



In The Supreme Court of Bermuda
CRIMINAL JURISDICTION
2023: No. 21

B E T W E E N:

THE KING

-v-

JOMARI GOODEN

Defendant

Appearances: **Mr Adley Duncan, Senior Crown Counsel (Litigation), for the
Prosecution**
 Mr Marc Daniels of Marc Geoffrey Ltd., for the Defendant

Date of Sentencing: 13th March 2025

SENTENCING REMARKS

*Possession of a Prohibited Firearm - Unlicensed Possession of Ammunition - Having a Bladed
Article in a Public Place - Resisting a Police Officer*

Richards J:

1. This case is a chilling one. We are all left to wonder what would have happened if you had succeeded in reaching inside your waistband and managed to get hold of the loaded gun concealed in your underpants while you were struggling with the police officers. They had

no way of knowing it was there, but you did. What would you have done with it if you had managed to get hold of it? Would you have brandished it? Would you have fired it? How many dead or injured public servants would we then have been looking at? What were you even doing running about the streets at night with this thing in the first place?

2. I have to sentence you in accordance with my best understanding of the law, but as a human being these are the questions that I will not pretend I have not been asking myself since you were convicted.
3. I do not think it would be proper to sentence you on the basis that you intended to shoot anyone because you have not been convicted of an offence of which that is an element, but the facts of this case serve to emphasise why sentences for possession of firearms and ammunition have to be strong ones. Whsoever you were carrying this loaded gun initially and frankly even if you had come into possession of it under the circumstances you advanced at trial, loaded firearms are inherently deadly objects. There is no telling what anyone might be tempted to do with them under certain conditions, even if they did not come into possession of them in inherently nefarious circumstances.
4. That said, I am unable to accept that you did come into possession of this gun as you described. I agree with the prosecution that the defence you ran was an insult to the intelligence of the jury. Although their verdicts do not necessarily mean that *they* were sure that your explanation was untrue, *I* am sure that it was and I unhesitatingly reject it. The notion that, in the state you say you were in, you could or would have disarmed an armed drug dealer of his loaded gun and then fled from him, despite the fact that you then had his gun and he still had your money, is preposterous. I am satisfied so that I am sure that it is untrue. You were in possession of that gun for your own reasons. I cannot properly find that you were on any particular mission that night, but there is certainly no mitigation to be found in the circumstances of possession. For the avoidance of doubt, I have further reflected this afternoon on whether the evidence of your urinalysis on reception into custody on 26th September 2023 undermines my conviction that your account to the jury was untrue and, having considered carefully the submissions of both Counsel, I have

concluded that it does not. I will however take it into account, as Mr Duncan suggests I should, when it comes to the appropriate sentence on Count 5.

5. I asked Mr Duncan during an earlier hearing how this case could really be worse because I was struggling to see how it could. Undoubtedly, you could have gone on to commit further and even more serious offences, but how could possession of these items be any worse? He suggested possession in a sensitive environment such as a school, but the point remains that the fact that you were in mobile physical possession of not only a working gun, but also several viable rounds of ammunition is a seriously aggravating feature of these offences.
6. A statutory minimum sentence of 12 years' imprisonment attaches to both Counts 1 and 2 on this indictment. Someone who had pleaded guilty to either one of those Counts could expect to receive such a sentence. That could be so even if they were not found to be carrying the item on a public street, but had it tucked away at home.
7. In *Winston Paynter*¹, the Defendant was convicted of possession of 6 rounds of ammunition (and no firearm) that were recovered from what the prosecution said was his home. They were discovered during a search precipitated by his arrest at another location. I was the prosecutor in that case and my now brother Wolffe J rejected my submission that the minimum sentence of 12 years' imprisonment was appropriate. In that case His Lordship was obliged to impose another substantial custodial sentence, which had to run consecutively to that sentence, and so he reduced the ultimate total sentence, but he said clearly that the minimum sentence "*should really only be reserved for those who have pleaded guilty*", reiterating a conclusion he reached in *James Rumley*². That case involved importation of firearm parts, but no ammunition. In both *Paynter* and *Rumley*, this Court reached the conclusion that the appropriate sentence for the firearms offences was one of 14 years. In my judgement, despite the submission of Mr Daniels, this case is more serious than either of those because it involves not only a complete functioning firearm, but also

¹ [2023] SC (Bda) 33 Cri (12th April 2023)

² [2021] SC (Bda) 17 Cri – sentence upheld on appeal see: [2021] CA (Bda) 18 Crim

ammunition, possessed in some of the most dangerous circumstances of which it is possible to conceive.

