



**IN THE SUPREME COURT  
TURKS AND CAICOS ISLANDS**

**CR 20 / 2024**

**REX  
V  
TYLER WENRICH**

**Before: The Hon. Mr. Justice Davidson Kelvin Baptiste (Ag.)**

**Mr. Clement Joseph and Ms. Alima Alexis for the Crown.**

**Ms. Sheena Mair for the defendant.**

**Heard: 21 May 2024**

**Delivered: 28 May 2024**



**SENTENCING JUDGMENT**

1. **Baptiste J (Ag.):** Tyler Wenrich falls to be sentenced having pled guilty to possessing two rounds of 9 mm ammunition, without being the holder of a licence for a firearm which takes that ammunition. By virtue of the Firearms (Amendment) Ordinance No 20 of 2022, the offence carries a mandatory minimum sentence of twelve years imprisonment and an unlimited fine. The court is obliged to impose a term of imprisonment of at least the mandatory minimum sentence and a fine.
2. The Firearm Ordinance provides an ameliorative gateway by which the court can disapply the mandatory minimum sentence. This arises in either of two circumstances. Where the offender is under 18 years at the time of the offence. The other is where the court is of the opinion that there are exceptional circumstances relating to the offence or the person convicted of the offence which justifies it in not applying the mandatory minimum sentence. Neither a guilty plea nor material assistance given in the

investigation of the offence shall constitute exceptional circumstances justifying the imposition of a lesser sentence.

3. The policy underpinning the mandatory minimum sentence is one of deterrence and is aimed at curbing the rapid rise in criminal activity associated with the use of firearms in the Turks and Caicos Islands. A short history shows that the 2010 Ordinance provided for imprisonment for a minimum term of 5 years and a fine without limit. The amendment of 2018 provided for a minimum term of seven years and retained the component of a fine without limit. It also introduced exceptional circumstances for the first time and allowed the possibility of a shorter term of imprisonment if exceptional circumstances were found. The 2022 amendment to the Ordinance increased the mandatory minimum imprisonment component to 12 years.
4. It is clear that the various increases in the mandatory minimum sentence reflect the seriousness with which the legislature takes firearms offences and highlights the element of deterrence. The implementation of the provisions of the Ordinance is not targeted at any country or nationality. It is simply giving effect to the laws of the Turks and Caicos Islands. It has the ears of friends, it has the ears of Romans, it has the ears of countrymen. There are no enemies.
5. In **Attorney General's Reference No 1 of 2023, AG R 1 of 2023, [2024] TCACA 4**, the Court of Appeal took judicial notice that the use of unlicensed firearms is wreaking havoc by facilitating the explosion of murders and other firearm related crimes in the Turks and Caicos Islands.
6. As the Privy Council recognised in **Reyes v The Queen [2002] UKPC 11**, at paragraph 25:

In a modern liberal democracy it is ordinarily the task of the democratically elected legislature to decide what conduct should be treated as criminal, so as to attract penal consequences, and to decide what kind and measure of punishment such conduct should attract or be liable to attract. The prevention of crime, often very serious crime, is a matter of acute concern in many countries around the world, and prescribing the bounds of punishment is an important task of those elected to represent the people. The ordinary task of the court is to give full and fair effect to the penal laws which the legislature has enacted. This is sometimes described as deference shown by the courts to the will of the democratically-elected legislature. But is perhaps more aptly described as the basic constitutional duty of the courts which, in relation to enacted law, is to interpret and apply it.”

7. I now consider the basis of Wenrich's plea of guilty. On 20 April 2024 at the Grand Turk Cruise Port, two rounds of 9mm Luger ammunition were found in Wenrich's backpack. He was about to depart the Turks and Caicos Islands. Wenrich was not the holder of a firearms licence in the Turks and Caicos Islands. The backpack in which

the ammunition was found was security scanned as his hand luggage in Virginia in the United States of America, prior to boarding his flight to Miami on 17th April 2024.

