

**COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT**

CRIMINAL DIVISION

CRI/VBI/42/02/2023

THE DIRECTOR OF PUBLIC PROSECUTIONS

Prosecution

AND

OKINO LYNDERO WHYMS

Defendant

Before: The Honourable Madam Justice Jeanine Weech-Gomez
Appearances: Ms. Davina Pinder for the Director of Public Prosecutions
Mr. Jeffrey Farquharson for the Defendant
Hearing Date: 08 May 2024

Sentencing – Possession of a Fire Arm with Intent to Cause Harm – Aggravating Factors – Mitigating Factors - Proportionality

Introduction

1. Mr. Okino Whyms a.k.a. “Neno” (“**Convict**”) D.O.B. 07 March 2001 (presently 23 years old) was arrested and subsequently charged for allegedly shooting Moses Adderley on Wednesday 11 August 2021. Mr. Whymns was arraigned in the Supreme Court before Senior Justice Bernard Turner on 26 August 2022 on the Voluntary Bill of Indictment No. 42/02/2022.
2. The charges were: Attempted Murder (1 count) contrary to section 292 of the Penal Code; and Possession of a Firearm with Intent to Engage Life (1 count) contrary to section 33 of the Firearms Act Chapter 213.
3. It was alleged that on Wednesday 11 August 2021, sometime around 7:40pm, police responded to a call of a shooting which happened at #27 Pink Cassia Street, Garden Hills No. 2, New Providence, The Bahamas. The virtual complainant, Moses Adderley, (“VC”) sustained gunshot wounds to the chest and left arm. The male shooter was reportedly not a stranger to the VC. He knew him as “Neno” Neno was later confirmed to be the

Convict. Police photographed and processed the crime scene at the home on #27 Cassia Avenue No. 27 Garden Hills Estates No. 2, New Providence around 8:15pm on the day in question and recovered one (1) 9mm unfired bullet from the front of the residence.

4. On 21 August 2021, ten (10) days after the shooting outside the VC's home, at No. 27 Cassia Street Garden Hills No. 2, Corporal Dequent Higgs cautioned and arrested Mr. Whyms following a high speed chase throughout the streets of Eastern New Providence in the Bernrand Road area. An unlicensed firearm, a silver and black Taurus 9mm pistol, with erased s/n was discovered under the vehicle on the driver's sided. It was loaded with twelve (12) live rounds of 9mm ammunition, underneath the right driver's door of the vehicle driven by Mr. Wright.
5. The above evidence was led at trial before this Court on 12 June 2023. The convict was found guilty of Possession of a Firearm with Intent to Endanger Life in a verdict of eight (8) to one (1).
6. Submissions on sentencing were then heard by this Court.

Evidence

7. On 08 March 2024, Chief Probation Officer Deborah Duncombe provided a Probation Report in relation to the Convict. I will provide a summary of the report below.
8. The Convict is presently twenty-three (23) years of age and has a ten (10) month old child. At the time of the offence, he resided with both his mother and father in separate homes (his parents are not married to one another).
9. Ms. Opal Rolle forty-one (41) years old, is the mother of the Convict. She is a custodian by profession. She has one other child named Jonathan Rolle (9 years old). She describes the Convict as a nice boy who is mannerly, quiet and humble. She said that he does not talk back and stays to himself. She also recalled him working at an early age. She does not believe that the Convict committed the present offence and stated that she wanted the best defence for him. Thus, she sold her car to hire Mr. Jeffrey Farquharson to represent him.
10. Mr. Kino Whyms, forty-five (45) years old is the Convict's father and is a Greens Keeper. He has three other children aged eighteen (18) years old, fourteen (14) years old and five (5) months old respectively. He stated that the Convict mainly lived with his mother and with him (the father) a few times. He described the Convict as "almost a perfect son" and believes that his behavior changed when he turned nineteen (19) years old. Mr. Whyms said the Convict is still respectful and mannerly to him. He too does not believe the Convict committed this offence. Thus, he and Ms. Rolle were compelled to replace the public defender. Mr. Whyms stated that he wants the Convict home so that "he can better his life and take care of his child".
11. Mr. Gawain Bosfield, twenty-seven (27) years old, said that he and the Convict grew up as "cousins" and as such he has known him since they were toddlers. He described him as

cool and stated that he does not talk much. He believes that the charges against the Convict “does not add up”.

