

MARY SITHOLE
and
NOTICE VENGAI
versus
THE STATE

HIGH COURT OF ZIMBABWE
MATHONSI J
HARARE, 17 December 2013

A. Gurira, for the applicant
E Makoto, for the state

MATHONSI J: The two accused persons were convicted on their own pleas of guilty to contravening s 4 (2) of the Firearms Act [*Cap 10:09*] after they were found in possession of a firearm which was in the dashboard of a Toyota Raum they were using. The firearm is registered but in the name of someone else.

They were given an effective sentence of 12 months imprisonment. Having appealed against both conviction and sentence, they now seek bail pending appeal which is opposed by the state on the basis that the appeal enjoys no prospects of success.

I disagree. The penalty for the offence they stand convicted of is a fine not exceeding level 10 or imprisonment for a period not exceeding 5 years or both. Looking at the record, the trial court does not appear to have investigated the circumstances under which the accused persons came to be in possession of someone else's firearm. The court did not engage in any meaningful pre-sentencing inquiry.

It was addressed specifically on community service but the judgement is silent on that. I agree with counsel for the applicants that having settled for an effective sentence of 12 months imprisonment, the trial court was enjoined to consider community service. If it was of the view that it was inappropriate, it ought to have given reasons for coming to that conclusion not to ignore the issue completely.

Its failure to do so presents the applicants with prospects of success on appeal. Accordingly the applicants have discharged the onus resting upon them as convicted persons.

They are accordingly granted bail in terms of the draft order.

Nyamushaya, Kasuso & Rubaya, applicants' legal practitioners
Attorney General's Office, respondent's legal practitioners