

JAMAICA

IN THE COURT OF APPEAL

**BEFORE: THE HON MR JUSTICE F WILLIAMS JA
THE HON MISS JUSTICE SIMMONS JA
THE HON MR JUSTICE LAING JA (AG)**

SUPREME COURT CRIMINAL APPEAL NO 39/2017

MARVIN WOOD v R

Ms Zara Lewis holding for Donald Gittens for the applicant

Ms Kathy Pike and Miss Carolyn Wright for the Crown

2 October 2023

Endorsement read by F Williams JA

[1] On 7 March 2017 the applicant was convicted by a judge, sitting alone, in the High Court Division of the Gun Court, at King Street, Kingston of the offences of (i) illegal possession of firearm (two counts); and (ii) illegal possession of ammunition (three counts). On 6 April 2017, he was sentenced to the following terms of imprisonment: (i) illegal possession of firearm; count 1 – 3 years, count 2 – 2 years; (ii) illegal possession of ammunition – count 1 – 14 years, count 2 – 5 years and count 3 – 5 years. The sentences were to run concurrently. His application for permission to appeal against conviction and sentence was refused by a single judge of appeal on 24 January 2022.

[2] A summary of the facts found by the learned trial judge, resulting in the convictions, were that the applicant, on 16 November 2013, was travelling in a motor car in which two firearms, one loaded with six rounds of ammunition, the other with four rounds of ammunition and a bag with an additional four rounds, were found, the vehicle having been stopped by the police. One firearm and the bag were found immediately in front of where he was sitting - that is, where his feet would have been resting.

[3] The applicant's unsworn statement was rejected by the learned trial judge.

[4] In brief written submissions dated and filed 27 September 2023, Mr Donald Gittens, counsel for the applicant, frankly conceded that he was unable to formulate any meritorious arguments in respect of the original grounds of appeal or to formulate any sustainable supplemental grounds of appeal. In those written submissions, he said that he had confirmed this position with the applicant and had gotten his instructions to proceed with the concession. The only request, in the circumstances, was for the sentences to be ordered to commence on the date on which they were imposed, on the basis that the applicant, during his time in the correctional facility since sentencing, has been part of the general population and has received no privileges, normally afforded an appellant or applicant for permission to appeal.

[5] The Crown offered no objection to the application.

[6] On our perusal of the transcript, the main issue that arose in the trial was credibility, which was adequately addressed by the learned trial judge. While the sentencing process was not addressed in what we might regard as an orthodox manner, it cannot fairly be said that the sentences are manifestly excessive – especially in light of the applicant’s previous convictions in 2001 for the same two offences that are the subject of this application, and shooting with intent. In our view, therefore, Mr Gittens’ concession, through Ms Lewis, was, in all respects, quite correctly made. The request as to the date from which the sentences are to run, is also an appropriate one, given that this is the present practice of the court, as reflected in such cases as **Tafari Williams v R** [2015] JMCA App 36.

[7] These, therefore, are our orders:

1. The application for leave to appeal convictions and sentences is refused.
2. The sentences are to run concurrently and are to be reckoned as having commenced on the date on which they were imposed, that is, 6 April 2017.