[2023] JMCA Crim 30

JAMAICA

IN THE COURT OF APPEAL

BEFORE: THE HON MISS JUSTICE STRAW JA
THE HON MRS JUSTICE FOSTER-PUSEY JA
THE HON MR JUSTICE FRASER JA

SUPREME COURT CRIMINAL APPEAL COA2020CR00072

GEORGE GRIFFITHS v R

Miss Audrey Clarke for the appellant

Mrs Nickeisha Young Shand for the Crown

25 May, 16 June and 14 July 2023

Criminal Law – Sentencing – Guilty plea – Illegal possession of firearm – Illegal possession of ammunition – Whether the learned judge erred in law when applying the discount for a guilty plea – The Criminal Justice (Administration) (Amendment) Act, sections 42D, 42E & 42H

FOSTER-PUSEY JA

[1] On 24 November 2020 the appellant pleaded guilty to the offences of illegal possession of firearm and illegal possession of ammunition before E Brown J, as he then was ('the learned judge'), in the High Court Division of the Gun Court held in Black River in the parish of Saint Elizabeth. On 14 December 2020 the learned judge sentenced the appellant to five years' imprisonment at hard labour for the offence of illegal possession of firearm and nine months' imprisonment at hard labour for the offence of illegal possession of ammunition with the sentences to run concurrently.

[2] The appellant sought permission to appeal on the following grounds:

"(a) The sentence of the court is manifestly excessive in all the circumstances

(b) Having regard to the length of the sentence the appellant will/may have completed the period of imprisonment before the matter comes up for hearing before the Court of Appeal

(c) The appellant was on bail at all material times and answered to his bail and fully understands his obligations in respect of surrendering to the court when required."

[3] A single judge of this court refused the appellant leave to appeal on the basis that the sentences imposed could not be seen as manifestly excessive. As is his right, the appellant renewed his application for leave to appeal the sentence imposed for illegal possession of firearm. We heard the application on 25 May 2023 and reserved our decision until 16 June 2023. On that date we made the following orders:

"1. The application for leave to appeal sentence is granted.

2. The hearing of the application is treated as the hearing of the appeal.

3. The appeal against sentence is allowed in part.

4. The sentence of five years' imprisonment at hard labour imposed on the appellant by the learned judge for illegal possession of firearm on 14 December 2020 is set aside. Substituted therefor is a sentence of four years' imprisonment at hard labour.

5. The sentence of nine months' imprisonment at hard labour imposed on the appellant by the learned judge for illegal possession of ammunition on 14 December 2020 is affirmed.

6. The sentences are reckoned to have commenced on 14 December 2020 and are to run concurrently."

These are the promised reasons for our decision.

The facts outlined by the prosecution

[4] On 18 April 2020, at about 4:45 pm, police officers, who were on vehicle checkpoint duties, signalled a white Toyota Noah registered 4914JJ to stop. The occupants of the motor vehicle obeyed and the police saw two persons in the motor vehicle, the appellant, who was the driver, and a female. The appellant and his female companion stepped out of the motor vehicle, as the police requested, and one of the police officers saw a Taurus 9 mm firearm on the driver's seat. The appellant, in response to a query from the police, stated that he was not a licensed firearm holder. The female occupant of the motor vehicle gave a similar response. The police informed the appellant of the offence of illegal possession of firearm. He responded by saying "Officer, she nuh know nutten, a my trouble alone". The police examined the firearm and six live rounds were ejected from the magazine. When the appellant was informed of the offence of illegal possession of ammunition and cautioned, he remained silent.

[5] The police took the appellant to the Junction Police Station where the firearm and ammunition were sealed and labelled in his presence, and he was charged for illegal possession of firearm and ammunition. When cautioned the appellant stated "Officer, a one guest house mi find di gun".

[6] A ballistic certificate acquired in respect of the firearm confirmed that it was in good working condition and that the ammunition found by the officer were 9 mm luger cartridges for use in the firearm that was seized.

The sentencing process followed by the learned judge

[7] The focus will be on the sentence for illegal possession of firearm as no issue was taken with the sentence imposed for illegal possession of ammunition.

