

**IN THE DISTRICT COURT
AT OAMARU**

**I TE KŌTI-Ā-ROHE
KI TE OHA-A-MARU**

**CRI-2024-045-000165
[2024] NZDC 25572**

NEW ZEALAND POLICE
Prosecutor

v

MATTHEW BRYAN MCLAREN
Defendant

Hearing: 23 October 2024

Appearances: J Collins for the Prosecutor
K Henry for the Defendant

Judgment: 23 October 2024

NOTES OF JUDGE D P DRAVITZKI ON SENTENCING

[1] Mr McLaren, you are to be sentenced on four charges under the Arms Act 1983. The first is a charge of possessing ammunition. That is a fine-only matter.

[2] The second is a charge of possessing a restricted weapon (that is, a pistol). That carries a maximum sentence of three years' imprisonment.

[3] The third and fourth charges are laid under s 55D of the Arms Act. It is a relatively new section which only came into effect in 2020. The two charges laid are of manufacturing a restricted weapon (that is the pistol) and a representative charge of manufacturing a firearm between June 2022 and June 2024. Those two charges of manufacturing firearms carry a maximum sentence of 10 years' imprisonment each. It is serious offending.

[4] This is the relevant summary of facts: On 1 July 2024, at approximately 10.43 am you were at home. Police were making enquiries in relation to another matter that did not involve you. A short time after arriving at the address, circumstances led police to invoke a warrantless search for cannabis under the Search and Surveillance Act 2012.

[5] The police located you in your sleepout. You were detained under the Search and Surveillance Act and your Bill of Rights was given which you acknowledged.

[6] When you were speaking to police, you stated you had a loaded gun on the floor in your sleepout. Police invoked a warrantless search for firearms under the Search and Surveillance Act. A short time later, police located an operational 3D-printed pistol with three live rounds of .22 ammunition in the attached magazine.

[7] A further search of the sleepout located:

- (a) approximately 26 bullets;
- (b) 178 3D-printed parts in various forms;
- (c) a 3D printer; and
- (d) various tools, springs and barrels used to manufacture firearms.

[8] You were arrested.

[9] You admitted the facts as outlined and, in explanation, stated you were a firearms enthusiast and had printed approximately five operational firearms in the last 18 to 24 months. It is that acknowledgement which gives rise to the representative charge which reflects that pattern of conduct.

[10] Police seek an order to destroy the 3D-printed parts, the 3D-printed firearm and the items relating to the manufacture of firearms and the ammunition and, I should say, also the 3D printer is sought to be destroyed and forfeited as well.

An order is also sought for you to be prohibited possession of firearms (that is, a firearm prohibition order). That is opposed and I will make a determination about that.

[11] You have previous criminal convictions but nothing whatsoever that is similar to this type of offending. They are mainly driving and dishonesty matters. You have no prior offences under the Arms Act. You have no previous convictions for the possession of firearms.

[12] You do have one serious violent conviction in your history. That did involve the use of a weapon, although not a firearm. That was a conviction for aggravated robbery which was entered in 2013. You were sentenced to three years and 11 months' imprisonment for that offending.

[13] I am faced with a situation where police say the starting point for the offending is a sentence of seven years' imprisonment. Ms Henry, on your behalf, says an appropriate starting point is two-and-a-half years' imprisonment. It is a massive range. It is a complicated process because of the lack of relevant sentencing authorities which arise, partly of course, because the specific manufacturing charges are a relatively recent addition to the law.

[14] The police refer me to the sole Court of Appeal case they say exists. That is the case of *Clarke v R* where there is some discussion around the charge of manufacturing firearms.¹ It is noted [the offence] was introduced into law, particularly as a response to concerns of criminal actors, such as gangs in particular, accessing illegal firearms, and manufacturing firearms, as part of their wider criminal activities and particularly drug-dealing, intimidation and related violence.

[15] In *Clarke* the Court of Appeal considered a single charge of attempting to manufacture a firearm. The Court considered a two-year starting point for that offence appropriate. Mr Clarke was being sentenced on a raft of offending. A totality reduction of six months was also considered appropriate by the Court of Appeal so the sentence of 18 months, as an uplift, was imposed and upheld by the Court of Appeal.

¹ *Clarke v R* [2024] NZCA 199.

[16] The aggravating factors the Court of Appeal referred to were:

- (a) The attempt to manufacture the firearm was well advanced.
- (b) Mr Clarke was premeditated in his act, he had gone to considerable trouble in terms of accessing both the knowledge and equipment necessary to undertake the manufacture.
- (c) That manufacture itself had been well advanced as the Court said and I think they also said the only thing that prevented the attempt coming to fruition was the fact Mr Clarke was arrested for other matters at the time before the manufacturing was quite completed.
- (d) The Court of Appeal also clearly considered as important, in Mr Clarke's case, the firearms manufacture was coupled with a lot of additional criminal activity including drug dealing specifically, gang affiliation or membership and stand-over and intimidation-type behaviour.

