

JAMAICA

IN THE COURT OF APPEAL

**BEFORE: THE HON MISS JUSTICE P WILLIAMS JA
THE HON MISS JUSTICE EDWARDS JA
THE HON MRS JUSTICE DUNBAR GREEN JA**

SUPREME COURT CRIMINAL APPEAL NO COA2020CR00067

JOHN SHAKESPEARE v R

Mr Derrick Thompson instructed by PeterMc and Associates for the appellant

Miss Paula Llewelyn KC, Director of Public Prosecutions and Ms Lori Ann Tugwell for the Crown

30 January 2023

Endorsement read by Dunbar-Green JA

[1] On 4 November 2019, the appellant pleaded guilty in the High Court Division of the Gun Court to (i) illegal possessson of firearm; (ii) illegal possession of ammunition; (iii) wounding with intent; and (iv) shooting with intent (counts 1 to 4 on a five-count indictment). Imposed on him were sentences of nine years' imprisonment at hard labour (the first page of the transcript indicates 19 years) for illegal possession of firearm and illegal possession of ammunition (counts 1 and 2), 19 years' imprisonment at hard labour for wounding with intent (count 3) and 14 years' imprisonment at hard labour for shooting with intent (count 4). The sentences were ordered to run concurrently.

[2] A single judge of appeal granted him leave to appeal his sentences. At the appeal, counsel appearing, on his behalf, sought the court's permission to argue a single ground that "the sentence was manifestly excessive in all the circumstances".

[3] On 31 January 2023 we heard submissions in which the appellant challenged the learned sentencing judge's approach to the sentencing of the appellant as well as the sentences imposed.

[4] Having considered those submissions, as well as those made by the respondent, we are satisfied that the learned sentencing judge erred when she failed to follow the sentencing approach first outlined in **Meisha Clement v R** [2016] JMCA Crim 26 and expanded in several decisions of this court. Consequently, we conducted a review of the sentencing process with specific reference to the sentence for wounding with intent, given counsel's indication that because the sentences are to run concurrently the sentence for that count (being the longest) would be the most impactful.

[5] We identified a starting point of 15 years which is, in any event, the prescribed minimum sentence for this offence. We then identified the most significant aggravating features which include: (i) the fact that the victim was a member of the security forces who was brazenly attacked while engaged in the performance of a public duty; (ii) the serious long term physical and psychological harm to the victim (he was shot in the chest, sustained spinal injury, underwent two surgeries, is unable to return to work and suffers from post-traumatic stress disorder); (iii) the intention to commit more serious harm than resulted; (iv) the fact that this was an attack in the process of resisting apprehension; and (v) the fact that the attack was such that the army had to be called in and resulted in a shoot-out or standoff which lasted for some 30 minutes. These factors would increase the sentence to between 25 years and 30 years.

[6] We then identified mitigating factors which include: (i) the absence of any previous conviction; (ii) a previous good character as seen from the social enquiry report; and (iii) an indication that the appellant seemed to have been provoked by prolonged stress associated with a particular family situation. These factors would reduce the sentence to between 22 and 27 years. We then applied a discount of 15% which we thought was more appropriate in the circumstances, and arrived at a sentence of between 19 and 24 years. This would mean that a sentence of 19 years' imprisonment would not be

manifestly excessive. This was not only an outrageous attack on law and order but a total disregard for the sanctity of human life, and the clear intent was to kill or cause serious harm. Having conducted a similar review of the sentences imposed, in relation to the other counts, we find that they too were not manifestly excessive.

[7] The appellant would then have to be credited with the one year and seven months spent on pre-sentence remand. When that period is subtracted from 19 years' imprisonment, the result is 17 years and five months' imprisonment.

[8] It was accepted that there must have been an erroneous recording of the sentence imposed for illegal possession of firearm. It seems to us that what should have been recorded was nine years' imprisonment instead of 19 years' imprisonment.

Order

[9] Accordingly, the court makes the following orders:

1. The appeal against sentence is allowed in part.
2. The sentence for illegal possession of firearm is set aside and substituted therefor is a sentence of seven years and five months' imprisonment having taken account of the pre-sentence remand of one year and seven months.
3. The sentence for illegal possession of ammunition is set aside and substituted therefor is a sentence of seven years and five months' imprisonment having taken account of the pre sentence remand of one year and seven months
4. The sentence for wounding with intent is set aside and substituted therefor is a sentence of 17 years and five months' imprisonment having taken account of the pre sentence remand of one year and seven months.

5. The sentence for shooting for intent is set aside and substituted therefor is a sentence of 12 years and five months' imprisonment having taken account of the pre-sentence remand of one year and seven months.
6. The sentences are to run concurrently.
7. The sentences are reckoned as having commenced on 30 October 2020, which is the date on which they were imposed.