IN THE SENIOR COURTS OF BELIZE

CENTRAL SESSION-BELIZE DISTRICT

IN THE HIGH COURT OF JUSTICE

INFERIOR APPEAL (CRIMINAL) NO.: IC20200001

BETWEEN

CARLISLE BOL

Appellant

and

BRIZENIO CHUB, CPL. 762

Respondent

Before: The Honourable Justice Nigel Pilgrim

Appearances:

Mr. Arthur Saldivar for the Appellant.

Ms. Sheiniza Smith, Senior Crown Counsel, for the Respondent.

2024: September 17th
October 11th

JUDGMENT

INFERIOR APPEAL- FIREARM OFFENCE-SENTENCE-PROPORTIONALITY- GOOD CHARACTER-YOUTH

[1] **PILGRIM J**.: Carlisle Bol ("the appellant") was convicted on 10th February 2020 on a 2017 charge of keeping a firearm without a gun license, contrary to section 3(1) of the **Firearm Act**[1] ("FA") before the Learned Magistrate ("TLM") sitting in the Belize Judicial District. He was sentenced to 2 years imprisonment. The appellant initially appealed both conviction and sentence, however, at the hearing he abandoned the former and only pursued the appeal against sentence, which he contends is unduly severe. The offending in brief is that the appellant, then a police officer, was held with an unlicensed firearm at a nightclub.

[2] The appellant submitted that TLM did not pay sufficient regard to his good character in the sentencing process, nor his youth. He also submitted that the appellant should have been given credit for not "escalating" things when he was held with the firearm.

[3] The respondent submits that TLM gave appropriate weight to the appellant's good character as exemplified by the imposition of a sentence below the mandatory minimum for this offence. The respondent replies that youth cannot avail the appellant in these circumstances, and that he ought not be given credit for not behaving worse, by "escalating". The respondent submits that TLM's sentence was not unduly severe.

Ground 1: The Sentence is Unduly Severe

The Legal Framework

[4] The relevant provisions of the FA are as follows:

> *"3(1) ...no person shall…keep…any firearm…for any purpose, unless he is the holder of a valid licence for that purpose, issued under section 3A.*
>
> *…*
>
> *32(1) A person who commits an offence under this Act shall, unless otherwise specially provided, be sentenced to imprisonment on summary conviction as follows–*

[1] Chapter 143 of the Substantive Laws of Belize, Revised Edition 2020.

(a) for a first offence, to imprisonment for a term which shall not be less than five years but which may extend to ten years;"

[5] The offence of keeping an unlicensed firearm is, on a plain reading of section 32 of the FA, one with a mandatory minimum penalty of 5 years imprisonment in these circumstances. The propriety of the imposition of a mandatory minimum penalty in ordinary legislation, such as the FA, is subject to the injunction in section 7 of the **Constitution** against inhuman and degrading punishment. This was decided by the Court of Appeal in the matter of **R v Zita Shol**[2] which adopted its earlier reasoning in the case of **Edwin Bowen v PC 440 George Ferguson**[3], where they quashed the imposition of the mandatory minimum penalty for drug trafficking on an appellant who was of effective good character, per Bulkan JA:

*"[14]…**this court held that the mandatory sentence was grossly disproportionate, given the small amount of cocaine in the appellant's possession alongside his previously unblemished record. The majority reasoned that if a mandatory sentence is found to be grossly disproportionate or such as to outrage the standards of decency, it would violate the constitutional prohibition on inhuman and degrading punishments**." (emphasis added)*

[6] The power of an appellate court to interfere with the sentence of a lower court was outlined by the apex court, the Caribbean Court of Justice ("CCJ") in the Guyanese decision of **Linton Pompey v DPP**[4]. This Court can only interfere if the sentence is manifestly excessive or wrong in principle, per Saunders PCCJ, speaking about appeals from the High Court, but which would apply equally to reviewing decisions by magistrates:

"[2] Appellate courts reviewing sentences must steer a steady course between two extremes. On the one hand, courts of appeal must permit trial judges adequate flexibility to individualise their sentences. The trial judge is in the best position to fit the sentence to the criminal as well as to the crime and its impact on the victim. But a reviewing court must step

[2] Criminal Application No. 2 of 2018 at paras 12-18.
[3] Criminal Appeal No 6 of 2015.
[4] [2020] CCJ 7 (AJ) GY.

in to correct discrepancies, reverse excesses or aberrations, secure consistency and promote observance of the rule of law.

