

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL 76/2017

**BEFORE: THE HON MR JUSTICE MORRISON P
THE HON MISS JUSTICE PHILLIPS JA
THE HON MR JUSTICE F WILLIAMS JA**

C P v R

Fabian Campbell for the appellant

Adley Duncan and Steve Walters for the Crown

3 and 4 December 2018

MORRISON P

[1] The appellant was born on 18 March 2001. On 19 June 2016, therefore, she was 15 years of age.

[2] On 17 July 2017, the appellant appeared before Shelly-Williams J (the judge) in the High Court Division of the Gun Court, at King Street in the parish of Kingston. She was charged on an indictment containing two counts: count 1 charged her with illegal possession of firearm and count 2 with illegal possession of ammunition, both contrary to section 20(1)(b) of the Firearms Act. Both offences were allegedly committed on 19 June 2016.

[3] The appellant pleaded guilty to both offences and the judge sentenced her to imprisonment for one year on each count of the indictment, with a stipulation that the sentences should be served in a juvenile facility. The judge also ordered that these sentences should run concurrently.

[4] On 17 August 2017, the appellant applied for leave to appeal against the sentences on grounds that it is no longer necessary to state. On 5 September 2017, a single judge of this court granted the appellant bail in the sum of \$200,000.00, pending the hearing of the application for leave to appeal. And, on 23 August 2018, another single judge of this court granted her leave to appeal.

[5] Before us this morning, Mr Fabian Campbell for the appellant sought leave to argue two supplemental grounds of appeal, as follows:

- “1. The Judge of the High Court Division of the Gun Court had no jurisdiction to adjudicate on the matter.
2. Sentence was manifestly excessive.”

[6] Mr Adley Duncan for the Crown did not oppose this application and it was accordingly granted as prayed.

[7] In the light of the clear conclusion which we have reached on the first ground, it will not be necessary to consider the second ground. On the first ground, Mr Campbell submitted that, based on the provisions of section 8(2) of the Gun Court Act, the judge

should have remitted the matter to the Children's Court to be dealt with in accordance with the provisions of the Child Care and Protection Act.

[8] In so far as is relevant, section 8 of the Gun Court Act provides as follows:

"8. – (1) Notwithstanding anything to the contrary in the Child Care and Protection Act or any other enactment but subject to subsections (2) and (3), any person who is guilty of an offence under section 20 of the Firearms Act ... shall, upon conviction thereof by the Court, be liable to imprisonment, with or without hard labour, for life.

(2) Where a child is charged before the Court with any offence referred to in subsection (1), then unless he is charged jointly with a person who has attained the age of fourteen years, the Court shall remit the case to a Children's Court to be dealt with in accordance with the provisions of the Child Care and Protection Act.

(3) Where a child is charged jointly with a person who has attained the age of fourteen years with an offence referred to in subsection (1), the Court shall, in dealing with the child, have only such powers as are exercisable by a Children's Court under the Child Care and Protection Act.

(4) ...

(5) ...

(6) ...

(7) In this section the expression 'child' has the meaning assigned to it in the Child Care and Protection Act." (Emphasis supplied)

[9] Section 2(1) of the Child Care and Protection Act provides that "'child' means a person under the age of eighteen years".

[10] A reading of these sections makes it immediately clear that, as Mr Duncan readily and quite properly conceded, Mr Campbell's submission on this ground is completely irresistible. At 15 years of age, the appellant was a child for the purposes of the Child Care and Protection Act at the material time. She was not charged jointly with anyone else. In these circumstances, it was the imperative duty of the judge, pursuant to section 8(2) of the Gun Court Act (which we have emphasised above), to remit the case to a Children's Court to be dealt with in accordance with the provisions of the Child Care and Protection Act.

[11] Instead, albeit upon the appellant's plea of guilty, the judge proceeded to deal with the appellant as though she was an adult offender. In our view, she plainly had no jurisdiction to do so and the proceedings before her must therefore be regarded as a nullity.

[12] The appeal is accordingly allowed. The appellant's conviction is quashed and the sentence is set aside. The matter is remitted to the Children's Court for the Corporate Area, for mention on 6 December 2018, and thereafter to be dealt with in accordance with the provisions of the Child Care and Protection Act.