[8] The learned judge noted that the offences in respect of which the appellant pleaded guilty were serious. He noted that for illegal possession of firearm, the maximum sentence prescribed by the Firearms Act was life imprisonment, and the normal range of sentences was seven to 15 years with 10 years as the usual starting point. The learned

judge stated that it could not be denied that, as counsel submitted, the appellant "came pleading from the very beginning" and so entered a plea of guilty at the first relevant date.

[9] The learned judge considered the appellant's age at the time of sentencing (30 years old), the fact that he was employed and had a two-year-old son, and he was previously engaged in animal husbandry and as an assistant teacher, having benefitted from secondary education. The learned judge also noted that the appellant was of previous good character and news of his predicament shocked the community.

[10] The learned judge referred to the appellant's justification of his actions, in that the appellant claimed that he retrieved the firearm and its ammunition from their hiding place in the hope of selling it to assist with the care of his family, and stated that he could not see the appellant as being 'beyond recall' although his behaviour could not be condoned. The learned judge highlighted the prevalence of illegal guns in society which in his view "beckon[ed] an element of deterrence" in the appellant's sentence. After referring to the fact that the appellant presented himself as an upright and industrious citizen the learned judge stated that the appellant ought to have taken the firearm to the nearest police station instead of planning to sell it. Noting the prevalence of illegal guns and gun related offences in the society the learned judge expressed the view that incarceration was a just punishment for the appellant. In arriving at the sentence the learned judge followed the following process. He:

a. set a notional sentence of eight years;

b. reduced the notional sentence by two years having considered the mitigating factors related to the appellant: including that he had no previous conviction, had a favourable community report and a good capacity for rehabilitation and he was the father of a two-year-old;

c. considered the aggravating factors of the prevalence of the offences and the fact that possession of the gun was calculated, and added 18 months for these factors; and

d. noted that the appellant did not spend any significant time in custody.

[11] The learned judge went on to state:

> "For his prompt plea of guilty, I will apply a 30% reduction in the sentence which comes to about a year and 8 months. So in conclusion then, the sentences that ought properly to be imposed on Count 1, will be five years and ten months but I will round that down to five years. So, it's five years on Count 1."

Submissions

<u>The appellant's submissions</u>

[12] Miss Clarke, counsel for the appellant, emphasized that sentencing for like offences should be consistent, however, on the basis of her research and experience, there has been marked inconsistency.

[13] The thrust of counsel's contention was that the sentences imposed by the learned judge were manifestly excessive having regard to the particular circumstances of the case at bar, and sentences imposed in other cases for like offences.

[14] Counsel outlined that the case for the learned judge's consideration was possession simpliciter of a firearm and ammunition without the requisite license. She noted that although the appellant indicated that he found the firearm, the learned judge found that he thought to become "a merchant through theft". Counsel further contended that although the learned judge was entitled to his own interpretation of the facts, that did not mean that the only conclusion to which he could come was one that was unfavourable to the appellant. Counsel noted that from the outset the appellant had

accepted full responsibility for the offences, and due consideration ought to have been given to that factor by the learned judge.

[15] Miss Clarke's second point of contention was that the learned judge erred in imposing a custodial sentence and that he failed to bear in mind the purpose and appropriateness of the sentences imposed. Counsel submitted that when a crime is committed, the punishment is usually referable to the actual effect of the offence on any aspect of society in general and any particular or specific member. She highlighted that in the last decade, non-custodial sentences had been imposed for like offences. In aid of this submission, counsel referred to the following sentences that were imposed for the offences of illegal possession of firearm and ammunition. In the majority of cases, the information was reflected on indictments certified by the Office of the Director of Public Prosecutions ('ODPP'). For ease of reading, a tabular format is useful.