8. The cruise ship docked at Grand Turk in the morning of 20th April 2024 and was due to depart at approximately 5 p.m. the same day. Grand Turk was the only docking destination of the cruise. While in Grand Turk for the day, the backpack was under Wenrich's control. On boarding the ship to depart Grand Turk, the backpack was put through a security scanner where one round of ammunition was found. The backpack was put through the scanner again and a second round of ammunition was found.
9. Wenrich is a licenced conceal and carry firearm permit holder in Virginia, United States, for a firearm that holds the same ammunition found in his backpack. The ammunition found is his ammunition. Wenrich fully co-operated with the police.
10. Ms. Mair submits on behalf of Wenrich, that exceptional circumstances exist allowing the court to depart from imposing the mandatory minimum sentence. To impose the mandatory minimum sentence would be arbitrary and disproportionate. Further, the public interest is met by the imposition of a lesser sentence. The intention of Parliament by fixing the mandatory minimum sentence was not to expand it to include circumstances as the present case.
11. Ms. Mair advances the position that taking a holistic approach, the features of the case allowing the court to find exceptional circumstances with respect to the offence include:
  - a. The defendant was a tourist boarding a cruise ship at Grand Turk to leave the islands and had been in Grand Turk with the backpack that held the ammunition for approximately 9 hours.
  - b. There were two rounds of ammunition, no firearm. There was no concealment of the two rounds or attempt to disguise them. The defendant legally owns the ammunition in his home state of Virginia where he has a 'concealed carry' permit for a firearm and ammunition.
  - c. The backpack was security screened at Richmond International Airport in Virginia and at the Miami cruise port. There was no criminal intent to commit any offence and no possession for a criminal purpose.
12. With respect to the circumstances of the offender, Wenrich is 31 years old and a father of an 18 months old son. He is in full time employment as a paramedic and is also the Vice President of the company he works for - Emergency Service Solutions. He has no previous convictions in the United States, Turks and Caicos Islands or elsewhere, and is of exceptionally good character.

13. Ms. Mair submits that a mandatory minimum sentence is not required as a deterrent in this case. There was no criminal intent by the defendant and no firearm. To impose a sentence of 12 years would undoubtedly be arbitrary and disproportionate.
14. The purpose of enacting the mandatory minimum sentence was due to a surge in murders and gun and gang crime in the islands. The imposition of a mandatory minimum in this case would not reduce those issues. The fact that it was 2 rounds of 9 mm ammunition in itself is a singular feature which, to impose the mandatory minimum would be arbitrary and disproportionate. When considering the circumstances of the offence and the offender and on taking a holistic approach, the circumstances are exceptional.
15. There was no gun and no use was made of the ammunition. Wenrich possessed the ammunition with no criminal intent, and was of impeccably good character. At no time was he attempting to hide the ammunition or evade the authorities.
16. Ms. Mair contends that the circumstances of the present case are similar to **R v David O'Connor CR 12 /2023**, referred to in the Attorney General's Reference. The Court found exceptional circumstances existed. The defendant lawfully acquired the 44 rounds of ammunition in the USA and was a licensed firearm holder in 3 states, the ammunition was not possessed with any criminal intent, he had no previous conviction in the Turks and Caicos Islands under the Firearms Ordinance and the public interest was served by the imposition of a lesser sentence. The Court of Appeal found that it was not possible to say that the judge was clearly wrong in finding exceptional circumstances.
17. Ms. Mair also relies on **R v Michael Grim CR 38/23**. Grim, a tourist leaving Providenciales, pled guilty to possession of 20 rounds of ammunition in a magazine in his luggage. He had strong mitigation. He legally owned the firearm, which was in the United States of America, and the ammunition belonged to him. The ammunition was not concealed. He was of good character, had no previous conviction. Exceptional circumstances were found. The public interest would be served by the imposition of a lesser sentence.
18. Mrs. Mair submits that the circumstances of this case are not what Parliament intended would attract the mandatory minimum sentence. The public interest would be served by the imposition of a lesser sentence. Having regard to the nature and circumstances of the offence and the history and circumstances of the defendant, exceptional circumstances exist to allow the court to depart from the mandatory minimum.
19. Further, strong personal mitigation exists in this case. Wenrich is a young married father with an eighteen – month old son. He is a paramedic and is Vice President of the company he works for. Wenrich is of exceptional character and has produced a number of character references and a letter to the court showing remorse.

20. Wenrich has a concealed carry permit in Virginia which requires 1 to 2 days training and a background check prior to the permit being issued. He spent 14 days in custody from 20th April to 3rd May 2024 - equivalent to a 3 weeks custodial sentence. Ms. Mair submits that a prison sentence of three weeks custody together with a financial penalty would be in line with the authorities. In that regard, Ms. Mair relies on **Attorney General's Reference No. 1 of 2023** at paragraph 125 where the Court of Appeal stated:

“...where exceptional circumstances exist the court has no jurisdiction to impose a non-custodial sentence. It can impose a custodial sentence for a term and a fine in a quantum that is fair and just in the circumstances...”