…

[29] The principles which must guide an appellate court in reviewing a sentence are well known. An appellate court will not alter a sentence merely because the members of the court might have passed a different sentence…. the court will not interfere with a sentence unless it is manifestly excessive or wrong in principle."

The factual context

[7] On 28th October 2017 Cpl. Brizenio Chub ("the respondent"), at around 3:50 a.m., was on duty at a nightclub. He observed the appellant amongst a group of men pointing at another person and arguing. The respondent escorted the appellant out of the club and told him to calm down and go home. After about 5 minutes the respondent saw the appellant arguing with the same person with his hand on his front pocket in the building. The respondent asked the appellant to leave but then observed a silver object in the latter's pocket. The respondent grabbed the appellant and carried him out of the building. He asked the appellant for the object in his pocket 3 times, but the appellant said that he had nothing to give him. The respondent told the appellant that he would conduct a search on him. The appellant pushed away the respondent's hand twice. Another police officer intervened and held the appellant whereupon a search was effected.

[8] The respondent found in the appellant's pocket a .22 pistol. The appellant indicated that he had no licence for that firearm. TLM accepted the case for the prosecution and convicted the appellant. In her sentence she expressly referenced, as mitigation, the appellant's good character[5]. She also identified the aggravating factors of carrying a firearm in public and concealing the firearm.

ANALYSIS

[9] The appellant, in order for this appeal to be decided in his favour and following the guidance of the CCJ in *Pompey*, was bound to demonstrate to this Court that TLM erred in law in that the imposition

[5] See para. 30 of TLM's reasons.

of the sentence was wrong in principle, for instance, by taking into account something she should not have or not taking into account something she should have, or that the sentence was so excessive as to shock the conscience of the ordinary Belizean on Albert Street. The appellant has failed to discharge that burden.

[10] Firstly, the issue of good character was considered by TLM. TLM said so. It is clearly demonstrated by the non-imposition of the mandatory minimum. She clearly, though not saying so expressly, engaged the principle of proportionality and relied on the appellant's previous good character to avoid the mandatory minimum. The size of the discount that is to be apportioned for any mitigating factor is a matter for TLM's discretion in the particular facts of that case, unless in the circumstances it is so unreasonable that no reasonable magistrate would have so concluded. The appellant has failed to demonstrate that the exercise of the discretion was so unreasonable. The Court, as noted by the CCJ in *Pompey,* must give TLM the room to appropriately individualize and craft the sentence, having seen and heard all the witnesses.

[11] Also, TLM went under by more than half what the National Assembly thought was a just starting sentence for the troublesome Caribbean epidemic of the unlawful possession of firearms, imposing a 2-year sentence out of a 5 year minimum. The TLM's sentence, in the Court's view, would not be seen by the man or woman on Albert Street as excessive.

[12] Secondly, the complaint that youth was not considered is also a non-starter. The appellant at the time of this offence was 23 years old. He was well past the age of majority, and it is important to reiterate that youth simpliciter is not a mitigating factor, it is only considered where that young age plays some role in the offence. There is no such evidence here. The appellant was not under the influence of an older offender. This offending was a function of stupidity, not immaturity. The Court finds the reasoning of the Trinidadian Court of Appeal in **Ryan Ramoutar et al v The State**[6] attractive, even in the Belizean context, on the issue of youth as a mitigating factor, per Mohammed JA:

> *"(11) Young age considerations:*

[6] Cr. App. Nos. S 028, 029 and 030 of 2015.