Name of case	Particulars of the case	Sentence(s) imposed
R v Jonathan Chung 17 February 2022 Western Regional Gun Court (no copy of the indictment provided)	Accused pleaded guilty to similar offences. He was found driving a motor vehicle in October 2019 in the parish of Saint Elizabeth where, after a police search, a firearm was found along with nine rounds of ammunition in a bag in his possession. **NB** At the time of the accused's sentence he was facing a murder charge where it was alleged that the said firearm was linked to the	$1,500,000.00 or four years' imprisonment at hard labour in respect of the offence of illegal possession of firearm; and $250,000.00 in respect of the offence of illegal possession of ammunition.

	shooting death of a member of the community in Saint Elizabeth.	
R v Gary Gordon October 2020 High Court Division of the Gun Court in the parish of Manchester	Accused pleaded guilty to the offence of illegal possession of firearm (count one) and not guilty to the offence of illegal possession of ammunition (count two).	$500,000.00 or three years' imprisonment at hard labour (count one). In respect of count two, the accused was discharged.
R v Orion Stewart October 2020 High Court Division of the Gun Court in the parish of Manchester	Accused pleaded guilty to the offence of illegal possession of firearm (count one) and the offence of illegal possession of ammunition (count two).	$650,000.00 or three years' imprisonment at hard labour (count one) and $100,000.00 or nine months' imprisonment at hard labour (count two). Sentences to run concurrently.
R v Clinton Bepot July 2019 High Court Division of the Gun Court in the parish of Saint Elizabeth	Accused pleaded guilty to the offence of illegal possession of firearm (count one) and the offence of illegal possession of ammunition (count two).	$1,000,000.00 or three years' imprisonment at hard labour (count 1) and $200,000.00 or three years' imprisonment at hard labour (count 2). Sentences to run consecutive if fines are not paid.

R v Zephan Cole 30 July 2019 High Court Division of the Gun Court in the parish of Saint Elizabeth	Accused pleaded guilty to the offence of illegal possession of firearm (count one) and the offence of illegal possession of ammunition (count two).	$1,000,000.00 or 18 months' imprisonment at hard labour (count one). Admonished and discharged (count two).
R v Nashane Findley and Tawayne Drummond July 2019 – December 2019 High Court Division of the Gun Court in the parish of Saint Elizabeth	Accused found guilty of the offence of illegal possession of firearm (count one) and the offence of illegal possession of ammunition (count two).	Each - $250,000.00 or three years' imprisonment at hard labour (count one) and each - $250,000.00 or three years' imprisonment at hard labour (count two). If fines are not paid, sentences to run consecutively.
R v Oneil Beckford August 2016	Accused found guilty of illegal possession of firearm.	$1,000,000.00 or in the alternative a custodial sentence.
R v Roger Berlin August 2015 - September 2015 High Court Division of the Gun Court in the parish of Saint Elizabeth	Accused found guilty of the offence of illegal possession of firearm (count one) and the offence of illegal possession of ammunition (count two).	$1,000,000.00 or three years' imprisonment at hard labour, (count one) and a probation order for three years (count two).

R v Steve Mitchell 2008	Accused pleaded guilty to illegal possession of fiream and illegal possession of ammunition.	Fine imposed, or alternatively a term of imprisonment.

[16] Counsel submitted that the cases above were only a fraction of the instances in which the courts have treated with the offences in question and have determined that a non-custodial sentence was appropriate. Counsel reiterated that she made several attempts to secure from the ODPP the social enquiry reports relevant to each of the cases on which she relied, so as to assist the court with the factual circumstances in the matters. However, all of her attempts were unsuccessful.

[17] In closing her submissions, counsel reiterated that a non-custodial sentence was appropriate in the case at bar, since it was a case in which there were no aggravating circumstances or factors that were particularly egregious.

The Crown's submissions

[18] In response, Mrs Young Shand, counsel for the Crown, rejected counsel for the appellant's contention that the sentences imposed by the learned judge were manifestly excessive having regard to all the circumstances of the case. At the commencement of her submissions, counsel reminded the panel that this court can only interfere with a first instance judge's sentence where there has been an error in principle (see **Alpha Green v R** (1969) 11 JLR 283, page 284). Further, counsel indicated that to determine whether there has been an error in principle, the approach of the learned judge must be analyzed based on the guidance enounced in the seminal cases of **R v Evrald Dunkley** (unreported), Court of Appeal, Jamaica, Resident Magistrates Criminal Appeal No 55/2001, judgment delivered 5 July 2002 and **Meisha Clement v R** [2016] JMCA Crim 26.

