

OPEN COURT

IN THE GRAND COURT OF THE CAYMAN ISLANDS
HOLDEN AT GEORGE TOWN, GRAND CAYMAN
SCA#51/95

CESAR GUARDIOLA v REGINA

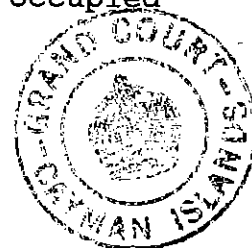
JEFFREY GUARDIOLA v REGINA

JUDGMENT

Mr. Adam Roberts for the Crown
Mr. John Furniss for the respondents

Schofield J.

This is the Crown's appeal seeking an enhancement of sentences of imprisonment imposed on two brothers Cesar Guardiola and Jeffrey Guardiola. The brothers are American and had arrived in Cayman on board a cruise ship from Ocho Rios, Jamaica, on 21st April 1995. Cesar was sharing a cabin with his fiancée, Sandra Guirola, and Jeffrey was sharing a cabin with Pedro Balbuena. As they disembarked at the George Town dock their bags were searched and 21 lbs of ganja was found in Cesar's bag and 28.5 lbs of ganja was found in the bag of Pedro Balbuena. A search of their cabins on board ship revealed a further 30 lbs of ganja in the cabin occupied by Cesar and his fiancée and 30 lbs of ganja in the cabin occupied by Jeffrey and Pedro Balbuena.



In interviews with the police Cesar admitted he was being paid to make a delivery of drugs and said he had made a similar trip a month earlier but was not paid the several thousand dollars he was promised. Jeffrey was invited to join Cesar as his bodyguard and knew they were transporting an illegal substance. Sandra said she knew Cesar had a delivery to make but did not know it was ganja. She had on her person though the name of the local contact to whom the delivery should be made. Pedro Balbuena is Sandra's sister and received the invitation to join the trip shortly before departure. He was told to take the bag ashore by Cesar who told him not to look inside or open it. He admitted he knew what was inside the suitcase found in his cabin.

Cesar and Jeffrey were both convicted on their own pleas of "guilty" to offences of importation of ganja. They each received sentences of two years imprisonment, twelve months of which was suspended. Pleas of "guilty" were accepted from Sandra Guirola and Pedro Balbuena to charges of being concerned in the importation of ganja. Sandra had lost her baby by Cesar whilst she was in custody. Pedro had extremely serious medical problems. Sandra's sentence was 18 months imprisonment of which 9 months was suspended and Pedro's sentence was 15 months imprisonment of which 11 months was suspended. Both Sandra Pedro and have served their sentences and have left the Island. I am thus dealing only with the sentences of Cesar and Jeffrey.

The Criminal Procedure Code is silent on the test to be applied when the Grand Court is asked by the Crown to review the sentence



imposed by a Summary Court. In England the Attorney General may only appeal the sentence of the Crown Court if it appears to him that the Crown Court has been "unduly lenient". There is no similar provision in our Code. However, this does not mean that the Grand Court will merely substitute its own view of what is an appropriate sentence. In the case of an appeal by a convicted person the Grand Court only interferes with sentence if such sentence is wrong in principle or is manifestly excessive. Similarly in the case of an appeal by the Crown I would interfere with a sentence only if such sentence is wrong in principle or manifestly lenient or inadequate. I suppose this latter test equates to the English test of "unduly lenient".

The sentence imposed on the two respondents was in effect one of twelve months imprisonment. It was wrong in principle to include a suspended element to the sentence, for such element could have no operation. There can be no doubt that these respondents will be sent to their country of origin immediately on completion of their sentences. The suspended period of the prison sentence in those circumstances was an ineffective or token punishment or sanction, and its imposition was inappropriate given the nature and seriousness of these offences. It serves no purpose to hold a sanction imposed in these Islands over the head of someone who will be out of the jurisdiction: the imposition of a punishment should not have a mere cosmetic function.

Was a sentence of twelve months imprisonment for the importation of



a total of 109 lbs of ganja manifestly lenient or inadequate? There was little that could be said in mitigation of sentence for these two men. They were moving drugs on a large scale in the hope of receiving substantial gain and in an organised way. Cesar had done so before, on his own admission. The fact that some or all of a controlled drug is destined for another country does not lessen the gravity of an offence in relation to that drug committed in these Islands (see Blackman v R. 1984 CILR 55).

In Hurlston v R 1986 CILR 93, 97, Georges JA. had this to say:

"Where possession of drugs is concerned the quantity of the drug found provides an obvious but reasonably valid ground for differentiation. It is already enshrined in the legislation in that a charge in the case of ganja may be laid for amounts under 1 lb and amounts over 1 lb. There appears to be a fairly clear policy that for amounts over 1 lb a peremptory term of imprisonment is appropriate. The length of the term can be assessed according to the increase in the quantity. With such a measuring rod an individual sentence can then be fixed taking into account the special circumstances of aggravation or mitigation which can then be clearly set out."

In that case, which involved an attempted exportation of 324 lbs of ganja, the Court of Appeal found that a sentence of three years imprisonment was proper. I have been referred to a recent



decision in which sentences of four years and three and a half years imprisonment were deemed appropriate for offences involving the importation of 307 lbs of ganja . I have been cited no case which involves the importation of approximately 100 lbs of ganja but from the above cases I can understand how the learned Magistrate arrived at a figure of two years imprisonment for each of these respondents, even though my own view is that two years is on the lenient side. However, to effectively reduce that figure by half by suspending twelve months of each of the sentences not only meant that he erred in principle but that the learned Magistrate arrived at a sentence which was manifestly inadequate.

In all the circumstances I allow this appeal and set aside the sentences imposed by the learned Magistrate. In substitution therefor I sentence each respondent to two years imprisonment.

Dated this 22nd day of November ,1995



D. Schofield

Acting Chief Justice

