



1 IN THE GRAND COURT OF THE CAYMAN ISLANDS
2 CRIMINAL SIDE

3 INDICTMENT NO: 17 of 2021

4
5 THE QUEEN

6
7 v.

8
9 DENCLE VIC BARNES

10
11 **Appearances:** Mr. Greg Walcolm, Senior Crown Counsel, for the Crown
12 Mr. Jonathan Hughes, Samson Law for the Defendant

13
14 **Before:** Mrs. Justice Marlene I. Carter (Actg.)

15
16 **Date of Hearing:** 26 May 2022

17
18
19 **Sentence Delivered:** 8 June 2022

20
21 HEADNOTE

22 *Criminal Law – Sentence – Illicit Trafficking – Possession of Unlicensed Firearm –*
23 *Totality – Concurrent Sentence*

24
25 SENTENCE JUDGMENT

- 26
27 1. The Defendant was convicted of the following offences on 18 of May 2022:
- 28 a. Illicit trafficking of 55.5 pounds of ganja contrary to Section 19(2)(ii)(b) of the Misuse
29 of Drugs Act, 2017 Revision
 - 30 b. Possession of an unlicensed Amadeo Rossi .357 Magnum revolver contrary to section
31 15 (5) of the Firearms Act (2008 Revision)
 - 32 c. Possession of an unlicensed Raven Arm .25 semi-automatic pistol contrary to section
33 15 (5) of the Firearms Act (2008 Revision)

1 d. Possession of 61 rounds of ammunition contrary to section 15 (5) of the Firearms Act
2 (2008 Revision).

3 2. The evidence presented by the prosecution and accepted by the jury was as follows:

4
5 i The Defendant approached Andrew Beckford in Whitehouse, Westmoreland
6 Jamaica on the 16 May 2020. Beckford was a fisherman and the Defendant
7 arranged with Beckford to assist in transporting drugs. On the 19 May 2020 the
8 Defendant returned to Whitehouse. He contacted Beckford and Beckford met him
9 on the beach at Whitehouse. The Defendant had packed a canoe with fuel, drugs,
10 food and drink and he and Beckford set out that evening from Whitehouse.

11
12 ii The Defendant and Beckford were at sea from 19 May into the early hours of the
13 21 May 2020 when they arrived in Cayman waters in the vicinity of Buena Vista,
14 at Spotts. The Defendant and Beckford began to take the drugs off the boat when
15 they were interrupted, and the Defendant ran off along the beach. Beckford also
16 left the scene at the beach.

17
18 iii On Thursday 21 May 2020 at around 5:15 am the police responded to a report and
19 went to the beach behind Buena Vista in the vicinity of No. 1280 Shamrock Road,
20 George Town Grand Cayman. Upon their arrival they observed a blue 28-foot
21 Jamaican style canoe with the words, "WH: DEANDRA ... W:H... RASTA" written
22 on its left side, and a number of large blue fuel bottles along the beach. The police
23 also observed total of 5 bags, some from within the boat and others were seen
24 floating in the surf on the beach near the boat.

25
26 iv The five bags were found to contain, in total, 55.5 pounds of ganja.

27
28 v Upon making further searches of the beach the police recovered a black handbag
29 from under coconut tree branches on the sand. This bag was later examined and
30 found to contain the following items:

- 31
32 • Two firearms, as defined by the Firearms Law (2008 Revision), wrapped
33 together in cellophane plastic wrap. One of the firearms was a chrome
34 colour Brazilian made, Amadeo Rossi's 357 magnum revolver with a
35 black rubber pistol grip and bearing serial number F423185. The other

1 firearm was a chrome colour USA made, model PM-25, Raven Arms .25
2 semiautomatic pistol, containing a magazine, bearing serial number
3 678198.

- 4 • A total of 61 rounds of ammunition, as defined by the Firearms Law (2008
5 Revision), wrapped together in cellophane plastic wrap, which included:
6 Ten .38 cartridges; One 357 magnum cartridge; and Fifty Remington UNC
7 9mm cartridges.

