

JAMAICA

IN THE COURT OF APPEAL

MISCELLANEOUS APPEAL NO COA2019MSCR00001

**BEFORE: THE HON MISS JUSTICE PHILLIPS JA
THE HON MISS JUSTICE P WILLIAMS JA
THE HON MISS JUSTICE EDWARDS JA**

**IN THE MATTER OF AN
APPLICATION PURSUANT TO
SECTION 55 OF THE CRIMINAL
JUSTICE (ADMINISTRATION) ACT**

AND

**IN THE MATTER OF THE
JURISDICTION OF THE CHILDREN'S
COURT PURSUANT TO THE CHILD
CARE AND PROTECTION ACT OVER
CHILDREN CHARGED WITH AN
OFFENCE UNDER THE FIREARMS
ACT**

AND

**IN THE MATTER OF THE
JURISDICTION OF THE GUN COURT
IN MATTERS INVOLVING CHILDREN
OVER THE AGE OF 14 YEARS OLD
WHETHER CHARGED ALONE OR
JOINTLY WITH ANOTHER PERSON**

NF v R

Carlton Colman for the defendant

**Miss Paula Llewelyn QC, Director of Public Prosecutions and Kemoy McEkron
for the Crown**

1 July 2019 and 6 March 2020

EDWARDS JA

Introduction

[1] This matter came for our opinion on referral from D Palmer J sitting as a judge alone in the High Court Division of the Gun Court. D Palmer J asked this court to give answers to two questions of law posed by him, in respect of a plea of guilty made by a child who appeared before him in the Gun Court. The questions he referred for the consideration of this court, pursuant to section 55 of the Criminal Justice (Administration) Act, are:

- “(i) What is the jurisdiction of the Gun Court in matters involving children over the age of 14 years, whether charged alone or not?
- (ii) Does the Children's Court have jurisdiction to finally determine matters involving children over the age of 14 years, who have committed offences under the Firearms Act?”

On 1 July 2019, after hearing submissions, we reserved our response for a later date and we give it now.

The jurisdiction of the Court of Appeal to decide questions of law reserved for its consideration

[2] The jurisdiction of this court to consider and decide questions posed to it on an issue of law before a matter is finally disposed of, is set out in section 55 of the Criminal Justice (Administration) Act, which states as follows:

“When any person shall have been convicted of any treason, felony, or misdemeanour before any Circuit or Resident Magistrate's Court, the Judge or Resident Magistrate before whom the case shall have been tried, may, in his discretion, reserve any questions of law which shall have arisen on the

trial for the consideration of the Court of Appeal, and thereupon shall have authority to respite execution of the judgment on such conviction, or postpone the judgment until such questions shall have been considered and decided as he may think fit; ...”

[3] The section, therefore, permits a judge to adjourn the trial of any such matter and to reserve any question of law, arising therefrom, for the consideration and decision of this court, and to postpone judgment until such questions have been decided.

Background facts

[4] On 13 March 2019, NF pleaded guilty in the High Court Division of the Gun Court to an indictment which charged him with the offences of illegal possession of firearm, contrary to section 20(1)(b) of the Firearms Act, and wounding with intent contrary to section 20(1) of the Offences Against the Persons Act. At the time of his plea he was just under 18 years old, and would not celebrate his 18th birthday until 24 July 2019.

[5] The allegations to which NF pleaded guilty are, by and large, not important to the questions referred to this court, but, we will state them briefly to place this referral in its proper context. On 12 August 2016 at about 3:00 pm, the complainant was walking home when he was approached by NF, who was in the company of two other men. The complainant knew NF, by his alias, for five years. They were from the same community. The other men were not known to the complainant by name. The complainant was taken to an open lot where his hands and feet were bound and he was placed to kneel by the men. One of the men left and returned with a firearm. Upon his return the man gave the firearm to the second man to shoot the complainant. The second man was reluctant or unwilling to shoot him, at which point NF took the gun and shot at the complainant,

hitting him to his right shoulder. The complainant managed to free himself and ran off, but as he fled, he heard another explosion and felt the sting of a bullet to his lower back. He continued to flee while still hearing several more gunshots. He looked back and saw NF chasing him with gun in hand. The complainant escaped to the highway where he was assisted by a passer-by to the hospital. There, he received medical treatment. By all accounts he still suffers from the effects of a bullet fragment lodged in his back. NF pleaded guilty, on those facts, to the two felony offences before D Palmer J.