12. Ms. Shavez Neeley, twenty-four (24) years old, is the Convict’s girlfriend. They share a 10 month old child. She describes the Convict as “cool” and stated that he “doesn’t argue”. She also does not believe he committed the offence.
13. Ms. Dellerese Ellis, forty-eight (48) years old, is the Convict’s paternal aunt. She said that she “doesn’t know Okino to be this type of person”. She describes him as very quiet and stated that he does not talk much.
14. Ms. Betsy Butler, fifty-one (51) years old, is a secretary at Dozer Heavy Equipment Company where the Convict previously worked, described him as “alright”.
15. Mr. Marcian Saunders, thirty-one (31) years old, was the Convict’s former Supervisor at Albany. He describes the Convict as “one of the best employees he has ever had” as he was always punctual, dependable and reliable. He needed minimum supervision. In relation to the present offence, Mr. Saunders believes that the Convict could have gotten caught up with the “wrong crowd” which resulted in his present predicament.
16. The Convict has maintained his innocence to date, despite being found guilty. He reported that after leaving his ‘baby’s mother’s house” through Lumumba Lane, he was driving towards Kemp Road in a rented self-drive vehicle. He stated that when he turned through Kemp Road, he noticed the “blinking lights” of what he recognized to be a Police vehicle behind him. However, he claimed that he was afraid to stop because he remembered what happened to three (3) of his relatives, who were shot in April 2021, while driving on Jerome Avenue and Chesapeake Road. Consequently, a chase ensued and as he turned onto St. James Road, he crashed into a wall. He admitted that the Police Officers, who were pursuing him, called for an ambulance and he was taken to the Princess Margret Hospital (“**PMH**”). After his release from PMH, he was informed that the Police retrieved a firearm from the scene where the car crashed, after the car was removed by a wrecker. He was subsequently charged with Attempted Murder and Possession of a Firearm with Intent to Endanger Life.
17. Several attempts were made by the Probation Officer to contact the VC in this matter, without success.
18. The Convict grew up in an environment where he felt safe, as both of his parents extended family contributed to his growth and development. He obtained his formal education within the public school system, but only attended up to the eleventh (11th) grade, when he discontinued the same to secure employment.
19. The Convict describes himself as quiet, shy and hardworking. He is baffled at his present predicament and maintains his innocence.

Counsel's Submissions

Defence Counsel's Submissions

20. The Defendant's counsel submits that the Court ought to consider the case of **The Attorney General v Larry Raymond Jones et. al. SCCrApp. Nos. 12, 18 & 19 of 2007**. Though addressing sentencing guidelines specific to a manslaughter conviction, Counsel asserts that it is the 'locus classicus' for guidelines for sentencing. At paragraphs 8 and 9, the Court made the following pronouncements:

"General Principles of Sentencing:

8 It has always been a general rule in The Bahamas (except in cases of murder and treason as the law was then understood) that where Parliament has prescribed a punishment for a particular offence, the prescribed punishment has been accepted by the judges as the maximum sentence which may be imposed on conviction for that offence....And the maximum penalty is usually reserved for the 'worst' cases, so, for example, where the Penal Code prescribes a penalty of 14 years for housebreaking, a convicted person without any previous record for such an offence would not normally be sentenced to the maximum of 14 years.