8
9 vi At approximately 8:05 am whilst the police were still at the scene a male member of the
10 public handed them a ziploc bag containing a CAT cellphone, a charging cable and lion
11 pride wrapping papers, stating that it was found that morning after he followed drag marks
12 seen on the sand thinking that the drag marks were made by a turtle.

13
14 vii At around 11:11 am on the 2 May 2020 the police were travelling in a marked police
15 vehicle heading in an easterly direction along Shamrock Road in the vicinity of Spotts
16 Dock when they were stopped by Andrew Beckford, who was standing on the left side of
17 the road. At the time when he stopped the police, he was wearing a short brown pants, a
18 long sleeve shirt with a hoodie, and no shoe. Andrew Beckford was then transported to the
19 Cayman Islands Detention Centre where he was arrested for offences relating to the
20 firearms, ammunition and ganja recovered on the beach behind Buena Vista.

21
22 viii Beckford identified the blue Jamaican style canoe which had been seized by the Police as
23 being that which he came in from Jamaica. He was interviewed and during the interview
24 he named the Defendant as being the person who had first contacted him in Whitehouse,
25 Jamaica about transporting the drugs by canoe.

26 ix During the course of the interviews Andrew Beckford identified Dencle Vic Barnes as the
27 other person who was with him on the boat after he was shown an identification
28 photospread with Mr. Barnes' photograph among photographs of 11 other men.

29 x The police obtained telephone records from the seized phones on the beach and from
30 Beckford with which they linked this Defendant as well as DNA evidence recovered from
31 a bottle found on the canoe which estimated that the it was 170 trillion times more than
32 likely that the Defendant was the source of the DNA recovered from the bottle than if it
33 were some other unknown person, unrelated to him.



1 **Statutory provisions and Case Law**

2 3. Section 19 of the *Misuse of Drugs Act* (2017 Revision) (“MDA”) states:

3 “19. (1) This section applies to-

- 4 (a) a Cayman ship;
5 (b) a ship registered in a state other than the Islands which is a party
6 to the Vienna Convention; and
7 (c) a ship that is not registered in any country or territory.

8
9 (2) A person on a ship to which this section applies, wherever it may be who-

- 10 (a) has a controlled drug in his possession; or
11 (b) is knowingly concerned in the carrying or concealing of a
12 controlled drug on the ship, knowing or having reasonable
13 grounds to suspect that the drug is intended to be imported or has
14 been exported contrary to section 3(1) or the law of any state other
15 than the Islands commits an offence and is liable-

16 (i) if the controlled drug is a hard drug -

17 (A) on summary conviction to a fine of twenty thousand
18 dollars and to imprisonment for five years; or

19 (B) on conviction on indictment to a fine and to
20 imprisonment for life; or

21 (ii) if the controlled drug is not a hard drug -

22 (A) on summary conviction to a fine of ten thousand dollars
23 and to imprisonment for two years; or

24 (B) on conviction on indictment to a fine and to
25 imprisonment for fourteen years.

26 (3) A certificate purporting to be issued by or on behalf of the government of a
27 state to the effect that the import or export of a controlled drug is prohibited
28 by the law of that state is evidence of the matter stated.”

29
30 4. The following Section of the MDA is also relevant in this case:

31 “Section 25

32 “(1) If any constable or customs officer has reasonable cause to suspect that any
33 vessel is being used or has been used for the commission of any offence
34 against this Law, he may, without a warrant, board and search such vessel
35 and, if such search reveals evidence that the vessel is being used for the
36 commission of any such offence, seize and detain such vessel.

37 (2) Where a person is convicted of an offence against this Law, and the court by
38 or before which he is convicted is satisfied that any vessel which was in his
39 possession or under his control at the time of his apprehension -



- 1 (a) *has been used in connection with or for the purpose of committing*
2 *or facilitating the commission of such offence; or*
- 3 (b) *was intended by him to be used for that purpose, the court shall*
4 *order the forfeiture to the Crown of such vessel.”*

5

6 5. In *Mitchell Comrie v The Queen*¹ the Learned Chief Justice referred to principles which should
7 guide a sentencing judge for offences relating to the importation of large quantities of drugs. These
8 are:

- 9 i. The quantity of ganja;
10 ii. The Defendant’s role; and
11 iii. Whether the Defendant has previous convictions.

