

BARBADOS

IN THE SUPREME COURT OF JUDICATURE

HIGH COURT

CRIMINAL DIVISION

Indictment No. 95/2015

BETWEEN:

THE QUEEN

Prosecution

v

TEVIN SKEETE

Accused

Before: The Honourable Carlisle Greaves, Judge of the High Court

Date of Hearing: 2020 June 19

Appearances:

Ms. Olivia Davis, Senior Crown Counsel for the Prosecution

Ms. Sadia Simpson and Mr. David Porter, Attorneys-at-Law for the Accused

DECISION

Use of a firearm section 3(1)(a) A and (9) Firearms Act, Cap. 179 - appropriate tariff 10-15 years - non recovery of firearm a substantial aggravating factor sentence 10 years imprisonment.

CARLISLE GREAVES J:

INTRODUCTION

[1] On 2nd June 2015 the defendant Tevin Skeete was charged on an indictment of two counts that he 1. On 14th January 2011, engaged in conduct endangering life by shooting at a police officer, contrary to **section 19** of *The*

Offences Against The Person Act, Cap. 141 and 2, he used a firearm on the same date without a valid licence to do so, contrary to **section 3(1)(a)(A)** and **(9)** of *The Firearms Act, Cap 179*.

- [2] He received a full trial and on the 28th January 2020, a jury by unanimous verdict found him not guilty of count 1 (endangering life) but guilty of count 2 (use of firearm). He was remanded in custody pending sentence and a presentencing report ordered.
- [3] The delay in sentencing has been contributed to, firstly, by the delay necessary in this jurisdiction for presentencing reports, which is said to average about eight weeks and then by the on-set of the Covid 19 which necessitated a national shutdown of the country since March 2020.

THE FACTS

- [4] On the night of 14th January, 2011, the accused was in the vicinity of the St Elmos Bar also known as Moontown at Halfmoon Fort, St Lucy.
- [5] A physical and shouting dispute arose between associates of his and others from the parish in what appeared to be a Crab Hill vs. Checker Hall mix up. The accused stood in the public roadway, drew a firearm, held it aloft and fired it into the air in the direction of the nearby fish market whilst disorderly carrying on in the roadway.

- [6] Several persons, said to be about 175 persons, were in the vicinity at the time as it appeared to be a crowded and celebratory night. Many fled upon hearing the firearm discharged.
- [7] At-least one person was said to have fallen as he/she fled. Several witnesses testified to witnessing the events and some recognized the defendant.
- [8] Apparently, at-least one off-duty police officer was in the vicinity at the time and upon the arrival of another officer, seized a firearm from him and pursued the accused and others discharging several shots in their direction. He alleged that in that flight he was shot at by the accused, the subject of count 1, for which the jury acquitted the accused.
- [9] The accused was therefore only convicted in respect of his discharge of a firearm whilst in the roadway adjacent to the St Elmos and it is for that that he now stands to be sentenced.

THE SUBMISSIONS

- [10] Crown Counsel submitted that a custodial sentence is merited in the instant case with a starting point of 12 years imprisonment based on the judgment of *The Queen v. Bovell BB 23/2020* which establishes for use of firearm cases, a starting point of 12 to 15 years is appropriate.
- [11] She pointed to aggravating factors, inclusive of the presence of approximately 175 persons in the vicinity at the time at public places who could have been

harmled directly or indirectly, that the discharge was done on a public highway, that there is some risk of reoffending, though moderate and since the offence the accused has accumulated 4 convictions for illicit drugs.

[12] She also identified the mitigating factors, including those mentioned in the presentencing report, inclusive of his moderate risk of reoffending and his attempts to better his life.

[13] Defence counsel submitted a starting point of 7 years imprisonment.

[14] She accepted those aggravating factors referred to by Crown Counsel except that the drug offences for which he was convicted were subsequent to the instant offence and are unrelated. In addition, she submitted that reference to the possible injury to members of the public is only speculative.

[15] She identified the mitigating factors to inter alia include a fairly favourable presentencing report, his desire to attain productive training and to commence his own business, his young age at the time, she estimated at 18 and which she submitted to be an important mitigating factor; that he did not point the firearm to or at any one but pointed it into the air instead. And that at the time he had no previous convictions.

THE LAW

[16] **Section 3(1) (a)** of *The Firearms Act, Cap. 179*, provides that no person shall use a firearm. **Section 3(2)** says **(1)** does not apply to anything done by a

person (a) under and in accordance with a licence or permit authorizing the doing of that thing and (9) says a person who contravenes (1) is guilty of an offence.

[17] So it is proved that the defendant used the firearm, had no licence nor permit to do so and thus committed the offence for which he was convicted.

[18] **Section 30**, provides, (1) a person who is guilty of an offence under **section 3(9)** ...shall on conviction on indictment (a) in the case of a first offence, ...be sentenced to imprisonment for not less than 7 years and not more than 15 years.

[19] The noted case of *R v Avis [1998] 2 Crim App R. 178*, per Lord Bingham, sets out the indicia to be considered in cases of the present sort. Those indicia were adopted in the local case, *The Queen v Bovell, BB CA 2000 No: 20* which require the court to consider, the type of weapon, the use, the intention and record of the perpetrator. That decision also established a range of between 8 and 10 years for the possession of a firearm and 12 and 15 years imprisonment for the use of a firearm.

[20] Despite the legislated mandatory minimum of 7 to 15 years provided for by **section 30** of *The Firearms Act*, the court is still required to be mindful of the principle of proportionality when imposing a sentence for this offence. That means the sentence must fit the crime and must therefore, having regard to the

circumstances, not be disproportionate. Alexander v. The Queen BB 2014 No: 15.CA.

THE SENTENCING

[21] I consider that in the present case the starting point should be 12 years. In arriving at that starting point, I have taken into account the weapon used which was a glock 9mm semi automatic pistol, a firearm often considered to be very efficient and dangerous, that it was used in a public place, namely a major public road, that it was used despite the presence of a large law abiding crowd, other than those involved in the melee and that the defendant has benefited from a full trial at which he was unanimously found guilty. I have also taken into account the high prevalence of these firearm offences in our society.

[22] Additionally, I now take into account that the firearm has not been recovered. As I have previously said in The Queen v Alleyne and Griffith, Ind No: 2016/168, the non-recovery of a firearm in these cases raises the spectre that it may be available for future use either by the defendant or other persons and should thus be treated as a substantial aggravating factor. In the instant case, in the interest of proportionality, I have restrained from increasing the tariff.

[23] In mitigation, I take into account, it was a single round discharged by the defendant, that he did not aim the firearm at any person, he discharged it into the air. I take into account that it could be argued that he appeared to have

done so to bring some order to the physical and boisterous melee between his associates and their opponents.

[24] I take into consideration his youthful age at the time although I recognize that it is the young men, many in his age group, not old men, who have been displaying the frequent gun violence in our community.

[25] I have taken into account those matters in mitigation referred to in the presentencing report, to factors to which he referred in his allocutus and those mitigating factors referred to by both prosecuting and defence counsel.

[26] I also consider the instant case not to be among the worst cases of this sort and I have disregarded his subsequent drug convictions and have treated him as a person of good character at the time of the offence.

[27] In the circumstances, I consider 10 years imprisonment to be the appropriate sentence in this case.

[28] From that shall be deducted the 1052 days spent in custody in respect of this matter up to July 12th 2020. Consequently, the defendant shall now be required to serve a further 7 years imprisonment effective from July 12th 2020.

Carlisle Greaves
Judge of the High Court