[19] After rehearsing the well-settled approach in those cases, counsel contended that the learned judge did not deviate from the guidance and found that a custodial sentence was appropriate in the circumstances. Counsel pointed out that the learned judge in his analysis considered two principles of sentencing, namely; deterrence, and rehabilitation. The learned judge stated that for both offences the maximum sentence is life imprisonment and the normal range is between seven and 15 years' imprisonment with 10 years' imprisonment being the usual starting point and he went on to take into account all the appropriate factors for determining the sentence that he would have imposed before considering the discount for the guilty plea.

[20] Counsel acknowledged that although it was open to the learned judge to make a non-custodial order, he was not bound to do so. In any event, according to counsel the learned judge had commenced at a starting point that was below the norm. The result of this was that the sentences were well below the normal range for these offences. In support of this point, reliance was placed on the cases below.

Name of case	Sentence for the offence of illegal possession of firearm	Sentence for the offence of illegal possession of ammunition
Denver Bernard v R [2019] JMCA Crim 13	Nine years and nine months' imprisonment	Four years and nine months' imprisonment
Tyrone Headley v R [2019] JMCA Crim 33	Eight years' imprisonment	Five years' imprisonment
Natalie Williams v R [2020] JMCA Crim 19	Five years and six months' imprisonment	
R v Gary Cherrington [2020] GCHCD 1	Seven years and eight months' imprisonment	Three years and eight months' imprisonment

Based on the foregoing, counsel concluded that the learned judge did not err in principle and therefore the sentences imposed ought not to be disturbed, but instead affirmed.

[21] In specific reference to the list of examples of sentences handed down that Miss Clarke provided to the court, Mrs Young Shand stated that it would not be appropriate to rely on them as it was not clear whether the factual circumstances were in fact similar to the case at bar.

Discussion

[22] Miss Clarke's point that sentences imposed in like circumstances ought to be consistent cannot be contradicted. It is for this purpose that the Sentencing Guidelines for Use by Judges of the Supreme Court of Jamaica and the Parish Court, December 2017 ('the Sentencing Guidelines') were published. Only one of the sentencing examples in which a copy of the indictment was provided, and on which Miss Clarke relied, took place before the publication of the Sentencing Guidelines (see **R v Roger Berlin**). We take Mrs Young Shand's point that without the outline of the facts in the cases on which Miss Clarke relied, it was difficult to know whether they could assist in determining an appropriate sentence in the case at bar. Interestingly, this was a handicap that could have been overcome, had the ODPP acceded to Miss Clarke's request for the relevant social enquiry reports. In the end, due to the approach that we took in this matter, we accepted that Miss Clarke had personal knowledge of some of the matters on which she relied.

[23] We understood Miss Clarke's concern that it was difficult to discern the basis on which one person who pleaded guilty was given the option to pay a fine while the other who was pleading guilty in similar circumstances was not, and the difference in the impact of the sentence was very significant as one individual had no option but to serve a term of imprisonment.

[24] According to the Honourable Mrs Justice Zaila McCalla, former Chief Justice of Jamaica, in the foreword of the Sentencing Guidelines:

> "The publication of these Sentencing Guidelines has as its primary goal, the removal of the uncertainty that surrounds the imposition of sentences…
>
> All stakeholders in the criminal justice system will now have a point of reference from which to approach sentencing. **In addition, these guidelines will allow attorneys-at-law to advise their clients on possible sentences, particularly where there is an interest in offering a guilty plea.**" (Emphasis supplied)

[25] In examining the objectives of sentencing, the writers of the Sentencing Guidelines also stated:

> "1.3 A just sentence is therefore one which promotes respect for the law and its processes, by reflecting adequately-and proportionately-an appropriate mix of all the relevant factors. Such a sentence is expected to be one which fits the crime as well as the offender.
>
> 1.4 Sentences should be proportionate to the gravity of the offence and the degree of responsibility of the offender. Accordingly, they should neither be unduly harsh, in the sense of being incapable of objective justification by reference to the gravity of the crime, the offender's degree of blameworthiness and his or her antecedent data; nor unduly lenient, in the sense of causing outrage to reasonable expectations of what is the minimum required for the protection of the public.
>
> 1.5 **Linked to the principle of proportionality is the principle of parity of sentences. This requires that, notwithstanding the need for individualisation of sentences, there should in general be parity as between those who have been convicted of similar offences committed in similar circumstances. In order to achieve this objective, sentencing judges must have regard to previous sentencing decisions of the Supreme Court and the Court of Appeal to the extent possible in every case.**"
> (Emphasis supplied)