12

13 6. In *Comrie*, the sentence after a guilty plea was three years’ imprisonment. The appellant in that
14 case had no previous convictions, the amount of ganja that could be attributed to him was 50lbs
15 and he was found to have had only a secondary role in the enterprise. In such circumstances the
16 court found that “*a starting point of 3 – 4 years’ imprisonment was appropriate.*”

17

18 7. I note the remarks of the Court of Appeal in the case of *R v Rován Johnson et al*², on the matter
19 of the suggested starting point in *Comrie*. The Cayman Islands Court of Appeal (CICA) noted:

20 “*We would add this. More than 8 years have passed since the judgment of the Chief*
21 *Justice in Comrie. He did not have the benefit of the sort of argument considered*
22 *by this court (albeit in the context of section 19). It may well be that were he now*
23 *considering the matter, he would have in mind a somewhat higher starting point*
24 *than he suggested then, even in the context of importation contrary to section*
25 *3(1).”*

26

27 8. In *R v Rován Johnson et al*³ the CICA addressed the applicability and use, in cases concerning
28 illicit trafficking, of the *UK Drugs Definitive Guidelines* as being matters to which a sentencing
29 Court may have regard:

30 “*In our judgment, there is good reason to follow the Definitive Guideline for the*
31 *reasons Justice Richards gave in Pillarchie. There is no Cayman guidance. The*
32 *maximum sentences for the offending are similar. The characteristics relating to*

¹ SCA 001/2011

² CICA 24/2019 & 25/2019 judgment delivered on the 26th of November 2020 by Goldring J., President, at paragraph 45

³ CICA 24/2019 & 25/2019 judgment delivered on the 26th of November 2020 by Goldring J., President. at paragraph 50



1 *culpability and harm, are equally apposite. As Justice Richards said, the starting*
2 *point for a Category 1 class B offence in respect of someone who undertakes a*
3 *significant role is 5 years 6 months (66 months) custody, with a range of 5-7*
4 *years.”*

5
6 9. In *R v Linton Pillarchie et al*⁴, a case of illicit trafficking, the CICA referred to its earlier ruling in
7 *Rovan Johnson* on this issue and reaffirmed that for offences of this nature the sentencing Court
8 can have regard to the *UK Drugs Definitive Guidelines*⁵. In this judgment, the CICA affirmed
9 sentences imposed by the Grand Court for several Defendants relating to 673 pounds of ganja and
10 indorsed the approach of Richards J. in the Grand Court as it previously had in *Rovan Johnson et*
11 *al.*

12
13 10. The approach of Richard J. in *Pillarchie*, was as follows:⁶

14 “23. *The Guidelines provide for the category of harm to be determined by the*
15 *quantity of the drug. The starting point for Category 1 is based on 200kg of*
16 *cannabis. In this case, given that the quantity of the drug is 673 pounds or*
17 *305 kilograms, this offence would fall into Category 1.*

18 24. *Culpability is demonstrated by an offender’s role in the enterprise. The roles*
19 *are identified by one or more of a number of characteristics. A leading role*
20 *would include:*

21 * *Directing or organizing, buying and selling on a commercial scale.*

22 * *Substantial links to, and influences on others in a chain.*

23 * *Close links to original source.*

24 * *Expectation of substantial financial gain.*

25 25. *A significant role would involve an operational or management function*
26 *within a chain, motivation by financial or other advantage, whether or not*
27 *operating alone, or some awareness and understanding of the scale of the*
28 *operation.*

29 26. *A lesser role includes factors such as, performing a limited function under*
30 *direction, being engaged by pressure, coercion or intimidation, involvement*
31 *through naivety, having no influence on those above in the chain and very*
32 *little awareness or understanding of the scale of the operation.”*

33

⁴ CICA 10/2020, 11/2020 & 12/2020 judgment delivered on the 23rd of April 2021 by Goldring J., President.