The overwhelming majority of cases in this jurisdiction are committed by young offenders within the age bracket of approximately eighteen to twenty-five years. ***The observation is frequently made that young persons in today's setting, because of their level of exposure, appear to mature at a considerably faster pace than those of the past. Once the age of majority has been attained, that is, eighteen years, with the attendant conferral of important adult rights and privileges (such as the capacity to contract and to vote), youth by itself will not inevitably lead to a reduction in sentence. Adult offenders must be taken, where deliberate action is engaged in, to have courted the consequences of their behaviour and choices. By so doing, adult offenders cannot, without more, seek to be partially immunized in the sentencing process, by praying in aid young adulthood as a mitigating factor. If the age of majority is to be considered as meaningful, representing as it does both notionally and practically the portal into the world of adult decision-making and overall responsibility, then any offender of and over that age will have a severely uphill task in persuading a sentencing court that without more, comparative youth is a mitigating factor.***

…

If on the evidence, it can be seen, however, that the youth of an offender has rendered him susceptible to more mature influence, this may be a factor which can, dependent on the context, be taken into account and it may lead either to a minor reduction or to a more substantial reduction in the sentence.

In respect of offenders who have not yet attained the age of majority, the courts may assume a certain level of immaturity in the absence of any evidence which might suggest otherwise, for example, where a minor is clearly a "ringleader" and involves others, even adults, in the subject wrongdoing. In the absence of such evidence, a nominal reduction may be given as a nod to youth." (emphasis added)

[13] The Court finds that TLM was under no obligation to consider youth as a mitigating factor.

[14] Thirdly, the Court dismisses the appellant's argument that TLM improperly denied him credit for not considering that the appellant did not "escalate" the situation. TLM quite properly considered the serious aggravating factor that the firearm was being carried in a public place, which carries an

inherent risk to other persons, particularly in what must have been a crowded nightclub. The appellant carried a concealed firearm, obscured from view in his front pocket. This is a significant aggravating factor because concealment allows dangerous weapons to be snuck into high-traffic areas creating a danger to the public. TLM took these matters properly into account. The appellant repeatedly resisted attempts at its seizure to the extent that he had to be forcefully held to have it taken from him. In those circumstances, the appellant cannot be given credit for not "escalating" the situation because it was only by the use of lawful force from the police he was prevented from doing so. Also, this Court is of the view that it is not a mitigating factor to say, "I did wrong, but I should be given credit for not doing worse." The absence of an aggravating factor does not, generally, convert into a mitigating factor.

[15] Indeed, the Court accepts the contention of the respondent that the appellant was the beneficiary of very good luck by TLM not considering other significant aggravating factors, such as the breach of public trust, seeing that the appellant committed this offence while being sworn to uphold the law as a police officer. Nor did the TLM expressly consider the prevalence and seriousness of the offence. If there was a flaw in the sentencing process, in the Court's view, it is that the sentence was not higher.

[16] This Court having regard to the length of time this matter was hanging over the head of the appellant, from 2017 to now, would not exercise its undoubted discretion to increase the sentence[7].

[17] The Court finds no merit in this ground of appeal.

[18] The appellant has served 1 year, 2 months and 26 days of his sentence before being granted bail according to prison records. He has also spent 4 days on remand. This equates to 455 days of incarceration, leaving a balance of 275 days to be served in accordance with TLM's original sentence. This means that the appellant's remaining sentence would be 9 months and 5 days.

[7] Section 120(1) of the Supreme Court of Judicature Act, Chapter 91 of the Substantive Laws of Belize, Revised Edition 2020: "*the Court may, if of opinion that a different sentence should have been passed, quash the sentence passed by the inferior court and pass such other sentence warranted by law, **whether more** or less **severe**, in substitution therefor as the Court thinks should have been passed."* There is a similar provision in the later **Senior Courts Act** at section 124(1).

Disposition

[19] The Court dismisses the appeal and affirms the orders of TLM. The appellant is ordered to complete the sentence imposed by TLM of 9 months and 5 days to run from today's date.

[20] The Court orders each party to bear its own costs.

Nigel C. Pilgrim
High Court Judge
Criminal Division
Central District
Dated 11th October 2024