At paragraph 107, the court stated:

“Sending a message of deterrence required that any leniency shown when having regard to mitigating circumstances must be reflected in the length of incarceration imposed, however short and in the quantum of the fine, however small.”

21. Mr. Joseph contends on behalf of the Crown, that the minimum 12 years sentence is appropriate in this case. Citing as the reason, the absence of exceptional circumstances of the offence or the offender to depart from the mandatory minimum. Mr. Joseph points out that by reason of section 30 (4) of the Firearms Ordinance CAP 18:09, a guilty plea or material assistance given in the investigation of the offence do not constitute exceptional circumstances.

22. Mr. Joseph advances the following as aggravating circumstances of the offence, as reasons why the court should impose the mandatory minimum:

- a. The ammunition discovered were 9 mm, which is very common and if it were left in the Turks and Caicos Islands could have been easily utilised if placed in the wrong hands.
- b. Although the ammunition was in the back pack, it was carried in public spaces when the defendant disembarked the cruise ship.
- c. The defendant took a flight from Virginia to Miami before boarding the cruise ship and did not do his due diligence in ensuring that the ammunition was not in his possession. His acceptance of guilty plea is guilty of knowledge.

23. With respect to aggravating circumstances of the offender, Mr. Joseph argues that being a holder of a firearm's licence in the United States of America is of no moment to the laws of the Turks and Caicos Islands. Individuals are bound by the laws of the countries they visit and the defendant is no different.

24. Mr. Joseph also posits that the increase in the mandatory minimum sentence from 5 years at its introduction in 2010 to 12 years in 2022 shows that there is a serious problem in our society with respect to firearm offences. This was acknowledged by the Court of Appeal in **Attorney General’s Reference No 1 of 2023** at paragraph 100. Mr. Joseph invites the court not to arrive at a decision in a vacuum but to consider parliament’s dominant purpose and intention.

25. Mr. Joseph relies on **R v Kelly [2000] QB 198** at 208, where Lord Bingham construed exceptional as:

“... a circumstance which is such as to form an exception, which is out of the ordinary course, or unusual, or special, or uncommon. To be exceptional a circumstance need not be unique, or unprecedented, or very rare; but it cannot be one that is regularly, or routinely, or normally encountered.”

In addition, Mr. Joseph references the principles relating to exceptional circumstances as enunciated in **R v Nancarrow [2019] EWCA Crim 470**, as well as local cases highlighting the deterrent purpose of the mandatory minimum sentence.

26. Mr. Joseph relies on the local case of **Jim Kelly Joseph v Regina CR-AP 18 of 2018**. The following mitigating factors were advanced including: (i) the appellant came into possession of the firearm because it was given to him by a young man whom he mentored; he intended to hand it over to the police; the firearm was not tested and presumed not to have been used; he was of exceptional good character; had no previous conviction; and several citizens gave good testimonials. The Court of Appeal held that exceptional circumstances did not exist in this case and dismissed the appeal.

27. The vexed issue of the existence or otherwise of exceptional circumstances is at the fore of this sentencing hearing. The issue finds expression in Wenrich’s plea of guilt to the offence of possessing two rounds of 9 mm ammunition. The court must impose at least the mandatory minimum sentence of 12 years imprisonment unless there are exceptional circumstances relating to the offence or the offender, which justifies it in not doing so.

28. Unsurprisingly, and as discerned from the submissions of both counsel, diametrically opposed positions have been taken on the question of exceptional circumstances. Ms. Mair advocates in support of the existence of exceptional circumstances warranting the disapplication of the mandatory minimum sentence. Mr. Joseph enunciates the position that there are no exceptional circumstances relating to the offender or the offence. In the premises, Mr. Joseph submits that the court is enjoined to impose the mandatory minimum sentence and a fine, as mandated by law.

29. Although the Firearms Ordinance does not define “exceptional circumstances”, it clearly states what does not constitute exceptional circumstances. A guilty plea does not constitute exceptional circumstances, nor does material assistance given in the investigation. Wenrich is caught by that provision.

