



IN THE SUPREME COURT

CR50 of 2022

THE TURKS AND CAICOS ISLANDS

REX

v

HINSON

BEFORE: The Honourable Mr. Justice Davidson Kelvin Baptiste (Ag)

**APPEARANCES: Mr. Oliver Smith KC and Ms. Tennant for the defendant.
Mr. Clement Joseph, Principal Public Prosecutor, for the Crown**

DELIVERED: 18th December 2023



SENTENCING REMARKS

1. **Baptiste J:** At a judge alone trial, Mr. Hinson, the defendant, was found guilty of two offences contrary to section 3 (1) of the Firearms Ordinance Chapter 18:09: Count 1, Carrying a firearm, a .25 FIE pistol without being the holder of firearm licence in respect of such firearm and; and Count 2, carrying three rounds of 0.25 ammunition without being the holder of a firearm licence which takes that ammunition. Mr. Hinson also pled guilty to a third count, possessing cannabis. The defendant falls to be sentenced in respect of these offences.

2. The short background facts are that the police stopped and searched a vehicle being driven by the defendant and found a Fanny pack containing a .25 pistol, three rounds of .25 ammunition and a small quantity of cannabis, among other items. The defendant claimed ownership of the cannabis but denied knowledge of the firearm and ammunition; indicating in his evidence that he did not have control of the vehicle for several hours, including overnight, and other persons had access to it.
3. The Firearms Ordinance provides for a mandatory minimum sentence of 7 years in respect of the firearm and ammunition offences unless there are exceptional circumstances relating to the offence or the offender, which justifies the court in not imposing at least the mandatory minimum term.
4. 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” –
 - a. Whether the person convicted of the offence has a previous conviction under the Ordinance;
 - b. 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.
5. Learned counsel for the defendant, contends in favour of the existence of exceptional circumstances warranting the imposition of a term below the mandatory minimum. The circumstances relied on as being exceptional are:
 - a. The defendant does not have a previous conviction for an offence under the Ordinance;
 - b. this is his first conviction;
 - c. he has an eye illness which requires surgery and medical monitoring; and
 - d. is the primary financial provider for his five young children and they would suffer significant hardship in the event he is incarcerated for an extended period of time.

6. In brief, the Crown contends that there are no exceptional circumstances relating to the offence or the offender; none of the matters relied on can be categorized as exceptional circumstances and as such there is no basis to depart from the mandatory minimum sentence of 7 years.
7. The courts in this jurisdiction have addressed the issue of exceptional circumstances on several occasions, utilizing the significant body of case law on the subject. The principles are well – established. In **R v Nancarrow [2019] EWCA Crim 470**, it was stated at paragraph 19:
 - (1) The purpose of the mandatory minimum term is to act as a deterrent (**R v Rehman and Wood**) 2005 EWCA Crim 2056; [2006] 1 Cr App R 77 at paragraph 12.
 - (2) Circumstances are exceptional if imposing the mandatory minimum term would amount to an arbitrary and disproportionate sentence (Rehman and Wood at paragraph 16).
 - (3) It is important that the 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 disapplication of five - year minimum, the circumstances of the case must be truly exceptional (**R v Robert Dawson [2017] EWCA Crim 2244**, paragraph 19).
 - (4) 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 and Wood at paragraph 11).
 - (5) The court should always have regard, amongst 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? (d) What is the defendant's record?

(6) The reference to the 'circumstances of the offender' is important. It is relevant that the offender is unfit to serve a five - year sentence or that such a sentence may have a significant adverse effect on his health (Reham and Wood at paragraph 15).

(7) Each case is fact - specific and the application of the principles depend 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).

8. Recently, in **Rex v Swinbourne [2023] EWCA Crim 906**, the court referred to the summary of the principles in R v Nancarrow and at paragraph 25, stated that the core principles are as follows:

(1) The purpose of the mandatory minimum term is to act as a deterrent.

(2) Circumstances are exceptional if imposition of the minimum term would lead to an arbitrary and disproportionate sentence.

(3) In order to disapply the minimum sentence the circumstances must be truly exceptional.

(4) There can be cases where the collective impact of all relevant circumstances makes the case exceptional.

9. A factor is unlikely to be exceptional if it would apply to a significant number of cases. In **Regina v Peers [2021] EWCA Crim 1677**, the court observed at paragraph 14, that there was a considerable body of reported cases dealing with what may or may

not comprise exceptional circumstances for the purposes of the Firearms Act 1968. Coulson LJ went on to say that “In summary, those cases make it plain that exceptional circumstances mean precisely that, and that it will be in a rare case in which that high hurdle is surmounted.”

