

**JAMAICA**

**IN THE COURT OF APPEAL**

**BEFORE: THE HON MRS JUSTICE FOSTER-PUSEY JA  
THE HON MR JUSTICE D FRASER JA  
THE HON MRS JUSTICE G FRASER JA (AG)**

**SUPREME COURT CRIMINAL APPEAL NO COA2021CR00069**

**RORY EDMOND v R**

**Cecil J Mitchell for the appellant**

**Miss Ruth Anne Robinson for the Crown**

**16 July 2025**

**Criminal law – Sentencing – Unless sentence manifestly excessive it will not be disturbed at the instance of the defendant even if sentencing judge failed to follow established sentencing methodology – Defendant to receive full credit for time spent on pre-sentence remand even where subject to a mandatory minimum sentence**

**ORAL JUDGMENT**

**D FRASER JA**

**Introduction**

[1] On 14 July 2021, the appellant, Mr Rory Edmond, was convicted on an indictment for the offences of illegal possession of firearm, contrary to section 20(1)(b) of the Firearms Act (count one) and shooting with intent, contrary to section 20 of the Offences Against the Person Act (count two). On 30 September 2021, he was sentenced to serve terms of imprisonment of 10 and 15 years’ respectively on each count, with the sentences being ordered to run concurrently.

[2] A single judge of this court refused his application for leave to appeal his conviction but granted him leave to appeal sentence. Through his counsel, the appellant indicated he was not renewing his application for leave to appeal his conviction. He, however, pursued his appeal against sentence.

### **The case for the prosecution**

[3] At about 7:40 am on 4 August 2020, District Constable Tyrone Easy and Corporal Constantine were on sentry duty at the National Police College, Twickenham Park in the parish of Saint Catherine. A public passenger bus drove to the gate. Its driver and a passenger alerted the attention of the officers to an ongoing armed robbery of a truck and the truck's location. The two officers then went out onto the main road.

[4] Corporal Constantine signalled a white box truck travelling from the direction of Central Village to stop. While he was doing so, a silver (called grey by the learned trial judge) Honda Civic motor car travelling from the same direction as the truck, exited the line of traffic and sped off on the soft shoulder, in the direction of Spanish Town. The truck driver then similarly pulled onto the soft shoulder and drove off in the same direction as the Honda Civic motor car. As he did so, he pointed a firearm through the truck window and fired in the direction of the police officers.

[5] Corporal Selvin Smith, who was *en route* to work in his private motor car, arrived on the scene. He picked up District Constable Easy and Corporal Constantine. They drove off in the direction of the Spanish Town by-pass road, in pursuit of the truck and Honda Civic motorcar. They drove onto a road that leads to a number of factories. The officers saw the truck heading into the bushes, called for more police assistance and then stopped on the roadway awaiting that assistance. Subsequently the truck and Honda Civic emerged from the bushes. However, when Corporal Smith attempted to stop them, they reversed and headed back into the bushes.

[6] Sometime after 8:00 am Constables Damaris Stewart, Delroy King and Corporal Jermaine Haye arrived on the scene in a service vehicle being driven by Constable

Stewart. With the service vehicle leading the way and Corporal Smith driving behind, the officers turned onto a roadway off the Spanish Town by-pass. They came upon the parked Honda Civic motor car and truck and stopped their vehicles.

[7] Constable Stewart saw three men including the appellant (dressed in a green long-sleeved t-shirt and a pair of brown pants) exit the motor car. The appellant exited from the driver's seat. Two of the three men, including the appellant, were armed with firearms. Both fired at the police and ran towards a river. Constable Stewart pursued the men. After some time, Constable Stewart came upon Corporal Haye who had the appellant, still dressed as he had been earlier, in his custody.

[8] The truck and motor car were searched in the presence of the appellant. A steel cutter was recovered from the back seat of the motor car. A knapsack containing a firearm and six rounds of ammunition was taken from the truck.

### **The case for the defence**

[9] In his sworn evidence the appellant said he was speeding in his Honda Civic motor car along the Spanish Town Road and drove on to the overhead bridge to avoid the police. There, at a stop sign, his path was blocked by a white truck. Two masked men armed with guns exited the truck. He was placed in the back of the car where one of the men held him at gun point and the other drove his car to an area that had factories. He managed to escape his assailants when the police arrived and ordered them to exit the vehicle. He denied being in possession of a firearm and shooting at the police.

### **The grounds of appeal**

[10] The appellant filed three original grounds of appeal:

- a) Verdict unreasonable having regard to the evidence.
- b) Judge failed to have proper regard to the case from the defence.
- c) Sentence excessive.

[11] In written submissions, Mr Mitchell, counsel for the appellant, accepted that the learned trial judge adequately dealt with the matters that arose for consideration, and there was no basis to say the findings of fact were unreasonable. Mr Mitchell indicated he had discussed his assessment with the appellant who accepted it. Accordingly, there was no basis on which to renew the application for leave to appeal conviction.

[12] Having ourselves perused the transcript, we agree with the observations of Mr Mitchell. The learned trial judge adequately addressed the key issues of credibility, identification, good character evidence, discrepancies and inconsistencies, along with the other necessary considerations that are required in every summation. His findings of fact are reasonable on the evidence and, as noted by counsel for the appellant, cannot be impugned. Accordingly, the application for leave to appeal conviction should be refused.

[13] Mr Mitchell, however, complained about the sentencing process. Miss Robinson, Counsel for the Crown, helpfully distilled the complaints into two supplemental grounds, that were gratefully adopted by Mr Mitchell and, on which the court permitted reliance. They are:

Ground 1: The Learned Trial Judge did not demonstrate how he arrived at the sentence imposed on the appellant.

