

WILSON CHAMOTO v THE PEOPLE (1980) Z.R. 20 (S.C.)

SUPREME COURT
GARDNER, AG. D.C.J., BRUCE-LYLE, J.S., AND MUWO, AG. J.S.
19TH AUGUST, 1980
S.C.Z. JUDGMENT NO. 17 OF 1980

Flynote

Sentence- Possession - Unlawful possession of firearm and ammunition - Custodial sentence - Whether appropriate.

Sentence - Custodial sentence - Imposition of on first offender - When appropriate.

Headnote

The appellant was convicted of unlawful possession of firearm and ammunition and was sentenced to four and two years' imprisonment with hard labour to run concurrently. Appealing against sentence his counsel argued that a custodial sentence was too severe for a first offender taking into account that the legislature gave an option of a fine.

1980 ZR p21

BRUCE-LYLE,

J.S.

Held:

- (i) The general practice is well recognised that where the legislature has prescribed a sentence of a fine or imprisonment or both it is not customary in the case of a first offender to impose a custodial sentence without the option of a fine. But the history of this legislation demonstrates that the possession of firearms is not regarded by the legislature as an ordinary case, and the courts would be failing in their duty were they not to deal severely with this particular kind of offence.
Siyauya v The People (1) followed.
- (ii) Having regard to the circumstances prevailing in the country and the ever marked increase in the incidence of offences involving firearms, the offence is considered to be a serious one and calls for a deterrent punishment.

Case referred to:
(1) *Siyauya v The People* (1976) Z.R. 253

For the appellant: N. L. Patel, Legal Aid Counsel.
For the respondent: N. Sivakumaran, State Advocate.

Judgment

BRUCE LYLE: delivered the judgment of the court.

The appellant was convicted of, (1), unlawful possession of a firearm without a licence and (2),

unlawful possession of ammunition without a licence. He now appeals against sentence only.

The appellant and a co-accused were found on the farm of PW1 by the farm labourers and, when they were being questioned by PW1 as to why they were on his farm, the appellant walked into a nearby bush and was seen by one of the labourers dropping a pistol from his coat pocket. The pistol was found to have a live bullet in magazine and PW1 subsequently made a report to the Police. When questioned by the Police the appellant stated that the pistol did not belong to him but that he had found it in the pocket of the coat. When put on his defence he admitted possession of both the pistol and the ammunition and also admitted that he had thrown the pistol into the bush.

The appellant, a first offender, was sentenced to four years' imprisonment with hard labour on the first count, two years' imprisonment with hard labour on the second count and both sentences were made to run concurrently.

Mr Patel, Senior Legal Aid Counsel, has argued on behalf of the appellant that having regard to the fact that the sentence in respect of these offences carry a penalty of a fine and in default of that fine a term of imprisonment, the custodial sentence imposed in this case is severe and that the penalty for these offences being a fine the appellant being a first offender, should have been sentenced to a fine and not to a custodial sentence.

1980 ZR p22
BRUCE-LYLE,

J.S.

In the case of *Siyauya v The People* (1), this court said at p. 224:

"The general practice is well recognised that where the legislature has prescribed a sentence of a fine or imprisonment or both it is not customary in the case of a first offender to impose a custodial sentence without the option of a fine. But the history of this legislation demonstrates that the possession of firearms is not regarded best the legislature as an ordinary case, and the courts would be failing in their duty were they not to deal severely with this particular kind of offence."

Having regard to the circumstances prevailing in this country and the ever-marked increase in the incidence of offences involving firearms, we consider this offence a serious one and we agree with the observations of the learned trial magistrate that such offences call for deterrent punishment. The sentence of four years' imprisonment with hard labour does not come to us with any sense of shock neither do we find it wrong in principle.

The appeal against sentence is therefore dismissed.
Appeal dismissed

1980 ZR p22