

18.7.97

Drugs (ganja)

IN THE GRAND COURT OF THE CAYMAN ISLANDS

SCA# 30/96

OSNEY HENRY BUSH

v

REGINA

Appearances:

Hampson of Quin & Hampson for the appellant.
Bonnar of the Legal Department for the Crown.

JUDGMENT

The appellant Osney Bush was charged with four others with various offences under the Misuse of Drugs Law. At the trial before the Summary Court he pleaded not guilty to the charges of being concerned in the possession of a controlled drug (ganja), possession of ganja and possession of ganja with intent to supply. However, at the completion of the testimony of the Crown's chief witness James Michael Ebanks, the appellant changed his plea to guilty on the charge of being concerned in the possession of ganja for this he was sentenced to 4 years imprisonment. He had previously entered a plea of guilty to a charge of conspiracy to pervert the cause of justice. For this offence he was sentences to one year, the sentences were to run consecutively. He now appeals on the following grounds:

- (1) The sentence imposed by the
Magistrate of the Summary Court was harsh
and excessive in the circumstances.

1
2 (2) The sentence was wrong in principle
3 and in law.
4

5 Counsel for the appellant pointed out that of all the defendants his client has
6 received the highest sentence by far in circumstances where all were
7 involved with the same amount of ganja.

8
9 I propose to deal initially with the first ground of appeal, that the sentence
10 was harsh and excessive in the circumstances. The appellant pled guilty
11 and was convicted on the charge of being concerned in the possession of a
12 controlled drug. The amount involved was 250lbs. The law itself does not
13 differentiate between being in possession, and being concerned. One
14 therefore has to look at the amount of drugs, and the degree of culpability
15 of the appellant when determining sentence.

16
17 In sentencing the appellant, the learned Magistrate made it clear that she
18 took into consideration all the circumstances of the case. The record shows
19 that the appellant had previous convictions for drugs. He was clearly the
20 principle organiser of the endeavour paying for the tickets for himself and a
21 co-accused to go to Jamaica where the shipment of ganja was organised. He
22 was also there to meet the shipment on its arrival in Cayman and received
23 four buckets of the drug. In addition, his guilty plea only came after a co-
24 accused had given evidence on oath as to his participation. Finally but not

1 least, the amount of ganja involved. All these facts were before the learned
2 Magistrate at the time of passing sentence.

3

4 It was submitted by counsel for the appellant that the court on passing
5 sentence ought to have given more weight to the plea in mitigation. This
6 argument is only justifiable when the guilty plea is made prior to the giving
7 of evidence at the trial. In this case the witness for the crown had
8 completed his testimony on oath. He was not cross-examined by counsel
9 for the appellant. Accordingly one cannot expect an unsworn statement in
10 mitigation to be given more credence than the sworn and unchallenged
11 testimony of the witness.

12

13 A number of precedents for sentencing have been put before this court. In
14 one instance, a sentence of 2 years imprisonment for 109lbs of ganja was
15 said to be too lenient, one of 5 1/2 years for 435lbs was reduced to 4 years
16 for one of the appellants, and 5 years for another. In 1996 Mario Torres
17 received 4 1/2 years for 17.5lbs of ganja. This was reduced to 3 years.

18

19 In view of the circumstances surrounding this case, and the defendant's
20 antecedents, I find that the precedents show the sentence to be neither harsh
21 nor excessive.

22

23 I consider four years to be the appropriate sentence. In keeping with the
24 practice of these courts, a reduction ought to have been made for his guilty
25 plea. In this case such a plea only came after the crown had adduced

1 evidence. For such a late plea a deduction of no more than six months
2 ought to be given. His sentence is therefore reduced to 3 1/2 years.

3

4 Regarding the second ground of appeal, that the sentence was wrong in
5 principle, learned counsel for the appellant cited the Hurlston case (supra) in
6 which the sentence of the courier was reduced, and on appeal that of
7 Hurlston reduced to that of the courier. The rationale behind that reduction
8 can be determined from the judgment delivered by Georges JA in which he
9 said:

10

11 “In this case the reduction of the sentence
12 imposed on Pixley is a factor of some
13 importance to be considered. Both Pixley
14 and the appellant were playing
15 indispensable roles in the movement of the
16 prohibited drug: Pixley was promised
17 \$1,000 and a trip here. If it could be
18 established that he would profit far more,
19 that would be a sound reason for
20 differentiating between the two. In the
21 absence of any evidence the two should in
22 my view be treated in the same way.

23

24 In the present matter the role played by the two Jamaican couriers and the
25 person who was merely there to assist the unloading of the boat was

1 significantly different from that of the appellant. We have already seen the
2 role Bush played in this crime and it was open to the learned Magistrate to
3 find that he stood to gain far more from it than the other defendants. The
4 learned Magistrate found that Bush was the principal and the organiser. Not
5 only did he play the major role and receive four buckets of the drugs. It is
6 true that the sums to be paid to the courier has not been determined but it
7 would be unrealistic to assume that it would be anywhere near the profit
8 which Bush was to derive.

9

10 I find that the difference is sufficient to justify differentiating between Bush
11 and the others as to sentence. Accordingly it cannot be said that the
12 sentence was wrong in principle.

13

14 I also find that the learned Magistrate acted correctly in sentencing the
15 appellant to one year to run consecutively for the offence of conspiracy to
16 pervert the course of justice. It was an offence which went to the very root
17 of our justice system and must be vigorously discouraged.

18

19 The appeal is allowed to the extent that the appellant will serve a total of 4
20 1/2 years imprisonment.

21

22 Kipking Douglas

23 Judge of the Grand Court

24 Dated this

18th day of

July

1997

25 KD/cc