

**COMMONWEALTH OF THE BAHAMAS
IN THE COURT OF APPEAL
MCCrApp. No. 85 of 2020**

B E T W E E N

THADDEUS CAMBRIDGE

Intended Appellant

AND

THE COMMISSIONER OF POLICE

Intended Respondent

BEFORE: **The Honourable Sir Michael Barnett, P
The Honourable Mr. Justice Evans, JA
The Honourable Madam Justice Bethell, JA**

APPEARANCES: **Mr. Ryszard Humes, Counsel for the Intended Appellant

Ms. Stephanie Pintard, Counsel for the Intended Respondent**

DATES: **20 April 2021; 3 May 2021**

Criminal appeal – Application for an extension of time within which to appeal – Appeal against sentence – Possession of ammunition with intent to supply – Whether sentence unduly severe – Whether magistrate took into account extraneous matters - Section 9A of the Firearms Act - Section 235(2) of the Criminal Procedure Code

Following the search of a home in Adelaide Village on 23 February 2020 the intended appellant was charged with and convicted of possession of 38 live rounds of 7.62 ammunition with intent to supply. He pleaded guilty at his first court appearance on 26 February 2020 and was sentenced to three years imprisonment. He now seeks an extension of time within which to appeal his sentence.

Held: application refused. Sentence affirmed.

The factors to be considered on an extension of time application are well known; length of and reasons for the delay, prospects of success and the prejudice, if any, to the intended respondent. The delay in this case is 6 months. The reasons for the delay are due to the lack of facilities and the intended appellant not being sure when he could file his appeal. The intended appeal is woefully out of time and the reasons provided are inadequate. The statutory time limit of seven days imposed by section 235(2) of the Criminal Procedure Code is meant to be followed and not simply disregarded.

Regarding the prospects of success, the intended appellant submits that his sentence is unduly severe and also that the magistrate erred by taking into account something extraneous, namely,

that in the course of sentencing him for possession of ammunition with intent to supply the magistrate said “There is an (assault weapon) lurking somewhere.”

A sentence is unduly severe “if it falls outside the realm of sentences which would be reasonable in like circumstances.” Having regard to sentences imposed in like circumstances, in addition to the aggravating factors and mitigating factors in the case of the intended appellant, the Court is not of the view that the sentence imposed was unduly severe.

The Court regards the magistrate’s comment that there was an assault weapon lurking somewhere as nothing otherwise than an acknowledgement that the intended appellant was in possession of ammunition for an assault weapon for the purpose of supplying the same to someone who had an assault weapon. The intended appellant was not being punished for possession of an assault weapon and the magistrate did not take into account something extraneous. Further, having regard to the facts of the present case and sentences imposed in like circumstances it cannot be said that the magistrate arrived at an inappropriate sentence as a result of her comment.

The intended appeal has no prospects of success.

Alexander Harris v The Commissioner of Police MCCrApp. No. 38 of 2020 considered
Commissioner of Police v Brian Botham MCCrApp. No. 134 of 2015 considered
Dieuson Tomas v Commissioner of Police MCCrApp. No. 122 of 2019 considered
Donovon Rolle v The Commissioner of Police MCCrApp. No. 145 of 2016 applied
Dustin Taylor v The Commissioner of Police MCCrApp. No. 63 of 2014 applied
Edward Barrett v Commissioner of Police MCCrApp. No. 19 of 2018 considered
Jermaine Ramdeen v Commissioner of Police MCCrApp. No. 64 of 2018 considered
Rodriguez Jean Pierre v R SCCrApp. No. 110 of 2019 applied
Shukuanya Thompson v Commissioner of Police MCCrApp. No. 86 of 2020 applied
Teniro Minns v The Commissioner of Police MCCrApp. No. 254 of 2018 distinguished
The Attorney General v Omar Chisholm MCCrApp. No. 303 of 2014 applied

J U D G M E N T

Judgment delivered by the Honourable Sir Michael Barnett, P:

1. This is an application by the intended appellant to extend the time within which to appeal the sentence imposed upon him following his conviction for the offence of possession of ammunition with intent to supply, contrary to section 9A of the Firearms Act. The intended appellant was convicted on 26 February 2020 and sentenced to a term of three years imprisonment.
2. When considering an application for an extension of time within which to appeal Adderley, JA at paragraph 12 in **The Attorney General v Omar Chisholm** MCCrApp. No. 303 of 2014 stated:

“12. It is settled that in exercising its discretion whether to grant or refuse an extension of time the court considers four things: the length of the delay, the reason for the delay, the prospect of success, and the prejudice, if any, to the respondent.”