⁵ paragraph 19 of the said judgment)

⁶ Indictment: 24 of 2020, R v Pillarchie and Ors., pages 29-30

- 1 11. The UK Sentencing Guidelines may guide the Court as to the factors to be considered when
2 determining an appropriate sentence for a Defendant as in this case. The appropriate equivalent
3 guideline from the UK's Sentencing Council is entitled '*Fraudulent evasion of a prohibition by*
4 *bringing into or taking out of the UK a controlled drug.*' For Class B drugs such as ganja, the
5 maximum sentence is 14 years imprisonment, as in this jurisdiction.
- 6
- 7 12. In *Rovan Johnson and Campbell*, the CICA found that the appropriate sentence for illicit
8 trafficking of drugs involving 1063 pounds of ganja was 4 years imprisonment after guilty pleas.
9 In *Pillarchie* the sentence after guilty pleas for importation of 673 pounds of ganja ranged from 4
10 years and 3 months to 6 years and 1 month imprisonment. Counsel for the Defendant in the instant
11 case has also referred the court to the case of *R v Russell, Smith and Ors* in which the Defendants
12 were sentenced, after guilty pleas, to sentences ranging from 2 years to 2 years and 8 months
13 imprisonment for trafficking of 454.41 pounds of ganja.

14

15 **Illicit Trafficking – Count 1**

- 16 13. Regarding **Harm**: The category of harm depends on the quantity of drugs involved. In this case
17 that quantity is 55.5 pounds of ganja which converts to 25.2 kg. This quantity falls somewhere
18 between category 2 [40 kg ganja] and category 3 [6 kg ganja] harm, per the UK Guidelines. This
19 is accepted by the Crown and counsel for the Defendant.

- 20
- 21 14. Counsel for the Defendant submitted that as regards **Culpability**:

22 *“...this case best fits into the ‘significant role’ category as, based on the evidence*
23 *of Andrew Beckford, the Defendant involved others [Beckford] in the operation.*
24 *The evidence is insufficient to suggest that the Defendant played more than an*
25 *‘operational or management function within a chain’ such as would be required*
26 *to make a finding of a leading role.”*

- 27
- 28 15. Counsel argued that the much of what the Crown offered in support of its submission as to the
29 extent or level of the Defendant's involvement in the enterprise was based on mere inference, that
30 there was no evidence to establish the significant links required for a finding of a leading role, that
31 the recruitment of Beckford was not in and of itself sufficient; that the quantity of ganja involved
32 did not in and of itself lend to a finding of an expectation of substantial financial gain.

- 33
- 34 16. Counsel for the Defendant therefore submitted that an appropriate starting point for the offence of
35 illicit trafficking would be one of 3 years imprisonment.

1 17. Counsel for the Crown submits: *“As it relates to this Defendant’s role in the offence there is*
2 *evidence from which the Court can infer that the Defendant had substantial links to, and influence*
3 *on, others in the chain, a factor which is indicative of playing a leading role as it relates to*
4 *culpability under the guidelines.”*

5
6 18. Counsel for the Crown made the following submission on this aspect:

7 *“6. From the evidence accepted by the jury this Defendant:*

- 8 a. *Was Involved in communications with persons in Jamaica prior to the*
9 *14.05.2020 sending coordinates to one of those persons for a location*
10 *in Jamaica;*
11 b. *Travelled from Cayman to Jamaica via means other than the usual ports*
12 *of departure or entry between the 13.05.2020 and 14.05.2020;*
13 c. *Was in communication with other persons in Jamaica between*
14 *14.05.2020 and 19.05.2020 when he departed Jamaica to travel to*
15 *Cayman;*
16 d. *Hired Andrew Beckford, through a third party, to captain the boat that*
17 *was scheduled to leave Jamaica on 19.05.2020, undertaking to pay Mr.*
18 *Beckford for his work;*
19 e. *Was present at the dock where the boat departed Jamaica on 19.05.2020*
20 *with the vessel already loaded with the bags of ganja;*
21 f. *Provided GPS guidance as well as captained the vessel for parts of the*
22 *return journey from Jamaica and Cayman.*

23 7. *This evidence provides sufficient support for an inference that this Defendant*
24 *played a leading role.”*

25
26 19. Counsel invited the court to consider that the court could upon its the assessment of the factors in
27 this case find that the Defendant’s actions fall short of a ‘leading role’, but that it would be open
28 for the Court to conclude that his role was ‘more than a significant role’.

