[2021] JMCA Crim 19

JAMAICA

IN THE COURT OF APPEAL

BEFORE: THE HON MRS JUSTICE MCDONALD-BISHOP JA
THE HON MRS JUSTICE SINCLAIR-HAYNES JA
THE HON MRS JUSTICE DUNBAR-GREEN JA (AG)

SUPREME COURT CRIMINAL APPEAL NO 5/2014

RADCLIFFE ALLEN v R

Sanjay Smith for the appellant

Miss Kathy-Ann Pyke and Dwayne Green for the Crown

3 December 2020 and 21 May 2021

DUNBAR-GREEN JA (AG)

[1] On 3 December 2020, we heard an appeal against the appellant's sentences of 15 and 28 years' imprisonment at hard labour imposed by a judge of the Supreme Court, for the offences of illegal possession of firearm and wounding with intent, respectively.

[2] A single judge of appeal had previously granted permission to appeal the sentences but refused the application in respect of the convictions. The matter came before us as a renewed application for leave to appeal the convictions and an appeal against sentences. However, at the commencement of the hearing, counsel for the appellant, Mr Smith, sought and obtained leave to abandon the original grounds of appeal against the convictions. Instead, he pursued a single ground that the sentences

of 15 and 28 years' imprisonment for the offences of illegal possession of firearm and wounding with intent, were manifestly excessive.

[3] At the conclusion of the hearing, we made the following orders:

> "1. The application for leave to appeal conviction is withdrawn with the leave of the court.
>
> 2. The appeal against the sentences is refused.
>
> 3. The sentences of 15 years' imprisonment at hard labour for illegal possession of firearm and 28 years' imprisonment for wounding with intent are affirmed.
>
> 4. The sentences are to be reckoned as having commenced on 13 December 2013."

We indicated then that our reasons would follow, in writing. We now fulfil that promise.

Background

[4] The appellant was tried before Sykes J (as he then was), in the Saint Elizabeth Circuit Court, on 22 and 28 November and 4 December 2013. He was convicted and on 13 December 2013, sentenced to 15 years' imprisonment at hard labour for illegal possession of firearm and 28 years' imprisonment at hard labour for wounding with intent. The sentences were ordered to run concurrently.

[5] The complainant, who was the main witness for the Crown, recounted how he was attacked and shot by the appellant, who was previously known to him. At the time of the shooting, they were both employed at a farm in Saint Elizabeth.

[6] The incident unfolded in this way. On 2 June 2010, at about 10:40 pm, the complainant was in a one-bedroom structure on the farm when the appellant entered, pulled him outside and said to him, "You think is joke thing this". The appellant then pointed a firearm at the complainant's forehead and fired. The complainant raised his left hand to block his head but was shot in his thumb and the left side of his face. The bullet exited through the back of his head. He cried out and enquired of the appellant,

"Weh you a go kill me fah?" Instead of withdrawing, the appellant started to squeeze his throat. He managed to extricate himself and attempted to flee but was chased, pulled back to "the first patch", and shot a second time in the face, by the appellant. He was then dragged by the foot and left at the back of the farm, as he had pretended to be dead.

[7] After the appellant left, the complainant, with much effort, was able to make his way to the main road in the community where he was assisted by neighbours and taken to the hospital. He was admitted and treated. As a result of the shooting, he is deaf in the left ear, has a disfigured left thumb and his face is permanently scarred.

[8] On 1 February 2011, the appellant was pointed out to Detective Sergeant Beech at the Santa Cruz police lock-up. He was cautioned and interviewed. In the interview, he denied that he had a gun on the night in question and stated that it was the complainant who had tried to shoot him, as a result of which he ran away for fear of losing his life.

[9] At trial, the appellant gave an unsworn statement from the dock. Unsurprisingly, his version of the incident was quite different. He stated that on the night in question, he went to the complainant's "quarters" to retrieve keys for a piggery and a flashlight to carry out his job, as a security guard, when the complainant brandished a firearm and told him to leave his room. He said that a struggle ensued and he "beat the complainant's hand", causing the gun to fall. He then made a hasty retreat from the farm.