*9 Since the decision of the Privy Council in *Bowe and Davis* cited above, a judge before whom a sane and sober person of full age and who is not eligible to be sentenced to death because of the decision of the Privy Council in *Trevor Pennerman Fisher v Regina* (No. 35 of 1998) and who cannot receive the benefit of any of the partial excuses set out in the Penal Code, has to exercise his or her judicial discretion as to the length of sentence to be imposed on a particular offender, bearing in mind all the circumstances of the case as well as the offender."*

21. He submits that the Court must take into consideration the circumstances of the offence and circumstances of the offender. Counsel also asserts that these are crucial considerations in the sentencing exercise.
22. Counsel further submits that the Convict's fingerprints were not found on the handgun in questions, as evidence by Officer Bell during his Examination in Chief at trial. He further submits that, through the Prosecution's own admission, it had to prove that there was a firearm in the Convict's possession and that that he had possession of this loaded pistol ready to use against another person in a manner which endanger the life of that person if occasion arose. Counsel asserts that there was no evidence, at the time of the car crash that the Convict was in possession of a firearm or in any way endangered anybody's life at all.
23. Counsel further asserts that the matters to which the Court would ordinarily put its mind to, when considering how severe a sentence to impose on a defendant, who is charged with possession who is convicted of a possession of a firearm with intent to endanger life, are the circumstances of the intent. He then said the Court must ask itself the following

questions: What proves the intent? Was he running through the street firing randomly at houses? Was he driving and shooting at the police in an attempt to escape? Was he involve in a house to house shoot out with somebody? Did he barricade himself in a vehicle or a house and was shooting it out with the police?

24. These, Counsel asserts, are the circumstances that the Court would ordinarily consider in attempting to determine how severe a sentence should be imposed for the offence as, but here, counsel further submits, is an offense of possession of firearms with intent to endanger life. He also asserts that the evidence which has been adduced before the Court - none of it concerns the offence which the Court can use to 'calibrate its sentence'.
25. Counsel further submits that there are no circumstances of the offense from which the Court can calibrate it's duty to sentence and, my lady, the circumstances of the offender has set out in the probation report is of a hard-working, life-long, a hard-working homebody. He also contends that nothing about what the social services officer, Ms. Duncombe, said suggested that the Convict was capable of committing this offense. Counsel submits further that Ms. Duncombe says in her report that nobody who knew the Convict believes that he did it. He asks the Court to take that into consideration when sentencing the Convict.
26. Counsel then submits that punishment is one of the legitimate purposes of sentencing, but one must be punished for something done. He asserts that the jury clearly did not believe that the Convict was involved in any shooting at the VC. They found him entirely innocent of the attempted murder charge. Counsel also submits that the jury did not believe that and there was nothing about the circumstances of the Convict's arrest and the finding of this firearm at a remote location from his vehicle that suggest that he's a menace of any sort whatsoever and that there is anything for which he ought to be punished.
27. Counsel further submits that deterrence is another factor that the Court must consider when sentencing a convicted person. He asserts that the Court is being asked to deter other young man, from being what the whole Bahamas is pleading that all young men should be, quiet, hard-working, loved and devoted to their family and their home. That's the only thing that's about the convicted man here on which the Court can rely to make the ruling, but my humble submission to you, my lady, is this is not the kind of behavior which the Court wants to deter, this is the kind of young man that the Court wants to encourage and wants to encourage other young men to be like.
28. He concludes by requesting the Court not go to sentencing, but instead exercises another option – though such other option was not expressly stated by Counsel.

Prosecution's Submissions

29. The Prosecution submits that the Convict was convicted pursuant to the offence of Possession of an Unlicensed Firearm with Intent to Endanger Life, contrary to **section 33 of the Firearms Act, Chapter 213** which states:

“33 If any person has in his possession any firearm or ammunition with intent by means thereof to endanger life or cause serious injury to property, or to enable any other person by means thereof to endanger life or cause serious injury to property, he shall, whether any injury to person or property has been caused or not, be guilty of an offence, and shall be liable —

(a) on conviction on information to a term of imprisonment in the range of ten years to fifteen years.”

30. Counsel then cites the case of **Patrick Knowles v R** - SCCrApp. No. 222 of 2016 where the convict was sentenced to eighteen (18) years imprisonment for armed robbery and twelve (12) years imprisonment for possession of an unlicensed firearm and possession of ammunition. Counsel then highlights the case of **Prince Hepburn v Regina** SCCr. App. No. 79 of 2013 (stated at paragraph 15 of the judgment). The paragraph states:

““In exercising his sentencing function judicially the sentencing judge must individualize the crime to the particular perpetrator and the particular victim so that he can, in accordance with his legal mandate, identify and take into consideration the aggravating as well as the mitigating factors applicable to the particular perpetrator in the particular case. This includes but is not limited to considering the nature of the crime and the manner and circumstances in which it was carried out, the age of the convict, whether or not he pleaded guilty at the first opportunity, whether he had past convictions of a similar nature, and his conduct before and after the crime was committed. He must ensure that having regard to the objects of sentencing: retribution, deterrence, prevention and rehabilitation that the tariff is reasonable and the sentence is fair and appropriate to the crime.”

