

# Judicial Communications Office

5 February 2020

## COURT INCREASES SENTENCE ON APPEAL

### Summary of Judgment

The Court of Appeal<sup>1</sup> today found that the sentences imposed on Ian Price for drugs and firearms offences were unduly lenient. He will now have to return to prison to serve his new determinate custodial sentence of five years' imprisonment.

Ian David Price ("the offender") pleaded guilty to three drug offences after arraignment and to three firearms offences together with an offence in relation to a machete on the second day of trial. At that time he had served approximately seven months in prison on remand awaiting trial. On 15 November 2019 the trial judge deferred sentence for six months stating that if he was told at the end of that period that the offender had turned his life around without coming to police attention, continuing with counselling and having made efforts to come to terms with his various addictions that the sentence which would be imposed would not involve a return to prison. The Director of Public Prosecutions referred the deferral of sentence to the Court of Appeal on the grounds that it was unduly lenient.

#### Factual Background

Two guns were found but the firearms offences related only to one of them. This was a revolver which was designed to fire cartridges containing CS or other gases and not for firing live rounds. It was a prohibited weapon and a firearm as defined by the Firearms (Northern Ireland) Order 2004 ("the 2004 Order"). The other firearm was an air pistol (which is not required to be held on a firearm certificate as specified by Schedule 1 to the 2004 Order). The offender was interviewed in relation to the air pistol but was not charged with any offence in relation to it. The offender was also charged with possession of four bullets but they were not capable of being fired from the revolver. The machete was described by the Court as a "lethal deadly weapon".

The offences occurred on 25 June 2017 in Bangor. The offender was at the home of the partner of Colin Horner, who had been murdered four weeks previously and he had been a friend of the offender. There were five other people present joining in "a commemoration of Colin Horner". The Court of Appeal described it as the "sort of occasion where full blown, unconstrained, irrational, violent drunken arguments could develop". The offender had in his possession a blue zip type wash bag which contained the revolver and the ammunition.

At about 5:30am there was a 999 call from the house from a man recorded as saying that a man described as the offender had a gun and was intimidating him and his niece. The police responded to the 999 call, cleared and searched the property. Nothing of significance was found and the offender was allowed to leave the scene. At approximately the same time there was a report to police that a female was trapped inside a VW Golf and that the car's alarm was sounding. During a search of the car a machete was discovered. At approximately 8.05am the police were in the process

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<sup>1</sup> Sitting in the Court of Appeal: Morgan LCJ, Stephens LJ and McAlinden J

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of removing the VW Golf when the offender approached and challenged them about removing his car. He smelt of alcohol and was unsteady on his feet. He was arrested and detained at the scene. A pair of black gloves was located in his jacket pocket together with a set of latex gloves and two mobile telephones. When analysed, the mobile phones revealed a photo of the revolver and the ammunition taken on 19 June 2017 and messages from and to the offender about supplying cocaine and pregabalin (this comprised the sole evidence of the drugs offences). The offender's home was searched later that day and the air pistol was found. At 8:10pm a woman phoned the police to say some children had found a gun in a bag which contained a gun and bullets. It was the same bag that the offender was seen to have had earlier that day

The offender was interviewed by the police on 25 and 26 June 2017. The Court said that the general tenor of the interviews was that he treated the police with "disdain and contempt. He blustered and lied. He attempted to brazen out his connection with the revolver, the ammunition and the machete". On 27 June 2017 he was remanded in custody but was released on bail on 12 January 2018. He breached his bail on 26 April 2019 and was in custody for a further period of 4 days. In total the offender spent 204 days in custody prior to his trial which is a period of approximately 7 months.

The Court heard that the offender first appeared in criminal justice system aged 12 and has been convicted of a further 167 offences. The overwhelming majority of his previous convictions are for road traffic offences however the Court noted he has a number of convictions for possession of an offensive weapon, drugs offences and violent offences. A pre-sentence report noted that since his release from custody in January 2018 he has refrained from misusing substances, distanced himself from negative associates, engaged in counselling and benefited from attending church with a view to leading a more settled lifestyle. The probation officer however observed that he made a similar claim in the past but ceased attending church. The offender was assessed as presenting a high likelihood of re-offending but that he did not meet criteria as posing a significant risk of serious harm at this time. The offender was examined by a Consultant Psychiatrist who considered that the most appropriate psychiatric diagnosis was one of a personality disorder.

