

1 IN THE GRAND COURT OF THE CAYMAN ISLANDS
2 CRIMINAL SIDE
3

4 Ind. No.: 0092/2016
5

6
7 THE QUEEN

8 V.
9

10 FABIAN OLIVER THOMPSON
11
12
13
14



15 **Appearances:**

Ms. Nicole Petit for the Crown

16
17 Ms. Prathna Bodden of Samson Law for the
18 Defendant
19

20 **Before:**

Hon. Mr. Justice Malcolm Swift (Actg.)

21 **Heard:**

4th – 8th May 2017

22 **No Case to Answer Decision:**

8th May 2017

23 **Verdict Decision:**

8th May 2017

24 **Sentence Hearing:**

30th May 2017
25
26

27 **HEADNOTE**

28
29 *Criminal Law – s.18(6) of the Firearms Law – Possession of an imitation*
30 *firearm with intent to commit an offence – Sentence after trial.*
31
32
33
34
35

SENTENCE JUDGMENT

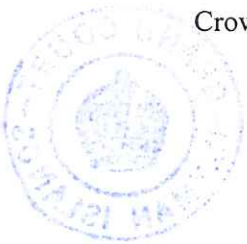
1. On the 8TH May 2017, I convicted the Defendant of Possession of an Imitation Firearm with intent to commit an offence contrary to s.18(6) of the Firearms Law (2008 Revision). The particulars of the Count are that he had with him an imitation firearm on the 20th January 2016 at 100, Kitty Lane, Bodden Town with intent to resist arrest. This was 2 days before the expiry of a 12-month Probation Order imposed by the Summary Court for possession of ganja.
2. The facts are set out in the Verdict Judgment and I shall not repeat them. It is enough for present purposes to say that the Defendant escaped being arrested by the Police by leaping a fence with an item resembling a firearm in his right hand which I am satisfied he took from his pocket to deter the Police from pursuing him and fled the scene because he feared arrest for having the item which had the appearance of a firearm in his possession.
3. The Defendant has not handed in the weapon concerned so that I am denied knowledge of precisely what it was and it remains a risk to the public at large. That ranks as a serious aggravating factor when sentence is determined.
4. Furthermore the weapon in question was used to put police officers in fear of being shot and to deter them from pursuing him. Such conduct is incapable of justification and aggravates the offence.



1 5. The Defendant is a man of 34 years of age with one previous conviction resulting in a
2 Probation order for 12 months. This offence puts him in breach of that order.

3
4 6. The Defendant did not give evidence so that at least it can be said that he has not given
5 false evidence on oath.

6 7. In *R v Ramoon*¹ the Chief Justice imposed a 3-year sentence on a 19 year old with no
7 previous convictions, saying that 3 years was the starting point following a guilty plea.
8 However, in *R v Welcome*² a sentence of 6 years (starting point 7 years) was imposed
9 in a case where the imitation firearm, which was not recovered, was in the possession
10 of a 23-year old with previous similar convictions. Higher sentences (5 to 7 years)
11 have been upheld in similar offences in the UK (*R v Omari*³; *R v Duffy*⁴; *R v Avis*⁵).
12 Referring to the sentence imposed in *Ramoon*, the learned Judge in *Welcome* said that,
13 in the years since that sentence was considered in 2010, times had moved on and gun-
14 crime had become the scourge of the Caribbean and, citing Lord Bingham's comments
15 in *Bentham*⁶, emphasized that imitation firearms have the same capacity to frighten
16 and to intimidate as the real thing. In this case, the police officers were effectively
17 deterred from hot pursuit by what they believed was the real thing. In the present case,
18 although the Defendant has no previous convictions, he did not plead guilty and put the
19 Crown and the Court to the expense of a trial.

20

¹ [Indictment 24 of 2010]

² Indictment 57 of 2016 – Sentence imposed by Dobbs J Actg.

³ [2004] 2 Cr.App.R(S) 96

⁴ [2005] 1 Cr.App.R(S) 75

⁵ [1998] 1 Cr.App.R(S) 420

⁶ [2005] UKHL 18

1 Adopting the approach of the Chief Justice in *Ramoon* it seems to me that, following a
2 trial, the starting point for sentence for a person with no criminal record is 4 years and
3 6 months imprisonment. Some might say that such a sentencing starting point fails to
4 reflect adequately the maximum sentence available for this offence which is 20 years
5 imprisonment.

6 8. The courts must mark offences such as this with the appropriate level of gravity. Gun-
7 crime must be stamped out. Anyone minded to carry, let alone use, either a firearm or
8 an imitation firearm must expect as a matter of course to go to prison for a substantial
9 time. The offence is aggravated for the reasons already given which increases
10 substantially the sentence from its starting point. Despite valiant efforts by the
11 defence, I can find no mitigation in this case. The most that can be said is that the
12 Defendant did not go into the witness box and perjure himself. However that fact is
13 off-set and counterbalanced by the complete absence of remorse – as demonstrated in
14 the Social Inquiry Report (SIR) – and by the Defendant's failure to recognize his guilt
15 and the seriousness of the offence.

16 9. I shall treat the probation breach as an aggravating factor and will impose no separate
17 sentence in respect of the breach.

18 10. The sentence is 5 years and 6 months' imprisonment.

19 Dated this the 30th day of May 2017

20
21
22 

Honourable Mr. Justice Malcolm Swift (Actg.)
Judge of the Grand Court

