



[2021] JMSC Crim 05

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE HIGH COURT DIVISION OF GUN COURT

HOLDEN IN KINGSTON

INFORMATION NO. 2020GC00038

BETWEEN

REGINA

CROWN

AND

DWAYNE TAYLOR

DEFENDANT

Mr. Atibo Dyer and Ms. Francis instructed by the Director of Public Prosecutions for the Crown

Mr. Christopher Hibbert for the Defendant

HEARD: February 19, 2021

Sentencing after trial- Section 20 1(b) of the Firearms Act- Illegal possession of firearm- Illegal possession of ammunition

STEPHANE JACKSON-HAISLEY, J

BACKGROUND

[1] The accused Dwayne Taylor was convicted before me on November 2, 2020 for the Offences of Illegal possession of firearm and Illegal possession of ammunition.

[2] The particulars of the offences are as follows:

“Count one: Duewain Carter and Dwayne Taylor on the 16th day of January in the parish of St. Catherine unlawfully had in their possession a firearm not under and in accordance with the terms and condition of a Firearms Users Licence.

Count two: Duewain Carter and Dwayne Taylor on the 16th day of January in the parish of St. Catherine unlawfully had in their possession ammunition not under and in accordance with the terms and condition of a Firearms Users Licence.”

[3] His convictions followed upon a trial which lasted from October 26, 2020 to November 2, 2020 in which he was tried along with a co-accused Duewain Carter who was acquitted. His sentencing was postponed to February 19, 2021 to facilitate the preparation of a social enquiry report and an antecedent report.

FACTS

[4] On the 16th day of January 2020 police officers were on patrol in the Linstead area of St. Catherine when they spotted a stationary motor vehicle with the engine still running. They approached whilst ordering the occupants to exit. The accused man exited the vehicle from the driver's seat whilst the other occupant entered from the passenger side. The police officers identified themselves to the accused and the passenger and requested a search of their person as well as the motor vehicle. A preliminary search unearthed nothing however due to a discrepancy with the licence plate the motor vehicle was seized and taken to the Linstead Police Station. Members of the Caribbean Search Centre were called in and they conducted a detailed search of the motor car. The search revealed a firearm embedded in the vehicle inside a centre compartment. The officers had to use a screw driver to remove the lid of the compartment in order to unearth this firearm. The firearm was a 9mm Beretta pistol which contained eighteen 9mm cartridges.

[5] Among the facts accepted by the Court was that the accused man being the driver of the motor car has custody and control over it and that it was he who had rented the motor car and that he retained custody and control over the vehicle from the time of its rental to the time the police found it under his control. The Court also found that during the time the accused man had the motor vehicle in his custody and control, the said Beretta pistol was in the possession of its rightful owner who was a licenced firearm holder and it was not until the 11th day of January 2020, that this licenced

firearm holder was robbed of his firearm and was shot and injured during said robbery. This said day the accused man's phone was detected in the vicinity where this robbery took place. It was therefore the finding of the Court that the accused man was privy to the placement of the firearm in the motor vehicle and therefore found him to have the requisite custody, control and knowledge with respect to said firearm.

SENTENCING

[6] Section 20 1(b) of the Firearms Act provides a penalty of up to life imprisonment for an individual convicted for the offences for which the accused is before me. Despite the maximum penalty of life imprisonment, when one examines the Sentencing Guidelines for Use by Judges of the Supreme Court of Jamaica and the Parish Courts of 2018 (the Guidelines), the penalty of life imprisonment seems to be reserved for the most egregious type of case and offender. The Guidelines provide a suggestion as to the normal range for offences of this nature taking into account mitigating and aggravating factors. The Court's ultimate decision will be guided by the contents of the reports presented as well as the plea in mitigation made by counsel on behalf of the accused.

THE SOCIAL ENQUIRY REPORT (SER) AND THE ANTECEDENT REPORT

[7] The antecedent report portrayed him as a thirty-eight-year-old man with a stable upbringing and having completed second level education. He was gainfully employed at the time of his arrest having worked at different places during his lifetime to include Ports Security for over two years. He was a member of the then Island Special Constabulary Force (ISCF) for four years. He was in a common law relationship and is the father of two children ages sixteen and thirteen who are dependent on him for support. He has three previous convictions for the offences of Illegal possession of firearm, Illegal possession of ammunition and Robbery with Aggravation. This occurred on October 12, 2007 in the Clarendon Circuit Court and he was sentenced to five, three and three years respectively.

[8] According to the SER he grew up in a stable family unit with parents who were involved in his upbringing and exposed him to societal values and norms. The accused was successful in two CSEC subjects, attended HEART and later earned himself a place in the ISCF. He was dismissed because of his conviction.