3. A Notice of Application for extension of time within which to appeal was filed on 31 August 2020. This is more than six months after his conviction and sentence and is woefully out of time. By way of affidavit filed in support of his application for an extension of time on 13 April 2021 the intended appellant asserts his reasons for the delay as:

“4. That due to the lack of facilities I was unable to file an appeal on my own at Bahamas Department of Corrections.

5. That several months had passed between my conviction and sentencing and I was unsure at what point I could file my appeal.”

4. Section 235(2) of the Criminal Procedure Code (CPC) provides:

“235. (2) An appellant, within seven days after the day upon which the decision was given from which the appeal is made, shall serve a notice in writing, signed by the appellant or his counsel, on the other party and on the magistrate’s court of his intention to appeal and of the general grounds of his appeal:

Provided that any person aggrieved by the decision of a magistrate’s court may upon notice to the other party apply to the court to which an appeal from such decision lies, for leave to extend the time within which such notice of appeal prescribed by this subsection may be served, and the court upon the hearing of such application may extend such time as it deems fit.” [Emphasis added]

5. In **Shukuanya Thompson v Commissioner of Police** MCCrApp. No. 86 of 2020 this Court (differently constituted) said, relative to the statutory time limit imposed on criminal appeals from the Magistrate’s Court:

“18. The CPC intends that appeals from Magistrate’s Court should be made quickly. It provides for a short period of only seven days.”

6. This Court (differently constituted) in the case of **Rodriguez Jean Pierre v R** SCCrApp. No. 110 of 2019 said:

“10. I do not think the Court intended that no matter how long the delay in appealing and notwithstanding the absence of any reasonable excuse, a court will grant an

extension of time if the prospects of success on its merits are good. That would be inconsistent with the purpose of the time limit imposed by Parliament.

11. As the Court of Appeal in England in *R v Lesser* (1940) 27 Cr. App. R. 69 observed:

‘There appears to be a danger of the rules which govern the proceedings of this Court being regarded as of no importance. The Court has listened to repeated applications for extensions of time for leave to appeal, which have been put forward as if the granting of such an application were a mere matter of form. While the Court is always willing to listen to such an application on the ground that the applicant did not understand what the points in issue were, or that he could not read or write, or on some ground of that kind relating to the particular case, it should be clearly understood that a person who has failed to appeal within the ten days allowed by statute has lost his right to appeal.’

12. In *Sahadath Ali v R* (1969) 15 WIR 399, the Court of Appeal of Trinidad and Tobago said:

‘...In any case we regard that we must be satisfied about the reasons given and that they must be of (some) substance, for in all the authorities it has been stated that the rules are of some importance and are to be followed.’

...

14. [In *Sahadath Ali v R*] The Court of Appeal held:

‘(i) that substantial grounds must be given for the delay before the court will exercise its power to extend the time; (ii) that notwithstanding (i) the court would intervene in a case where the trial judge exceeded his jurisdiction in imposing a sentence or did not have jurisdiction to impose the sentence; (iii) that the sentence imposed was within the jurisdiction of the trial judge and the application must be refused because no substantial grounds were given.’

15. An exposition of the law may be found in the decision of the Court of Appeal of The Eastern Caribbean on appeal from Anguilla in *Liburd v The Queen* HCRAP 2008/003 where Barrow JA (as he then was) said:

‘[3] In considering an application for an extension of time for appealing a court generally looks at the length of delay, the reasons for delay and the merits of the proposed appeal. The court’s consideration begins with the principle that time limits for appealing must be obeyed. The court will not be inflexible and unyielding in its application of the principle but it has a duty to hold an applicant to strict compliance.