8. I note Mr Daniels' contention, predicated on the Court of Appeal's judgment in *Eston Joell*³, that the minimum sentence can be justified even after trial. With respect, that is a decision upon an appeal against conviction. It is unsurprising in the circumstances that the sentence was not appealed. I do not accept it as authority for the proposition that this Court's more recent practice of imposing sentences longer than the minimum in contested cases is wrong. With respect, I think the same can be said of the Court of Appeal's decision in *Detre Ford*⁴. The fact that 12 years was not held to be excessive, does not mean that the sentence in that case could not properly have been longer.
9. Lastly, I have considered again what Mr Daniels has said about the decision of this Court in *Josiah King*⁵. There it appears that the parties were agreed as to a basic sentence of 12 years and the primary focus of submissions was as to the uplift. With respect, I do not think that anything said therein mandates a departure from the relevant aspects of *Rumley* and *Paynter*, primarily because of what Wolffe J said about the likely sustainability of a longer sentence in paragraph 28 of his remarks. Mr King had of course pleaded guilty and had the benefit of such discount as the Court was able to afford him for that.
10. In my judgement, when compared with recent past cases, this case is closest to *Jaron Roberts*⁶ in that it concerned mobile physical possession of a loaded gun. In that case Wolffe J imposed a sentence of 16 years' imprisonment for the firearms offences. I accept that, given Mr Roberts' relevant previous conviction, it would not be appropriate for you to receive a sentence quite as long as he did.
11. All of this brings me to the conclusion that the appropriate starting point on Counts 1 and 2 is 15 years' imprisonment. I note that that is a sentence somewhat in excess of what the

³ [2016] CA (Bda) 10 Crim

⁴ [2017] CA (Bda) 8 Crim

⁵ [2022] SC (Bda) 79 Cri

⁶ Indictment 26 of 2021

prosecution is seeking. I have reflected further upon that in light of the submissions that have been made by both Counsel this afternoon. Having done so, I will reduce the sentence slightly from the starting point, more as an exercise of mercy than anything else.

12. I have looked for what mitigation I can and I have to say that I find little to none in this case. I have been impressed by some of the collateral impressions provided in the SIR. These come from people who care about you, like your parents and your aunt and lament some of the choices you have made in your life. By the time I have finished my remarks, I have no doubt that you will think I have been harsh with you. I emphasise that I do what I think I must, but with a very heavy heart. There are so many better ways that you could be spending your time. Please start listening to people who have your best interests at heart and turn away from the path that they fear you have gone down. It may well be that the murder of your friend in 2017 set you on that path, but the initiative for dealing properly with your grief and directing your energies to good and not ill has to come from you. Others will, I am sure support you, but not if you will not let them. The author of the Social Inquiry Report understandably concludes that you present a high risk of reoffending. Please, I beg you, when you are eventually able to re-enter society, prove them wrong.
13. Although I think the sentences on Counts 1 and 2 should properly be concurrent, I do not think that there would be anything wrong in principle about ordering the sentence on Count 3 to run consecutively to those sentences. I will not do so for reasons of totality more than anything else.
14. Lastly, I accept Mr Duncan's submission that the sentence on Count 5 should run consecutively to the other sentences for the reasons that he advanced on a previous occasion.
15. Mr Gooden, would you please stand up. The sentences that I therefore impose upon you are as follows:
Count 1: 14 years' imprisonment
Count 2: 14 years' imprisonment, concurrent to Count 1

Count 3: 5 years' imprisonment, concurrent to Counts 1 and 2

Count 5: 3 months' imprisonment, consecutive to all the other Counts.

16. That means that the effective total sentence is one of 14 years' and 3 months' imprisonment.

17. Time in custody shall be taken into consideration.

Dated this 13th day of **March 2025**



THE HONOURABLE MR JUSTICE ALAN RICHARDS
PUISNE JUDGE