[6] At the sentencing hearing for NF, counsel Mr Colman made submissions to D Palmer J, which, in summary, were to the effect that the High Court Division of the Gun Court had no jurisdiction to hear the case against NF, he being at the time of the plea, a child as defined by section 2 of the Child Care and Protection Act. Counsel further submitted that D Palmer J was bound by the decision of the Court of Appeal in **CP v R** [2018] JMCA Crim 43, to remit the matter to the Children's Court to be dealt with in accordance with the provisions of the Child Care and Protection Act.

The referral

[7] D Palmer J, accepting that NF was still a child at the time of the plea and at the sentencing hearing, took the view that the law was sufficiently uncertain for the legal questions, raised by the age of NF at the time the plea was made, to be referred for the consideration of this court. As a result, he adjourned the sentencing hearing, and made a referral to this court.

[8] In making the referral, D Palmer J noted that, at the time of taking the plea, he had not considered the import of the decision of this court in **CP v R**. The case at bar and **CP v R** both involved charges against a child over the age of 14 years, charged alone before the Gun Court for an offence contrary to section 20 of the Firearms Act.

[9] The two questions referred for our determination concern the interpretation to be given to particular sections of the Child Care and Protection Act and the Gun Court Act.

Discussion and resolution

[10] As NF was a child at the time of the offence and his plea of guilty, we believe it may better serve this discussion if we were to first answer the second of the two questions posed.

Question number 2: Does the Children's Court have jurisdiction to finally determine matters involving children over the age of 14 years, who have committed offences under the Firearms Act?

[11] Before answering the specific question posed, we think it useful to give the background to the development of the relevant law. The Child Care and Protection Act 2004 was passed to replace the now repealed Juveniles Act of 1951. Whilst the provisions of the Child Care and Protection Act, in many important areas, mirror those of the repealed Juveniles Act, there are several very important distinctions. The Juvenile Act classified a 'child' as any person under the age of 14 years. It also had an additional category of persons called 'juveniles' and 'young persons'. A 'juvenile' was defined in the Juveniles Act as a person under the age of 17 years, whilst a 'young person' was defined as a person over 14 years and under 17 years. There were separate jurisdictions for the

treatment of these categories of persons in the Juvenile Act. By virtue of section 3 of the Juveniles Act, a child under 12 was presumed to have no criminal responsibility.

[12] On the other hand, a 'child' is defined in section 2 of the Child Care and Protection Act as a person under the age of 18 years old and that Act provides for only two separate jurisdictions for the treatment of children. It makes provisions for the treatment of children under 14 years of age and for those over 14 years but under 18 years of age. It makes no reference to a 'young person' or a 'juvenile', and those categories were, for all intent and purposes, repealed. Also, by virtue of section 63 of that Act, a child under 12 years of age continues to be conclusively presumed to have no criminal responsibility.

[13] Under section 23(2) of the now repealed Juveniles Act, the Juvenile Court had complete jurisdiction to finally dispose of offences involving a child under 14 years, while for those over 14 but under 17 years of age ('young persons'), it had jurisdiction only if the offence did not fall under the Third Schedule to the Act. Firearm offences fell under the Third Schedule to that Act, so that the Juvenile Court had no jurisdiction to finally dispose of a matter where a 'young person' was charged with firearm offences, and, under section 23(3), could only hold proceedings with a view to a committal for trial.

[14] However, section 26 of the Juveniles Act permitted a court before whom a juvenile had been tried and found guilty of any offence other than murder, to remit the matter to the Juvenile Court to be dealt with, if it thought fit to do so. The Juvenile Court could then deal with the juvenile in any way in which it might have, had the juvenile been tried and found guilty by that court. This section gave a court to whom the juvenile had been

committed for trial, the power to send that juvenile back to the Juvenile Court for sentencing, if it was thought that the case was a fit one in which to do so.

