

Mrs. Ramsay-Hale

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IN THE GRAND COURT OF THE CAYMAN ISLANDS

HOLDEN IN GEORGE TOWN, GRAND CAYMAN

S.C.A. NOS. 50, 51 & 52 OF 2001

ERROL TROWERS,

DEVON FERON

&

DERRICK G. EDWARDS

- VS -

REGINA

PROCEEDINGS had and taken by THE HONOURABLE

MR. JUSTICE SANDERSON on the 10th

day of May, 2002, George Town, Grand Cayman.

APPEARANCES:

For the CROWN:

MS. S. LOOK LOY

For the DEFENDANT TROWERS:

MR. L. AIOLFI

For the DEFENDANTS

FERON & EDWARDS:

MR. J. FURNISS

(SANDERSON, J. -- ORAL REASONS FOR JUDGMENT)

FRIDAY, MAY 10, 2002

SANDERSON, J. (Orally):

There are three sentence appeals before me this morning, the first deals with Errol Trowers.

Mr. Trowers was charged and pled guilty to two counts of being concerned with the importation of cocaine. There were two separate transactions, one in late May and the other in early June 2001. Mr. Trowers arranged for two couriers to transport approximately 12 and 15 ounces of cocaine from Jamaica to Grand Cayman. He was sentenced to seven years and eight years consecutively, for a total of 15 years.

Mr. Aiolfi argues that the sentence is too high on the basis that Mr. Trowers was encouraged to commit these offences by Mrs. Forrester, who did so in cooperation with police here after she was arrested in connection with bringing in 41.5 ounces of cocaine. She had made contact with Mr. Trowers before her arrest, and he had agreed that he would find couriers. After her arrest, she continued her discussions with him and those

(SANDERSON, J. -- ORAL REASONS FOR JUDGMENT)

1 discussions were recorded from the police
2 telephone line, as I understand it.

3 Mr. Aiolfi submits that but for this
4 encouragement Mr. Trowers would not have
5 committed these offences and that this should
6 be a mitigating factor. He relied upon the
7 English authorities of *R. vs. Underhill*[1979] 1
8 C.A.R. 270 and *R. vs. Bigley and Bigley* [1993]
9 14 C.A.R. 201. Those cases support the
10 proposition that where there is encouragement
11 or even entrapment, but when it does not amount
12 to a defence, the Court is still entitled to
13 take that conduct into account in mitigation of
14 sentence.

15 The learned magistrate considered and
16 rejected the same argument that was made to
17 her. She did so on the basis that the
18 transcript of the phone conversations revealed
19 to her that Mr. Trowers was not a new player in
20 this game.

21 Miss Look Loy has taken me to the various
22 portions of the conversation to support the
23 learned magistrate's decision.

24 I think that since no evidence was led
25 before the magistrate at the guilty plea, I am

(SANDERSON, J. -- ORAL REASONS FOR JUDGMENT)

1 in as good a position as she was to consider
2 what should be made of those remarks. In other
3 words, there is no assessment of credibility,
4 it is based purely upon the written record and
5 that written record before me is identical.

6 I have considered everything that
7 Miss Look Loy pointed out that was said during
8 these conversations. One example is that he
9 wanted to get one thousand dollars per ounce.
10 I considered that and all of the other facts in
11 the context of all the facts that were brought
12 before me in this case.

13 I cannot say that the evidence satisfies
14 me so that I am sure that he was not encouraged
15 by Mrs. Forrester to commit these crimes. I
16 think he was. I am not satisfied so that I am
17 sure that the taped conversations prove that he
18 was an established dealer or middleman.

19 I was referred, by Mr. Aiolfi, to the case
20 of *R vs. Marlon Brando Ebanks, CICA 8/01* where
21 the Court of Appeal reduced two consecutive
22 sentences of seven-and-a-half years which was a
23 total of 15 years to seven years each or a
24 total of fourteen years. The amount of cocaine
25 was similar. However, Mr. Ebanks had 47 prior

(SANDERSON, J. -- ORAL REASONS FOR JUDGMENT)

1 Mr. Furniss has asked me to consider a
2 sentence of five or five-and-a-half-years,
3 based upon two decisions of our Court of
4 Appeal. One is Charmaine Smith, where the
5 sentence of seven years was reduced to five
6 years. The other is *R. vs. Denise McKay, CICA*
7 *9/01*.

8 The sentences in those two cases were
9 slightly lower than the present. Each case
10 must be decided on the particular facts. The
11 guidelines for these offences was 12 years at
12 the time the crime was committed. The learned
13 magistrate made what she considered to be
14 appropriate adjustments for the early guilty
15 pleas and subsequent cooperation, which was
16 significant.

17 I cannot see any error in principle in her
18 sentencing. I think that reducing the
19 sentences from six-and-a-half to
20 five-and-a-half years would amount to
21 tinkering. Accordingly, these two appeals are
22 dismissed.

23 MR. FURNISS: Obligated, My Lord.

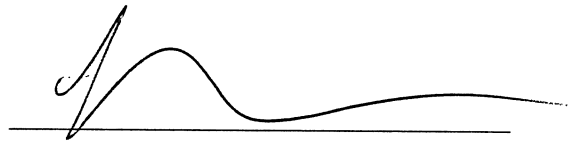
24 MR. AIOLFI: Obligated.

25 WHEREUPON ANOTHER MATTER SPOKEN TO...

REPORTER'S CERTIFICATE

I, **LISA M. BAKER**, Official Court Reporter,
hereby certify that the foregoing pages are, to the
best of my skill and ability, a true and accurate
transcript of the proceedings had in the said Court
and reported in machine shorthand by me on the date
and place aforementioned.

DATED THE 25TH DAY OF MAY 2002

A handwritten signature in dark ink, appearing to be 'L M BAKER', written over a horizontal line.

LISA M. BAKER