered.
- 22
23
24 24. It is not difficult to see how, in these two cases, a finding of the existence of
25 exceptional circumstances might have been possible.
- 26
27 25. In the case before me, however, both defendants (and especially the first defendant,
28 Mr. Smith) are maintaining their innocence, as they did throughout their trial. With
29 regard to the first defendant, Mr. Smith, this is what is reported about his attitude
30 towards the offence at page 8 of the SIR:



1 “...Mr. Smith still maintains his innocence and urges that he does not
2 know anything about the firearm, the ammunition, or how it came to be
3 in the apartment.”

4
5 26. In putting this forward, Mr. Smith seems not to recall that, on the jury’s finding, it
6 was likely to be his and Ms. Ford’s DNA that were found on the firearm and
7 ammunition. In addition, there was other evidence the jury accepted in finding both
8 defendants guilty.

9
10 27. The second defendant, Ms. Ford, tries, in the information she gave for the SIR, to
11 get by this important consideration.

12
13 28. Miss Ford, (perhaps more so than the first defendant, Mr. Smith) has sought, after
14 her conviction, to put forward what might appear to be an attempt to persuade the
15 Court that exceptional circumstances exist in this case.

16
17 29. To further address Ms. Ford’s efforts to persuade the Court that exceptional
18 circumstances exist in her case, I note that it appears to me that Mrs. Pettit is correct
19 in her submission that, in the cases in which exceptional circumstances have been
20 found in this jurisdiction, the facts and circumstances which form the basis on which
21 a court concluded that exceptional circumstances existed, were presented during the
22 course of a trial (and not after a conviction at the time of sentencing, as the second
23 defendant, Ms. Ford, now seeks to do)

24
25 30. So, in relation to the second defendant Ms. Ford, we have one defence being put
26 forward during the trial and then, after conviction, an attempt to put another account
27 before the Court – all in an effort to create a basis on which the Court is being asked
28 to find that there are exceptional circumstances.



1 31. To explain this Court’s view of Ms. Ford’s attempts to put this other account before
2 this Court at this stage I note:

3
4 a. Based on the fact that Ms Ford is now saying that she had seen the firearm on a
5 prior occasion, it might have been better if she had attempted to enter a plea of
6 guilty in relation to the offences. Had Ms. Ford entered a guilty plea – throwing
7 herself at the mercy of the Court by explaining particular circumstances to which
8 she has only now referred after conviction in the social inquiry report – she may
9 have stood a better chance at persuading the court in her favour. I am not making
10 a definitive finding on this aspect of the matter, but certainly Ms. Ford would
11 have stood a better chance of persuading the court in these circumstances.
12 During trial, she put forward a defence denying all knowledge of the presence
13 of the firearm in her apartment and then, now, attempts to change her story when
14 the verdict came in.

15
16 32. It is therefore this Court’s view that, given her conviction, and the mandatory
17 minimum sentence she now faces, she has a strong motivation to now attempt to
18 explain matters that she first denied.

19
20 33. Additionally, at least some of the matters she now asserts, might be regarded as
21 prejudicial to Mr. Smith, are not evidence or part of an explanation coming after a
22 guilty plea and are therefore rejected by this Court. In fact, Mr. Hughes, on behalf of
23 Mr. Smith, objected to their use in the sentencing exercise.

24
25 34. In the court’s finding, there are no exceptional circumstances in relation to either
26 offender or the offences for which they have been convicted. In coming to this view
27 I have also given consideration to all the cases, including the other cases cited by

1 Mrs. Pettit, such as the case of *R v Zakir Rehman and Gary Dominic Wood*³, *Leon*
2 *Hydes v R*⁴ and *Chavarria-Atily v R*⁵.



3
4 **APPROACH TO SENTENCING**

5 35. In *R v James Henry Sergeant*⁶, Lawton LJ made the following observation on
6 approaching sentencing:

7 *“What ought the proper penalty to be? We have thought it necessary not only to*
8 *analyse the facts, but to apply to those facts the classical principles of*
9 *sentencing. Those classical principles are summed up in four words: retribution,*
10 *deterrence, prevention and rehabilitation. Any judge who comes to sentence*
11 *ought always to have those four classical principles in mind and to apply them*
12 *to the facts of the case to see which of them has the greatest importance in the*
13 *case with which he is dealing.”*

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16 36. A perusal of the first defendant’s criminal record as well as a review of his SIR both
17 indicate to me that there are no real or significant aggravating features in this case in
18 respect of the first defendant, Mr. Smith.

