

IN THE COURT OF APPEAL OF THE CAYMAN ISLANDS

Criminal Appeal No. 13 of 2009  
(Indictment No. 81/08)  
C#08082/2008

3/12/09

Between:

HER MAJESTY THE QUEEN

Respondent

- and -

ANDREW ANTHONY BAPTIST

Appellant

NOTIFICATION TO AUTHORITIES OF RESULT OF APPEAL

To: The Attorney General


This is to give you notice that ANDREW ANTHONY BAPTIST having sought leave to appeal against *his* SENTENCE passed upon *him* by the Grand Court on the 21<sup>st</sup> day of May, 2009 as set out below:

Ind. 13/09 ~~RAPE~~ FIREARM  
2 years and six months imprisonment

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

1. Legal aid granted to John Furniss.
2. Leave to appeal sentence granted.
3. Appeal allowed.
4. Sentence quashed and sentence substituted of 2 years six months imprisonment with time in custody to be taken into account.
5. Transcript of oral judgment to be released.

Dated this 3<sup>rd</sup> day of December, 2009.

  
Registrar



IN THE COURT OF APPEAL OF THE CAYMAN ISLANDS

APPEAL NO. 13 OF 2009  
IND. NO. 81 OF 2008  
C# 08082/2008

BETWEEN:

ANDREW ANTHONY BAPTIST

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.)

## JUDGMENT

1

2

3 CHADWICK P. (Orally):

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

On the 21st May 2009, the appellant, Andrew Anthony Baptist, pleaded guilty to a charge of possession of an unlicensed firearm contrary to s. 15(1) and 15(5) of the Firearms Law (2008 Revision). The particulars of the offence were that on the 29th September 2008, at Kings Road, West Bay, the accused had in his possession a firearm, a BB gun, Model SW40F, without having a current firearm's licence.

The evidence of the firearms expert, which was admitted without challenge and without the need to call the expert, was that the weapon did not possess a lethally rifled barrel. That was a crucial piece of evidence because it had the effect that this offence did not fall within s.39(1)(c) of the Firearms Law 2008; and so did not attract the statutory minimum sentence which, upon a plea of guilty, would have been seven years.

So the appropriate sentence was a matter for the judge, without any minimum imposed by s.39 of the Firearms Law. The judge, Mr.

## Reasons for Judgment (Chadwick P.)

1 Justice Pusey, appreciated that. He understood  
2 that the minimum statutory sentence would not  
3 apply. He reminded himself of the decision of  
4 this Court in Atily. He looked at all the  
5 circumstances. He took account of the fact  
6 that the offender was a young man; but a young  
7 man with a serious record. He thought that the  
8 appropriate sentence would have been three  
9 years.

10 In reaching that conclusion, he did not  
11 give any discount for the guilty plea. He did  
12 not decide that the plea should attract no  
13 discount because of the late stage at which it  
14 had come in. Had he addressed his mind to that  
15 question, he would have been right to take the  
16 view that a discount was warranted,  
17 notwithstanding the late stage at which the  
18 plea came in. The reason for that was that it  
19 was not until a late stage that the expert's  
20 report had become available; and so, not until  
21 a late stage that the defendant could know  
22 whether he was facing, potentially, a statutory  
23 minimum of seven to ten years, or a sentence in  
24 the discretion of the Court, which might be  
25 considerably less than that.

## Reasons for Judgment (Chadwick P.)

1           In those circumstances, it is, I think,  
2           accepted by the Crown that some discount for  
3           the guilty plea should have been allowed. In  
4           our view, an appropriate discount from a  
5           sentence of three years, in this case, would  
6           have been six months. I say that because this  
7           was a case in which the evidence was strong:  
8           the offender was found in the process of  
9           seeking to dispose of the weapon by throwing it  
10          under a car. A guilty verdict was very likely,  
11          and a guilty plea recognised that prospect.  
12          Still, some discount was appropriate, and a  
13          discount of six months off three years, in the  
14          circumstances, would have been about right.

15          The judge, having decided that a sentence  
16          of three years was appropriate, passed a  
17          sentence of two years and six months. In  
18          reaching that sentence he deducted six months  
19          from three years to recognise the fact that the  
20          appellant had been in custody for some four  
21          months. He took the view that some four months  
22          in custody was equivalent, approximately, to  
23          six months off a sentence. So, the judge  
24          sentenced this offender to two years and six  
25          months, but without further credit for time

Reasons for Judgment (Chadwick P.)

1 spent in custody since his arrest.

2 In our view, it is more sensible in this  
3 jurisdiction to observe the convention that an  
4 offender will normally get credit for time  
5 spent in custody. If that convention or  
6 practice is readily observed, then sentences  
7 are generally capable of being compared like  
8 with like, without the need on each occasion to  
9 ask whether the sentence started at the date it  
10 was pronounced or whether the sentence gave  
11 credit for time spent in custody.

12 So it seems to us the appropriate sentence  
13 in this case would have been two years, six  
14 months, with credit given for time spent in  
15 custody. We propose to quash the sentence and  
16 substitute a sentence of two years and six  
17 months, with credit for time spent in custody.

18 MR. FURNISS: Obligated, My Lord.

19 CHADWICK P.: The effect of giving credit  
20 for the time spent in custody is to recognise  
21 that there should have been some discount for  
22 the guilty plea.

23 MR. FURNISS: Thank you, sir.

24

25

COURT REPORTER'S CERTIFICATE

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

---

Kerri Francella