29
30 20. The suggested categorisations from the Crown, result in the following starting points and
31 sentencing ranges:

- 32 1. *“The suggested starting point for an offence involving a ‘leading role’ with respect*
33 *to culpability, with a balancing of the ‘category 2 & 3’ with respect to harm is 5*
34 *years custody with a sentencing range of 3 years 6 months – 6 years 6 months*
35 *custody.*
36
37 2. *The suggested starting point for an offence involving a ‘significant role’ with*
38 *respect to culpability, with a balancing of the ‘category 2 & 3’ with respect to*
39 *harm is 3 years custody with a sentencing range of 2 years – 4 years custody.*
40



1 3. *Should the Court find that the Defendant's played 'more than a significant role'*
2 *with respect to culpability, with a balancing of the 'category 2 & 3' with respect*
3 *to harm is 4 years custody with a sentencing range of 3 years 6 months – 5 years*
4 *6 months custody. The increase of 1 year 6 months in the starting point and*
5 *sentencing range would appropriately reflect a finding that the Defendant's role*
6 *was in fact greater than a 'significant role' in this offence."*
7

8 21. Counsel for the Crown submitted that there were aggravating features to be considered at sentence:

9 (i) The Defendant has a number of previous convictions for drug offences, among these are 8
10 previous convictions of similar offences [possession of drugs with intent to supply and
11 importation of drugs committed between 1995 - 2017].

12 (ii) This offence was committed whilst the Defendant was on conditional release/license from
13 prison for his last conviction for a similar offence, importation of ganja for which he was
14 sentenced on the 19 July 2018.

15 (iii) The Defendant's failure to respond to previous sentences.

16 (iv) The Offence is a prevalent offence.

17 (v) Planning of the offence.

18
19 22. While counsel for the Defendant accepted that there are no mitigating features for the court's
20 consideration he invited the court to be mindful as it considered the aggravating factors outlined
21 above, that not all of the Defendant's previous convictions were for drug importation/trafficking
22 offences, that the Defendant may be liable to serve the balance of the term of the offence for which
23 he was released on licence and that prevalence may already be accounted for in the sentence range
24 suggested by the Guidelines.

25 **Court's considerations on Count 1**

26 23. The quantity of drugs in this case is 55.5 pounds or 25.2 kg. There is no issue that this quantity
27 falls between category 2 and category 3 harm, per the relevant UK Guidelines to be considered for
28 the offence of illicit trafficking.

29
30 24. This court has previously observed that in many instances involving sentences for drug importation
31 or illicit trafficking, this court has determined sentence after pleas of guilty were entered and as a
32 result the court was then, in such instances, in possession of much more detailed evidence of a
33 Defendant's involvement in the enterprise, aided by information from the Defendant himself, in
34 assessing the role of the Defendant in the enterprise as per the Guidelines. This is not possible in
35 this case.



1 25. I find that the Defendant played a significant role in the enterprise. While there is an attraction to
2 the Crown's submission of a finding of a more than significant role, in the circumstances of this
3 case, given the court's ultimate disposition on sentence, I do not adopt that categorization. The
4 starting point is 3 years custody. The sentencing range is 2 years – 4 years custody.

5
6 26. The aggravating factors in this case warrant an increase to the starting point to take the sentence
7 beyond the suggested sentence range to properly reflect the full extent to which this court should
8 seek to deter this Defendant who has over many years continued to bring illegal drugs to these
9 islands flouting the law and the court's orders and efforts at rehabilitation. This offence was
10 committed while the Defendant was on license from serving a sentence for offences of importation
11 of ganja.

12
13 27. In these circumstances a sentence of 5 years imprisonment on count 1 of illicit trafficking is the
14 appropriate sentence.