31. Counsel also relies on the case of **The Commissioner of Police v Brian Botham** MCCrApp No. 134 of 2015. At paragraphs 31 and 32 of the case, the Court opined:

“In recent times this Court has consistently stressed deterrence as the main factor governing a sentencer’s consideration when sentencing an accused person found in possession of a firearm. Examples of this approach are Galen Forbes v The Commissioner of Police MCCrApp & CAIS No. 10 of 2013 and Kevin Cooper v The Commissioner of Police MCCrApp & CAIS No. 318 of 2013. Indeed, the Court in Galen Forbes has gone so far as to find that the mandatory minimum sentences introduced by the 2011 amendment to the Firearms Act were not unconstitutional thereby affirming the decision of Turner, J in the court below.

In Galen Forbes (supra) the Court considered the case of an appellant who had been found with a loaded gun in a vehicle. In an oral judgment delivered by Allen, P., the Court took into account the prevalence of firearm offences in The Bahamas today and concluded the objective of deterrence trumped the favorable mitigating circumstances of the appellant. Madam President Allen stated:

“Counsel for the Appellant submits that when considering the mitigating circumstances of the offender in this case, namely his youth, his previous good character and the fact that he was gainfully employed just prior to the offence that this court ought to reduce the sentence of four years to time served, which is four months.

It ought to be emphasized that a convicted offender is not entitled as of right to reduction in his sentence for such mitigating factors. Reduction on the basis of mitigation is seen as a matter in the discretion of the court which the court may withhold if it sees fit in order to emphasize some other penal object, such as deterrence.

Notwithstanding that youth and previous good character may have in previous cases resulted in a reduction, nevertheless, having regard to the prevalence of guns, the increasing and alarming incidences of murder, manslaughter and assault with such weapons in the Bahamas today, we think deterrence should be the objective of this court in this case.

We feel it is essential that we send a strong message to the appellant and to others who would offend that possession of firearms is a serious offence and will not be tolerated.””

32. Counsel then submits that the following are the aggravating and mitigating factors applicable to the Convict:

Aggravating Factors

- a) *The use of a firearm.*
- b) *The seriousness of the offence.*
- c) *The prevalence of firearms and firearm related offences.*
- d) *The Convict attempted to evade police when he led them on a high speed chase*
- e) *The convict has charges of a similar nature.*

Mitigating Factors

- a) *The Convict is a young man.*

33. Counsel asserts that the aggravating factors outweigh the mitigating factors. She further submits that the predominant object that ought to be applied is deterrence of the Convict and potential offenders. The offence, she submits, is very serious and is too prevalent in Bahamian society.
34. Counsel concludes that, based on the foregoing, the Convict ought to be given a custodial sentence of fourteen (14) years, less the time spent on remand.

DISCUSSION AND ANALYSIS

Sentencing (General)

35. With respect to the Court’s criminal jurisdiction on sentencing, **section 6 of the Criminal Procedure Code, Chapter 91** provides:

“6. The Supreme Court may pass any sentence authorised by law to be inflicted in respect of the offence for which it is imposed.”

36. In relation to evidence which the Court may consider, **section 185 of the Criminal Procedure Code, Chapter 91** provides:

“185.(1)The court may, before handing down a sentence, receive such evidence as it thinks fit in order to inform itself as to the proper sentence to be handed down and may receive any relevant representation from the victim or otherwise hear counsel for the defence and the prosecution on any mitigating or aggravating circumstances that may be relevant.