[17] However, that [offending] was for an attempt.

[18] The police say a number of the same factors are present in your case. That includes the elements of premeditation, some persistence and even, possibly, a low level of sophistication in terms of acquiring the knowledge, materials and equipment to give effect to the manufacturing process.

[19] In your case, the process had come to full fruition. One fully completed firearm was recovered. By your admission, you had manufactured approximately five firearms over the previous 18 months to two years. It is not entirely clear what became of the others, although I understand it is put forward they had been disassembled, or had not lasted because of the plastic nature of some of the components used.

[20] Police, with sentencing submissions, did file a photograph book of the items recovered. Clearly there was an operation of some organisation. There are a large number of component parts displayed in those photographs,

together with the printer and related materials. It is destruction of all of the items in that photograph book that police are seeking.

[21] Police say that, unlike *Clarke*:

- (a) This was a completed attempt.
- (b) There were multiple firearms manufactured over time although only one recovered.
- (c) Police do accept there is no evidence of additional criminality in your case. That is, there is no evidence you were intending to sell the firearms, let alone sell them to criminal gangs. Nor was it suggested the firearms would otherwise be used in an unlawful way.

[22] Nonetheless, police contend an appropriate start point, with comparison to *Clarke*, is a sentence of seven years' imprisonment.

[23] Ms Henry says that start point is far too high. She relies particularly on that last factor I was talking about, the absence of any additional criminality. It is not suggested [the firearms] would be involved to assist drug dealing or other gang involvement or activity.

[24] I do understand that it is acknowledged you have some history in the past of being a gang member but you no longer are. As I say, police accept there is no additional criminality element to the offending.

[25] Ms Henry says, on that basis and absent that aggravating factor of additional criminality, a start point sentence of two-and-a-half years' imprisonment is appropriate.

[26] Ms Henry did acknowledge the absence of directly "on-point" relevant sentencing authority. Orally today, she referred me to two cases, *Philpott v R* and *R v Rose*.² I understand those cases concern circumstances where licensed firearms

² *Philpott v R* [2021] NZHC 3219; *R v Rose* [2023] NZDC 10267.

holders have accessed firearms with the intention of supplying those to unlicensed firearms owners or criminal groups.

[27] Ms Henry points out the start-point in those cases is less than the police are contending for here. Ms Henry also, though, readily acknowledged that in those cases, the offending would not have been subject to the same maximum 10-year imprisonment sentence that has been deliberately set by Parliament in relation to the manufacture of firearms.

[28] Those [cases] come to me late in the piece and orally. I accept there may be some similarities but there is already that important difference.

[29] This is how I deal with the matter in the light of the lack of much in the way of sentencing authority.

[30] The starting point must be the maximum sentence of imprisonment. That 10-year maximum is a real indication by Parliament that this is to be considered very serious offending.

[31] That needs to be coupled with massive efforts which have been taken to remove unlawful firearms including the firearms buy back and other related steps. There is obvious and real potential to undermine any efforts to remove illegal firearms from the community if the type of offending you have been involved in becomes more widespread. There would be ready access to criminal parties to source firearms provided they are able to source, at relatively low cost, the manufacturing materials and obtain the necessary expertise. That clearly is a huge concern and it is for that reason that high maximum penalty has been required.

[32] This type of offending does require a stern response. But I do agree with Ms Henry the issue of additional criminality is a very significant aggravating factor to this type of offending. That is absent in your case.

[33] In fact, it is put forward, including again today orally, you did not know this was unlawful. I have some real difficulty with that submission. You knew you did not have a firearms licence. You say the plans to manufacture [the firearms] were

readily accessible online. I can accept that but I do have real difficulty understanding or accepting that at least at a basic level, you did not understand this was unlawful behaviour.

[34] I have to take into account the fact the manufacturing was complete. That is a significant difference from *Clarke*. I have to take into account that, on your acknowledgement, there were several firearms involved although only one was recovered and possibly only one remained in an operational state.

[35] The firearm was loaded. That is regarded as being an aggravating factor in all firearms offending.

[36] The firearm was a restricted firearm, it was a pistol. That is again regarded as being an aggravating feature in any firearms offending.

[37] There are particular concerns about firearms of this type being not detectable:

- (a) either physically through metal scanning which I suspect is a concern given they are made of plastic;
- (b) but certainly not being detectable in terms of having registrations and numbers so that they are readily traceable.

[38] Those factors, including the readily concealable nature of a pistol, make them particularly suitable for use in illegal activity if they came into the wrong hands. Those are aggravating features.