[15] Section 72 of the Child Care and Protection Act (like section 23 of the Juveniles Act did for the Juveniles Court), outlines the jurisdiction of the Children's Court over the different categories of persons. Pursuant to section 72(2), the Children's Court ousts its own jurisdiction over a child charged jointly with an adult. Section 72 (6), in particular, provides as follows:

"72.-(6) Where a child—

- (a) who has not attained the age of fourteen years is charged with any offence; or
- (b) who has attained the age of fourteen years is charged with any offence **other than an offence specified in the Fourth Schedule,**

the charge shall, subject to any right of appeal provided by this or any other enactment, finally be disposed of by a Children's Court, or if the charge is heard before a court of summary jurisdiction that is not a Children's Court, by that court of summary jurisdiction, without prejudice, however, to the provisions of section 75." (Emphasis added)

[16] By virtue of section 72(6), therefore, the Children's Court has the jurisdiction to try matters involving all children under the age of 14 years old, and for those children over the age of 14 years, it only has jurisdiction to try them if they are charged with offences which are not listed in the Fourth Schedule. The Fourth Schedule matters are as follows:

- “1. Murder or manslaughter.
2. Treason.
3. Infanticide.
4. Any offence under sections 8, 13, 14, 15, 16, 17, 18, 19, 20, 23, 24, 25, 29, 30, 31, 44, 48, 50, 51, 55, 56, 58, 59, 60, 61, or 69 of the Offences Against the Person Act.
5. Any offence under section 37 or 43 of the Larceny Act.
6. Any firearm offence as defined in the Gun Court Act.”

[17] A firearm offence, as defined in section 2 of the Gun Court Act, is as follows:

- “(a) any offence contrary to section 20 of the Firearms Act;
- (b) any other offence whatsoever involving a firearm and in which the offender’s possession of the firearm is contrary to section 20 of the Firearms Act:”

[18] Section 72(7) of the Child Care and Protection Act provides that where a child over the age of 14 years is charged before the Children's Court with a Fourth Schedule Offence, the Children's Court's jurisdiction is limited to committal proceedings only. It reads:

“72.-(7) where a child who has attained the age of fourteen years is charged with an offence specified in the Fourth Schedule-

- (a) **proceedings for the child's committal for trial** shall, subject to subsection (1), be heard in a Children's Court; and
- (b) if, on the termination of those proceedings, the Court is satisfied that the child should be committed for trial, the Court shall so commit the child and shall bind such child and the witnesses,

by recognizance to appear at the Court
to which such child is committed.”
(Emphasis added)

[19] It is clear, therefore, that pursuant to this section, the Children’s Court has no jurisdiction to try matters involving a child over 14 years of age charged for any of the offences in the Fourth Schedule, including any firearm offence, and its jurisdiction is limited to holding proceedings with a view to a committal for trial in the Court in which such jurisdiction lies.

[20] This position is similar to that which had obtained under the now repealed section 23(3) of the Juveniles Act. Had NF, being a child over 14 years old, been charged before March 2004, he would have been classified as a ‘young person’ under the now repealed Juveniles Act, and both offences for which he stands charged, being Third Schedule offences, the jurisdiction of the Juveniles Court would have been limited to committal proceedings only. The situation is still the same under sections 72(6) and 72(7) of the Child Care and Protection Act, as the offences for which NF is charged are both in the Fourth Schedule, and he being over the age of 14 years, the jurisdiction of the Children’s Court, pursuant to the Child Care and Protection Act, is limited to committal proceedings.

[21] By virtue of section 74 of the Child Care and Protection Act, where under its provisions, a child is tried before any court which is not a Children’s Court, that court, in respect of that child, shall have all the powers of the Children’s Court. The powers of the Children’s Court in respect of the treatment of a child found guilty of any offence before that court are, by and large, enumerated in sections 76 and 78 of the Child Care and Protection Act.

