

9/2/10

CAYMAN ISLANDS
CRIMINAL FORM 18
RULE 50(1) & 51(1)

IN THE COURT OF APPEAL OF THE CAYMAN ISLANDS

**Criminal Appeal No. 32 of 2008
(Indictment No. 86/07)
C#9677/2007**

Between:

HER MAJESTY THE QUEEN

Respondent

and

CHRISTOPHER KELVIN EBANKS

Appellant

NOTIFICATION TO AUTHORITIES OF RESULT OF APPEAL

To: The Attorney General

This is to give you notice that CHRISTOPHER KELVIN EBANKS having sought leave to appeal against SENTENCE passed upon *him* by the Grand Court on the 14th day of November, 2008 as set out below:

Indictment # 86/07

Possession of a Firearm with Intent to Commit an Offence – Count 1
Robbery – Counts 2-4
Found Not Guilty on 14th November 2008
Defendant acquitted and Discharged

Possession of an Unlicensed Firearm – Count 5
10 years imprisonment.
Time served to be taken into account.
Gun forfeited and ordered destroyed.
Jewellery to be returned to complainants.

The Court of Appeal has finally determined the said appeals, and has this 25th day of November, 2009 given judgment therein to the effect following:

- 1. Application for leave to appeal refused.**
- 2. Appeal against sentence (Ct 5) dismissed. Sentence affirmed.**
- 3. Transcript of oral judgment to be released.**

Dated this 9th day of February, 2010


Registrar



IN THE COURT OF APPEAL OF THE CAYMAN ISLANDS

APPEAL NO. 32 OF 2008

IND. NO. 86 OF 2007

SCA C#9677/2007

BETWEEN:

CHRISTOPHER KELVIN EBANKS

Appellant

and

HER MAJESTY THE QUEEN

Respondent

BEFORE: THE RT. HON. SIR JOHN CHADWICK P.
THE HON. MR. JUSTICE FORTE J.A.
THE HON. MR. JUSTICE MOTTLEY J.A.



Reasons for Judgment delivered orally on 25 November 2009

JUDGMENT RELEASED JANUARY 2010

Reasons for Judgment (Chadwick P.)

1

2

JUDGMENT

3

4 CHADWICK P. (Orally):

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

In November 2008 the appellant, Christopher Kelvin Ebanks, was tried before Mr. Justice Campbell, sitting as a judge alone in the Grand Court, on an indictment which contained five counts. Those counts related to a robbery which had taken place on 6th October 2007.

The judge, for the reasons which he gave in a careful judgment, found the appellant not guilty in respect of the first four of those counts. The fifth count was a charge of possession of an unlicensed firearm contrary to s.15(1) of the Firearms Law (2006 Revision). That count related to an incident a few days after the 6th October 2007, when an air gun was found in the appellant's possession.

There was some debate at the trial as to whether the weapon found was in fact a firearm falling within the definition in s.2(1) of the Firearms Law (2006 Revision). For that purpose, a "firearm" means "artillery, machine

Reasons for Judgment (Chadwick P.)

1 gun, sub-machine gun, rifle, shot gun, pistol,
2 air gun, air pistol or any lethal barrelled
3 weapon from which any shot, bullet or other
4 missile can be discharged, except an air rifle,
5 air gun or air pistol of a type prescribed by
6 the Governor and of a calibre so prescribed."
7 For the purposes of the definition, a firearm
8 will not include an imitation firearm because
9 an imitation firearm will not be a weapon from
10 which any shot, bullet or other missile can be
11 discharged.

12 The judge was satisfied that the weapon in
13 this case was a lethal barrelled air gun which
14 fell within the definition of "firearm"; and,
15 importantly, within the provisions of
16 s.39(1)(c) of the Firearms Law (2008 Revision).
17 Accordingly, the judge found the accused guilty
18 as charged under count 5: that is, guilty of
19 possession of an unlicensed firearm contrary to
20 s.15(1) of the Firearms Law (2006 Revision).
21 Given that finding of guilt, the judge had no
22 alternative but to impose a sentence of
23 imprisonment for a term of at least ten years
24 -- this being a case in which the appellant had
25 not pleaded guilty to the offence charged --

Reasons for Judgment (Chadwick P.)

1 unless he were of opinion that there were
2 exceptional circumstances relating to the
3 offence or to the offender which justified him
4 not doing so. Had he found the existence of
5 exceptional circumstances, he would have been
6 required to state what those exceptional
7 circumstances were (see s.39(2) of the Firearms
8 Law).

9 The section applies where an individual is
10 convicted by a court of summary jurisdiction or
11 the Grand Court of an offence under, inter
12 alia, s.15(5). Section 15(5) is a section
13 which imposes an offence for contravention of,
14 inter alia, section 15(1).

15 The judge therefore addressed, correctly,
16 the question whether or not there were
17 exceptional circumstances in this case. He
18 said this:

19 "I have listened to your counsel
20 in respect of his plea in
21 mitigation. Having heard what
22 he said and listened to Crown
23 counsel, I am not satisfied that
24 there is any area for the
25 exercise of the Court's

Reasons for Judgment (Chadwick P.)

1 discretion here, any exceptional
2 circumstances arising. Having
3 said that, the sentence of the
4 Court is that you serve a period
5 of ten years' imprisonment."

6 It is from that sentence passed on the
7 14th November 2008 that the appellant seeks to
8 appeal to this Court. In his grounds of
9 appeal, filed on the 19th November 2008, he
10 said this:

11 "I am applying to the Court of
12 Appeal on the grounds that I was
13 given ten years for an imitation
14 firearm. It was not proven that
15 I used this to committ an
16 offense. I firmly believe that
17 this sentence is extremely harsh
18 and excessive. I willingly
19 turned over the said firearm to
20 the police as a sign of my
21 willingness to co-operate with
22 the police."

23 It is necessary to emphasise that those
24 grounds proceed on a misunderstanding of the
25 offence in relation to which the appellant was

Reasons for Judgment (Chadwick P.)

1 convicted. He was not convicted for possession
2 of an imitation firearm: he was convicted for
3 possession of a firearm within the definition
4 in s.2(1) of the Firearms Law. He was not
5 convicted of possession with intent to commit
6 an offence: indeed he was acquitted of that.
7 He was convicted simply of being in possession
8 of an unlicensed firearm.

9 In those circumstances, s.39(2) required
10 the judge to impose a sentence of ten years
11 following a not guilty plea after a trial,
12 unless the judge was satisfied that there were
13 exceptional circumstances. The only suggestion
14 in the grounds of appeal as to exceptional
15 circumstances was that, as the appellant says,
16 he turned over the firearm to the police as a
17 sign of his willingness to cooperate. The
18 judge was plainly entitled to take the view,
19 and indeed correctly took the view, that that
20 did not amount to an exceptional circumstance
21 in this case. For those reasons, this appeal
22 is bound to fail and it is dismissed.

23 Mr. Ebanks, you should stand up. For the
24 reasons that I have given, the appeal is
25 without prospect of success and it must be

Reasons for Judgment (Chadwick P.)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

dismissed, so the appeal is dismissed.

COURT REPORTER'S CERTIFICATE

Certified correct to the best of my skill and ability, dated
the 8th day of December 2009.

Kerri Francella