[4] Time limits for appealing are established to ensure that there is certainty in the conduct of litigation. Certainty is of overriding importance, especially in criminal litigation, so that all persons interested in litigation and members of society generally may know where matters stand. An appellant must know that he may appeal at any time within 14 days but equally he must know that if he does not appeal within that time he may no longer appeal, unless he has satisfactory grounds to persuade the court to make an exception and extend time. Similarly, the prosecution must be able to rely on time limits and to know and conduct the affairs of that branch of the administration of justice on the basis that if there is no appeal within the time limited then there will be no appeal, save in an exceptional case. As important, the victims of crime, their families and friends, as well as witnesses must be able to rely on the certainty of the time limits imposed by the law and to believe that if no appeal is filed before time expires there is closure.

[5] Because there are such grave considerations involved in an application to extend time for appealing the court must be keen in its examination of reasons for delay...’

16. In Liburd Barrow JA acknowledged that it did not follow that because an applicant has given no reason for a delay an application for an extension of time must be automatically dismissed. Even though there has been inordinate and inexcusable delay the court may still grant an extension of time ‘where for example significant injustice would result if the proposed appeal were not heard’.

7. The intended appeal is woefully out of time and the reasons provided for the delay are inadequate. Time limits imposed by statute are meant to be followed and not simply disregarded on the basis that there exists a power in the Court to extend the time within which to appeal.

8. Relative to the prospects of success of the intended appeal, by way of amended Notice of Appeal the intended appellant's proposed grounds are as follows:

“1. The Learned Magistrate’s sentence s unduly severe.

2. The Learned Magistrate erred in principle by giving weight to something she ought not to have taken into account not sufficient weight to mitigating factors (sic).”

9. The prospects of success of these grounds will be considered together.
10. The facts surrounding the case, as taken from the Magistrate's Notes, are that officers, armed with a search warrant conducted a search of a residence in Adelaide Village. In the front, northern bedroom in a wooden speaker box officers found a plastic bag containing 38 live rounds of 7.62 ammunition. The intended appellant and another were arrested and charged with the offence of possession of ammunition with intent to supply. He entered a guilty plea and was convicted thereon.
11. At the sentencing phase the Notes reveal the following:

“Defendant has antecedent for simple possession in March, 2013.

Defendant agrees with summary of the Prosecution Case.

Plea in Mitigation

- **Defendant has pleaded at his first opportunity.**
- **He is the stepfather of children ages 12 years & 6 years.**
- **Defendant has an eight year old son.**
- **Defendant is employed with West Winds #2 in the Maintenance Department (Time Share Department)**
- **Defendant co-operated with the Police.**

Decision

Court takes into consideration mitigating factor of early plea.

Court takes into consideration aggravating factors of quantity and caliber of ammunition.

There is an (assault weapon) lurking somewhere.

Defendant sentenced to (3) years on count #1.”

12. By his amended proposed grounds, the intended appellant is asserting that the sentence imposed by the magistrate was unduly severe and also that she erred in principle by taking

into account something she ought not to have taken into account, namely, that **“There is an (assault weapon) lurking somewhere.”**

13. Counsel for the intended appellant submits that based on where the comment appears in the magistrate’s sentencing remarks, it is clear that this was operating on the mind of the magistrate when she sought to impose a sentence on the intended appellant and was punishing him for the firearm. Counsel says this was an error in principle as the intended appellant was not charged with any firearm related offence.
14. On the other hand, counsel for the intended respondent submits that the intended appellant was charged with possession of ammunition with intent to supply. By its very nature, the offence presumes that there is a firearm for which the ammunition would be supplied for. Therefore, the magistrate was merely commenting on that fact and not taking the firearm into account when sentencing the intended appellant.
15. Section 9A of the Firearms Act, pursuant to which the intended appellant was charged, provides:

“9A. Possession of firearm and ammunition with intent to supply.