Submissions for the appellant

[10] Mr Smith cited **Andrae Jackson v R** [2019] JMCA Crim 31, **Evon Johnson v R** [2014] JMCA Crim 43, **Antonio McIntosh v R** [2019] JMCA Crim 18 and **Carey Scarlett v R** [2018] Crim 40, and posited that the sentences imposed by the learned trial judge were manifestly excessive when compared to those cases.

[11] Counsel acknowledged that neither the Sentencing Guidelines for use by Judges of the Supreme Court of Jamaica and the Parish Court, December 2017 ('the Sentencing Guidelines') nor the case of **Meisha Clement v R** [2016] JMCA Crim 26, had been in existence at the time of the appellant's sentencing but went on to submit, referring to the latter case, that there were in existence at the time of sentencing, established sentencing principles which the judge did not apply. There were also mitigating factors which, he said, ought to have been considered by the learned trial judge. For instance: that the appellant grew up in foster care; lost his father when he was five years old; had been abused by his mother as a child; was a skilled labourer who had been employed since he was 18 years of age; and was a single father of a five-year old child who depended on him for financial support.

[12] We were urged to find that the appellant's capacity for reform ought to have been explored by the learned judge, particularly, in view of the fact that he had expressly excluded a previous conviction. Counsel was of the view that the imposition of lesser sentences would increase the likelihood of successful rehabilitation.

[13] In his submissions, he observed that the learned trial judge was not bound by the statutory minimum limit of 15 years' imprisonment for the offence of wounding with intent, which is now imposed by section 20(2)(a) and (b) of the Offences Against the Persons Act, as that amendment was not retroactive to the date of the offence. He suggested 12 years' imprisonment, as an appropriate sentence. That proposed sentence was arrived at by utilizing a starting point of 10 years with an adjustment upwards by eight years for the aggravating factors and then a reduction of six years, on account of the mitigating factors. This was a revision down from 14 years, as had been advanced in his written submissions, based on the sentence imposed in **Andrae Jackson v R**.

[14] The sentence for illegal possession of firearm was challenged on the basis that the learned trial judge had imposed it without an indication of the usual range of sentences and a starting point for that offence. Counsel indicated that seven to 15

years' imprisonment was the usual range, with a usual starting point of 10 years. In his opinion, all things considered, seven years' imprisonment would be appropriate.

Submissions for the Crown

[15] The case of **Meisha Clement v R** was cited as a collation of common law principles and guidelines relevant to sentencing, and to espouse the principle that the appeal court ought not to disturb a sentence merely because a different sentence might have been imposed, as enunciated in **R v Ball** (1951) 35 Cr App R 164, 166. It was impressed upon us, by Mr Green, that the sentences accorded with those principles and were, therefore, justifiable. In support of that position, he argued that the learned trial judge's sentencing remarks adequately reflected the purpose of sentencing, and that in determining the appellant's level of culpability and the ultimate penalties, he had properly considered how the offences were committed and the gravity of the complainant's injuries.

[16] Mr Green conceded that the sentence for wounding with intent was outside the established range but argued that it was, nonetheless, appropriate. In support of that conclusion, we were urged to consider that the learned trial judge had addressed his mind to a starting point and acknowledged that the maximum available sentence was life imprisonment, but found that the circumstances did not warrant such an imposition. He had also indicated the usual range of sentences to be "in the vicinity of 18 years' imprisonment" but found that a higher sentence was warranted based on his finding that the appellant had intended to kill the complainant. Counsel also pointed to the learned judge's express consideration of the aggravating and mitigating circumstances, including personal mitigation, in arriving at the sentences.

