

JAMAICA

IN THE COURT OF APPEAL

**BEFORE: THE HON MISS JUSTICE STRAW JA
THE HON MRS JUSTICE V HARRIS JA
THE HON MR JUSTICE LAING JA (AG)**

SUPREME COURT CRIMINAL APPEAL NO COA2021CR00046

DWAYNE FRATER v R

Mrs Caroline Hay KC and Zurie Johnson for the applicant

Ms Kathy-Ann Pyke and Miss Kristen Anderson for the Crown

24 November 2023

Endorsement read by V Harris JA

[1] On 15 April 2021, the applicant, Mr Dwayne Frater, was convicted by a judge sitting alone in the High Court Division of the Gun Court for the offences of illegal possession of a firearm (two counts) and illegal possession of ammunition (two counts). On 4 June 2021, he was sentenced to serve six years' imprisonment at hard labour on each count for illegal possession of firearm and two years' imprisonment on each count for illegal possession of ammunition. The sentences were ordered to run concurrently. A single judge of appeal refused his application for leave to appeal his convictions and sentences on 19 April 2022. This is a renewal of that application.

[2] The facts as found by the learned trial judge were that, on 6 November 2017, the applicant was the driver of a motor car with three passengers that was intercepted by the police. Following a detailed search of the vehicle, two firearms and a total of 36 rounds of ammunition (contained in two magazines) were found concealed in the roof of the motor car. When the police confronted the applicant with the firearms and ammunition, he indicated that he did not have a licence or permit for them.

[3] The prosecution, at trial, relied upon the deeming provision found in section 20(5) of the Firearms Act to establish possession in the applicant as the driver of the motor car. The crucial issue at trial was whether the applicant, who gave an unsworn

statement from the dock, provided any reasonable explanation for being in possession of the firearms and ammunition without a licence or permit. The learned trial judge correctly found that he did not.

[4] Learned King's Counsel, Mrs Caroline Hay, in very brief written submissions, conceded that, after reviewing the evidence and summation of the learned trial judge, as well as the applicant's written instructions, she was unable to advance any meritorious grounds against the convictions and sentences. King's Counsel indicated in oral submissions that she had confirmed this position with the applicant and was in receipt of his written instructions to proceed with the concession. She also applied for an order to allow the sentences to commence on the date they were imposed.

[5] The Crown did not oppose that application.

[6] Having perused the transcript, we formed the view that the learned trial judge adequately addressed the central issue in the case. Also, it could not be fairly said that the sentences were manifestly excessive, given that they were imposed following a trial where the applicant was quite properly convicted of being in possession of two firearms and a considerable number of ammunition. Mrs Hay's concession was, in our judgment, quite correctly made.

[7] Concerning the application made by Mrs Hay, as to the date from which the sentences are to run, we have no difficulty in making such an order given the present approach of the court as illustrated in several authorities, including **Tafari Williams v R** [2015] JMCA App 36 and **Omar Anderson v R** [2023] JMCA Crim 11.

[8] In light of the preceding, these are our orders:

1. The application to appeal convictions and sentences is refused.
2. The sentences are to be reckoned as having commenced on 4 June 2021, the date on which they were imposed.