

GRENADA

IN THE COURT OF APPEAL

MAGISTERIAL CRIMINAL APPEAL NO.1 OF 2003

BETWEEN:

DEREK PARKE

Appellant

and

COMMISSIONER OF POLICE

Respondent

Before:

His Lordship, The Hon. Sir Dennis Byron
His Lordship, the Hon. Mr. Albert Redhead
His Lordship, The Hon. Mr. Ephraim Georges

Chief Justice
Justice of Appeal
Justice of Appeal [Ag.]

Appearances:

Mr. Cajeton Hood for the Appellant
Mr. Christopher Nelson for the Respondent

2003: March 11;
September

JUDGMENT

- [1] **BYRON, C.J.:** Derek Parke pleaded guilty to unlawful possession of an AKS rifle and 21 rounds of ammunition contrary to sections 20(1) of the Firearms Act and was summarily convicted and sentenced by the Magistrate to two(2) years imprisonment with forfeiture of the firearm and ammunition. Parke complains that the sentence was excessive.
- [2] The background facts were simply that when the firearm and ammunition were found in a barrel in his home during a police raid, Parke told the police that he had had them since the "revo". He has no previous convictions.

- [3] The law on sentencing powers are set out in section 20(4)(a) “every person who contravenes subsection (1) shall be guilty of an offence, and shall be liable (a) on summary conviction, to a fine of not less than four thousand and not more than twenty thousand dollars and to imprisonment for not less than two and not more than five years”.
- [4] Counsel for the appellant contended that the imposition of term of imprisonment was not mandatory, and the Magistrate failed to exercise a discretion on the appropriate sentence. He contended that in this case a term of two years imprisonment was excessive. The cases cited related to the application of custodial sentences.
- [5] This case required an adjudication on the interpretation of the statutory provisions before we could consider whether a discretion was properly exercised.
- [6] The wording of the section did not give counsel much wriggle room as the section clearly evinced a legislative intention to require the imposition of a financial and custodial punishment within the minimum and maximum levels prescribed. So long as those statutory provisions exist the court is bound to apply them.
- [7] In the circumstances I could not rule that the sentence was excessive. The appeal is dismissed.

Sir Dennis Byron
Chief Justice

I concur.

Albert Redhead
Justice of Appeal

I concur.

Ephraim Georges
Justice of Appeal [Ag.]