30. Additionally, the Ordinance lists two matters in considering whether a sentence of less than the mandatory minimum term is just in all the circumstances. The court may have regard in particular to whether the person convicted of the offence has a previous conviction for an offence under the Firearms Ordinance. Wenrich has no previous conviction for any offence. The other consideration is whether the public interest in preventing the unlawful possession or use, manufacture, transfer sale or acquisition of firearms would be served by the imposition of a lesser sentence.
31. While the Firearms Ordinance does not define exceptional circumstances, the case law has established principles relating thereto. The principles were summarised in **R v Nancarrow [2019] EWCA Crim 470**, paragraph 19:
- i. The purpose of the mandatory minimum sentence is to act as a deterrent.
  - ii. Circumstances are exceptional if to impose the mandatory minimum would amount to an arbitrary and disproportionate sentence; **R v Rehman [2005] EWCA Crim 2056**.
  - iii. It is important that courts do not undermine the intention of Parliament by accepting too readily that the circumstances of a particular offence or offender are exceptional. In order to justify the disaplication of the mandatory minimum, the circumstances of the case must be truly exceptional (**R v Dawson [2017] EWCA Crim 2244** at paragraph 19).
  - iv. It is necessary to look at all the circumstances of the case together, taking a holistic approach. It is not appropriate to look at each circumstance separately and conclude that taken alone, it does not constitute an exceptional circumstance. There can be cases where no single factor by itself will amount to exceptional circumstances, but the collective impact of all the relevant circumstances makes the case exceptional (Reham, at paragraph 11.)
  - v. The court should always have regard, among other things, to the four questions set out in **R v Avis [1998] 2 Cr App R (S) 178**, namely: (a) what sort of weapon was involved? (b) What use, if any, was made of it? (c) With what intention did the defendant possess it? What is the defendant's record? (See for example, **R v McCleary [2014] EWCA Crim 302** at paragraph 11.)
  - vi. The reference in the section to circumstances of the offender is important. It is relevant that the defendant is unfit to serve the minimum sentence or that such a sentence may have a significant adverse effect on his health (Rehman, at paragraph 15.)

- vii. Each case is fact specific and the application of the principles depended upon the particular circumstances of each individual case. Limited assistance is to be gained from referring the court to decisions in cases involving facts that are not materially identical (see, for example, **R v Stoker [2013] EWCA Crim 1431** at paragraph 22).
32. Ultimately, the test is whether the imposition of the minimum sentence would lead to a sentence that is arbitrary or disproportionate. The answer to that question must be considered in the light of the clear statutory intent that the offences in question must be met with strong deterrent sentences (**R v Bartell [2020] EWCA Crim 625**, paragraph 27).
33. In **Attorney General's Reference No 1 of 2023**, the Court of Appeal of the Turks and Caicos Islands approved the test in *Reham* that circumstances may be considered exceptional if to impose the mandatory minimum sentence would result in a sentence that is arbitrary and disproportionate. The court in *Attorney General's Reference* took the test for exceptional circumstances to mean a set of particular and unusual circumstances that affect the offender or the offence and which in the opinion of the court justifies it in not imposing the mandatory minimum sentence.
34. I recognise it is trite law that whether there are exceptional circumstances is a fact - sensitive question. Further, there is no check list of matters which determine on which side of the line a case falls. In *Reham*, at paragraph 15, Lord Woolf emphasised the importance of not dividing circumstances into those that are capable of being exceptional and those that are not (**Regina v Davidson [2016] EWCA Crim 1626**, paragraph 33).
35. I recognise, as pointed out in **R v Bartell [2020] EWCA Crim 625**, paragraph 21, that the difficulty with an exceptionality test is that it does not provide any clear standard from which the exceptional case will differ. Further, exceptional circumstances can cover a multitude of circumstances (**R v Luke-Smith [2024] EWCA Crim 424** paragraph 24).
36. I have referred to the principles relating to exceptional circumstances. I am also obliged by the authorities to consider cumulatively, the factors advanced on Wenrich's behalf as constituting exceptional circumstances in relation to the offence and the offender. I have to decide whether in my opinion, they constitute exceptional circumstances.
37. In that regard I consider the written submissions of Ms. Mair and the agreed basis of plea. The basis of plea states that the backpack in which the ammunition was found underwent two security scan processes. The first was at the airport in Virginia prior to boarding for Miami. The second was prior to boarding the Cruise ship in Miami. The cruise ship docked at Grand Turk in the morning of 20th April and was due to depart at 5p.m. the same day. The two rounds were detected during the scans while boarding. They were not detected at the same time. Wenrich is a licenced Virginia conceal and carry permit holder that holds the same ammunition found in his bag.