[17] Mr Green acknowledged that the learned trial judge did not adopt a rigid approach, but confidently asserted that he gave adequate consideration to the relevant guidance on sentencing that was available at the time. It was suggested that, in arriving at the sentences, the learned trial judge had considered the following aggravating circumstances: the offence of wounding with intent was a serious firearm

offence; the appellant had an illegal gun; the offences were premeditated; the appellant's intention was to kill the complainant; when the complainant tried to escape he was chased, brought back and shot, again; and when the complainant pretended to be dead he was dragged to the back of the premises by the appellant, to "hide his body".

[18] Counsel also based his submissions on the learned trial judge's consideration of reports that the appellant was functionally literate, had previously been in steady employment, and had not been viewed in his community as someone known to be involved in anti-social acts. He argued, however, that consideration could not have been given to childhood abuse because there was no evidence to ground that allegation.

[19] As the sentence imposed for illegal possession of firearm fell within the normal range that had since been promulgated in the Sentencing Guidelines, Mr Green contended, it could not reasonably be impeached.

Analysis

[20] The appellate court's review of sentences is guided by the principle that a sentence cannot be altered merely because it might have passed a different sentence. Hilbery J in **R v Ball,** at page 165, opined that:

> "…this Court does not alter a sentence which is the subject of an appeal merely because the members of the Court might have passed a different sentence. The trial Judge has seen the prisoner and heard his history and any witnesses to character he may have chosen to call. It is only when a sentence appears to err in principle that the Court will alter it. If a sentence is excessive or inadequate to such an extent as to satisfy this Court that when it was passed there was a failure to apply the right principles then this Court will intervene."

[21] The established principles that should guide the trial judge and the approach of this court were summarized by Morrison P in **Jermaine McIntosh v R** [2020] JMCA Crim 28, at paragraph [29], as follows:

> "(1) The four classical principles of sentencing are retribution, deterrence, prevention and rehabilitation.
>
> (2) It is for the sentencing judge in each case to apply these principles, 'or any one or combination of…[them], depending on the circumstances of the particular case'.
>
> (3) The now generally accepted practice is for the sentencing judge to identify a notional starting point within a broad range of sentences usually imposed for a particular offence, and to decide whether to increase or decrease the starting point to allow for aggravating or mitigating features of the particular offence.
>
> (4) Obtaining a social enquiry report as an aid to sentencing is generally regarded as good sentencing practice, though it will be for the sentencing judge in each case to determine whether to obtain a report in light of the circumstances of each case.
>
> (5) This court will not lightly interfere with a sentencing judge's exercise of his or her discretion to fix an appropriate sentence, and will only do so where it can be shown that the sentencing judge (i) departed from the accepted principles of sentencing; and (ii) imposed a sentence outside of the range of sentences which the court is empowered to give, or the usual range of sentences imposed in like cases."

[22] As Morrison P observed at paragraph [30], the principles, though well-established, are not to be treated as a checklist nor are they exhaustive. Ultimately, the decisive factor for this court is "whether the sentence imposed was manifestly excessive in all the circumstances". We will add, in relation to point (5)(ii) that the usual range in like cases should not be seen as establishing static markers, but rather a guide for use by the sentencing judge in determining the appropriate sentence. If there is deviation, however, it must be clear from the judge's reasons why in the particular case, a longer or shorter sentence may have been considered appropriate. This would necessarily include an indication of any exceptional, aggravating or mitigating circumstances which were considered. Ultimately, the sentence must fit the circumstances of the case and the offender.

[23] In articulating the framework in **Jermaine McIntosh v R**, Morrison P would have had the benefit of his earlier dictum in the instructive case of **Meisha Clement v R**, which amalgamated considerations that ought to guide the learned trial judge's sentencing process. The learned President identified those factors at paragraph [41] of the judgment to be:

> "(i) identify the appropriate starting point;
>
> (ii) consider any relevant aggravating features;
>
> (iii) consider any relevant mitigating features (including personal mitigation);
>
> (iv) consider, where appropriate, any reduction for a guilty plea; and
>
> (v) decide on the appropriate sentence (giving reasons)."