[26] This inconsistency in sentencing in apparently similar circumstances is a matter that indeed needs urgent attention, as it runs counter to the objectives of sentencing. It may be useful for judges at first instance to prepare a running compendium of the sentences imposed in similar circumstances, and discuss the bases on which the matters are approached with a view to accomplishing more consistency in their approach. Indeed, it appears that the writers of the Sentencing Guidelines intended that this was to occur. At para. 16.3 of the Guidelines they wrote:

> "Looking ahead, it is also hoped that it will be possible before too long to compile a companion volume of reports of sentencing decisions, both from the Supreme Court and the Court of Appeal."

[27] If this work is already in progress, it is hoped that it will be speedily implemented, allowing for daily or weekly updates of sentences imposed.

[28] Of course, a new Act governing the possession and use of a firearm has now been passed by Parliament, as a result of which a different sentencing regime will also need to be imposed in respect of offences committed after the coming into force of the Firearms (Prohibition, Restriction and Regulation) Act, 2022.

[29] In the case at bar the challenge that we face, in acceding to Miss Clarke's submissions that a non-custodial sentence be imposed, is that, while it appears that a number of judges saw it fit to impose fines as punishment instead of a term of imprisonment, the sentence imposed by the learned judge, before he embarked on applying the discount, fell within the range of sentences outlined in the Sentencing Guidelines.

[30] The case of **Meisha Clement v R** is very instructive in outlining a systematic approach to determining the appropriate sentence to be imposed. Morrison P wrote:

> "[41] As far as we are aware, there is no decision of this court explicitly prescribing the order in which the various considerations identified in the foregoing paragraphs of this judgment should be addressed by sentencing judges.

However, it seems to us that the following sequence of decisions to be taken in each case, which we have adapted from the SGC's definitive guidelines, derives clear support from the authorities to which we have referred:

(i) identify the appropriate starting point;

(ii) consider any relevant aggravating features;

(iii) consider any relevant mitigating features (including personal mitigation);

(iv) consider, where appropriate, any reduction for a guilty plea; and

(v) decide on the appropriate sentence (giving reasons).

[42] Finally, in considering whether the sentence imposed by the judge in this case is manifestly excessive, as Mr Mitchell contended that it is, we remind ourselves, as we must, of the general approach which this court usually adopts on appeals against sentence. In this regard, Mrs Ebanks-Miller very helpfully referred us to **Alpha Green v R** 43, in which the court adopted the following statement of principle by Hilbery J in **R v Ball** 44:

> 'In the first place, this Court does not alter a sentence which is the subject of an appeal merely because the members of the Court might have passed a different sentence. The trial Judge has seen the prisoner and heard his history and any witnesses to character he may have chosen to call. It is only when a sentence appears to err in principle that this Court will alter it. If a sentence is excessive or inadequate to such an extent as to satisfy this Court that when it was passed there was a failure to apply the right principles, then this Court will intervene.'

[43] On an appeal against sentence, therefore, this court's concern is to determine whether the sentence imposed by the judge (i) was arrived at by applying the usual, known and accepted principles of sentencing; and (ii) falls within the

> range of sentences which (a) the court is empowered to give for the particular offence, and (b) is usually given for like offences in like circumstances. Once this court determines that the sentence satisfies these criteria, it will be loath to interfere with the sentencing judge's exercise of his or her discretion."

[31] In the case at bar, the learned judge clearly and correctly followed the required steps leading up to determining the sentence that he would have imposed had the appellant been tried and found guilty. We had no reason to vary the sentence of seven years and six months to which the learned judge arrived. Bearing in mind that the normal range of sentences imposed for illegal possession of firearm is seven years to 15 years, it is clear that the learned judge believed that the circumstances of the offence and the offender merited a sentence at the very low end of the range.