15 **Unlawful possession of firearm (counts 2 & 3)**

16 28. There are factors to which the court may have regard, when sentencing in firearms matters. **R v**
17 **Avis**. 8 [1998] 1 Cr. App. R. 420, the court noted as follows:

18 *“The appropriate level of sentence for a firearms offence, as for any other offence, will*
19 *depend on all the facts and circumstances relevant to the offence and the offender,*
20 *and it would be wrong for this court to seek to prescribe unduly restrictive sentencing*
21 *guidelines. It will, however, usually be appropriate for the sentencing court to ask*
22 *itself a series of questions:*

23 (1) *What sort of weapon is involved? Genuine firearms are more*
24 *dangerous than imitation firearms. Loaded firearms are more*
25 *dangerous than unloaded firearms. Unloaded firearms for which*
26 *ammunition is available are more dangerous than firearms for which*
27 *no ammunition is available. Possession of a firearm which has no*
28 *lawful use (such as a sawn-off shotgun) will be viewed even more*
29 *seriously than possession of a firearm which is capable of lawful use.*

30 (2) *What (if any) use has been made of the firearm? It is necessary for the*
31 *court, as with any other offence, to take account of all circumstances*
32 *surrounding any use made of the firearm: the more prolonged and pre-*
33 *meditated and violent the use, the more serious the offence is likely to*
34 *be.*

35 (3) *With what intention (if any) did the Defendant possess or use the*
36 *firearm? Generally speaking, the most serious offences under the Act*
37 *are those which require proof of a specific criminal intent (to endanger*



1 *life, to cause fear of violence, to resist arrest, to commit an indictable*
2 *offence). The more serious the act intended, the more serious the*
3 *offence.*

4 (4) *What is the Defendant's record? The seriousness of any firearm offence*
5 *is inevitably increased if the offender has an established record of*
6 *committing firearms offences or crimes of violence.*

7 *Two further questions for the sentencing Court's consideration were added in the*
8 *authority of **R v. Sheen and Sheen** [2012] 2 Cr. App. R. (S.) 3:*

9 (5) *Where was the firearm (or were the firearms) discharged, and who and*
10 *how many were exposed to danger by its or their use?*

11 (6) *Was any injury or damage caused by the discharge of the firearm or*
12 *firearms, and if so how serious was it?"*

13
14 29. On these questions, it was submitted on the Defendant's behalf:

15 *"What sort of weapon was involved?"*

16 The weapons in this case were unloaded handguns, one of which did not have a
17 magazine. One 357 round was available for the magnum, whilst no ammunition was
18 available for the Raven semiautomatic pistol.⁹ They are firearms which are 'capable
19 of lawful use' as per Lord Bingham and are to be treated less seriously than firearms
20 which have no lawful use such as sawn-off shot guns, or more dangerous weapons like
21 machine guns.

22 *What use, if any, was made of the firearm?*

23 The firearms in this case were not put to any illegal use.

24 *With what intention, if any, did the Defendant possess the firearm?*

25 There is no information before the Court as to the intention of the Defendants. As per
26 the case of *Manahan*,¹⁰ the court should not speculate as to the possible use of the
27 firearm, or the reason for its possession by the Defendants.

28 *What is the Defendant's record?*

29 Although the Defendant has a criminal record, he does not have any firearms related
30 offending in his history."

31
32 30. As to the further questions raised in *Sheen*, on the facts of this case, the firearm was not discharged
33 and there was therefore no injury or damage caused by such discharge.

1 31. The Crown does not take issue with the factors that may be considered as regards sentencing for
2 the relevant offence as set out in *Avis*. However, the Crown takes a somewhat neutral position,
3 that being that the *Avis* considerations upon the facts of this case should not cause the Court to
4 increase the sentence above the mandatory minimum of ten years, nor are there any exceptional
5 circumstances warranting the imposition of a sentence less than the mandatory minimum of 10
6 years.

7
8 32. The Crown submits however that the Aggravating Features identified in relation to these offences
9 should result in an increase in the starting point, above the mandatory minimum.