(2) For the purposes of this section, victim in relation to an offence means —

(a) the person to whom harm is done or who suffers physical or emotional loss as a result of the commission of the offence;

(b) the spouse or any relative of that person in paragraph (a) or the guardian of that person where, as the case may be, he is dead or otherwise incapable of making a statement referred to in subsection (1).”

37. Typically, forms of evidence which the Court is permitted to consider are: (i) the Probation Report of the Convict; (ii) Statement by the Victim (or family/guardian of the Victim); (iii) the Convict’s antecedents (if any); and/or (iv) Psychiatric Reports (if any) (**Williams v Attorney General** - BS 2015 SC 107).

38. It is important to note that the above are merely examples of what evidence the Court may consider. It is not an exhaustive list. It is incumbent on defence counsel to inform the Court which evidence the convict wishes to be adduced and considered prior to sentencing. This was expressly stated in the case of Bahamian Court of Appeal decision of **Gary Thurston v R** - SCCrApp. No. 11 of 2020. There, at paragraph 31, the Court opined:

*“31. While section 185 of the Criminal Procedure Code Act, Ch. 91 gives a sentencing court a discretion, before handing down a sentence, to determine what evidence should be received in order to inform itself as to the proper sentence to be handed down, **it is undoubtedly for counsel for the defence to indicate to the judge what that evidence should be.***

[Emphasis added]”

39. Furthermore, the Court of Appeal decision of **Attorney General v Quincy Todd** SCCrApp. No. 56 of 2010 provided the following guidance in relation to sentencing:

“44. Sentencing is a judicial function and by far the most important function a trial judge has to perform. In the absence of statutory limitations, the judge has a wide discretion. That discretion must, however, always be exercised in a judicious manner, that is to say, the judge is duty bound to take several matters into consideration. It has been said that he must take into consideration the aggravating as well as the mitigating factors. Consideration must be given to the nature of the crime and the manner in which it was perpetrated. At the end of the day the judge using his judicial experience, taking into consideration the relevant case law and guidance given in earlier cases is left to determine what is fair and reasonable bearing in mind that no two cases are alike. It is a delicate balancing act.”

Law on Sentencing (in relation to minimum sentences and the Court’s power to impose a lesser sentence than the minimum statutory sentence)

40. According to the **Abolition of Mandatory Minimum Sentences Act, Chapter 94A (“AMMS”) section 2:**

“2. Where a provision in any law has the effect of requiring a court to impose a minimum term of imprisonment that provision, to the extent of that requirement, shall be of no effect.”

41. The extent and efficacy of the AMMS Act was expounded upon by Barnett P in the Bahamian Court of Appeal decision of **The Director of Public Prosecutions v Pericles A. Maillis** - BS 2021 CA 64 (*“Pericles Maillis”*). There, the learned President opined:

“13 It is to be noted that for the offences under the Firearms Act, the option of a fine instead of imprisonment was not an option available to the Magistrate. Reference was made to section 2 of the Abolition of Mandatory Minimum Sentences Act, 2014 as being the authority for the imposition of a fine. That section provides:

“Where a provision in any law has the effect of requiring a Court to impose a minimum term of imprisonment that provision, to the extent of that requirement, shall be of no effect.”

14 The Abolition of Mandatory Minimum Sentences Act 2014 enabled a sentencer to impose a sentence of imprisonment of whatever length, however short. It did not provide for the sentencer to impose a fine instead of imprisonment where a fine was not provided for in the relevant legislation.

[Emphasis added]”

42. Accordingly, the AMMS empowers the Court to impose sentences which are lesser than the minimum statutory imprisonment sentence. Such power is also contingent on the

circumstances of the case, along with a consideration of the applicable aggravating and mitigating factors. This will be discussed further below.

43. **Section 116(3) of the Penal Code, Chapter 84** provides:

“116. (3) Subject to the provisions of this Code or of any other statute relating to the offence, the court before which any person is convicted of an offence punishable by imprisonment may, in its discretion, sentence him to any less term of imprisonment than the term prescribed by this Code, or such other statute for the offence.”

44. Thus, the Court may also impose a lesser sentence so long as there is no restraint on such discretion. According to the legislative framework, the Court may impose a lesser sentence, so long as it is within the ambit of the aforementioned legislation.