[32] We reviewed **R v Gary Cherrington** on which Mrs Young Shand relied. In this matter a police officer travelling in a marked police vehicle observed the defendant placing something wrapped in a plastic bag under the wheel of a station wagon vehicle. The police officers stopped, retrieved the bag and opened it in the presence of the defendant. A firearm with ammunition was found. In sentencing the defendant, the judge took into account as aggravating circumstances the prevalence of the crime in society, the firearm was "a deadly weapon in good working condition" and "there was the act of concealment on the approach of the police party and the denial of knowledge that the firearm belonged to him". After taking into account the facts that the defendant had no previous conviction and a good social enquiry report, the judge imposed a sentence of seven years and eight months for the offence of illegal possession of firearm. It does not appear that a guilty plea was involved. However, the case is useful for comparative purposes before the application of a discount for a guilty plea.

[33] We had to however consider whether the learned judge was correct in his approach to identifying the percentage discount that he was granting for the guilty plea.

[34] The appellant having pleaded guilty, the learned judge ought to have applied section 42D of the Criminal Justice (Administration) (Amendment) Act ('CJAA') which states:

> "(1) Subject to the provisions of this Part, where a defendant pleads guilty to an offence with which he has been charged, the Court may, in accordance with subsection (2), reduce the sentence that it would otherwise have imposed on the defendant, had the defendant been tried and convicted of the offence.
>
> (2) Pursuant to subsection (1), the Court may reduce the sentence that it would otherwise have imposed on the defendant in the following manner –
>
> (a) **where the defendant indicates to the Court, on the first relevant date, that he wishes to plead guilty to the offence, the sentence may be reduced by up to fifty *per cent*;**
>
> (b) where the defendant indicates to the Court, after the first relevant date but before the trial commences, that he wishes to plead guilty to the offence, the sentence may be reduced by up to thirty-five *per cent*;
>
> (c) where the defendant pleads guilty to the offence after the trial has commenced, but before the verdict is given, the sentence may be reduced by up to fifteen *per cent*.
>
> (3) Subject to section 42E, and notwithstanding the provisions of any law to the contrary, where the offence to which the defendant pleads guilty is punishable by a prescribed minimum penalty the Court may-
>
> (a) reduce the sentence pursuant to the provisions of this section without regard to the prescribed minimum penalty; and

(b) specify the period, not being less than two thirds of the sentence imposed, which the defendant shall serve before becoming eligible for parole.

(4) In determining the percentage by which the sentence for an offence is to be reduced pursuant to subsection (2), the Court shall have regard to the factors outlined under section 42H, as may be relevant." (Emphasis supplied)

[35] The CJAA lists some of the factors which the court ought to take into account in determining an appropriate discount on a sentence when a defendant pleads guilty. Section 42H of the CJAA states:

> "Pursuant to the provisions of this Part, in determining the percentage by which a sentence for an offence is to be reduced, in respect of a guilty plea made by a defendant within a particular period referred to in 42D(2) and 42E(2), the Court shall have regard to the following factors namely -
>
> (a) whether the reduction of the sentence of the defendant would be so disproportionate to the seriousness of the offence, or so inappropriate in the case of the defendant, that it would shock the public conscience;
>
> (b) the circumstances of the offence, including its impact on the victims;
>
> (c) any factors that are relevant to the defendant;
>
> (d) the circumstances surrounding the plea;
>
> (e) where the defendant has been charged with more than one offence, whether the defendant pleaded guilty to all of the offences;
>
> (f) whether the defendant has any previous convictions;
>
> (g) any other factors or principles the Court considers relevant."

[36] The issue that we identified in the case at bar was that since the appellant pleaded guilty at the first relevant date, the learned judge could have reduced the sentence by up to 50%. Instead, the learned judge reduced the appellant's sentence by 30%. It

should be noted that where a defendant indicates to the court after the first relevant date but before the trial commences that he wishes to plead guilty the sentence may be reduced by up to 35%. Yet, in the case at bar, when the appellant immediately took responsibility for his wrong and pleaded guilty at the first relevant date the learned judge reduced his sentence by 30%. It was open to the learned judge to do so. However, he ought to have indicated why he saw it fit to give a 30% discount in the particular circumstances. Section 42H(a) for example, provides that a judge can take into account whether the reduction of the sentence would be disproportionate to the seriousness of the offence or so inappropriate in the case of the defendant that it would shock the public conscience. The learned judge did not refer to any such issue but highlighted that he was giving a 30% discount for the appellant's "prompt plea of guilty". The promptness to which the learned judge referred, without explanation, was not reflected in the percentage discount that the learned judge applied. The learned judge erred in law in this regard. In the circumstances, it was necessary for us to conduct the sentencing exercise afresh in relation to the discount for the guilty plea.

