

BARBADOS

IN THE SUPREME COURT OF JUDICATURE

HIGH COURT

CRIMINAL DIVISION

Indictment No. 38/2020

BETWEEN:

THE QUEEN

Prosecution

v

AJANI EMMANUEL LASHLEY

Accused

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

Date of Hearing: 2020 September 14

Date of Judgment: 2020 November 27

Appearances:

Mr. Rudolph Burnett for the Prosecution

Mr. Andrew Pilgrim, Q.C., Attorney-at-Law for the Accused

DECISION

Firearms Act, Cap. 179. Sentence - possession of firearm and ammunition; fines for first offence; recovery of firearm and ammunition a mitigating factor.

CARLISLE GREAVES J:

INTRODUCTION

[1] On 14th July 2020 the accused was arraigned on an indictment dated 27th April 2020 for two counts of possession of a firearm and 8 rounds of ammunition

without a permit on 20th November 2014, contrary to the *Firearms Act, Cap. 179*.

- [2] He pleaded not guilty and trial date was warned for the 14th September 2020.
- [3] On 14th September 2020, the accused pleaded guilty to both counts and those pleas were accepted by the Crown.

THE FACTS

- [4] On Thursday 20th November 2014, the police executed a warrant at the accused's residence in Passage Gardens, Passage Road, St Michael. Upon entering his home, the police saw him lying on a bed in his bedroom with his hand under his pillow. Upon recognizing the police the accused pulled the gun from under the pillow and threw it through the window. The firearm was recovered by other police officers who were on the outside and saw it come through the window.
- [5] When informed of what they saw the accused responded, "officer I did not want you to hold me with no gun."
- [6] Later when shown the firearm he said, "officer I was trying to get rid of it." When it was examined in his presence and the 8 rounds were found in it, he said, "they came with the gun."

- [7] He was interviewed and in that interview he said he found the firearm and ammunition at Farley Hill in the bush a few months ago when he went to Bike Fest and put it in his pants.
- [8] The firearm was assessed by the police firearms expert who found it to be a 9mm 380 calibre semi automatic pistol and that the ammunition was live, both fitting the definition of a firearm and ammunition within the meaning of the Act.

THE SUBMISSIONS

- [9] I have been urged by both the prosecution and the defence not to impose a custodial sentence in this case.
- [10] The prosecution submits the aggravating factors include, the type of firearm it was, that he threw it away upon the approach of the officers and that his action constituted an obvious danger to the police.
- [11] He submits that the mitigating factors include his early guilty plea and saving of precious court time, his age at the time, his time spent in custody which is reported as 101 days, no previous convictions, his full cooperation with the police from the inception, his exceptional probation report and his assessment as a low risk of offending and the vintage of the case, some 6 years having passed since the commission of the offence.
- [12] He submits that a substantial fine should meet the justice in this case.

- [13] The defence submits that a fine of between \$10,000.00 and \$25,000.00 should be imposed, payable within one year or two years imprisonment.
- [14] They submit the mitigating factors include, his lack of criminal convictions before and since this offence and no pending criminal matters, that he spent 101 days on remand, his guilty plea which they submit is a strong mitigating factor meriting a discount per Persuad v R [2018] CCJ 10 (AJ).
- [15] In addition his counsel submits that of the four criteria set out in Bovell v R (BB 2002 CA 16) when considering the sentence to be imposed in firearm cases, three of them are favourable to the accused. In particular, no use was made of the firearm, it is not linked to the commission of any other criminal offences, no specific criminal intention is established for accused's possession of it and he has no known criminal record.
- [16] In addition he submits as mitigating, the accused's strong expression of remorse in his probation report (and allocutus) also evidenced by his early cooperation with the police and guilty plea.
- [17] I am urged to take into account his steady employment, his care of his one year old daughter whom he supports and according to his probation report daily delivers to and collects from the Nursery, his own tragic childhood when his mother was forced to let him live with his father and paternal grandparents for his betterment and the loss of his father at five years old through a tragic

death which has affected him up to the present. He also received favourable assessments from those who spoke for him and his record shows no history of behavioural issues during or after his school days.

[18] I am also urged to give consideration to his community service where he provides transport, yard work and tiling for his community and his maturity now at 26 years old since the offence was committed at his youthful 20 years.

[19] Counsel cited two cases in which fines were previously imposed for this type of firearm offence. *R v Roland Ifill 2017*, per **Cornelius J** \$7,500.00 and \$2,500.00 for possession of a firearm and 12 rounds of ammunition respectively. *R v Zico Maynard 2020* per **Birch J**, \$25,000.00 payable in 1 year or 7 years in prison and a CRD for 12 rounds of ammunition.

THE LAW

[20] The maximum penalty for these offences is 15 years imprisonment. *Bovell v R* makes it clear that the starting point for these offences is 8 to 10 years imprisonment and that these courts should only depart therefrom for very good reasons. Where the court considers a fine should be imposed it should be substantial to deter the defendant and others from the commission of these offences and to maintain the confidence of the community.

- [21] It is not often that a prosecution will fall below the threshold for a sentence for this type of offence nor is it often that a court will depart from a prosecution's request of this sort without very good reason.
- [22] The prosecutors are the guardians and representatives of the people's interest and their function though difficult cannot be said to be lightly carried out. I think therefore a court should pay due regard to their submissions.
- [23] This society is bended under the weight of those who choose to unlawfully arm themselves with firearms and ammunition and these courts are aware that they must duly do their part to rid this society of this scourge.
- [24] However in the instant case I will accept the submissions of both the prosecution and counsel. I will in addition treat the recovery of the firearm and ammunition as a strong mitigating factor just as I have in other cases treated the non-recovery as a strong aggravating factor.
- [25] I will say however that it does not go without notice that in many of these cases, the defence tend too often to be that the accused found the firearm. Yet they keep it, often for long periods of time as in this case and never report or surrender it. Frankly the frequency seem too striking to be acceptable.
- [26] I have considered **section 35** of the *Penal System Reform Act, Cap. 139* which requires that I consider alternative sentences to incarceration in the

appropriate circumstances and requires that a custodial sentence not be imposed unless it is the only appropriate sentence.

[27] In addition I note the difficulty a court faces when required to sentence individuals who have committed offences long ago and may have matured since then throughout the time the system has delayed their day in court, despite the legal requirement that a person charged should receive a fair hearing within a reasonable time before a competent and impartial tribunal.

[28] When there is such unreasonable delay, I think the court should provide some benefit to the one charged, whether it be in the form of a discounted sentence or otherwise.

DISPOSAL

[29] Having accepted the submissions, I sentence as follows:

[30] Count 1 possession of the firearm \$15,000.00 payable in six (6) months or 5 years imprisonment. Count 2, possession of the ammunition \$10,000.00 payable in three (3) months or five (5) years imprisonment.

Carlisle Greaves
Judge of the High Court