[24] Those factors were elaborated on by McDonald-Bishop JA in **Daniel Roulston v R** [2018] JMCA Crim 20, to include identification of the sentencing range applicable to the offence, and the need to give credit for time spent on remand, while awaiting trial.

[25] Notwithstanding the fact that the present case predated those to which we have just referred, and the Sentencing Guidelines, the learned trial judge was not bereft of ample guidance from earlier cases that would have enabled him to apply the same or consonant principles of sentencing. For example, in **R v Everald Dunkley** (unreported), Court of Appeal, Jamaica, Resident Magistrates' Criminal Appeal No 55/2001, judgment delivered 5 July 2002, Harrison JA (as he then was) made the following observations at page 3:

> "…The principles which govern the method by which that ultimate goal [of sentencing] is achieved, have been well

formulated and generally accepted. The aim of the sentence is to satisfy the goals of:

(a) Retribution;

(b) Deterrence;

(c) Reformation; and

(d) protection of society

or any one or a combination of such goals, depending on the circumstances of the particular case."

[26] At page 4 of the judgment, it was also observed:

"If … the sentencer considers that the 'best possible sentence' is a term of imprisonment, he should again make a determination, as an initial step, of the length of the sentence, as a starting point, and then go on to consider any factors that will serve to influence the length of the sentence whether in mitigation or otherwise..."

[27] These principles, if properly applied, should result in a fair and transparent sentencing outcome, and it is with them in mind that we now turn to the sentencing approach by the learned trial judge.

[28] An antecedent report was read into evidence prior to the passing of the sentences. There was also a social enquiry report which contained information that was similar to that which was included in the antecedent report. These are some material aspects of the reports. The appellant was 32 years old at the date of sentencing. His father died when he was aged five, and when his grandmother was unable to take care of him, he was sent to a foster home and eventually to the Alpha Boys Home where he learnt tailoring and woodwork. After leaving the Alpha Boys Home at 18 years old, he worked at various jobs. However, at the time of his arrest, he was unemployed. He had one dependent child, and the majority of citizens, in his community, did not know him

to exhibit anti-social characteristics. He had a previous conviction, in February 2011, for uttering a forged document. The social enquiry report also revealed that the appellant was put in foster care because of anti-social tendencies which "resulted in him being abused by his mother".

[29] The learned trial judge embarked on his sentencing remarks by highlighting the seriousness of the offences and concluded that a term of imprisonment was always the "starting point" for firearm offences of the nature and gravity demonstrated in this case. He then recounted the brazen nature of the acts committed by the appellant. The following portions of the transcript, as recorded at page 202, line 4 to page 203, line 5, provide useful insight into how the learned trial judge perceived the offences:

> "…based upon the evidence, you got yourself an illegal gun and attempted to use that illegal gun, well, not attempted you use the illegal gun, to shoot the witness. And the witness outlined that when he tried to escape from you, you chased him, held on to him and took him back, where he was shot a second time. So, in other places now in the normal course of things, you really would have been charged with attempted murder, you know, because the witness indicated that one of the--[sic]at one point, the gun was aimed at his head…This was not an offence committed during a quarrel or there was a fight, this was premediated action…Then, if that is not enough, the witness is then dragged on the ground behind where he was staying and left there. Now, what does all of this suggest? This suggests [sic] that your real intention was to kill this man."

[30] Continuing at page 206, lines 6 to 8, he said:

> "And so, having hidden the body, you ran away from the community. Fortunately, you were found and brought to court…"

[31] Having determined the type of sentence, the learned trial judge turned his attention to determining the appropriate sentences. He had regard to the evidence that

the attack was premeditated, that the appellant had chased the complainant after he had tried to escape and that the appellant had aimed the gun at the complainant's head. He also focused on that evidence as revealing an intention on the part of the appellant to kill the complainant and then, having presumed him dead, to dispose of the body. These facts were weighed against the positive features of the appellant's social enquiry and antecedent reports. It was also made clear, by the learned trial judge, that he would not take account of the appellant's previous conviction for forgery.