[22] Section 75 of the Child Care and Protection Act also permits a court before whom a child has been found guilty of any offence other than murder, to remit the matter to the Children's Court for sentencing. It reads in part as follows:

- “(1) Any Court by or before which a child is found guilty of an offence other than murder may, if it thinks fit, remit the case to a Children’s Court acting for the place where the offender was committed for trial or, if he was not committed for trial, to a Children’s Court acting either for the same place as the remitting court or for the place in which the offender resides.
- (2) Where any such case is so remitted, the offender shall be brought before a Children’s Court accordingly, and that court may deal with him in any way in which it might have dealt with him if he had been tried and found guilty by that Court.
- (3) No appeal shall lie against an order of remission made under subsection (1), but nothing in this subsection shall affect any right of appeal against a verdict or finding on which such an order is founded; and a person aggrieved by the order of the Children’s Court to which the case is remitted may appeal therefrom as if he had been tried by and had pleaded guilty before the Children’s Court.
- (4) ...

The answer to question number 2

[23] The answer to the second question referred to this court for determination is, therefore, that: the Children’s Court has no jurisdiction to try firearm offences, as defined by section 2 of the Gun Court Act, committed by a child over 14 years of age. This is because firearm offences are amongst the offences listed in the Fourth Schedule to the

Child Care and Protection Act, which, by virtue of section 72(7), the Children's Court has no jurisdiction to try when the offender is 14 years and older.

Question number 1: What is the jurisdiction of the Gun Court in matters involving children over the age of 14 years, whether charged alone or not?

[24] Section 8 of the Gun Court Act of 1974, as amended, in its current form reads as follows:

- “(1) Notwithstanding anything to the contrary in the Child Care and Protection Act or any other enactment but subject to subsections (2) and (3), any person who is guilty of an offence under section 20 of the Firearms Act or an offence specified in the Schedule shall, upon conviction thereof by the Court, be liable to imprisonment, with or without hard labour, for life.
- (2) Where a child is charged before the Court with any offence referred to in subsection (1), then unless he is charged jointly with a person who has attained the age of fourteen years, the Court shall remit the case to a Children's Court to be dealt with in accordance with the provisions of the Child Care and Protection Act.
- (3) Where a child is charged jointly with a person who has attained the age of fourteen years with an offence referred to in subsection (1), the Court shall, in dealing with the child, have only such powers as are exercisable by a Children's Court under the Child Care and Protection Act.
- (4) If a young person is, pursuant to subsection (1), sentenced to imprisonment, the Court may order that he be detained in such place, other than an adult correctional centre, and on such conditions, as the Minister may direct and, while so detained, he shall be regarded as being in legal custody.
- (5) ...
- (6) ...

(7) **In this section the expression 'child' has the meaning assigned to it in the Child Care and Protection Act."** (Emphasis added)

[25] Section 8 of the Gun Court Act has seen at least three amendments since its first appearance in the Act of 1974, chief of which was in 1976. The section was repealed and replaced in 1983 and was, thereafter, amended after the passage of the Child Care and Protection Act in 2004.

[26] Section 5 of the Gun Court Act gave jurisdiction to a High Court Division of the Gun Court to hear and determine any firearm offence other than murder and treason as well as any offence specified in the Schedule to the Act. Section 8, in its original form in 1974, gave special powers to the Gun Court in the treatment of all persons charged with offences contrary to section 20 of the Firearms Act of 1967. The hearing of the charge had to commence within seven days of the date of first appearance before the Gun Court and, notwithstanding anything to the contrary in the Juveniles Law, any person summarily convicted of said offences was subject to detention during the Governor General's pleasure. In the case of a person under 14 years of age, however, their sentence, if summarily convicted, could only be for detention at an approved school or place of safety. The jurisdiction of the Gun Court with regard to trial of these offences was in respect of all persons above the age of criminal responsibility, with the only fetter on the jurisdiction being a restriction as to where a person under 14 years of age could be ordered detained.

[27] The Gun Court (Amendment) Act of 1976 brought about, along with other changes not relevant to this discussion, an important change to section 8. The provision

in section 8(2) regarding detention at the Governor General's pleasure was deleted, and substituted therefor was a term of imprisonment for life at hard labour for any person convicted of offences under section 20 of the Firearms Act or any offence specified in the Schedule. However, it kept the requirement for persons under 14 years of age to serve their sentence in an approved school or at a place of safety as defined in the Juveniles Act.