[37] It is useful to consider these factors in turn:

a. The circumstances of the offence, including its impact on the victims -

   The appellant found the firearm and was hoping to benefit from selling it. There was no impact on any victim.

b. Any factors that are relevant to the defendant -

   The appellant ensured that he did not cause any trouble to the female companion travelling with him but took full responsibility for the firearm and ammunition.

c. The circumstances surrounding the plea -

The appellant did not waste any time but immediately admitted that he was in the wrong.

d. Where the defendant has been charged with more than one offence, whether the defendant pleaded guilty to all of the offences -

   The appellant pleaded guilty to both illegal possession of firearm and illegal possession of ammunition.

e. Whether the defendant has any previous convictions -

   The appellant did not have any previous convictions.

f. Any other factors or principles the Court considers relevant -

   The possession of illegal firearm and ammunition is prevalent in the society and the appellant intended to attempt to sell the firearm. Nevertheless, the circumstances of the offence are not as egregious as many cases of possession. The appellant came into possession of the firearm by chance and, on the facts before the court, had no intention of using it.

[38] In all the circumstances we believed that this was a case in which the grant of a 45% discount was appropriate. In arriving at that percentage discount we also took into account the strength of the evidence against the applicant who was caught red-handed. There was overwhelming benefit to him to plead guilty. While his plea was to be rewarded with a reasonable discount, it did not warrant the full discount in all the circumstances.

[39] We reviewed **Natalie Williams v R** on which Mrs Young Shand relied and in which the appellant was granted a 30% discount at the hearing of her appeal. In our view that case is distinguishable. In that matter, Miss Williams pleaded guilty to the offences of illegal possession of firearm and robbery with aggravation. She was sentenced

to 12 years and 10 years respectively with the sentences running concurrently. She appealed the sentences imposed. On appeal this court varied the sentences to five years and six months for the offence of illegal possession of firearm and seven years' imprisonment for robbery with aggravation.

[40] The convictions arose from an incident involving a robbery in Mr Bullock's home in which the appellant was employed. Three men broke into the home, one with a handgun, one with a machete and the other with what appeared to be a kitchen knife in his hand. The man with the gun threatened to kill Mr Bullock's son, another man tied and blindfolded Mr Bullock, his son and his wife. The men stole items valued at over $2,000,000.00 including three credit cards, a National Commercial Bank Midas Card (for which the man with the gun demanded the PIN), keys for two motor cars belonging to Mr Bullock and a number of other items. During the incident Mr Bullock was told information relating to himself in great detail which could only have come from someone close to the family. After the men left Miss Williams was seen tied up with duct tape. Days later Miss Williams was seen on video footage purchasing items at a supermarket with the use of Mr Bullock's Midas Card. It turned out that Miss Williams' boyfriend was involved in the incident. He claimed that Miss Williams had planned "everything". Items that were stolen from the Bullocks' home were found at Miss Williams' mother's home. It is clear that Miss Williams' actions had a severe impact on the victims in question and her actions were premeditated. The outline of the facts demonstrates that that case is distinguishable from the case at bar.

[41] Had the appellant been granted a 45% discount for his guilty plea, his sentence would have been approximately four years and one and a half months (rounded down to four years) in contrast with the five years imposed by the learned judge. The test to be applied by this court in examining the sentence is whether the sentence imposed was manifestly excessive. What is manifestly excessive will depend on the original sentence under consideration. For example, a difference of two years between a sentence of 19 years and 17 years may not be considered significant. On the other hand, a difference of

one year can be significant bearing in mind the original sentence of five years that was imposed on a guilty plea. The percentage difference in the sentence demonstrates this.

[42] In these particular circumstances, the learned judge did not follow the correct approach in determining the percentage discount that he would apply in light of the appellant's guilty plea, and this resulted in the sentence imposed on the appellant being manifestly excessive in all the circumstances. We determined that a sentence of four years should be imposed on the appellant by virtue of his guilty plea.

[43] We, therefore, ordered as indicated above in para. [3] of these reasons.