- 10 (i) The Defendant of previous convictions, clearly showing a failure to respond to
11 previous sentences; and
12 (ii) This offence was committed whilst the Defendant was on conditional
13 release/license from prison for his last conviction for a similar offence in 2018;
14 (iii) The fact that the Defendant was found to be in possession of more than one
15 firearm

16
17 33. There are no mitigating factors for the court's consideration.

18
19 34. Counsel for the Defendant referred the court to the case of *R v Gerald Jaleel Bush & Rico Roy*
20 *Walton*⁷, and submitted that there were strong factual similarities with the present case. The
21 evidence in that case suggested the importation of two firearms and ammunition by boat from
22 Jamaica, however the indictment reflected 3 counts of possession of unlicensed firearms (as in this
23 case). Having been tracked at sea, the Defendants arrived on shore and were confronted by the
24 police and ran. Firearms were later found on the beach and the Defendants were arrested walking
25 on the road.

26
27 35. In *Bush and Walton*, each Defendant was sentenced of 10 years imprisonment for each firearm
28 and 5 years imprisonment for the ammunition. The sentences were imposed to run concurrently.
29 The defence submits that such a sentence was appropriate and that this court should adopt the same
30 approach of the sentencing Judge in that case.

31

⁷ Ind. 18/18



1 36. Counsel for the Defendant urged the Court to find that concurrent sentences are appropriate in this
2 case, and that the highest of these should be the already significant minimum sentence of 10 years
3 with respect to the firearms offences.

4
5 37. The Crown sought to distinguish *Bush and Walton* with regards to sentence. Counsel for the
6 Crown submitted that it was significant that each of the Defendants in that case were relatively
7 young men, neither of whom had previous convictions for firearms. Counsel submitted that these
8 factors were upmost in the mind of the court at the time of sentence. Counsel submits that the
9 Defendant has significant previous convictions for drug offences.

10
11 **Court's considerations - Counts 2 and 3**

12 38. The statutory minimum mandatory sentence of 10 years is the appropriate starting point in this case
13 for each of the offences of possession of unlicensed firearm. I do not find that the factors set out
14 in *R v Avis* should override the clear provisions of the statute.

15
16 39. The circumstances of the offenders in *R v Bush and Walton* are sufficiently different from the
17 Defendant in this case to make that case distinguishable in terms of sentence. In that case the court
18 declined to find that a sentence higher than the mandatory minimum of ten years should be imposed
19 largely based on the age of the Defendants at the time that the offence was committed and the
20 court's finding that even though by the time of sentence each had had previous convictions for drug
21 possession offences, that these did "*not point to individuals who are habitual criminals and in*
22 *particular, criminals*".

23
24 40. This cannot be said of this Defendant in this case whose conviction history with regards the
25 possession of drugs with intent to supply and/or importation stretches from 1995 to present.

26
27 41. It is a principle of sentencing that an offender should not benefit from a sentence for a guilty plea
28 where he is also being sentenced for other offences for which he has been convicted after trial. By
29 the same token where, as in this case, a statutory minimum sentence is being considered the court
30 must be scrupulous to ensure that the offender does not thereby benefit where to do so would result
31 in the sentence not being appropriate for the overall level of offending and the offender being
32 sentenced.

33
34 42. I find that a sentence in excess of the mandatory minimum on counts 2 and 3 is appropriate. The
35 sentence on count 2 is 14 years imprisonment. On Count 3, the sentence is 14 years imprisonment.



1 **Unlawful possession of a firearm (ammunition), Count 4**

2 43. The mandatory minimum sentence does not apply to this count. The maximum sentence is one of
3 20 years imprisonment.

4
5 44. The dicta in *Avis [1998] 2 Cr. App. R. (S.) 178* and *R v. Sheen and Sheen [2012] 2 Cr. App. R.*
6 *(S.) 3* are applicable to this Court.

7
8 45. The Defendant was found in possession of a considerable number, sixty-one rounds, of
9 ammunition. In the case of *Kemar Anthony Boothe v The Queen*⁸, a sentence of 1 year custody,
10 after a guilty plea, was imposed for the unlawful possession of 15 rounds of ammunition. This was
11 the sentence prior to a 50% reduction in sentence for the Defendant's assistance to the police in
12 that case. It follows that the court must have considered a sentence in the region of 1 year and 6
13 months custody as being appropriate for the unlawful possession of 15 rounds of ammunition.