[32] The learned trial judge identified life imprisonment as being the maximum penalty and 18 years' imprisonment, as the usual sentence for the less serious cases of wounding with intent. He remarked at page 209, lines 2 to 6:

> "The usual range of sentences… for not too serious cases of wounding with intent, if there is such a thing, is in the vicinity of eighteen years or so."

[33] Recognizing that cases differ, at the very least, by their circumstances, the learned trial judge ruled out the maximum penalty as being reserved for the most extreme cases but said, as this was a very serious case of wounding with intent, the lower sentence would not be adequate. He indicated that the sentence would be substantially above 18 years and concluded that 28 years' imprisonment would reflect the fact that this was "a very, very serious case of wounding with intent…[and] …appropriate since what [the appellant] really intended was to kill the witness and hide the body" (page 209, lines 13 to 22).

[34] Whilst it was not established by the learned trial judge, by reference to decided cases, that the range of sentences for minor cases of wounding with intent fell within the "vicinity of eighteen years", his remarks were indicative of a notional point from which he had proposed to calculate the sentence. This starting point (although not so expressed) was below the permitted maximum for that offence which he, rightly, dismissed as being inapplicable, but within the range contained in the Sentencing Guidelines.

[35] In deciding the appropriate length of sentence for the more egregious of the offences, the learned trial judge expressly contemplated what he characterized as the appellant's "clear intent to kill the witness and hide the body". His thought process is revealed in the statement recorded at page 209, lines 6 to 9 of the transcript, viz:

> "Because of what you did in this particular case, and your clear intent to kill the witness and hide the body, the sentence is going to be substantially above eighteen years."

[36] In our view, this was a definitive statement that his reason for imposing a sentence above the normal range was that the appellant intended to kill, as evidenced by the horrible acts of wounding and his conduct afterwards.

[37] Here, it is convenient to point out that both parties were agreed that the statutory minimum of 15 years' imprisonment was inapplicable as that provision had been enacted subsequent to the commission of the offences, albeit prior to the sentencing of the appellant. Otherwise, as indicated by Brooks JA (as he then was), in **Carey Scarlett v R**, paragraph [31], since the introduction of the statutory minimum, 15 years' imprisonment could be considered as the lower end of the range for the offence of wounding with intent, where a firearm is used. The normal range, as contained in the Sentencing Guidelines, is 15 to 20 years' imprisonment.

[38] Undoubtedly, the circumstances of these offences were horrific by any measure and reflected multiple layers of culpability. The attack was found to have been premeditated and unprovoked. It was carried out during the night at an isolated farm with no one else in the company of the complainant. A gun was pointed directly at the complainant's head and discharged more than once. As a consequence, serious wounds were inflicted on the complainant. And when it appeared that he had succumbed to the injuries, his ' lifeless' body was dragged to the back of the premises where he was left for dead. There was also evidence that the attack resulted in a hearing disability, permanent facial scars and a disfigured thumb.

[39] On the basis of the evidence, accepted by the learned trial judge, there was justification for his conclusion that the brutal acts were akin to attempted murder. We pause here to say, that although the remark about 'attempted murder' was repeated, we did not understand the learned trial judge to be indicating that the sentence should reflect culpability for an offence that was not charged. That would be inappropriate. Instead, we understood him to be saying that the actions demonstrated an intention to commit an offence that was much greater than that which resulted. In our view, it was proper for the learned trial judge to have considered this, in assessing the gravity of the appellant's conduct.