Factors which the Court must consider with respect to Sentencing and the Proportionality Principle (specific to Fire Arm Offences)

45. With respect to factors which may be considered when a Court is tasked with sentencing relating to Fire Arm Offences, case law addresses the issue succinctly.

46. The case of **Prince Hepburn v Regina** SCCrApp. No. 79 of 2013 (“**Prince Hepburn**”) is instructive. At paragraph 36 the Court opined that:

“In exercising his sentencing function judicially the sentencing judge must individualize the crime to the particular perpetrator and the particular victim so that he can, in accordance with his legal mandate, identify and take into consideration the aggravating as well as the mitigating factors applicable to the particular perpetrator in the particular case. This includes but is not limited to considering the nature of the crime and the manner and circumstances in which it was carried out, the age of the convict, whether or not he pleaded guilty at the first opportunity, whether he had past convictions of a similar nature, and his conduct before and after the crime was committed. He must ensure that having regard to the objects of sentencing: retribution, deterrence, prevention and rehabilitation that the tariff is reasonable and the sentence is fair and appropriate to the crime.

[Emphasis Added]”

47. In the case of **Teniro Minns v The Commissioner of Police** - BS 2020 CA 155 (“**Teniro Minnis**”), the Court of Appeal made the following pronouncements:

“23. It is to be noted that Applicant was charged with possession of a firearm simpliciter and thus it was improper for the magistrate to take the position that he was punishing the Applicant for using the gun. I am aware that if there was cogent evidence as to the use of the gun this could be an aggravating factor relative to the possession thereof. See the case of Taylor v The Commissioner of Police [2015] 2 BHS J. No. 52 where Crane-Scott, JA in delivering the judgment of the court made these helpful comments:

“26. It is evident from a reading of the Firearms Act (as amended over the years) that as a general rule, Parliament intends firearms offences to carry custodial sentences thereby reflecting the abhorrence with which Bahamian's, through their Parliament, view the illicit use and abuse of firearms.

27. In our view the time has come for the country's courts to reflect, through their sentences, the following sentiments expressed by Lord Judge CJ in the English Court of Appeal case of R v Wilkinson [2010] 1 Cr App R (s) 100:

‘2. The gravity of gun crime cannot be exaggerated. Guns kill and maim, terrorize and intimidate. That is why criminals use them. Sentencing Courts must address the fact that too many lethal weapons are too readily available: too many are carried: too many are used always with devastating effect on individual victims and with the insidious corrosive impact on the well-being of the local community.’

28. The unlawful possession and use of firearms and ammunition is a grave concern to this society. They are used to kill and injure and to further the commission of other violent crimes. Illegal guns and ammunition are integral to the illicit drug trade and are used the world over by rival gangs bent on protecting turf, exacting gang discipline and imposing street justice...

30. In balancing the relevant factors with a view to the proper exercise of the sentencing discretion, we expect that sentences will pay due regard to such aggravating and mitigating factors of the offence as well as those of the offender as may be available.

31. When determining the seriousness of a particular offence under the Firearms Act, sentencers should have regard to factors which may include, but which are not necessarily limited to the following considerations, initially suggested by Lord Bingham CJ in the case of Tony Avis and others (1998) 2 Cr App R (S) 178:

(i) What sort of weapon or ammunition is involved? Or we may add, what quantities are involved?

(ii) What use (if any) has been made of the firearm or ammunition?

(iii) With what intention (if known) did the defendant possess or use the firearm or ammunition as the case may be?

(iv) What was the defendant's record (if any in) relation to such offences?

32. *When considering the particular circumstances of the offender, sentencers may have regard to such of the following as may be relevant in the particular case:*

(1) An early plea of guilty will always be a strong mitigating factor in favour of the offender and should always be taken into account by way of a discount on sentence;

(2) Expressions of remorse (if any) (bearing in mind that the absence of remorse should not be held against the offender and cannot be regarded as having aggravated the seriousness of the offence);

(3) Clean criminal record and good character (if any);

(4) Young age (if applicable);

(5) Employment status (if known);

(6) Possibility of rehabilitation (if known);

(7) Cooperation with the police investigations;” [Emphasis Mine]

48. It is also important to note what was stated in **Commissioner of Police v Brian Botham** MCCrApp. No. 134 of 2015 (“**Brian Botham**”):

“31. In recent times this Court has consistently stressed deterrence as the main factor governing a sentencer's consideration when sentencing an accused person found in possession of a firearm.

