

SAINT LUCIA

THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
(CRIMINAL)

CRIMINAL CASE NO. SLUCRD2010/0778

BETWEEN:

THE QUEEN

Claimant

and

SHERRYLAND MOSES

Defendant

Appearances:

Mr. Stephen Brette for the Claimant

Mr. Jeannot-Michel Walters for the Defendant

2017: March 23.

JUDGMENT ON SENTENCING

- [1] **CUMBERBATCH, J.:** On Saturday the 10th July 2010 the Virtual Complainant, Kentroy Montoute was cooling out with some friends at Grande Reviere, Dennery when the Defendant approached him and commenced discharging a firearm at him. He received injuries and was taken to the Dennery Hospital. He was treated and referred to the Victoria Hospital where he underwent emergency surgery for gunshot wounds, which in the opinion of the doctor were life threatening.
- [2] Prior to the shooting incident the Defendant and Virtual Complainant were engaged in an oral altercation at which time the Defendant told the Virtual Complainant in creole, "I giving you something" to which the Virtual Complainant responded, "come and try it".
- [3] The Defendant was indicted by the Director of Public Prosecutions for the offence of Attempted Murder contrary to Section 88 (b) of the Criminal Code 2004 and using a Firearm with Intent to

Commit an Offence contrary to Section 27 (1)(a) of the Firearms Act N. 9 of 2003. After a fully contested trial the Defendant was convicted by the jury for the offence of Attempted Murder.

THE PRE-SENTENCE REPORT

- [4] After the allocutus the Court ordered a Pre-Sentence Report be produced as is required by law to assist the sentencer in the sentencing process. This report revealed that the Defendant is an issue of a common law relationship with his parents. He resided for the most time with his father and paternal great grandmother both of whom ensured that his needs were adequately met. He also lived in Barbados for one year.
- [5] Community residents are convinced that the Defendant committed the offence and state he appears to be someone with a mental problem. Some describe him as respectful, quiet and jovial whilst others find him to be violent and opine that the community is better off without him.
- [6] The Defendant's education is limited as he has very little reading and writing skills. He has been employed in the construction industry and prior to his incarceration herein he has been self employed as a farmer.

THE LAW

- [7] I find the following to be the aggravating and mitigating factors.

AGGRAVATING FACTORS

1. The seriousness of the offence,
 2. The use of an illegal firearm,
 3. The nature and extent of the injuries inflicted which were life threatening,
 4. The Defendant's lack of remorse
- [8] I do not find any mitigating factors herein. I have however considered the submissions of defence counsel Mr. Walters who entered this case at the sentencing stage. He too found the Defendant's insistence on his innocence and lack of remorse to be of concern. I have also taken into account the facts herein and find that a custodial sentence is inevitable. Accordingly this Defendant shall serve a period of imprisonment of 9 years.

- [9] This is another of those cases which involve the use of illegal firearms which has become prevalent in the jurisdiction. The ease of availability and unbridled use of illegal firearms has become a distinct problem for law enforcement officers and the public at large. Thankfully this shooting did not result in a fatality but the decision of the jury is indicative of the fact that the Defendant intended to kill or cause serious bodily injury to the Virtual Complainant irrespective of the consequences.
- [10] The Court's abhorrence of this type of conduct must be made manifestly clear. The Pre-Sentence Report discloses the effects of the gunshot injuries to the Virtual Complainant and his family. The seriousness of this offence should not be trivialized hence the issue of deterrence must be a factor in the determination of an appropriate sentence.
- [11] The Defendant is not a first offender having run afoul of the law for drug offences the last of which was committed in the year 2002. These will not be taken into account in the determination of his sentence. However his connection with cannabis will have to be addressed by way of rehabilitation.
- [12] The Defendant requires rehabilitation for his aggressive and violent conduct. His drug use must also be addressed. Indeed the Probation Officer has opined that he has the propensity to reoffend.
- [13] The offence for which the Defendant stands convicted carries a maximum sentence of 20 years imprisonment. His sentence must be commensurate with the seriousness of the offence. The Court must however take into account his personal circumstances, the likelihood of rehabilitation and the mitigating factors in his favour.
- [14] Thus in the circumstances I consider a sentence of 9 years imprisonment to be appropriate. The Defendant shall be credited for all time spent on remand whilst awaiting his trial. He shall be enrolled in all relevant programs of rehabilitation for his anger management, drug use, aggressive behaviour and poor decision making skills.

FRANCIS M. CUMBERBATCH
HIGH COURT JUDGE