[40] Accordingly, we are unable to agree with Mr Smith that the learned judge failed to consider the mitigating factors and demonstrate why a sentence outside the usual range was warranted for the offence of wounding with intent. Whilst it is true that there was not a mechanistic step by step approach to the sentencing, the learned trial judge did demonstrate, by his references and reasoning, that he considered both the aggravating circumstances and the mitigating factors personal to the appellant. In so doing, he also took account of the appellant's intention to commit an offence beyond that which resulted, as justification for the sentence imposed.

[41] In challenging the reasonableness of the sentence imposed for the offence of illegal possession of firearm, Mr Smith asserted that the learned trial judge fell into error because he did not demonstrate how he arrived at the sentence of 15 years' imprisonment. It remains, therefore, to determine whether the learned trial judge failed to apply the required approach, and if so whether that resulted in the sentence being manifestly excessive. The following extracts from the learned judge's remarks at page 201, lines 14 to 25 and page 202, lines 5 to 7 show how he viewed the circumstances in which this offence was committed:

> "The offences for which you have been convicted could hardly be described as a minor offence. Based on the narrative outlined by the witness, I think it is clear to say that for whatever reason you intended to inflict very, very

> serious harm on this individual and in 2010, you had a firearm. Now, one of the interesting things about the case is that though it is said that you were employed as a watchman, there is no evidence in the case to suggest that your employer gave you a firearm to carry out your duties… you got yourself an illegal gun and… you used the illegal gun, to shoot the witness."

[42] In his remarks, recorded at page 208, lines 19 to 21, the learned trial judge said:

> "Mr Allen I should tell you the physical maximum penalty for both offences is really life, but that is usually reserved for what is described as the worse of the worse."

[43] He then went on to deal with the wounding charge and only returned to the illegal possession of firearm charge to pronounce the sentence. Mr Smith was, therefore, correct in his assertion that the learned trial judge did not reveal how he had arrived at the sentence for the latter offence.

[44] Quite properly, he ought to have identified the range of sentences for that offence, determined a starting point within that range as a notional term and then go on to calculate the sentence. In the absence of such an approach, it befell us to assess whether the sentence was manifestly excessive. In answering that question, we adverted to the steps indicated at paragraphs [23] to [25] above.

[45] We recognized that possession of an illegal firearm, in the circumstances of this case, was a very serious offence and should be visited with a term of imprisonment. We went on to examine the normal range of sentences for the offence, fixing the starting point within the range, as we considered appropriate to the circumstances of the offence. Finally, we made allowance for aggravating and mitigating factors, to arrive at an appropriate sentence for the appellant.

[46] Taking account of the Sentencing Guidelines and the authorities from this court, we considered that the range for illegal possession of firearm should be between 10

and 15 years. Once this was established, it became a matter of determining an appropriate starting point within the range. We kept in mind that the Sentencing Guidelines indicate a usual range of 15 to 25 years' imprisonment and a usual starting point of 15 years for the use and possession of a firearm to commit an offence contrary to section 25 of the Firearms Act, under which the appellant could have been charged. We, however, determined that a starting point of 12 years was appropriate, given that the firearm contained ammunition, there was a level of premeditation attending its possession, and it was used in the commission of another offence.

[47] Having arrived at the starting point, we weighed the mitigating factors peculiar to the appellant, particularly the absence of any relevant previous conviction, against aggravating circumstances, namely: the use of a firearm to commit a very serious offence; the fact that the firearm was not recovered (with the assistance of the appellant), and the high incidence of firearm offences in the society. It was evident that the aggravating factors outweighed the mitigating factors. We concluded that a sentence of 15 years' imprisonment was not disproportionate to the gravity of the offence. That term of imprisonment also fell within the normal range contained in the Sentencing Guidelines, albeit at the higher end**.**

[48] Before concluding this point, we should say something about Mr Smith's submission that the learned trial judge should have had regard to the alleged abuse of the appellant during childhood. Apart from the absence of direct evidence of maternal abuse, we should indicate that the learned trial judge did make remarks, which showed that he had regard to the appellant's troubled and disadvantaged upbringing. There was, therefore, no merit in this complaint.