[28] In the Gun Court (Amendment) Act of 1983, the entire section 8 was repealed and replaced. The side note to this replacement reads "special powers of the Court re sentence". Although subsection (1) of the new section 8 still made all persons found guilty of an offence under section 20 of the Firearms Act or any offence specified in the Schedule liable to life imprisonment, notwithstanding anything to the contrary in the Juveniles Act, this general power was now made subject to subsections (2) and (3). In subsection (2) a child charged before the court with any offence in subsection (1), could not be tried in the Gun Court unless jointly charged with a person 14 years and over. Where the child was not jointly charged the case had to be remitted to the Juvenile Court to be dealt with in accordance with the provisions of the Juveniles Act. Subsection (3) provided that the court, in dealing with a child jointly charged with a person 14 years and over, could only exercise those powers exercisable by the Juvenile Court under the Juveniles Act. In section 8(7) the expressions 'child' and 'young person' had the same meaning assigned to them in the Juveniles Act. We have already seen that under section 2 of the Juveniles Act the expression 'child' meant a person under the age of 14 years and 'young person' meant a person between the age of 14 years and under 17 years of age.

[29] All this meant that under the 1983 version of section 8 of the Gun Court Act, the Gun Court had no jurisdiction to try a child under 14 years of age charged alone for any firearm offence contrary to section 20 of the Firearms Act or any offence in the Schedule. However, it had the jurisdiction to try a person over 14 years old, who by definition in the Juveniles Act, was a 'young person', whether charged alone or jointly charged with another child of 14 years and older or with an adult. The only restriction in the section in dealing with a child over 14 years old was in subsection (4), where it provided that if the young person was sentenced to a term of imprisonment the court may order that he be detained in a place other than a prison.

[30] The repeal of the Juveniles Act and its replacement with the Child Care and Protection Act, resulted in some drastic changes in the effect of section 8 of the Gun Court Act and its application. The references to the Juveniles Act were removed from section 8, and in subsection (7), the expression 'child' now had the meaning given to it in section 2 of the Child Care and Protection Act, which we have already noted, means a person under 18 years of age. Therefore, the meaning of section 8(2) of the Gun Court Act was immediately changed. The reference to a 'child' in section 8(2), by virtue of section 2 of the Child Care and Protection Act now means a person under 18 years old.

[31] Therefore, it is now the position that, by virtue of section 8(1) of the Gun Court Act in its present form, notwithstanding anything in the Child Care Protection Act (or any other enactment), but subject to subsections (2) and (3), any person found guilty of any offence under section 20 of the Firearms Act or an offence specified in the Schedule, shall

be liable to imprisonment for life, with or without hard labour. Pursuant to subsection (2), a child (and for the purpose of criminal responsibility this would mean any person 12 years and older but under 18 years of age), charged alone for an offence contrary to section 20 of the Firearms Act or any offence in the Schedule, shall have his case remitted to the Children's Court to be dealt with in accordance with the provisions of the Child Care and Protection Act. We have already seen that the provisions of the Child Care and Protection Act provide for the exercise of final jurisdiction over children under 14 years old and those over 14 years old not charged with Fourth Schedule offences. The Children's Court, however, must conduct committal proceedings in respect of children over 14 years of age charged with Fourth Schedule offences, which includes firearm offences.

[32] Section 8(3) of the Gun Court Act provides that where a child is charged with a person of the age of 14 years and older, the Gun Court has jurisdiction to hear the matter but has only such powers, in respect of that child, as are exercisable by the Children's Court under the Child Care Protection Act.

[33] Sections 76 and 78 of the Child Care and Protection Act, outline the methods of dealing with a child offender placed before the Children's Court, which include but are not limited to, the dismissal of the case, the making of probation and supervision orders, correctional orders, fit person orders, and to imprisonment for up to 25 years to life, depending on the age of the child and the offence committed.

[34] Subsection (4) continues to refer to a 'young person', who, if sentenced to imprisonment, may be ordered detained in a place other than an adult correctional centre.