[9] He is described by his spouse as a good caring person who adequately provided for her. The community report reflected that he was often referred to as 'Ole Police' and that residents disclosed that they were shocked about his involvement in this matter as he is seen as a good man who motivates the youth within the community. Reportedly, he keeps to himself, appears to be hard working and drives a chartered taxi to support himself and his partner. Residents requested lenience on his behalf.

[10] With respect to whether the accused accepts responsibility for the offences, the probation officer noted that he insisted that he had no knowledge of the weapon or of it being hidden in the car. He however had to accept responsibility because he was driving the car when the illegal weapon was discovered. Mr. Taylor related that he is deeply saddened by the occurrences. He relayed his awareness of the disappointment expressed by the community as he was not viewed as a criminal or a person involved in illegal activities. He is now more aware of the negative impact the offences have on his family whom he believes are grossly disappointed.

[11] Despite this being his second offence of a similar nature the probation officer did not opine that an established pattern of offending had been created. The probation officer considered that there was no usage, aggression or intensity to suggest an escalation in the seriousness of offending behaviour. In concluding, the probation officer said that the subject does not appear to be a violent person. He has failed to accept responsibility and has demonstrated that he is yet to make any strides towards rehabilitation. This is unfortunate and cannot be viewed lightly. He is however still a fairly young man and thus has the possibility for change.

THE PLEA IN MITIGATION

[12] Counsel highlighted the positive attributes of the accused man which included the fact that he had a stable upbringing which contributed to him finding a place in the ISCF. With respect to the offence there is no use of aggression to suggest anything more aggravating than what is before the Court. The accused is seen as a mentor in his community. Although he admits to having previous convictions for an offence of a similar nature all offences occurred within the same incident and he has learnt a lesson from them. These offences took place approximately fourteen years ago.

[13] He urged the Court to consider the fact that the accused is a product of his association formed whilst in custody which followed him to the outside. He asked the Court to find that the accused is not beyond redemption but that he can still benefit from rehabilitation.

SENTENCING REMARKS

[14] The offence of illegal possession of firearm has as its normal range a sentence of between seven years and fifteen years with the usual starting point begin some ten years. In arriving at a suitable sentence I have considered the reports presented to the Court and all that has been said about the accused by way of counsel's plea in mitigation. This leaves me now to examine the aggravating factors and the mitigating factors.

[15] The prevalence of this type of offence in Jamaica as a whole and the impact it has on the society is an aggravating factor. The circumstances that led to the accused being found in possession of the firearm are also aggravating. The ownership of the firearm was traced to someone who was robbed of the firearm and within a short space of time afterwards the firearm was found in the possession of the accused. The manner in which the firearm was secreted in the car and the effort it took to unearth it is also an aggravating factor. The accused has previous convictions for matters of a similar nature. Prior to his first convictions he was a police officer, one who was sworn to uphold the law. His previous convictions were followed by a period of incarceration.

Within a few years after being released from prison he was arrested and charged for these offences for which he is now before me. This to my mind demonstrates a propensity towards this kind of offence. He is not a young person but rather could be considered middle aged. The SER is not a positive one. The accused demonstrates no remorse or repentance for having committed this offence. The fact that the matter went to trial is also a factor to be borne in mind.

[16] This brings me now to examine the mitigating factors. Although the SER contains negative portions, some portions of it paint the accused in a positive way. Community members expressed shock at his involvement in this offence and in fact viewed him as a mentor in the community and is someone who is helpful to youths in the community. In addition, he is a father and has young children dependent upon him. He seems to have been employed in either the car rental business or the taxi business and has been described by his spouse as a good, caring and hardworking person who adequately provided for her needs. Those are the mitigating factors that stand out.

[17] Utilizing the Guidelines, the usual starting point for an offence of this nature is ten years. The normal range is between seven to fifteen years as previously indicated. The aggravating factors outweigh the mitigating factors. In the light of the accused man's previous conviction for an offence of a similar nature and all the other aggravating factors, I am of the view that he should not find himself within the normal range. For offences of this nature he could be sentenced to up to life imprisonment. This is a matter involving conviction after trial. The maximum point in the normal range is that of fifteen years but in all the circumstances, even if I were to start at the usual starting point of ten years, I find myself leaning towards a sentence of seventeen years. However, in the light of the few mitigating factors and the fact that the accused has spent a little over a year in custody since his apprehension for this offence, I am of the view that a sentence of fifteen years' imprisonment is an appropriate one for the offence of illegal possession of firearm.

[18] With respect to the offence of Illegal possession of ammunition, the considerations are the same as for the illegal possession of firearm. However, in the

light of the fact that the ammunition was found inside the firearm in the circumstances outlined earlier, I find a sentence of five years' imprisonment at hard labour to be appropriate. The sentences are to run concurrently.