...

34. Deterrence is a legitimate principle to guide a sentence. It is one of the pillars of sentencing and is inclusive of others, i.e. retribution, prevention and rehabilitation.”

49. In relation to proportionality, the principle was explained in the case of **Jermaine Ramdeen v Commissioner of Police - BS 2018 CA 114** (“**Jermaine Ramdeen**”). There, at paragraphs 8 and 9, the Court stated:

“PROPORTIONALITY PRINCIPLE

8. Proportionality in sentencing is concerned with the relationship between the seriousness of the offence committed and the sentence imposed. At the same time proportionality is about the sentencing process, not only its result. Properly understood, proportionality in sentencing entitles an offender ‘to a process directed at crafting a just sentence’ and ‘a sentencing judge is prohibited from arriving at sentences contingent on factors unrelated to the determination of a fit sentence’.

9. The principle of proportionality was discussed by MacMenamin J. in the Irish High Court in the case of *Gilligan v Ireland and others* [2013] IESC 45. The learned judge opined that modern authorities make clear the fact that the judiciary is entrusted with the task of applying the principle of proportionality in sentencing and that the origin of this principle can be found in the very nature of the judicial task. He then had these instructive observations:

“34. One of the hallmarks of the exercise of judicial discretion in sentencing is the application of the overriding principle of proportionality...”

35. By now, it is well established that the distributive principle of punishment under our law requires that, in general, every sentence must be proportionate to the gravity of the offence, and take into account the personal circumstances of the offender (see Deaton; Osmanovic; and Lynch and Whelan v Minister for Justice). Here, the term “proportionality” is used in the sense of the judicial task of striking a balance between the particular circumstances of the commission of the offence, and the circumstances of the offender to be sentenced. 36. **In sentencing, proportionality only arises when the judge is exercising a judicial discretion as to sentence, within parameters laid down by law.** Obviously, the principle does not arise in the case of mandatory penalties. The test of proportionality does however apply in every case where the offence, on conviction, carries a maximum, as opposed to a mandatory sentence. **Thus, it arises in any situation where a trial court has a discretion as to the particular penalty to be imposed, within the statutory maximum sentence.**

[Emphasis added]”

50. Based on the foregoing, the following must be taken into consideration when a Court is determining a proper sentence for a convict:

- Aggravating Factors (eg: absconding from police, severity and nature of the crime, the manner and circumstances in which it was carried out, his conduct before and after the crime was committed etc);
- Mitigating Factors (eg: age of the convict, whether this was his first conviction, whether he plead guilty at the earliest opportunity as to avoid wasting the Court’s time, [to an extent] whether the convict showed any remorse whether he had past convictions of a similar nature employment status, good character, etc);
- The purpose of sentencing: retribution, prevention deterrence and rehabilitation (in relation to fire arm related offences, deterrence is a paramount consideration due to the nature of such offences and its prevalence in Bahamian society); and
- Proportionality.

51. The Court is obliged to impose a sentence based on the specific circumstances of each case and it must be suitable/proportionate to the crime and the individual to be sentenced.

Much emphasis is placed on deterrence in relation to Firearm related offences as Parliament intended to highlight public revulsion to the prevalence of such crimes in society. It is a means by which Parliament intends to deter would be offenders and to ensure a clear message is sent to the convict and society as a whole – such offences will not be tolerated in this society.

52. What too must be noted is that the Court is empowered to impose lesser sentences, which is permitted by the current legislative regime. The Court must, however, ensure that no sentence is too lenient. Bearing in mind all of the aforementioned factors and the proportionality principle, the punishment must fit the crime. As Barnett P opined: “*The Abolition of Mandatory Minimum Sentences Act 2014 enabled a sentencer to impose a sentence of imprisonment of whatever length, however short*”. It, however, must be sound in law, proportionate and appropriate based on the relevant circumstances unique to the convict.