[35] Therefore, in accordance with the above provisions, the jurisdiction of the Gun Court to try a child charged with a firearm offence is either:

- i) where the child is 14 years and older and is charged alone and has been committed to that court for trial by the Children's Court; or
- ii) where the child is under 18 years of age and is charged with another person over 14 years and older. In such a case, notwithstanding anything to the contrary in the Child Care and Protection Act or any other enactment, the Gun Court has direct jurisdiction to try the matter.

The answer to question number 1

[36] The answer to the first question posed by D Palmer J to this court, therefore, is that: the High Court Division of the Gun Court has jurisdiction to try matters involving children 14 years of age and older charged with firearm offences, whether charged alone or with another person also 14 years or older. Where a child is charged alone for a firearm offence, the child must first be taken before the Children's Court. If the child charged alone is under 14 years old, the Children's Court will retain jurisdiction. If the child is over 14 years old the Children's Court must hold committal proceedings for committal to the Gun Court.

[37] Where a child, whether under the age of 14 years or over the age of 14 years, is charged jointly with another person 14 years or older, the Gun Court would have direct jurisdiction to hear and determine such a case.

[38] Where a child is tried jointly with another child over 14 years of age or with an adult, in the Gun Court, for an offence contrary to section 20 of the Firearms Act, and is convicted, the Gun Court, in dealing with that child or those children, must exercise only such powers as are exercisable by the Children's Court under the Child Care and Protection Act, by virtue of section 8(3) of the Gun Court Act.

[39] A child over 14 years of age, charged alone with an offence contrary to section 20 of the Firearms Act, or an offence specified in the Schedule to the Gun Court Act, who has been committed to the Gun Court for trial, if convicted, is liable to imprisonment for life with or without hard labour, pursuant to section 8(1) of the Gun Court Act, no provision having been made exempting such a child in section 8(2) or (3) of the Gun Court Act.

Some further observations

(a) The decision in CP v R

[40] D Palmer J, based on the submissions of counsel for NF, was concerned about the effect of the decision in **CP v R** on his jurisdiction in the instant case. In that case, the appellant CP, who was 15 years of age at the time, appeared before the Gun Court and pleaded guilty to an indictment which charged her alone with the offences of illegal possession of firearm and illegal possession of ammunition, both contrary to section 20 (1) (b) of the Firearms Act. CP having pleaded guilty to both counts on the indictment, the learned judge proceeded to sentence her to 12 month's imprisonment on each count of the indictment, with the requirement that the sentences should run concurrently and be served in a juvenile facility.

[41] CP appealed against the sentences and argued as a ground, *inter alia*, that the learned judge in the Gun Court had no jurisdiction to adjudicate on the matter. This court agreed with the submissions of counsel and found that on the basis of the provisions of section 8(2) of the Gun Court Act, the matter ought to have been remitted to the Children's Court to be dealt with in accordance with the provisions of the Child Care and Protection Act.

[42] This decision is in keeping with the answers given by this court to the questions posed by D Palmer J. However, the case of **CP v R** did not go on to state what the applicable provisions in the Child Care and Protection Act were. Those provisions, as we have pointed out, are in sections 72(6) and 72(7). In the case of CP, who was over the age of 14 at the time, the Children's Court only had jurisdiction to commit the matter for trial in the Gun Court. Therefore, although the trial was declared a nullity in the Gun Court because it originated there, the Children's Court had no jurisdiction to try it and would still have had to hold committal proceedings with a view to committing the case back to the Gun Court for trial.

[43] It is also important to note that the restrictions on the treatment of children in the Gun Court, under section 8 of the Gun Court Act, is with respect to offences specified in the Schedule to that Act and offences contrary to section 20 of the Firearms Act, which are cases more often described by the euphemism 'possession simpliciter'.

[44] In the instant case, NF was also charged with wounding with intent contrary to section 20(1) of the Offences Against the Person Act, which is one of the offences listed

in the Fourth Schedule to the Child Care and Protection Act, and on that basis, it was not triable in the Children's Court. A firearm having been used to cause the wound, this felony offence was also triable in the Gun Court and NF was subject to the penalty stipulated for that offence in the Offences Against the Person Act.

(b) Are there anomalies in the law by virtue of the introduction of the Child Care and Protection Act and the amendments to section 8 of the Gun Court Act?