[39] In general, the High Courts have said, including in *Karetu*, that illegal firearms possession will result in a prison sentence absent special circumstances.³

[40] I also note in *Clarke* itself, the manufacturing charge was uplifted, by a separate charge of possession of a firearm, by a further 18 months. Now, of course you are facing similar charges of both possession of the pistol and of the manufacturing charge, although I am asked to deal with all matters together.

³ *Karetu v Police* [2012] NZHC 2370.

[41] Taking all of those factors into account, the starting point in this matter, in my view, cannot be less than three years' imprisonment. That is the starting point which I adopt.

[42] That takes into account all of those factors and the absence of the other serious aggravating factor being involvement in additional criminality. If there was even a suggestion of selling to criminal groups or using [the firearms] in other unlawful activity, then the starting point would be much higher in my view.

[43] Absent that but taking into account all of the other factors, I consider a starting point of three years' imprisonment to be appropriate.

[44] You are entitled to a reduction for your guilty plea. It was offered at an early opportunity. The full reduction of 25 per cent is appropriate and is applied.

[45] I am also prepared to offer a reduction of five per cent for remorse. It does seem you have been particularly cooperative with the police and have volunteered information to them about your activities. That, in my view, does indicate accepting responsibility for [the offending] and genuine remorse. That is a total reduction of 30 per cent from the starting point.

[46] Ms Henry referred me to factors in your background and upbringing as being relevant to this offending. I do acknowledge, absolutely, you have had a really difficult background and upbringing. However, I am not satisfied there is an obvious or readily identifiable connection between that background and this specific offending which appears to have been prolonged and methodical. I do not apply a further reduction for those factors.

[47] The 30 per cent reduction that I do accept is to be applied to the 36-month or three-year starting point. That is a little under 11 months. Eleven months is allowed.

[48] That results in a sentence of imprisonment of 25 months. That is over two years.

[49] In addition, a personal uplift is required because this was offending on sentence. You were subject to a sentence of intensive supervision at the time. I would uplift by one month.

[50] The final sentence of imprisonment is a sentence of 26 months' imprisonment. That is the sentence which I impose.

[51] That is, as I say, longer than two years and therefore it is not open to me to consider conversion of that sentence to home detention.

[52] I have received and considered the Provision of Advice to Courts (PAC) report and I have noted the recommendation within that is a sentence of home detention. That is not open to me. I consider, on a principled basis, the least restrictive sentence which is available is a prison sentence at a length which is longer than I am able to convert to a sentence of home detention.

[53] In terms of a firearms prohibition order as sought by police, it needs to be established, on the balance of probabilities, that it is necessary, reasonable and appropriate to impose that to assist to manage the risk your behaviour poses to public safety. That is opposed by you. However, I am satisfied it is appropriate to impose that prohibition order.

[54] Mr Collins said there is general risk to the public safety from the greater availability within the community of firearms, particularly firearms of this nature which are untraceable. I agree with that. That is absent entirely any risk of you selling them or otherwise disposing of them or using them in criminal activity. Simply, the general availability of firearms of this nature does pose a significant risk to public safety and, in my view, it is necessary, reasonable and appropriate to impose a firearms prohibition order on you.

[55] I also make an order for forfeiture and destruction of the pistol, the firearms parts and the ammunition recovered under s 69 of the Arms Act.

[56] I also make an order for forfeiture and destruction of the 3D printer which was recovered. There is a complex interplay of law between the Arms Act and the

[Criminal Proceeds (Recovery) Act 2009] which would require that item to be regarded as an instrument of crime. That is not strictly opposed by Ms Henry. That is the forfeiture and destruction of the 3D printer and, therefore, I do not go into what is quite a complicated argument in detail. I am satisfied the 3D printer was integral in this criminal activity. It could be regarded as an instrument of crime. That should also be forfeited and destroyed.

ADDENDUM:

[57] I have been advised that contrary to usual practice, an order for destruction of the material seized is not sought by police. They may wish to use the materials recovered for educational purposes. On that basis, the orders which I make in relation to the firearms parts and the firearms recovered are limited to forfeiture. The order is limited to forfeiture in relation to the assembled firearm and the firearm. The order, [extends to destruction of] the ammunition and the 3D printer.

[58] Mr McLaren is subject to a current sentence of intensive supervision. That is overtaken by the sentence of imprisonment I have imposed. That sentence is cancelled. I do note Mr McLaren has very specific mental health needs and requirements that will need to be addressed in custody.

[59] You are remanded in custody accordingly, Mr McLaren.

Judge DP Dravitzki
District Court Judge | Kaiwhakawā o te Kōti ā-Rohe
Date of authentication | Rā motuhēhēnga: 18/11/2024