(1) It is an offence for a person to have a firearm or ammunition in his possession with intent to supply it to another in contravention of the provisions of this Act.

(2) A person who contravenes this section commits an offence and is liable –

...

(b) on summary conviction to imprisonment to a term in the range of four years to seven years.

(3) For the purposes of subsection (1), where a person is found in possession of two or more firearms or twenty-five more rounds of ammunition without a firearm certificate, it shall be presumed, unless the contrary is proved, that he is in possession of the said firearm or said ammunition with intent to supply it to another person irrespective of whether that person is within The Bahamas or elsewhere.

(4) For the purposes of this Act, “supply” includes sell, transfer or otherwise distribute.” [Emphasis added]

16. The mandatory minimum sentence of four years imprisonment imposed by section 9A(2)(b) of the Firearms Act was abolished by the Abolition of Mandatory Minimum Sentences Act, 2014. Therefore, it was open to the magistrate to sentence the intended appellant for less than four years but up to a maximum of seven years imprisonment for this offence.

17. To succeed on his appeal the intended appellant would have to demonstrate that the sentence imposed was unduly severe or that the magistrate erred by taking into account something she ought not to have taken into account.
18. The intended appellant submits that his sentence was unduly severe because the mitigating factors, that is, his early guilty plea, the fact that the ammunition was found in a home not in a vehicle, his lack of antecedents of a similar nature, his gainful employment and his cooperation with the police, outweighed the aggravating factors of the amount and caliber of the ammunition and that an assault weapon was lurking somewhere.
19. In considering whether a sentence imposed was unduly severe, this Court, differently constituted, in the case of **Donovon Rolle v The Commissioner of Police** MCCrApp. No. 145 of 2016, defined “unduly severe” as:

“46. ...A sentence is unduly severe if it falls outside of the realm of sentences which would be reasonable in like circumstances...”
20. When one considers the factors at play in the present case, can it be said that the sentence imposed on the intended appellant was outside the realm of reasonable sentences in like circumstances?
21. The intended appellant pleaded guilty at the first opportunity and naturally a discount would be given for his early plea of guilt.
22. In most cases involving offences relative to ammunition the accused is also charged with a firearm related offence. This intended appellant was not. However, the facts of the case of **Dustin Taylor v The Commissioner of Police** MCCrApp. No. 63 of 2014 are similar to the present case: the appellant pled guilty to possession of ammunition with intent to supply and the ammunition was found in a home following a search. Taylor was sentenced to four years imprisonment, presumably pursuant to the mandatory minimum sentence regime which had not yet been abolished. However, his sentence was reduced to three years imprisonment on appeal.
23. Taylor had 20 live rounds of ammunition while the intended appellant in the present case was found guilty of possession of 38 live rounds of 7.62 ammunition with intent to supply. 7.62 ammunition is for an assault type weapon. The Crown invites the Court to take judicial notice that the AK 47 assault weapon is **“the number one weapon of choice used in the commission of crime in our society.”**
24. Taylor pleaded guilty and had a previous conviction. The intended appellant, who also pleaded guilty, did not have any antecedents for a similar offence. However, the quantity of ammunition in the present case is more than in Taylor’s case and the caliber of ammunition in the present case is for an assault weapon.
25. In the case of **Alexander Harris v The Commissioner of Police** MCCrApp. No. 38 of 2020 the appellant was convicted and sentenced for the offences of possession of an unlicensed firearm and two rounds of ammunition. The ammunition was found in a car which had been stopped by the police, not in a home as in the intended appellant’s case. Harris was charged with possession simpliciter, not intent to supply as was the intended

appellant. In the court below Harris was sentenced to two years imprisonment on each count following a trial. He did not appeal against his sentence and it was affirmed on appeal.