53. In relation to the case before me, I believe the aggravating and mitigating factors are as follows:

Aggravating Factors

a) *Possession of a firearm.*

b) *The seriousness of the offence.*

c) *The prevalence of firearms and firearm related offences in our society.*

d) *The Convict attempted to evade police when he led them on a high speed chase.*

Mitigating Factors

a) *The Convict is a young man.*

b) *The Convict has no antecedents.*

54. In submissions, Counsel for the Prosecution indicated that the Convict had antecedents. However, on a close inspection of the antecedents form submitted in the Probation Report of the Probation Officer, the Court is satisfied that this was an oversight on the Prosecution’s part, which the Prosecution accepted that.

55. Defence Counsel submitted that, the Convict is a young man, who is a hardworking homebody. This is evidenced from the glowing recommendations from almost all persons interviewed by the Probation Officer. From the evidence, he was not a bother to anyone, was hardworking, loved and a respectful individual

56. According to the Probation Report, all persons interviewed believed that the criminal act for which he was convicted was out of character for the Convict and they do not believe that he committed the offence.

57. I also acknowledge that the Convict's fingerprints were not found on the Firearm. It is important to note that during course of trial, there was no evidence tendered as to the fingerprints of the Convict being found on the Firearm or the ammunition. Whilst the Convict showed no remorse, this in my opinion ought not militate against him as he has maintained his innocence from the date of arrest to present day.
58. I, however, must also acknowledge that the Convict attempted to evade the police, and unnecessarily endangered not only endangering the lives of others, but his own life. Furthermore, and most importantly, the Convict was convicted of Possession of an Unlicensed Firearm with Intent to Endanger Life. He was convicted by a jury and I am mindful that our society has an egregious gun problem and all offences related to firearms carry a heavy penalty.
59. I too bear in mind the following factors:
- Retribution - The retribution of element is intended to show public revulsion for the offence and to punish the offender for his wrong conduct;
 - Deterrence - Deterrence sentences are aimed at deterring not only the actual offender from committing further offenses but to deter potential offenders from breaking the law;
 - Prevention - aimed at preventing the offender through incarceration from offending against the law, thus protecting the society; and
 - Rehabilitation/Reformation – the purpose of which is to assist the Convict by reforming his ways so as to become a contributing member of society.
60. Bearing in mind principles emanating from *Prince Hepburn*, *Jermaine Ramdeen*, *Teniro Minnis*, *Brian Botham*, and *Pericles Maillis*, I believe an appropriate sentence in the circumstances is seven (7) years.
61. Whilst I appreciate that the sentence does not squarely fall within the sentencing range pursuant to the statute, I am of the view that, having regard to all of the circumstances, the said sentence is reasonable and proportional. I do not believe this sentence is unduly lenient having regard to all of the circumstances.
62. As stated earlier, the Convict is a first time offender, was described as an unproblematic individual who was respectful and hardworking he is twenty-three (23) years of age. I am of the view that he is a prime candidate to be rehabilitated and deserves a lesser sentence. Whereas I acknowledge the prevalence of firearm related offences in Bahamian society, the sentence must fit the crime of this particular individual and circumstances. Each case must be based on its own facts. I am, therefore, satisfied in all the circumstances that seven (7) years is both reasonable and proportional in the circumstances.

Conclusion

63. Sentencing is a very important aspect of the Criminal Justice System after trial. Relevant and admissible evidence must be considered prior to sentencing.
64. In relation to imposing lesser sentences than imposed by legislation, the Court is empowered to impose sentences that are lesser than the minimum allowed under legislation, so long as it is proportionate to the circumstances and the specific individual.
65. In the premises and in consideration of the aforementioned principles, I hereby sentence the Convict to seven (7) years imprisonment, less the time served on remand. Such sentence is to run from the date of conviction, being 19 July 2023.

Dated the 05th day of June 2024

**Jeanine Weech-Gomez
Justice of the Supreme Court**