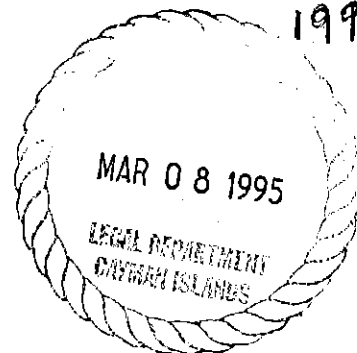


1995



IN THE GRAND COURT OF THE CAYMAN ISLANDS
HOLDEN AT GEORGE TOWN, GRAND CAYMAN
SCA 7/95

JOSE ANGEL DIAZ vs REGINA

SCA 7/95 POSSESSION OF GANJA WITH INTENT TO SUPPLY

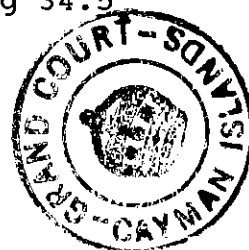
Appellant in person
Mr. Adam Roberts for the Crown

JUDGMENT

Schofield J.

The appellant is a seventeen year old young man who was convicted on his own plea of "guilty" of possession of ganja with intent to supply, contrary to section 3 (1) (m) of the Misuse of Drugs Law. He was jointly charged with one Andrea Evett Ebanks, a thirty two year old lady, whose appeal I disposed of on 10th February 1995. On that day I adjourned the appellant's appeal to today for judgment, to give me time to consider various points raised by learned Crown Counsel.

The facts are briefly stated. Ms. Ebanks' boyfriend had been sent to Northward Prison. She succumbed to her boyfriend's entreaties to supply him with ganja at the prison and on 13th March 1994 drove there with the appellant. The appellant threw a package containing 34.5



grams of ganja and some cigarette papers over the prison fence. It was accepted before the learned Magistrate that Ms Ebanks persuaded the appellant to commit this offence and that her culpability was far greater than his.

I had no hesitation in dismissing Ms. Ebanks' appeal in relation to the twelve month prison sentence handed down to her although I did set aside a fine imposed upon her as being wrong in principle.

The appellant was sentenced to six months imprisonment and was fined \$250 and I needed time to consider how to deal with a young man such as this charged with such a serious offence.

First let me deal with the jurisdiction of the Summary Court to deal with this offence and to impose a sentence of imprisonment. The appellant was born on 26th May 1977 and he was sixteen years old, a juvenile, when the offence was committed. However by the time the case was heard before the learned Magistrate, on the 12th January 1995, the appellant had attained seventeen years of age and was an adult for the purposes of these Courts (see section 2 of the Juveniles Law 1990). Section 28 (3) of the Juveniles Law reads:

"28. (3) In the case of any person who commits an offence prior to attaining the age of seventeen that offence shall be heard in Juvenile Court, unless otherwise stated in this Law."

In the case of such an offender jointly charged with a summary offence



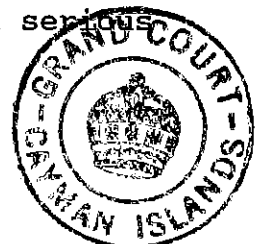
with an adult the Law otherwise states in section 18 of the Law, which reads:

" 18. Where a Juvenile is charged with an offence triable summarily, jointly with a person who has attained the age of seventeen years or that person is charged at the same time with aiding, abetting, causing, procuring, allowing or permitting that offence, the charge shall be heard by the Magistrate's Court, unless that Court is satisfied that the Juvenile should be tried in a Juvenile Court."

Thus the Magistrate's Court had power to try this appellant.

Section 9 of the Law sets out the methods of dealing with a juvenile offender which precludes a sentence of imprisonment, but only in the case of "a juvenile (who) has been found guilty of any offence before a Juvenile Court". This appellant was neither a juvenile when he was found guilty nor was he dealt with by a Juvenile Court. Section 9 of the Juveniles Law did not apply to him and the learned Magistrate had power to deal with him in any manner provided by law, including sentencing him to imprisonment.

The sentence of imprisonment was lawful but was it correct in principle? Imprisonment is a sentence of last resort and should only be imposed when no alternative sentence is proper. This was indeed a serious



offence. Supplying drugs to prisoners at Northward is treated seriously by these Courts and will usually be severely dealt with. In another recent case this Court upheld a substantial prison sentence for such an offence, and Ebanks' appeal was dismissed. Balanced against that we have a situation in this case where this young man at sixteen was used by an adult and clearly influenced by her. The fact that he was so used operated against him in this case. Had he perpetrated the offence without the adult, under his own compulsion, he would have been tried in the Juvenile Court and imprisonment could not have been imposed upon him. That is because section 18 of the Law would not have applied to the appellant and he would thus have fallen within the scope of section 28 (3). Furthermore although the Law has to draw a line between adult and juvenile, there is little difference between a sixteen year old and a person who has just crossed the line to seventeen. His life may be ruined by an early introduction to prison life and that introduction must only be made for the most compelling reasons. This young man was a first offender.

In all circumstances a sentence of imprisonment was inappropriate and we must look to alternatives. I adjourn the matter to 24th March 1995 at 10:00 a.m. for a Probation Officer's report.

Bail is renewed.



Dated this 24th day of February, 1995.⁵



[Handwritten signature]
D. Schofield
Judge