10. It is the opinion of the court that is critical as to what exceptional circumstances are. The purpose of the statutory provisions was to ensure that, absent exceptional circumstances the court would always impose the mandatory minimum.
11. In **R v Edwards [2007] 1 Cr App. R (S) 111**, the court emphasised that strong personal mitigation on its own was unlikely to be sufficient to amount to exceptional circumstances. That was because, if it were so, there would be a risk that those looking for a safe haven to harbour dangerous firearms would target those whose personal circumstances might excite the sympathies of the court. If that exercise were successful, it would undermine the very policy of the minimum term: See **R v Peers [2021] EWCA Crim 1677**, at paragraph 18.
12. Having regard to the established legal principles, the court has to consider whether there are exceptional circumstances relating to the defendant and the offence warranting the disapplication of the mandatory minimum sentence of seven years imprisonment. Earlier in this judgment, I referred to the circumstances relied on as being exceptional. The fact that the defendant does not have a previous conviction for an offence under the Firearm Ordinance is a factor the court may have particular regard to in considering whether a sentence of less than the mandatory minimum is just in all the circumstances. The fact that this is the defendant’s first conviction is a matter which in the ordinary course of things goes to mitigation.
13. The issue of the defendant’s eye illness finds expression in the Pre-Sentence Report. It is stated there that the defendant shared that he began having trouble with his eyes since 2019 and was advised that he has a pathogen disease, which is an eye infection. He was offered the option of surgery but was not able to follow through as he is now incarcerated. I note here that the defendant was incarcerated in October 2022. He stated that he began having trouble with his eyes since 2019, but puts forward his incarceration as the reason for his not following up with surgery. There is nothing to

show that the defendant is unfit to serve a seven-year term of imprisonment or that such a term would have an adverse effect on his health.

14. With respect to the defendant being the primary provider for his five young children ranging in age from 7 years to 14 years. The authorities show that those who contravene the Firearms Act must, for the good of society, whatever the consequences are for their family must expect to receive the mandatory minimum prescribed by law. Judges must eschew sorrow or sympathy for an offender. It is only in exceptional circumstances that the court can disapply the mandatory minimum sentence.
15. With respect to the offence, the firearm in question was a .25 Fie pistol; there were three rounds of .25 ammunition. The pistol and firearm were found in a Fanny pack in a vehicle being driven by the defendant, when the police stopped and searched the vehicle. No use was made of the weapon. The defendant denied knowledge of the weapon.
16. The circumstances relating to the offender and advanced as exceptional circumstances, as well as the circumstances relating to the offence, have to be considered cumulatively against the policy backdrop of a provision requiring the imposition of a deterrent sentence unless exceptional circumstances are made out. As explained in **R v Rehman** at paragraph 12, in respect of the rational of the statutory provision: The policy was to treat the offence as requiring a minimum term unless there were exceptional circumstances, not necessarily because the offender would be a danger in the future, but to send out a deterrent message. The mere possession of a firearm can create dangers to the public. The possession of a firearm can result in the firearm going into circulation. It can then come into possession of someone other than the particular offender, for example, by theft, in whose hands the firearm would be a danger to the public. Parliament has therefore said that usually of merely being in possession of a firearm will itself be sufficiently serious to require the imposition of five years unless the exceptional circumstances threshold is passed.
17. The court is enjoined to take a holistic view as to the existence or otherwise of exceptional circumstances. In my judgment, and applying the principles relating to exceptional circumstances, the high threshold of exceptional circumstances relating to

the offence or the offender have not been met. The circumstances were not exceptional either in relation to the offence or the offender.

18. 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 to which section 3 of the Firearms Ordinance applies, must be met with strong deterrent sentences: **R v Bartell [2020] EWCA Crim 625**, at paragraph 27. In my view the public interest in preventing the unlawful carrying of a firearm would not be served by the imposition of a lesser sentence.
19. In my judgment, the collective impact of the circumstances advanced by the defendant cannot be described as exceptional justifying the disapplication of the mandatory minimum sentence of seven years. The imposition of the mandatory minimum sentence would not lead to a sentence that is arbitrary or disproportionate.
20. With respect to the possession of cannabis, the weight of the cannabis found in the defendant's possession was 16.59 grams (0.585 ounces). It was a small quantity for his personal use. No aggravating factors in relation to the offence or the offender. Mitigating factors small amount for personal use, acknowledgement from the onset that the drugs belonged to him, and he plead guilty (on the morning of the trial).
21. There being no exceptional circumstances relating to the offence or the offender, the court imposes the mandatory minimum sentence of 7 years for count 1, carrying of firearms and for count 2, carrying of ammunition. Counts 1 and 2 arise from the same incident, the sentence imposed in relation to these counts is to run concurrently. The defendant has been in custody since his arrest on 27th October 2022, he is given full credit for the time spent on remand. The time he has spent on remand is to be deducted from the seven years imprisonment. The defendant is reprimanded and discharged on Count 3.

(5) The sentence of the court is as follows:

Count 1: Carrying a firearm, the defendant is sentenced to seven years imprisonment.

Count: 2 Carrying of ammunition, the defendant is sentenced to 7 years imprisonment.

The time spent on remand is to be deducted from the seven years.

The sentences on count 1 and 2 are to run concurrently.

Count 3, possession of Controlled drug (Cannabis), the defendant is reprimanded and discharged.

The Hon. Mr. Justice Davidson Kelvin Baptiste

Judge (Ag) of The Supreme Court.