[49] Brief mention will now be made of the cases cited by counsel for the appellant.

[50] In **Andrae Jackson v R**, the appellant was convicted on 14 February 2013, for the offence of illegal possession of firearm, two counts of wounding with intent and robbery with aggravation. He was sentenced to 10 years' imprisonment for illegal

possession of firearm, 14 years' imprisonment on each count of wounding with intent and 16 years' imprisonment for robbery with aggravation. The brief facts of the case are that on 3 December 2011, two men opened fire on a truck, wounding the driver and another passenger. When the truck came to a stop the men entered and took a knapsack containing cash. The driver of the truck identified one of the assailants to be the appellant, who was previously known to him.

[51] On appeal, the sentences were confirmed with the exception that the sentence imposed for the offence of robbery with aggravation was reduced, by one year, for time spent on remand, prior to conviction.

[52] In **Evon Johnson v R** the appellant was convicted of illegal possession of firearm and wounding with intent. He was sentenced to 20 years' imprisonment for each offence, running concurrently. In that case, the appellant approached and shot the complainant while he was fishing at a river. The complainant recognised and identified the appellant who was previously known to him. On appeal this court set aside the sentences imposed by the learned trial judge, as being manifestly excessive, and substituted a sentence of 10 and 17 years' imprisonment for the offences of illegal possession of firearm and wounding with intent, respectively.

[53] In the case of **Antonio McIntosh v R**, the appellant was sentenced to eight and 18 years' imprisonment for the offences of illegal possession of firearm and wounding with intent, respectively. The offences arose from a brawl at a 'round robin' which resulted in a fight between the complainant and another man. When the fight was parted, the man and the appellant left the party but returned about five minutes later. The appellant brandished a gun that he used to shoot the complainant in his face. The other man also shot the complainant. This court upheld the sentences on the basis that they were within the usual range of sentences for the offences and, therefore, could not reasonably be said to be manifestly excessive.

[54] In **Carey Scarlett v R**, which applied the statutory minimum of 15 years' imprisonment for the offence of wounding with intent, the appellant was sentenced to 15 and 25 years' imprisonment for illegal possession of firearm and wounding with intent, respectively. The complainant identified the appellant to be his assailant, who was previously known to him. The evidence at trial revealed that the complainant was outside his home when the appellant approached and pointed a firearm at him. The complainant attempted to knock away the gun but it discharged and shot him, in his hand. The complainant ran in a bid to escape his attacker but was shot twice, in the process. This court reduced the sentence of 25 years to 18 years' imprisonment for reason that the sentence was outside the normal range and the learned trial judge had failed to demonstrate that a higher than usual sentence was required.

[55] We are mindful that the examples of how courts have treated with similar cases provide a framework to assist judges in the exercise of their discretion on sentencing so that decisions are not arbitrarily disparate. This does not mean that the cases should be dealt with purely as an arithmetic comparison of the sentences imposed. It ought to be borne in mind that while judges aim for uniformity in sentencing, they take account of the particular circumstances of the case before them. Consequently, the sentencing outcome may differ, based on how much weight is accorded to the various relevant factors by the particular judge. So, when this court upholds a particular sentence it should be taken to mean that what the court is saying is that the applicable principles were applied (not necessarily expressed in the form of a checklist), and the sentence is not manifestly excessive.

[56] Having said that, none of the cases cited by Mr Smith was at all similar to the circumstances of this case. A significant distinguishing feature that was not shown to be present in those cases cited, was that the appellant clearly intended to commit more serious harm than resulted. Those cases were also distinguishable from the present because of the nature and extent of the injuries caused to the complainant.

[57] It follows that we were loath to disturb the sentences in this case, having not found them to be manifestly excessive in the circumstances. There was also no error in principle, such as would merit interference by this court with the sentences imposed by the learned trial judge.

[58] It was for these reasons that we made the orders stated at paragraph [3] above.