

BARBADOS

IN THE SUPREME COURT OF JUDICATURE

HIGH COURT

CRIMINAL DIVISION

Indictment No. 301/2019

BETWEEN:

THE QUEEN

Prosecution

v

ROMELL KEMAR FARLEY

Accused

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

Date of Hearing: 2020 September 15

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. Possession of firearm and ammunition; sentence for first conviction; fine; substantial mitigating factor, recovery of the firearm and ammunition.

CARLISLE GREAVES J:

INTRODUCTION

[1] On 14th July 2020 the accused was arraigned on an indictment dated April 14th 2020 that on 5th May 2017 he possessed a firearm, namely a semi automatic shotgun and 4 rounds of ammunition without a permit.

[2] He pleaded not guilty and was given a warned trial date for the 14th September 2020.

[3] On the 14th September 2020 he pleaded guilty to both counts and the prosecution accepted those pleas. Presentencing reports were ordered.

THE FACTS

[4] On 5th May 2017 the police executed a warrant at the residence of the accused at Seales Land, Government Hill St Michael.

[5] The accused let them into the house and upon their searching a man hole in the ceiling of the house they found a plastic bag containing a duffle bag which contained a shot gun and a sock which contained 4 rounds of ammunition.

[6] When asked to account for these items the accused said, "I gine be honest wid you one time. I is who bring dat gun and shots in hay". Later he added, "I only got that yesterday". When the police sought to interview him he gave the police no explanation about how he came to have the firearm and ammunition.

THE SUBMISSIONS

[7] The prosecution submits that the accused should receive a custodial sentence starting at 3 years and after taking into account the aggravating and mitigating factors he should receive a sentence of 1 year imprisonment.

- [8] The aggravating factors submitted by the prosecution, include, the type of weapon it was, that it was concealed in the manhole and that it posed a danger.
- [9] The mitigating factors are a guilty plea and a positive probation report in which he is described as a quiet and generally good person with a low risk of re-offending.
- [10] The prosecution submits that if there is proof of his medical condition that is a factor that maybe taken into account in respect of a reduction of his sentence.
- [11] Defence counsel submits that the accused should be fined in the range of \$10,000.00 to \$25,000.00 payable in a short period or imprisonment in default.
- [12] He submits that the mitigating factors outweigh the aggravating factors.
- [13] Those mitigating factors include his time on remand 28 days; that of the four factors required to be considered in firearm cases per *R v Bovell BB 2002 CA 16*, three favour the accused. Those are no use of the firearm nor link to any other crimes, no specific criminal intent established, no previous convictions or any convictions at all.
- [14] In addition there was early cooperation as he early admitted the possession, he showed remorse as expressed in his probation report. He is self employed and works in the community as a driver, landscaper and tiler, he has strong family support and resides with and contributes to their financial well being

and he financially supports his one year old daughter and is described by the mother as a good father.

[15] Counsel submitted the accused is still relatively young at age 32.

[16] In addition, the delay of 4 years should be considered in this case and it is a substantial mitigating factor that the firearm is recovered and unavailable for mischief in the community.

[17] Finally, he submits the defendant has a serious medical condition since an early age which required heart surgery and daily medication which he argues may be aggravated if imprisoned.

THE LAW

[18] The maximum penalty for firearm and ammunition offences of this type under the *Firearms Act, Cap. 179* is 15 years imprisonment.

[19] *R v Bovell* makes it clear that such accused persons should expect a custodial sentence in the range of 8 to 10 years and that a court should only depart from a custodial sentence in exceptional circumstances or for very substantial reasons.

[20] It also establishes that where in the circumstances a fine is considered appropriate to meet the justice of the case, that fine should be substantial and payable within a short time.

- [21] I have considered **section 35** of the *Penal System Reform Act, Cap. 139* which provides in effect that a custodial sentence should be a last resort if there are appropriate alternatives meeting the justice of the case.
- [22] I am hardly convinced that in the instant case a non-custodial sentence is appropriate. I am not persuaded that the accused has the personal means to pay a substantial fine if imposed.
- [23] His probation report establishes that he is not regularly or steadily gainfully employed.
- [24] In addition other than his guilty plea I cannot say on these facts that he offered any real assistance about the source of the firearm.
- [25] I am on the other hand concerned that the facts and mitigating and aggravating factors are not particularly dissimilar to those in *R v Ajani Lashley No 38 of 2020*, who received a substantial fine.
- [26] I consider his most forceful mitigating factors to be the recovery of the firearm for which I would allow a substantial discount, his guilty plea for which he would be allowed the usual 1/3rd discount, his low risk of re-offending and his medical condition.
- [27] In the circumstances unless I can be convinced he can pay the suggested fine in the suggested time, I cannot say that the prosecution's suggested one year imprisonment is unreasonable.

[28] In the circumstances I would have sentenced him to one year imprisonment from today.

[29] I am however now urged by his counsel that he has secured the means to pay with assistance from his relatives. In the circumstances, consistent with the principles enunciated in *R v Hasan Catlyn 39/2020* and *R v Ajani Lashley 38/2020*, I will sentence as follows:

DISPOSAL

[30] For the ammunition possession the fine is \$10,000.00 payable in 3 months or 3 years imprisonment. For the firearm possession, the fine is \$15,000.00 payable in 6 months or 3 years imprisonment.

Carlisle Greaves
Judge of the High Court