[45] Some perceived anomalies in the law were pointed out by D Palmer J in his referral, as well as by counsel for the Crown during submissions before this court. The first is with regard to the possibility of an anomaly in the sentencing of children under 14 years of age, tried for firearm offences in the Children's Court, and those 14 years and older tried in the Gun Court for offences contrary to section 20 of the Firearms Act.

[46] Section 8(3) of the Gun Court Act provides that where a child is charged jointly with a person who has attained the age of 14 years, the Gun Court has jurisdiction to hear the matter but has only such powers as are exercisable by the Children's Court under the Child Care and Protection Act. However, section 78(5) of the Child Care and Protection Act, provides that where a child is under the age of 14 and convicted of an offence specified in the Fourth Schedule, the child may be sentenced to detention for up to 25 years. This may be done where the court is of the opinion that none of the other available methods of punishment are suitable. There is in section 78(5) of the Child Care and Protection Act, therefore, a specific provision providing for the detention of children under 14, in those circumstances, for up to 25 years. There is no similar provision in that Act, with regard to children over 14 years of age convicted for offences contrary to section 20

of the Firearms Act. This, of course, is not surprising, since the Children's Court has no jurisdiction to try children over 14 years of age charged with Fourth Schedule offences, although it does have the jurisdiction to sentence such children if they are remitted to the Children's Court for sentence. Significantly, there is no provision in the Gun Court Act for the imprisonment of children over 14 years of age charged jointly with an adult, for an offence contrary to section 20 of the Firearms Act, beyond the age of majority and the Gun Court's treatment of such a child or children is limited to the powers exercisable by the Children's Court.

[47] Counsel for the Crown submitted that, in the result, there was a danger of there being a disparity between the treatment of a person under the age of 14 years tried in the Children's Court for an offence contrary to section 20 of the Firearms Act and a child over the age of 14 years tried jointly with an adult in the Gun Court for a similar offence.

[48] It is true that the Child Care and Protection Act makes no provision for a child of 14 years and over to be imprisoned for up to 25 years for a firearm offence but makes such a provision for a child under 14 years in section 78(5). The child over 14 years, who is tried jointly with another child or an adult in the Gun Court, and convicted, is subject only to the treatment prescribed pursuant to the sentencing powers exercisable by the Children's Court. The question is whether that child can be detained in an adult correctional centre past the age of majority, where no provision has been made for longer sentences against a child of that age in the Child Care and Protection Act, and where the only provision for detention in an adult correctional centre is where the child of 14 and

older is of so recalcitrant a character that it was not expedient that he should continue to be detained in a juvenile correctional centre.

[49] There is also the fact that a child of 14 years and over tried alone in the Gun Court, for an offence contrary to section 20 of the Firearms Act, after a committal, notwithstanding anything to the contrary in the Child Care and Protection Act or any other enactment, is subject to imprisonment for life pursuant to section 8(1) of the Gun Court Act, since such a child is not made subject to subsection (3).

[50] There is, therefore, in our view, a clear anomaly in the law as regards the sentencing options, with respect to a term of imprisonment, available to sentence the following categories of children:

- i) a child under 14 years of age tried in the Children's Court for firearm offences, which includes offences contrary to section 20 of the Firearms Act, which are listed in the Fourth Schedule to the Child Care and Protection Act (imprisonment for up to 25 years pursuant to section 78(5) of the Child Care and Protection Act);
- ii) a child over 14 years of age tried alone in the Gun Court for an offence contrary to section 20 of the Firearms Act or an offence in the Schedule to the Gun Court Act, after committal from the Children's Court in accordance with section 8(2) of the Gun Court Act and section 72(7) of the Child Care and Protection Act (life imprisonment pursuant to section 8(1) of the Gun Court Act); and

iii) a child tried in the Gun Court with another child over 14 years of age or an adult, for an offence in the Schedule to the Gun Court Act or any offence contrary to section 20 of the Firearms Act, in accordance with section 8(3) of the Gun Court Act (imprisonment up to the age of majority pursuant to section 76(6) of the Child Care and Protection Act).

[51] This anomaly can only be addressed by the legislature.