38. Wenrich was a tourist boarding the cruise ship about to leave Grand Turk after spending approximately 9 hours there. He had two rounds of ammunition but no firearm. He legally owns ammunition in his home state of Virginia. The two rounds were not concealed and he had no criminal intent.
39. Wenrich, a young married man with an eighteen-month old son, is of impeccable character with no previous conviction in the Turks and Caicos Islands or elsewhere. Several testimonials were received attesting to his good character. He is fully employed as a paramedic and Vice President of the company he works for.
40. I note Mr. Joseph's submissions that there are no exceptional circumstances with respect to the offence and the offender, as well as the cases he relies on. It is well established that each case is fact sensitive and reference to other cases where the facts are materially different, is of limited assistance.
41. The case law establishes that *'the mandatory minimum sentence can cover a wide range of potential conduct. It covers not only the professional gun runner, guns used by members of criminal gangs and others whose possession is for the first time, as well as those convicted of past firearm offences. It is cast in a wide net. The reality is that mandatory minimum sentence provisions apply to offences that can be committed in various ways, under a broad array of circumstances and by a wide range of people.'* This highlights the requirement for individuality in sentencing, as well as exceptional circumstances relating to the offence or the offender.
42. I accept the agreed basis of plea and the matters relied on in the written submissions of Ms. Mair as constituting exceptional circumstances. In my opinion these matters, taken cumulatively, constitute exceptional circumstances in relation to the offence and the offender. I am also of the view that in all the circumstance of this case, the imposition of the mandatory minimum would result in a sentence that is arbitrary and disproportionate. This is the single ultimate test.
43. It is necessary to address the important principle of proportionality. *'No one should be dispossessed of his liberty in an arbitrary fashion. A period of detention would be arbitrary if it is not proportionate to the offence and other relevant circumstances.'*
44. The fundamental principle of all sentencing is proportionality. Sentencing must be proportionate to the gravity of the offence and the degree of responsibility of the offender. A sentence must reflect the fundamental principle of proportionality. In **R v Friesen, 2020 SCC 9**, the Supreme Court of Canada stated that all sentencing starts with the principle that sentences must be proportionate to the gravity of the offence and the degree of responsibility of the offender. The principle of proportionality has always been central to Canadian sentencing: paragraph 30.
45. In **R v Hills 2023 SCC 2**, the Supreme Court of Canada stated at paragraph 58:

“The “gravity of the offence” refers to the seriousness of the offence in a general sense and is reflected in the potential penalty imposed by Parliament and in any specific features of the commission of the crime ... The gravity of the offence should be measured by taking into account the consequences of the offender’s actions on victims and the public safety, and the physical psychological harms that flowed from the offence.”

In this case these issues do not arise as there was possession of two rounds of ammunition in a backpack, no firearm.

46. At paragraph 56 of *Hills*, the Supreme Court recognised proportionality as a “*central tenet*” of Canada’s sentencing regime with roots that predate its recognition as the fundamental principle of sentencing in the Criminal Code. Whatever weight a judge may wish to accord to the objectives of sentencing, the resulting sentence must respect the fundamental principle of proportionality.
47. At paragraph 57, the Supreme Court stated that the purpose of proportionality is founded in “*fairness and justice*”. It is to prevent unjust punishment for the sake of the common good and it serves a limiting function to ensure that there is justice for the offender. As the *sin qua non* of a just sanction, the concept expresses that the amount of punishment an offender receives must be proportionate to the gravity of the offence and the offender’s moral blameworthiness.
48. The need for proportionality and individualised sentencing is not confined to capital cases: Lord Bingham in **Reyes v The Queen [2002] UKPC 1** at paragraph 37.
49. In **R v Suter, 2018 SCC 34**, at paragraph 4, the Supreme Court of Canada stated that:

“Sentencing is a highly individualized process. A delicate balancing of various sentencing principles and objectives is called for, in line with the overriding principle that a “sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender””.
50. The principle of proportionality requires that a sentence not exceed what is just and proportionate, given the moral blameworthiness of the offender and the gravity of the offence. In this sense the principle serves a limiting or restraining function: **R v Nasogaluak 2010 SCC 6** at paragraph 42.
51. Sentences must in all circumstances be guided by the cardinal principle of proportionality. The sentence must be severe enough to denounce the offence but must not exceed what is just and appropriate. A person cannot be made to suffer a grossly disproportionate punishment simply to send a message to deter others from offending. Proportionality has a restraining function and in this sense serves to guarantee that a sentence is individualised, just and appropriate: **R v Bissonnette, 2022 SCC 23 at paragraphs 50 and 51**.
52. ‘The determination of a just and proportionate sentence is a delicate art which attempts to balance carefully the societal goals of sentencing against the moral blameworthiness

of the offender and the circumstances of the offence, while at all times taking into account the needs and current conditions of and in the community.’ **R v Shropshire**, [1995] 4 SCR 277 at paragraph 46. (See also paragraph 62 of Hills).

