

1 IN OPEN COURT
2 IN THE GRAND COURT OF THE CAYMAN ISLANDS

12-12-06

3
4 SCA No: 15/06
5 Case No: 3938/05
6

7
8 DELTON LEE MULLINGS
9

10 -vs-

11 REGINA
12
13
14

15 BEFORE: The Hon. Madam Justice Levers
16

17 Appearance:

18 Mr. N. Dixey for the Appellant

19 Ms. T. Lobban for the Crown
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21 Heard: 27th October 2006
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JUDGMENT



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26 Levers, J.
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28 This is an appeal against sentence by Delton Lee Mullings. The facts are

29 that on 23rd September 2005, the Appellant was on the premises of Bank's

30 Plaza in the district of West Bay with his co-defendant, Carlos Evans. Both

31 appeared to an observing uniformed police officer to be acting suspiciously

32 near a laundry room. They were both spoken to, but permitted to leave.

33 Subsequently, the laundry room was searched and a digital scale, a box of

1 Arm and Hammer baking soda, and a white substance resembling cocaine
2 was found in a plastic bag. It was found subsequently to be 307.4g of
3 cocaine base.

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5 The Appellant and Carlos Evans were apprehended. Carlos Evans was
6 apprehended first and he made a full admission in interview. He stated that
7 he served as a lookout while Mullings prepared the drugs and he was to
8 receive money for the sale of the cocaine.

9

10 Both men pleaded guilty in the Summary Court and on 26th April 2006, the
11 Magistrate imposed a sentence of 9 years upon the Appellant and 2 years
12 upon his co-defendant Carlos Evans.

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14 The rationale for the sentence was that she found that Mullings played the
15 greater role in the offence, in that Mullings had control of the drug, and
16 Carlos Evans (if accepted as a witness of truth) only acted as a lookout.

17 According to the Magistrate and I quote:

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19 “...thus aiding and abetting Mullings’ enterprise. I
20 am of the view that this is criminal conduct at the
21 lower end of the scale of gravity. The Court finds,

1 on the other hand, that Mullings always intended
2 to possess and prepare the drugs for sale. He was
3 unemployed and clearly motivated by the prospect
4 of earning profits from dealing in the drugs. I am
5 satisfied on the basis of the plea tendered that his
6 conduct was at the higher end of the scale of
7 gravity.”
8

9 Both men made full admissions and pleaded guilty. Both men were
10 relatively young and of previous good character. Both men identified the
11 exhibited items during their interview. Both parties provided urine samples
12 for analysis when requested during their interview. Both parties signed all
13 the relevant documents including certificates at the conclusion of the
14 interview.
15

16 The learned Magistrate gave some importance to the fact that Evans assisted
17 in the apprehension of Mullings by the full confession he made. She didn't
18 however remember the fact that Evans was arrested first and thereafter
19 obviously could give the information he did first. Mullings did not have a
20 chance to give any information on Evans as far as the particular offence was
21 concerned. He readily admitted it and went as far as assisting the police in
22 supplying certain names belonging to those in the drug world to them.

23 Having had regard to all the factors she gave the Appellant 9 years and gave
24 Carlos Evans 2 years for the simple reason:

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2 "...but, I give him a substantial discount for his
3 plea and also for his assistance to the police which
4 lead to the apprehension of Delton Mullings, as
5 detailed in the statement of PC Andrews. He was
6 gainfully employed on the island until he made this
7 foolish decision to involve himself in Mullings'
8 scheme and the report from the Prison shows that
9 he has many redeeming qualities, not the least
10 being a strong work ethic."

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12

13 It is of course also a fact that the Prisons' gave a statement of character to

14 Mullings as well. A disparity in sentence depends, of course, on the level of

15 involvement by the particular accused in the offence. In this instance the

16 disparity is enormous 7 years to 2 years. There is no evidence to say that

17 Evans was so much less culpable than Mullings. Evans, however you read

18 his statement and whether you accept him as a witness of truth or not, took a

19 conscious decision to involve himself with the dealing of drugs for money.

20 That to my mind does not merit such a substantial discount. Further there is

21 no evidence on which the Magistrate could have come to the conclusion that

22 Mullings had to be sought out. Mullings was not hiding. It was Evans who

23 was arrested first and he was in a position to give the police Mullings' name.

24 There is nothing to suggest if Mullings had been arrested he would not have

25 done the same as far as Evans was concerned. Mullings himself has shown

26 willingness to cooperate with the police.

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2 The learned Magistrate appeared to bear the Guidelines in mind and then
3 gave Mullings 9 years and Evans 2 years. The Appellant was cooperative,
4 made full admission in his interviews and provided assistance and
5 information to the police. He actually called names and although the learned
6 Magistrate was aware of this she apparently gave no reduction for this
7 assistance. It is surprising that evidence not having been subject to cross
8 examination, the Magistrate took the following into account and accepted
9 the truth of the submission to such an extent that one is left with this
10 enormous discrepancy in sentencing:

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12 "I intend to sentence him on the basis of his plea
13 that he had been at the Laundromat for a *bona fide*
14 purpose, without any prior arrangement with
15 Mullings for the joint purpose of preparing and
16 dealing in the drugs, and that the full extent of his
17 criminal conduct was that he agreed to act as a
18 look-out, thus aiding and abetting Mullings'
19 enterprise."

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22 This acceptance of the evidence seems to be at odds with the Crown's case.

23 According to Evans' admissions he knew that the Appellant was going into

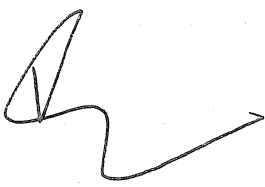
24 the Laundromat to mix cocaine, he knew that the Appellant was mixing

25 cocaine when the police came to the Laundromat. He purchased the

1 soapbox found to contain the drugs. He warned the Appellant by stretching
2 out his arms and making a noise. He was to be paid for his role as a look out
3 in the enterprise.

4
5 In view of that I find that the extreme leniency with which the Magistrate
6 dealt with Evans and the harshness with which she dealt with Mullings is not
7 in accordance with the principles of sentencing. I therefore reduce
8 Mullings' sentence to 5 years. Time spent in custody to be taken into
9 account.

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11 Dated this ^h12 day of December 2006

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13 
14 Judge of the Grand Court