[52] Counsel for the Crown also pointed out that, although the current provisions in section 8 of the Gun Court Act are reflective of the amendments subsequent to the repeal of the Juveniles Act, section 8(3) has retained a sub-category of persons known as 'young persons' which is a holdover from the Juveniles Act.

[53] There is, however, no longer any category known as 'young persons' in the Child Care and Protection Act. A child in section 2(1) of the Child Care and Protection Act is a person under 18, and in section 8(7) of the Gun Court Act, the expression 'child' has the meaning given to it in the Child Care and Protection Act. There is no definition of 'young person' in either Acts, and, to our mind, it is an anachronism left over from the now repealed Juveniles Act. It, however, does serve the purpose of showing that it was always the intention of Parliament to make persons over the age of 14 years, who are tried in the Gun Court for firearm offences, liable to a term of imprisonment.

[54] For good measure, we would also like to mention that section 19 of the Gun Court Act also makes reference to the jurisdiction of the Gun Court affecting a "Young Person",

which also seems to be a hold-over from the repealed Juveniles Act, and perhaps needs to be replaced with the expression 'child'.

[55] Finally, counsel pointed out that in section 8(3), where a child could be charged jointly with a person who has attained the age of 14 years, the second reference in subsection (3), where the court is dealing with "the child", does not seem to recognise the possibility that both persons before the court could fall within the definition of "a child" because there is no mention in the subsection of the expression "the children".

[56] However, it seems to us that since the expression "child" means any person under 18 years of age, a child under 14 years could be charged and tried with a child of 14 years or older, thus giving jurisdiction to the Gun Court to try them both. In such a case, each would be a child and only such powers as are exercisable by a Children's Court under the Child Care and Protection Act would be exercisable by the Gun Court in relation to both of them, pursuant to the subsection. Since a child could also be charged with an adult over 18, it seems to us that there is no difficulty, as the reference to the child would be to that person before the court who was under the age of 18 years old.

Conclusion

[57] It is the opinion of this court that the Children's Court does not have jurisdiction to try children who are 14 years or older, whether by themselves or jointly charged with another, if they are charged with an offence listed in the Fourth Schedule of the Child Care and Protection Act, which includes firearm offences. Firearm offences, as defined in section 2 of the Gun Court Act, are offences contrary to section 20 of the Firearms Act

and any other offence involving a firearm and in which the offender's possession is contrary to section 20 of the Firearms Act. Where a child over the age of 14 years is charged alone for any firearm offence, any offence listed in the Schedule to the Gun Court Act or any offence contrary to section 20 of the Firearms Act, then pursuant to section 8(2) of the Gun Court Act, that child is to be brought before the Children's Court for proceedings to be held with a view to a committal to the High Court Division of the Gun Court or the Circuit Court, as the case may be. The jurisdiction of the Children's Court is limited in these cases to that of committal proceedings, and to sentencing if there is a remittal to it for sentencing by the Gun Court, after conviction for an offence, other than murder.

[58] The Children's Court having no jurisdiction to try such matters, it follows that any remittance under section 8(2) of the Gun Court Act of matters involving a child charged alone who is 14 years of age or older to the Children's Court, to be dealt with in accordance with the provisions of the Child Care and Protection Act, would only be for committal proceedings to be held.

[59] On the other hand, the Children's Court by way of sections 72(6) and 78(5) continues to retain its jurisdiction to try children under the age of 14 years, who are not charged with an adult, whether or not they are charged with Fourth Schedule offences, including firearm offences. Therefore, matters involving children under 14 years charged alone for offences contrary to section 20 of the Firearms Act, any offence stipulated in

the Schedule to the Gun Court Act or any other firearm offence, should be brought before the Children's Court, where jurisdiction lies.

[60] Where a child of the age of criminal responsibility is charged jointly with a person over 14 years of age for an offence specified in the Schedule to the Gun Court Act, any offence contrary to section 20 of the Firearms Act or any other firearm offence, jurisdiction to finally determine such matters lies in the High Court Division of the Gun Court, and there is no need for committal proceedings to be held.

[61] The referral for our consideration is, therefore, decided as set out in the answers given in paragraphs [24] and [36]-[39] to the questions posed.