53. This brings me to the nature of sentencing. What is the nature of sentencing? In **R v Hills**, the Supreme Court recognised at paragraph 62, that sentencing is a highly individualized and discretionary endeavour. Each sentence is to be custom tailored to match the particular offence, as well as the offender. There is no “*one size fits all*” penalty, as sentencing is “*an inherently individualized*” and “*profoundly subjective process.*”

54. The Supreme Court also observed at paragraph 64 that: “*Sentencing is not an exact science. It can be difficult for sentencing judges to select the exact fit punishment as there is often more than one correct sentencing response to a crime.*”

55. I adopt the words of the Court of Criminal Appeal in **Dookee v Director of Public Prosecutions** [2010] SCJ 71, cited with approval by the Privy Council in (See **Sabapathee v The Director of Public Prosecutions** [2014] UKPC 19 at 17.)

“... sentencing is not a science of mathematical application of any set formula. It is a normative science rather than a physical science which takes into account the circumstances of the offender as well as the offence and the impact of the offence on the community. A sentence may look to be lenient because it is tailored to fit the offender, the offence and the offended but, in our system of justice, the trial court is the only constitutional institution which is empowered and sovereign in determining which sentence to pass on an offender, on the facts of the particular case... The principle of proportionality pervades through the whole system of justice, in procedure, substance and sanctions.”

56. In **R v Bissonnette**, the Supreme Court of Canada stated at paragraph 49:

“There is no mathematical formula for determining what constitutes a just and appropriate sentence. This is why this court has described sentencing as a “delicate art which attempts to balance carefully the societal goals of sentencing against the moral blameworthiness of the offender and the circumstances of the offence, while all time taking into account the needs and current conditions of and in the community”.”

57. The principles of proportionality play a critical role in my determination of the appropriate sentence. Guided by the legal principles pertaining to proportionality, it is patent that the imposition of the mandatory minimum sentence of 12 years, for the possession of two rounds of ammunition, given the circumstances of the offence and the offender, would be arbitrary and disproportionate. The court cannot sanction a sentence that violates the principle of proportionality. In the circumstances, the mandatory minimum sentence of 12 years is disapplied. It would not be in the public interest to impose the mandatory minimum.

58. In fashioning a just and proportionate sentence, the court also pays regard to the individualised nature of sentencing and also considers the principle of deterrence which underpins the legislative intent. The penological objective of deterrence takes two forms. Specific deterrence and general deterrence. Specific deterrence is meant to discourage the offender before the court from reoffending. The aim of general deterrence is to discourage members of the public who might be tempted to engage in the criminal activity for which the offender has been convicted (**R v Bissonette 2022 SCC** paragraph 47).
59. As far as specific deterrence is concerned, it is unlikely that Wenrich will be re-offending. He came here as a tourist on a cruise ship, and spent about 9 hours and was being scanned for departure when the 2 rounds were found. With respect to general deterrence, Wenrich cannot be made to suffer a grossly disproportionate punishment simply to send a message to deter others from offending.
60. The court has to impose a sentence that is just and proportionate. The court has found exceptional circumstances relating to the offence and the offender and holds that the imposition of the mandatory minimum sentence would be arbitrary and disproportionate. Substantial mitigation also exists in this case.
61. The defendant has spent 14 days in custody from 20th April 2024 to 3rd May 2024, equivalent to a three-week custodial sentence. Absent the statutory requirement for the imposition of a term of imprisonment and a fine, a fine would adequately meet the justice of this case. In my view the imposition of a short prison sentence and a fine would not be inconsistent with the policy of deterrence.
62. As the Court of Appeal aptly puts it in **Attorney General's Reference No 1 of 2023**, sending a message of deterrence required that any leniency shown when having regard to mitigating circumstances must be reflected in the length of incarceration imposed, however short, and in the quantum of the fine, however small.
63. The order of the court is that the defendant is sentenced to 3 weeks imprisonment. The time he has spent on remand or in detention, is to be deducted from the three weeks. The sentence amounts to time served. The defendant is also fined \$9000.00 payable on or before the 10th of June 2024, in default 3 weeks imprisonment.

**The Honourable Mr. Justice Davidson Kelvin Baptiste**

**Judge of the Supreme Court (Ag.)**