26. In **Dieuson Tomas v Commissioner of Police** MCCrApp. No. 122 of 2019, a case involving possession of an unlicensed firearm and ammunition, the sentence imposed in the court below of three years on each count was affirmed on appeal. Following a trial Tomas was convicted for the offence of possession simpliciter as he was in possession of 6 rounds of ammunition. The ammunition was not found in the confines of a home.
27. In **Edward Barrett v Commissioner of Police** MCCrApp. No. 19 of 2018 Barrett was charged with various offences pursuant to the Firearms Act, inclusive of three counts of possession of ammunition with intent to supply. Following a trial, he was sentenced to three years imprisonment on each count. The facts of the case revealed that Barrett was importing the ammunition for sale within The Bahamas. Various calibers of ammunition were involved. His three-year sentence was affirmed on appeal.
28. In **Jermaine Ramdeen v Commissioner of Police** MCCrApp. No. 64 of 2018 the appellant pled guilty to the offences of possession of an unlicensed firearm and possession of ammunition. He was sentenced to three years on each count. Like the intended appellant, Ramdeen had a previous conviction for an unrelated offence. His sentence was affirmed on appeal.
29. Crane-Scott, JA in delivering the judgment of the Court in **Taylor** said:

“25. The Firearms Act was amended yet again in 2013 and most recently in 2014. The latter amendment was passed with the intention of including offences relating to high powered firearms, illicit manufacture, trafficking and export of firearms and to fulfill this country’s international obligations pursuant to the United Nations Convention Against Transnational Organized Crime and for Connected Purposes.

26. It is evident from a reading of the Firearms Act (as amended over the years) that as a general rule, Parliament intends firearms offences to carry custodial sentences thereby reflecting the abhorrence with which Bahamian’s, through their Parliament, view the illicit use and abuse of firearms.

27. In our view the time has come for the country’s courts to reflect, through their sentences, the following sentiments expressed by Lord Judge CJ in the English Court of Appeal case of R v Wilkinson [2010] 1 Cr App R (s) 100:

‘2. The gravity of gun crime cannot be exaggerated. Guns kill and maim, terrorise and intimidate. That is why criminals use them. Sentencing Courts must

address the fact that too many lethal weapons are too readily available: too many are carried: too many are used always with devastating effect on individual victims and with the insidious corrosive impact on the well being of the local community.’

28. The unlawful possession and use of firearms and ammunition is a grave concern to this society. They are used to kill and injure and to further the commission of other violent crimes. Illegal guns and ammunition are integral to the illicit drug trade and are used the world over by rival gangs bent on protecting turf, exacting gang discipline and imposing street justice.

29. Based on the recent (2014) amendment to the Firearms Act it is now clear that by virtue of Section 9 of the Act, Parliament intends a custodial sentence to be imposed by a stipendiary and circuit magistrate following a summary conviction for the purchase, acquisition or possession of a firearm or ammunition and that sentence should fall within the range of 12 months to 10 years.

30. In balancing the relevant factors with a view to the proper exercise of the sentencing discretion, we expect that sentencers will pay due regard to such aggravating and mitigating factors of the offence as well as those of the offender as may be available.” [Emphasis added]

- 30.** For all of the above reasons, having balanced the aggravating and mitigating factors in the present case and having considered sentences in like circumstances we do not find the sentence imposed on the intended appellant to be unduly severe.
- 31.** Regarding the intended appellant’s assertion that the magistrate took into account extraneous matters, while the comment by the magistrate that **“There is an (assault weapon) lurking somewhere.”** is unfortunate, having regard to the nature and seriousness of the offence and all of the foregoing factors it cannot be said that the magistrate arrived at an inappropriate sentence as a result of her comment.
- 32.** The present case is distinguishable from the case of **Teniro Minns v The Commissioner of Police** MCCrApp. No. 254 of 2018 upon which the intended appellant relied. The facts of Minns are:

“6. ...On 22nd August 2018, a complaint was made to the police with respect of a vehicle being taken at gunpoint. Acting on information, Officers 2420 Chong and 3592 Dames went to the area of Bimini Avenue, where the defendant was seen. After speaking with the defendant, who was told that he was suspected of being in possession of a firearm, the defendant took the Officers to an abandoned building, where he pointed out to them a

firearm loaded with three live rounds of ammunition. The firearm was hidden under a sheet metal. The defendant was cautioned and arrested as a suspect for possessing a firearm and ammunition without the requisite authority.