## **The trial judge's sentencing remarks**

The trial judge relied on the pre-sentence report and concluded that the offender was not dangerous within the meaning of the Criminal Justice (Northern Ireland) Order 2008 ("the 2008 Order"). He said that "the most difficult aspect of this case ... is the issue of the mandatory sentence that is carried by count 1, the possession of the firearm without a licence." Article 70 of the Firearms (Northern Ireland) Order 2004 requires a court to impose a minimum sentence of five years for the offence of possession of a handgun without holding a firearms certificate unless the court is of the opinion that there are exceptional circumstances relating to the offence or the offender which justify its not doing so. The revolver in this case was a prohibited weapon under the 2004 Order and possession of it therefore required a firearms certificate.

In relation to exceptional circumstances the trial judge agreed with the assessment that the revolver was "technically a firearm". He referred to the case of *R v Avis & others*<sup>2</sup> [1998] 1 Cr App R 420 which set out four questions which it would usually be appropriate for a sentencing court to ask. The questions were:

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<sup>2</sup> *R v Avis & others* [1998] 1 Cr App R 420

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- What sort of weapon is involved? The trial judge answered that question by stating that “it’s a technical firearm.”
- What (if any) use has been made of the firearm? The trial judge answered that: “Effectively, the ... firearm was seen. There’s no question of him brandishing or using the item in any way.”
- With what intention (if any) did the respondent possess or use the firearm? The trial judge answered that question by stating that there was an absence of charges such as firing the weapon with intent or to cause fear or violence.
- What is the defendant’s record? The trial judge stated that there were no firearms offences on his record and that although it was conceded that it reads as a dreadful record it “did not indicate that there was an established record of committing firearms offences or crimes of violence”.

The trial judge concluded that all the questions in *R v Avis* were “answered in the positive” and relied on those as well as his finding that the revolver was only “technically” a firearm to find exceptional circumstances so that it was not necessary to impose the sentence of five years’ imprisonment required by Article 70 of the 2004 Order. The judge deferred sentence.

## **The Avis questions and answers**

The Court of Appeal set out its views in relation to the answers provided by the judge to the *Avis* questions before considering whether there were exceptional circumstances under Article 70 of the 2004 Order. It considered that the trial judge to a degree obscured the significance of the revolver by describing it as “technically” a firearm and that his answer should have recognised that the revolver was accompanied by “live” ammunition, that it was a firearm with greater potential impact than an imitation firearm but it was not a lethal weapon and was far less dangerous than firearms capable of firing live rounds, and that it was at the lowest end of the scale of firearms though more dangerous than an imitation firearm. In relation to the third question the Court considered that the trial judge was correct in that the prosecution had not proved to the requisite standard for instance a specific intention to fire the revolver with intent to endanger life. It added, however, that the offender had the revolver with the intention that it could be used to intimidate not by brandishing but by reputation and he had an intention of disposing of it in whatever drunken manner was convenient to him with total disregard for the safety of others. The Court considered that these were intentions of significance. In relation to the fourth question the Court considered that the weapons offences and the violent offences in the offender’s criminal record were obscured by judge’s answer to this question: “The offender had used the equivalent of a baseball bat to smash the door of a person’s home, he had threatened to kill and tried to drag a female out of her car, he had occasioned actual bodily harm to three victims and he had stamped on a person’s head – these were all serious offences”.

## **Sentencing for firearm offences**

The Court of Appeal has considered the impact of Article 70 of the 2004 Order in *R v Corr*<sup>3</sup> where it set out a number of applicable principles including the test for what is an exceptional circumstance.

The Court commented that just because the firearm in this case was not lethal and was designed to discharge noxious gas it did not of itself lead to a finding of exceptional circumstances on

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<sup>3</sup> *R v Corr* [2019] NICA 64 at paragraph [30] onwards

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consideration of all the circumstances. It said it was relevant to note that the legislator required the revolver to be possessed with a firearm certificate and the legislator determined that unless there were exceptional circumstances a minimum sentence should be imposed. It said it was also relevant to note that the revolver was not an imitation firearm but even if it was it could cause significant harm. In *R v Avis* the court stated that imitation weapons are often very hard to distinguish from the real thing and the victim is usually as much frightened and intimidated as if a genuine firearm had been used.

## **Sentencing for knife crime**

The offences of having an article with blade or point in public place contrary to section 139 of the Criminal Justice Act 1988 and of possessing an offensive weapon in a public place contrary to Article 22(1) of the Public Order (Northern Ireland) Order 1987 both carry a maximum sentence of imprisonment for a term not exceeding four years. The Court said this reflects the legislative intent that these are equally serious offences.