Ground 2: The Learned Trial Judge failed to credit the appellant for time spent in custody prior to sentencing.

## **Discussion and analysis**

### Ground 1

[14] Mr Mitchell submitted that the learned trial judge did not fully demonstrate how he arrived at the sentences imposed and appeared not to have strictly applied the Sentencing Guidelines for use by Judges of the Supreme Court of Jamaica and the Parish Courts, December 2017 ('the Sentencing Guidelines'). He however agreed, when queried

by the court, that neither sentence imposed by the learned trial judge was manifestly excessive.

[15] However, we note that, regarding the sentence imposed on count one, as conceded by Miss Robinson, in determining the appropriate sentence, the learned trial judge did not employ the methodology set out in **Meisha Clement v R** [2016] JMCA Crim 26 and refined by subsequent cases. That failure does not, however, automatically render the sentence liable to be set aside. As outlined in the case of **Lincoln McKoy v R** [2019] JMCA Crim 35 at para. [43], relied on by Miss Robinson, it now “falls on this court to determine the appropriate sentence that ought to have been imposed after an application of the relevant principles”.

[16] We now do so, applying the relevant principles as reflected in **Meisha Clement v R** in particular para. [41] and the Sentencing Guidelines. Those guidelines identify the normal range for the offence of illegal possession of firearm as between seven to 15 years with a usual starting point of 10 years. We agree with Miss Robinson that this case is unremarkable, therefore the usual starting point should be adopted. We also agree that aggravating features in this case are, (i) the high prevalence of illegal firearms in Jamaica; and (ii) the fact that the appellant used the firearm to shoot at police officers in a brazen daylight attack. Mitigating factors, we accept as the appellant having no previous convictions, being of previous good character and his excellent social enquiry report. Looking at the factors globally, we are of the view that the aggravating factors would add three years to the starting point and the mitigating factors would reduce the sentence by three years. The net effect is, therefore, that the sentence remains at the 10 years imposed by the learned trial judge. That sentence is appropriate, subject to any adjustments that may be required, after consideration of ground two.

[17] Regarding the sentence imposed on count two, we also accept the submissions of Miss Robinson. We find the complaint that the learned trial judge failed to adequately demonstrate the basis of the sentence, wholly misconceived. The learned trial judge faithfully followed the recommended principles. He used as his starting point 15 years,

which is the mandatory minimum sentence prescribed for shooting with intent under section 20(2) of the Offences Against the Person Act. He identified the fact that the appellant fired at police officers as an aggravating factor. Conversely, he appropriately treated the appellant's excellent social enquiry report and absence of previous convictions as mitigating factors. In the round, in total he assigned a value of three years to both the aggravating and mitigating factors, with the result that the sentence ended up at the mandatory minimum 15 years. A sentence well within the usual range stipulated by the Sentencing Guidelines. Subject to the considerations on ground 2, there is therefore also on count two, no basis to disturb the sentence imposed by the learned trial judge.

#### Ground 2

[18] As conceded by Miss Robinson, Mr Mitchell's complaint that the learned trial judge failed to deduct the three months and 27 days spent by the appellant on pre-sentence remand is meritorious. The appellant's right to a full arithmetical deduction of that time, has been long established by the case of **Callachand & Anor v The State of Mauritius** [2009] 4 LRC 777.

[19] To be fair to the learned trial judge, at the time of sentencing he may have been guided by the then prevailing view that the existence of a statutory mandatory minimum sentence for shooting with intent, precluded the application of the deduction on that count. And, that being the count with the longer sentence, it would be pointless to apply it to the sentence for count one. The restriction on applying deductions where mandatory minimums apply was reflected in later judgments, an example of which is **Paul Tomlinson v R** [2023] JMCA Crim 13. Interestingly, however, in that case a deduction was applied by this court to the sentence for illegal possession of firearm and not to the sentence for wounding with intent, which was subject to a mandatory minimum prescription.

[20] That view of the limiting effect of a mandatory minimum sentence on the application of a deduction persisted until 6 March this year, when in the matter of **Cecil Moore v R**, Supreme Court Criminal Appeal No 25/2016, judgment delivered 6 March

2025 (with reasons to follow) a nine member panel of this court determined that, notwithstanding the existence of a mandatory minimum sentence, a defendant is entitled to be credited with all the time spent on pre-sentence remand. Accordingly, the appellant is entitled to the deduction of the time he spent on pre-sentence remand, from the sentences imposed on both counts one and two.

[21] The court, therefore, makes the following order:

- i) The application for leave to appeal conviction is refused.
- ii) The appeal against the sentences imposed is allowed.
- iii) The sentence of 10 years' imprisonment at hard labour imposed for the offence of illegal possession of firearm is set aside, and substituted therefor is the following:
  - (1) 10 years' imprisonment at hard labour for the offence of illegal possession of firearm, less credit given of three months and 27 days for time spent on pre-sentence remand.
  - (2) Having deducted the time spent on pre-sentence remand of three months and 27 days the appellant is to serve nine years', eight months' and three days' imprisonment at hard labour.
- iv) The sentence of 15 years' imprisonment at hard labour imposed for the offence of shooting with intent is set aside, and substituted therefor is the following:
  - (1) 15 years' imprisonment at hard labour for the offence of shooting with intent, less credit given of three months and 27 days for time spent on pre-sentence remand.
  - (2) Having deducted the time spent on pre-sentence remand of three months and 27 days the appellant is to serve 14 years', eight months' and three days' imprisonment at hard labour.

- v) The sentences are to run concurrently and are reckoned as having commenced on 30 September 2021, the date on which they were imposed by the learned trial judge.