[2011] JMCA Crim 18

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO 151/2007

BEFORE: **THE HON. MRS JUSTICE HARRIS JA**
THE HON. MR JUSTICE MORRISON JA
THE HON. MR JUSTICE DUKHARAN JA

SHELDON GRANT v R

L. Jack Hines for the applicant

Miss Cadeen Barnett for the Crown

21, 25 February; 3, 29 March & 1 April 2011

ORAL JUDGMENT

HARRIS JA

[1] The applicant Sheldon Grant was convicted on 14 December 2007, in the High Court Division of the Gun Court for the offences of illegal possession of firearm and illegal possession of ammunition. He was sentenced to a term of imprisonment of seven years in respect of each offence.

[2] An application made by him to a single judge for leave to appeal against conviction and sentence met without success. His renewed application before us was against sentence only. On 29 March 2011 the application for leave against sentence was refused and it was ordered that the sentences should commence on 14 March 2008. We now put our reasons in writing.

[3] Briefly, the facts are that about 10:00 pm on 24 December 2005 two police officers, Detective Sergeant Michael Frazer and Detective Corporal Kirk Palmer, acting on information, went to Bronstroph Square off Washington Boulevard. There they saw two men, one of whom was the applicant. Sergeant Frazer drew his firearm, and after identifying himself, shouted to them, "Police, Don't move." On hearing this, the applicant placed his left side against a fence. He, Sergeant Frazer held him. A brief struggle ensued between them. Thereafter, Sergeant Frazer, searched him and removed a semi automatic pistol containing 11 9mm cartridges from him. When asked by Sergeant Frazer if he was a licenced firearm holder or if he had a permit to carry one, his response was that he did not.

[4] The applicant gave sworn testimony. He stated that he lived in Seaview Gardens and was a carpenter and on the night of the incident he was at a bar on Washington Boulevard drinking soup when the police arrived. He asserted that he was alone at the time. He went on to state

that the police told him not to move, punched him in his eye, then searched him and took his documents. He denied that the police had found a gun on him. He further said that, at the time, he was not engaged in any unlawful activity.

[5] The original grounds of appeal which were filed by the applicant were abandoned. Mr Hines however, obtained leave to file and argue the following supplemental ground:

> "1. That the sentence of seven years imprisonment albeit to run concurrently for Illegal Possession simpliciter of a Firearm and Illegal Possession of Ammunition though not manifestly excessive by any means was not reasonable in the circumstances of the case."

[6] Mr Hines argued that although the sentence is not manifestly excessive, this court has a well-established practice of reducing sentences, based upon the circumstances of the particular case. Accordingly, he submitted, the punishment should be aimed at fitting the particular crime. The applicant, he argued, is 22 years of age, has had no previous convictions and his Social Enquiry Report shows that he is not a trouble-maker nor is he a violent person. The approach of making a comparative assessment of sentences for similar offences is an important consideration in deciding on an appropriate sentence, he argued.

[7] Mr Hines cited a number of cases in support of his submissions but indicated that he wished to treat specifically with the case of ***R v James***

Wignall (1969) WIR 401. He submitted that Wignall had been indicted for murder, pleaded not guilty, was convicted of manslaughter and a sentence of 15 years was imposed on him. The offence for which he was convicted is a far more serious offence than the offence of illegal possession of firearm, yet this court reduced the sentence to four years, he argued. It was his further contention that the principle underpinning the great reduction in the sentence shows that the factors of no previous conviction and a sound character still prevail as a powerful combination in determining an appropriate sentence, despite the prevalence of gun crimes. The existence of no previous conviction exemplifies respect for law and a good character shows respect for the good and moral life, he submitted. A sentence of four years imprisonment would be reasonable, taking all these matters into account as well as the similarity of the present case with ***Wignall's***, he submitted.

[8] Wignall and the applicant were not convicted for similar offences and although Mr Hines is mindful of the normal practice of the court making a comparative review of sentences for similar offences, he seeks to invite this court to depart from that practice. Even if this court felt inclined to entertain his invitation, ***Wignall's*** case would be of no assistance to him. Mr Hines failed to appreciate that ***Wignall's*** case is distinguishable from the instant case. In ***Wignall***, the court did not only take into consideration that he had no previous convictions, that he was

of excellent character and that he was well-loved in his community but also a compelling mitigating factor arising from the evidence was that he was severely provoked. The fact that a defendant has no previous conviction and good character does not in itself establish any principle in determining the reduction of a sentence. In the instant case, it cannot be said that there are any compelling or extraordinary circumstances, as in ***Wignall's*** case, which would have accorded the applicant the same benefit as Wignall so far as sentence is concerned.

[9] It is necessary at this stage to state that this matter has been adjourned on several occasions at Mr Hines' request, to facilitate his obtaining from the Gun Court, a schedule of sentences imposed for illegal possession of firearm and ammunition in 2007. A schedule was supplied but unfortunately, it was unhelpful as there was no indication whether the sentences were imposed on a guilty plea or on conviction. On a guilty plea the sentence must be discounted - see ***R v Dunkley*** RMCA No 55/2001 delivered 5 July 2002. On conviction a defendant is not entitled to a discounted sentence.

[10] There can be no doubt that the offences for which the applicant was charged are indeed serious, and that the possession of illegal firearms by the young men of our country has indeed posed monumental problems, as rightly observed by the learned trial judge. We note with

some concern that this malady has in fact wreaked havoc on our society. Law abiding citizens constantly live in fear of those who choose to arm themselves with illegal firearms. It is of significance that, at the material time, the applicant was in a public place, armed with a loaded firearm. Bearing in mind the prevalence of gun offences, the court has a duty to appropriately punish an offender and to protect the public.

[11] The learned judge took into account that the applicant had no previous convictions. He gave consideration to the contents of the Social Enquiry Report, which shows among other things, that the applicant is not prone to violence, nor was he a trouble maker. It is without doubt, that in sentencing, the learned judge, having taken these factors into account, regarded them as mitigating circumstances.

[12] The question as to an appropriate sentence is a matter for the discretion a trial judge. It is a well known rule that an appellate court will not lightly interfere with a sentence imposed by a judge. This court will only intervene where it is manifestly excessive. We are of the view that the sentences are reasonable and appropriate. It follows therefore, that this court will not disturb them.