## **Sentencing for drug offences**

The Court noted that an aspect of the sentencing guidelines in this jurisdiction is that the assessment of the amount of harm is usually by reference to the quantity of the drug involved with the high or low purity of the drug potentially being an aggravating or mitigating factor. It noted, however, that the guidelines indicate that where the offence is selling directly to users (“street dealing”) the quantity of the drug is less indicative of the harm caused and that much will depend on the circumstances of each case.

## **Aggravating and mitigating features**

The Court noted the following aggravating features in this case:

- The revolver was discarded by the offender in a residential area and was found by children, one of whom then tried to use it;
- If concurrent sentences are to be imposed then the gravity and number of the other offences have to be taken into account as aggravating features of the most serious offence. The Court said it would proceed on the basis that the most serious offence was possession of the revolver without a firearms certificate and that all the other offences were aggravating features in respect of that offence. It considered that the possession of the machete in a public place was a particularly serious aggravating feature and that the drugs offences were serious aggravating features;
- The offender was intoxicated and was actively seeking to obtain cocaine when in possession of both the revolver and the machete;
- The offender’s relevant criminal record for crimes of violence, for drug offences and for possession of offensive weapons; and
- There was an element of breach of trust in relation to the offer to supply pregabalin which had been prescribed to the offender by his GP as he was seeking to profit from the health service which trusted him to use the medication for his own pain relief.

The Court noted three mitigating features:

- The offender pleaded guilty;

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- The offender's personal circumstances including his personality disorder although these are of limited effect in the choice of sentence; and
- The revolver was not capable of firing live ammunition.

## Consideration

The Court noted that the trial judge assessed the offender as not being dangerous within the test of dangerousness in the 2008 Order relying on the pre-sentence report. It said there was no challenge to that finding but made the point that in considering pre-sentence reports in relation to a significant risk of serious harm it is important to bear in mind that the trial judge should concentrate on the statutory test and not on the test adopted by the probation service.

The Court said it was clear that when the trial judge stated that the revolver was "technically" a firearm he did not mean that it was legally not a firearm in the eyes of the law:

"Such a meaning would defeat the legislation and would seriously obscure the real danger caused by blank firing revolvers which look and if fired sound as if they are firearms capable of firing bullets. On that basis they can be used by criminals to create real fear and to control. Firing a blank round at a person would generate extreme terror. Decidedly they are not the equivalent of imitation firearms which in any event can be used by criminals to intimidate and to control".

The Court considered that the trial judge meant, and was correct to mean, that on a scale of dangerousness the revolver was at the lowest end of the scale of firearms. On this basis and in considering all the circumstances in relation to the offence and the offender the Court agreed that this was one particularly striking circumstance. However, it went on to consider there were other particularly striking circumstances:

- the offender's intoxicated condition when in possession of the revolver, the ammunition and the machete;
- his attempts to obtain cocaine at that time;
- the clear and obvious risk posed by his possession of the revolver, the ammunition and the machete on an occasion where full blown, unconstrained, irrational, violent drunken arguments could develop;
- the offender's intimidatory conduct;
- his total disregard for the safety of others when discarding the revolver and ammunition in a residential area with the obvious risk created for children which to a large extent materialised;
- his previous criminal convictions for weapons offences, drug offences and violent offences; and
- the attitude of the offender as demonstrated during his police interviews.

The Court considered that the circumstances of the offence in this case were serious and plainly fell within the type of offending behaviour which the legislature intended to prevent:

"We consider that there is an obvious contrast between an arbitrary and disproportionate sentence on an individual with a good work record, no criminal convictions and who co-operates with the police and the drunken escapades of the offender on 25 June 2017 who chose to ignore or was impervious to the risk of the

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revolver being found by children with consequential impacts on family life. The legislative norm is that the community should be protected from such circumstances. They are corrosive and a menace. We consider that this was the deliberate type of offending with the potential to cause serious public harm which the legislature intended to prevent by the sentencing regime in Article 70 of the 2004 Order. We consider that to impose five years' imprisonment taking into account all the offences would not result in an arbitrary and disproportionate sentence. This means that there were no exceptional circumstances in this case so that the judge ought not to have deferred sentence."

## Conclusion

The Court concluded that the sentences imposed by the trial judge were unduly lenient and quashed those sentences. It determined that the sentences on the firearms/machete indictment and on the drugs indictment are to be concurrent and imposed a total effective sentence of five years' imprisonment, half to be served in custody and half on licence. The Court directed the offender to present himself at Maghaberry prison to serve his sentence.

## NOTES TO EDITORS

1. This summary should be read together with the judgment and should not be read in isolation. Nothing said in this summary adds to or amends the judgment. The full judgment will be available on the Judiciary NI website (<https://judiciaryni.uk>).

ENDS

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