

JAMAICA

IN THE COURT OF APPEAL

**BEFORE: THE HON MISS JUSTICE STRAW JA
THE HON MR JUSTICE D FRASER JA
THE HON MISS JUSTICE SIMMONS JA**

SUPREME COURT CRIMINAL APPEAL NO 99/2014

RICARDO HENRY v R

Miss Sherneika Jackson for the applicant

Miss Tamara Merchant and Miss Anita Hall for the Crown

10 and 12 July 2023

Endorsement read by Straw JA

[1] The applicant pleaded guilty and was sentenced, on 4 November 2014, on an indictment containing five counts as follows:

1. Count One – Illegal Possession of Firearm – Five years' imprisonment
2. Count Two – Illegal Possession of Ammunition – Two years' imprisonment
3. Count Three – Robbery with Aggravation – Seven years' imprisonment
4. Counts Four & Five – Shooting with Intent – 15 years' imprisonment each

The sentences were ordered to run concurrently.

[2] He applied for leave to appeal his sentences. On 12 September 2017, a single judge of appeal refused the application for leave and before us was the applicant's renewed application.

[3] The applicant's counsel urged on this court that the sentences were manifestly excessive, particularly the sentences for shooting with intent and that the learned sentencing judge failed to apply the principles of sentencing.

[4] Section 20(2)(a) of the Offences Against the Person Act stipulates that a person convicted before a Circuit Court of shooting with intent is "liable to imprisonment for life, or such other term, not being less than fifteen years". It was on this basis that the learned judge imposed the sentences of 15 years' imprisonment for counts four and five. The learned judge had no discretion to impose a sentence below the statutory minimum, on account of a plea of guilt, or otherwise, as the Criminal Justice (Administration) (Amendment) Act, 2015 ('the CJAA, 2015'), that provides such a discretion, had not yet been passed.

[5] The case of **Curtis Grey & Toussaint Solomon v R** [2018] JMCA App 30, relied on by Miss Jackson, is entirely distinguishable. In that case the applicants had applied within the required six-month period, after the passing of the CJAA, 2015, as required by section 42L of the said Act, for their sentences to be reviewed. No such application has been made on behalf of Mr Henry. Therefore, the learned judge was not empowered to interfere with the prescribed minimum sentence imposed by Parliament and neither is this court so empowered (see the cases of **Troy Walker v R** [2023] JMCA App 7; **Tafari Morrison v R** [2020] JMCA Crim 34; **Paul Haughton v R** [2019] JMCA Crim 29; and **Ewin Harriott v R** [2018] JMCA Crim 22).

[6] With respect to counts one, two and three, the learned judge did not employ an arithmetical approach to his sentences as the sentencing exercise pre-dated the cases of **Meisha Clement v R** [2016] JMCA Crim 26 ('**Meisha Clement**') and **Daniel Roulston v R** [2018] JMCA Crim 20. He would, however, have had the guidance as set out in **R v**

Evrald Dunkley (unreported) Court of Appeal, Jamaica, Resident Magistrates' Criminal Appeal No 55/2001, judgment delivered 5 July 2002, that a determination is to be made, as an initial step, as to the length of the sentence as a starting point and then consideration should be given to the factors that would serve to influence the length of the sentence. Nevertheless, the learned judge clearly took account of the classical principles of sentencing and also took account of the guilty pleas. Prior to the passage of the CJAA, 2015, sentencing judges would be guided by common law as to allowable discounts for guilty pleas. It has never been fixed and remained at the discretion of the judge (see **Meisha Clement**). The Sentencing Guidelines for Use by Judges of the Supreme Court of Jamaica and the Parish Courts, December 2017 ('Sentencing Guidelines') indicate the usual sentencing range for the offences of illegal possession of firearm and ammunition as being between seven and 15 years. The usual starting point is 10 years. The applicant received sentences of five and two years respectively for those offences. With respect to robbery with aggravation, the Sentencing Guidelines indicate a normal range between 10 and 15 years. In **Lamoye Paul v R**, [2017] JMCA Crim 41, McDonald-Bishop JA commented that, while the usual starting point for robbery with aggravation is 12 years, robbery committed with a firearm and with more than one perpetrator should attract a range between 15 to 17 years (see para. [22]). The applicant was sentenced to seven years. The learned judge indicated that he imposed the sentences for counts one, two and three after applying his discretion (in relation to the discount for the guilty plea). We see no basis for interfering with the sentences imposed (see **Alpha Green v R** (1969) 11 JLR 283).

[7] The applicant has not demonstrated any arguable grounds of appeal. We, therefore, make the following orders:

1. The application for leave to appeal sentence is dismissed.
2. The sentences are to be reckoned as having commenced on 4 November 2014, the date on which they were imposed and are to run concurrently.