

**IN THE SUPREME COURT OF BELIZE A.D. 2017**

**INFERIOR APPEAL NO. 63 of 2015**

**ANTHONY ZELAYA**

**APPELLANT**

**AND**

**THE POLICE**

**RESPONDENT**

**(P.C. #438 STEVE FERGUSON)**

**BEFORE the Honourable Madam Justice Sonya Young**

Hearings

2017

9<sup>th</sup> May

Written Submissions

Appellant – 12.5.2017

Respondent – 10.5.2017

Decision

16<sup>th</sup> May, 2017

Mrs. Nazira Myles for the Appellant.

Ms. Sheiniza Smith, Senior Crown Counsel for the Respondent.

**Keywords: Inferior Appeal – Sentence – Excessive – Consecutive or Concurrent – Time to pay fine – Prohibited Firearm – Ammunition – Drug Trafficking – Firearms Act Cap. 143 – Summary Jurisdiction (Procedure) Act Cap. 99 – Supreme Court of Judicature Act Cap. 91**

**DECISION**

1. Anthony Zelaya, the Appellant herein, pleaded guilty to possession of a prohibited firearm, a sawed-off shotgun and four live rounds of unlicensed

16 gauge ammunition. He also pleaded guilty to one count of drug trafficking to wit – 105 grams of cannabis. He was among four persons charged following the search of a house at Gardenia Village on 14<sup>th</sup> July, 2015. On entering his guilty plea, no evidence was offered against his co-accused.

2. Mr. Zelaya was sentenced to seven years imprisonment for the firearm, and seven years for the ammunition, those sentences were ordered to run concurrently. He was then ordered to pay a fine of \$10,000 forthwith on the drug trafficking offence. In default, he was to be imprisoned for a term of five years. This sentence by the Chief Magistrate's notes of evidence was ordered to run concurrently as well. However, by the order book it is stated to run consecutively. No issue has been made by counsel for the Appellant about this discrepancy where the record book is prima facie evidence only of the truth of any matters stated therein – see section 139 of the Summary Jurisdiction (Procedure) Act. Its content could therefore be refuted. However, having been unable to pay the fine, Mr. Zelaya was immediately imprisoned with his default sentence running consecutively to his other sentences.
3. He has appealed on five grounds, four of which were abandoned, as they related erroneously to a trial. The remaining ground, that the sentence was unduly severe, will now be considered.

**Submissions:**

4. Counsel submitted that serving twelve years, collectively, was far beyond what could be considered just in the circumstances. She stressed that he ought to have been given some time to pay the fine and she was supported in

this contention by counsel for the prosecution. She, however, urged that where Mr. Zelaya had already served twenty-two months, in keeping with the spirit of the decision in *Edwin Bowen v P.C. 440 George Ferguson, Appeal No. 5 of 2015* he ought to be given time served on the drug trafficking offence. Additionally, since all the offences resulted from one incident they should have been ordered to run concurrently. Counsel for the Respondent conceded that Mr. Zelaya ought to have been given some time to pay the fine and accepted six months as sufficient. Although her submissions were silent as to whether the default sentence ought to run concurrently, the court noted that it is plainly stated in the first paragraph that: “(a)ll sentences were ordered to run concurrently.”

5. The Appellant continued with an assertion that the Chief Magistrate had misdirected herself when she proposed that the mandatory minimum sentence on a prohibited firearm was three years. She informed that the sentence was in fact five years and was not mandatory. Nonetheless, having so erred, the Chief Magistrate proceeded to sentence Mr. Zelaya to seven years on each count. Counsel for the Respondent also supported this position, but, unlike the Appellant, she strenuously objected to the submission that he should be given time served on these two offences as well. She entreated the court to consider the aggravating factors such as the type of firearm and ammunition and the prevalence of these types of offences in Belize.

#### **Consideration and Findings:**

6. This court finds firstly that the Magistrate did not err in her pronouncement of the sentence prescribed by law for a prohibited firearm. The Appellant was charged under section 35 of the Firearms Act which reads:

*“35.-(1) Subject to section 33, no person, including a gun-dealer shall own, keep, carry, use or have in his possession any firearm or ammunition, of the following description- (a) rifle of 7.62 or higher calibre; (b) revolver of .44 or higher calibre; (c) magnum revolver of .357 calibre; (d) sawed-off shotgun of any calibre; (e) machine gun of any calibre.*

*(2) ...*

*(3) Any person who contravenes the provisions of this section shall be guilty of an offence and shall be liable- (a) upon summary conviction, to imprisonment for a term which shall not be less than three years but which may extend to seven Offences in respect of persons under 16 years of age.”*

7. Having considered the oral and written submissions of counsel on both sides, this court also finds that the sentences imposed do not properly reflect the totality of the Appellant’s criminality especially when the aggravating factors are weighed against those in mitigation.
8. This Appellant had no previous convictions and pleaded guilty saving the exigencies of a trial. However, the firearm is prohibited which makes the offence that more serious. The firearm was loaded when found and there were three other live rounds of similar calibre present. A quantity of controlled drugs was also recovered.
9. This court knows of no general rule which states that where different offences form part of the same incident the sentence must be ordered to run concurrently. Whether a sentence runs concurrently or consecutively is always within the discretion of the court, which ought to be guided by certain basic principles. That the offences were located in the same place is not a relevant or deciding factor in favour of concurrent sentences. The nature and seriousness of the offences must be considered. So too, whether the criminality for one offence could encompass the criminality of all the offences. The sentence whether aggregate or otherwise should be just and appropriate. It should neither be too harsh nor too lenient. This calls for a

proper weighing of relevant factors while ensuring that the sentence imposed conforms to the statutory regime under which it is effected. In this case, I find the aggregate sentence imposed to be so weighty as to call for the intervention of the court.

10. The Appellant having been simultaneously fined and confined should have been given some time to pay that fine rather than being ordered to do so forthwith. I do agree that six months would have been a reasonable period. Having not been given any time, his sentence given by the court below on the drug trafficking offence is hereby quashed and a sentence of twenty-two months is substituted therefore. Twenty-two months being the period since incarceration and the hearing of his appeal.
11. On the possession of the prohibited firearm, his term of imprisonment is reduced to six years imprisonment.
12. On the possession of the unlicensed ammunition his term of imprisonment is reduced to three years.
13. All sentences are ordered to run concurrently.

**SONYA YOUNG  
JUDGE OF THE SUPREME COURT**