19
20 37. In considering what would be an appropriate sentence for the first defendant, Mr.
21 Smith, I bear in mind the classical principles of sentencing or objects of sentencing.

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23 38. I will refer as well to the *Cayman Islands Sentencing Guidelines* which provide
24 general guidance to a sentencing court. At page 8 of those *Guidelines*, the following
25 is stated:

26 *“1. Aims of Sentencing*

27
28 *In sentencing an offender, the Court has to balance a number of*
29 *competing interests and objectives, tailoring the punishment to the*
30 *individual circumstances of the offender whilst ensuring that the*
31 *punishment is commensurate with the seriousness of the offence. A*
32 *number of aims govern the sentencing process and it will be rare for*
33 *them all to be met; the task of the Court is to consider which of these*

³ [2005] EWCA Crim 2056

⁴ App no 26 of 2008

⁵ [2009] CILR 119

⁶ (1974) 60 Cr. App. R. 74

1 aims will be best served by the sentence to be passed on an individual
2 offender.

3 The following are the principal aims of sentencing:

4 (a) Incapacitation

5 (b) Deterrence

6 (c) Punishment

7 (d) Rehabilitation,

8 (e) Restitution”



9
10 39. Looking at the principal aims to be considered for deciding on a sentence that would
11 be met and right in a particular case, there is, for example, the object of deterrence:
12 I note that there are two aspects to deterrence: there is specific deterrence, which is
13 the aim of deterring the particular offender from reoffending, and there is also
14 general deterrence, which is to deter any possible like-minded person from
15 committing a similar offence.

16
17 40. There is also the object of rehabilitation: This objective aims to address allowing
18 the offender to find some way of becoming an upright member of society and to
19 rejoin society as an improved person when he or she completes his or her sentence.
20 Some emphasis is usually given to this area especially where the offender or
21 offenders are youthful, usually below the age of 23. I note that in this case, both of
22 them are, 28 years of age - Mr. Smith, having been born the 24th day of July 1994,
23 and Miss Ford, born on the 21st of September 1994.

24
25 41. There is also the aim of punishment/retribution: This is to address the objective of
26 paying back the offender for the wrong he has done to society.

27
28 42. In this case, as I indicated earlier, there are no real or significant aggravating or
29 mitigating factors which would serve to alter a starting point of 10 years.



1 43. Taking everything into account, (especially where no exceptional circumstances
2 exist to permit this court properly to depart from the mandatory minimum) the
3 sentence of the court is that the first defendant, Mr. Smith, will serve a sentence of
4 10 years’ imprisonment in respect of the firearm (Count 1) and one year’s
5 imprisonment in respect of the ammunition (Count 2). The sentences are to run
6 concurrently. He is to be credited for the time that he has spent in custody on pre-
7 sentence remand.

8

9 44. I now turn my considerations for sentence to the second defendant, Ms. Ford.

10

11 45. I have considered the submissions made by Counsel, Mr. Brady, on behalf of Miss
12 Ford. I have read the SIR as well as her criminal record search. For this offender, it
13 also does not appear that there are any convictions of any relevance to the offences
14 for which she is now before the Court, and which formed the basis of her conviction.

15

16 46. I have considered, in relation to Miss Ford, the cases cited by Mrs. Petit and the
17 submissions made by Mr. Brady – repeating the point I made above at paragraph 29.

18

19 47. In relation to Miss Ford as well there is nothing I have seen by way of mitigating
20 circumstances or by way of aggravating circumstances to move “the needle” in either
21 direction.

22

23 48. Therefore, in the result, it is the same sentence that the court will impose on Miss
24 Ford in relation to the offences, using a starting point of 10 years’ imprisonment.

24

25 49. Accordingly, in relation to the possession of an unlicensed firearm (Count 1) the
26 sentence for Ms. Ford is 10 years’ imprisonment. And in relation to the unlawful
27 possession of ammunition (Count 2) the sentence is a year’s imprisonment. The
28 sentences are to run concurrently.

1 50. Miss Ford as well, of course, is also to be credited with the time she has spent in
2 custody on pre-sentence remand.

3
4 51. I order that the firearm and ammunition are to be forfeited and destroyed.

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6 52. Those are the sentences of the court.

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9 **Dated this the 5th May 2023**

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11 **Justice Frank Williams (Actg.)**
12 **Acting Judge of the Grand Court**
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