14
15 46. In this case the amount of ammunition, 61 rounds of ammunition, warrants that a higher starting
16 point should be adopted. The court adopts a starting point of 3 years custody.

17
18 **Aggravating Features**

19 47. There are significant aggravating features in relation to this offence:

- 20 a. The Defendant's previous convictions, clearly showing a failure to respond to previous
21 sentence.
22 b. This offence was committed whilst the Defendant was on conditional release/license from
23 prison for his last conviction for a similar offence in 2018.

24
25 48. There are no mitigating features in relation to this offence.

26
27 49. Adopting a starting point of 3 years custody and taking into account the aggravating factors
28 outlined, the appropriate sentence on count 4 is 5 years custody.

29
30 **Totality**

31 50. I have considered the principle of totality in seeking to arrive at an appropriate overall sentence.
32 The relevant CI Sentencing Guidelines – October 2015 to be considered in this case:
33

⁸ *Criminal Appeals 003 of 2021 and 004 of 2021,*
220608 R v Barnes (Dencle Vic) - IND 17 of 2021 - Sentence Judgment

1 1. *“The Court, when sentencing for more than a single offence, should pass a total*
2 *sentence which reflects all the offending behaviour before it and at the same time,*
3 *is a sentence which is just and proportionate. This is so whether the sentences are*
4 *concurrent or consecutive (see 6 below).*

5
6 2. *Thus, concurrent sentences will ordinarily be longer than a single sentence for a*
7 *single offence.”*

8
9 *Paragraph 6*

10 3. *“It is wrong in principle to impose sentences to run consecutively where those*
11 *offences, though distinct in law, arose out of a single act so that the overall*
12 *criminality for the offender can be represented by concurrent sentences.*

13
14 51. I do not find that consecutive sentences are appropriate in this case.

15
16 52. Concurrent sentences will ordinarily be appropriate where:

17 (a) Offences arise out of a related incident or facts

18 (b) There is a series of offences of the same or similar kind especially when committed
19 against the same victim

20 53. *“Where concurrent sentences are passed, the sentence should reflect the overall criminality*
21 *involved. The sentence should be appropriately aggravated by the presence of the associated*
22 *offences and thus the court may increase sentence for the principal offence to reflect the gravity of*
23 *conduct.”*

24
25 54. The application of the totality principle justifies the imposition of an overall sentence, which is
26 greater than the sentence that would have been passed if this Defendant had only committed one
27 offence of possession of one unlicensed firearm in the specific aggravating circumstances present
28 in this case. It is with this in mind as well as the observations at paragraph 41 above that this court
29 has imposed a sentence of 14 years imprisonment in respect of each of counts 2 and 3.

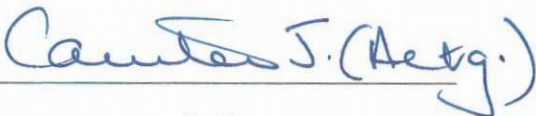
30
31 55. Given the Defendant’s conviction record, the other aggravating factors, and the principles outlined
32 above from the CI sentencing guidelines the sentence of this court is as follows: on Count 1 for
33 Illicit Trafficking 5 years imprisonment. On count 2 for possession of an unlicensed firearm 14
34 years imprisonment concurrent to count 1. On count 3 for possession of an unlicensed firearm 14



1 years imprisonment concurrent to Count 2. On Count 4 the sentence is 5 years imprisonment
2 concurrent to count 2. For the avoidance of doubt the length of the sentence to be served by the
3 defendant, the concurrent sentence having been applied is 14 years imprisonment. Any time that
4 the Defendant has spent in custody for this offence is to be deducted from this sentence.

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6 56. Pursuant to Section 25 of Misuse of Drugs Act, the vessel, the Jamaican canoe, is forfeited to the
7 Crown and the ganja is ordered destroyed.

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12 **Justice Marlene I. Carter**
13 **Judge of the Grand Court (Actg.)**
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