According to the arresting officer, when asked how he came to be in possession of the firearm and ammunition, the defendant told them that he had watched a male, who sells drugs on the streets, hid the firearm. Further that after the male, who hid the firearm left the area, he (the Applicant) went and stole the firearm from where it was hidden.”

33. On these facts Minns was charged with and pled guilty to the offence of possession of an unlicensed firearm and possession of ammunition. Minns was sentenced to three years and one year imprisonment, respectively. Minns appealed on the basis that, inter alia, his sentences were too harsh in the circumstances.

34. During the course of sentencing in **Minns** the magistrate said:

“The firearm in this case is considered to be a fairly powerful and dangerous weapon. Not only did the defendant possess the firearm, but he used it in the commission of an offence. The sentence of the court is not to punish the defendant for the alleged offence committed, but for possessing and using the firearm as he accepted he did, whilst committing an offence.

The court recognizes the defendant is a young person and there is the possibility of him rehabilitating and making positive contribution to society in the future. **However, the court cannot overlook the serious nature of the defendant having an illegal firearm in his possession, using the firearm to commit an offence** and the havoc created among members of the society by persons like the defendant, who possess and use such illegal weapon to commit an offence against innocent persons in our society.” [Emphasis added]

35. The Court (differently constituted) in **Minns** said:

“23. It is to be noted that the Applicant was charged with possession of a firearm simpliciter and thus it was improper for the magistrate to take the position that he was punishing the Applicant for using the gun. I am aware that if there was cogent evidence as to the use of the gun this could be an aggravating factor relative to the possession thereof...

24. The magistrate in his remarks accepted that the Applicant had no previous convictions as such as far as the law is concerned the Applicant had committed no other crime. The magistrate does not in his remark identify the crime which he alleges that the Applicant committed and which he asserted that the Applicant admitted to. It is noteworthy that the summary of facts which the magistrate provided does not contain an allegation that the Applicant was the person who took the vehicle at gunpoint. It follows that the Applicant's acceptance of those facts cannot be construed as an admission to a crime other than possession of the firearm and ammunition. Nor is there any direct evidence on the record to explain the Magistrate's comment that the accused accepted that he used the firearm to commit a crime. This court has had the need on previous occasions to remind magistrates that proper records should be kept of what transpires at hearings especially where guilty pleas are taken." [Emphasis added]

36. The present case is clearly distinguishable from **Minns**. While it was patently clear in **Minns** that the magistrate was punishing the appellant for use of the firearm, the same is not true in the case of the intended appellant. We would not regard the magistrate's comment as being otherwise than an acknowledgement that the intended appellant was in possession of ammunition for an assault weapon for the purpose of supplying the same to someone who had an assault weapon. This is a perfectly legitimate observation, and it does not mean that the magistrate was punishing him for possession of an assault weapon. The magistrate did not take into account something which she ought not to have taken into account.

37. This Court wishes to repeat what it said in **Commissioner of Police v Brian Botham** MCCrApp. No. 134 of 2015:

"31. In recent times this Court has consistently stressed deterrence as the main factor governing a sentencer's consideration when sentencing an accused person found in possession of a firearm.

...

34. Deterrence is a legitimate principle to guide a sentence. It is one of the pillars of sentencing and is inclusive of others, i.e. retribution, prevention and rehabilitation."

38. Three years is not too high for a person in possession of ammunition with intent to supply. The person supplying others with a firearm or ammunition must be punished. Not much leniency can be shown to persons who possess firearms and ammunition with the intent to supply them to others.

39. In our view, the intended appeal has no prospects of success and we would refuse the application for an extension of time; and affirm the sentence of the magistrate.

The Honourable Sir Michael Barnett, P

The Honourable Mr. Justice Evans, JA

The Honourable Madam Justice Bethell, JA