

# The Court of Appeal for Bermuda CRIMINAL APPEAL No. 3 of 2017

BETWEEN:

K.D.

Appellant

- v -

## THE QUEEN

Respondent

Before: Baker, President Kay, JA Bell, JA

**Appearances:** Michael Scott, Browne Scott, for the Respondent Larry Mussenden and Maria Sofianos, Office of the Director for Public Prosecutions, for the Respondent;

#### Date of Judgment:

5 November 2018

## EX TEMPORE JUDGMENT

Once Court of Appeal has determined appeal against sentence – no power to hear further appeal

## BAKER, P

 This is an application for leave to appeal out of time by K.D. ("the Appellant"), represented on this occasion by Mr Michael Scott. The Appellant appeared on appeals before this Court on the 16<sup>th</sup> June 2017. There were two matters before the Court relating to convictions on different occasions in respect of which the Appellant is serving long consecutive sentences. Because of information that he has provided to the authorities, this Court in June 2017 allowed his appeal against sentence in respect of one of the groups of convictions, and reduced his sentence by some three years. The Appellant has now, it is said, given further information to the authorities and seeks leave to appeal out of time to receive a further deduction in the total sentences that he has received.

- 2. We are quite unpersuaded that we have any jurisdiction to entertain this further appeal. Appeals were launched against the two sets of offences; in respect of one it was dismissed, and in respect of the other it was allowed. That was, as we have said, in June 2017. Full details can be ascertained from the judgment given by Clarke JA.
- 3. Mr Scott urges on us the importance of encouraging those who have information about the whereabouts of guns and ammunition to give it to the authorities. That, he submits, can be done by reducing sentences on appeal, even in cases in which the offence or offences for which the defendant has been sentenced have nothing to do with guns or ammunition or the information given.
- 4. We agree with Mr Scott's submission, that it is important to encourage those, particularly those in custody, to provide this kind of information to the police, and in appropriate cases the Court is prepared to grant leave to appeal out of time if there are good reasons for doing so, and that consideration can then be given to a reduction of sentence if appropriate. That is not to say that a reduction will necessarily be given, but at least the court would be able to consider it.
- 5. The problem that Mr Scott has in the present case, and it is similar to the one that he faced in DMv The Queen is that both the two sentences that the Appellant is serving have already been the subject of appeals, and in these circumstances, we can find no basis upon which this Court, which has a statutory jurisdiction, is able to consider any further appeal. The matter has been considered in respect of both sets of his offences, and the Court has given its ruling. It has no

jurisdiction to entertain now yet a further appeal. In these circumstances, the application for leave is refused.

HR.hr Baker P

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