

1995

IN THE GRAND COURT OF THE CAYMAN ISLANDS
HOLDEN AT GEORGE TOWN, GRAND CAYMAN
SCA#50/94



REGINA vs

ELLEN JOY WILLIAMS

4194/93 POSSESSION OF GANJA WITH INTENT
TO SUPPLY
4195/93 POSSESSION OF GANJA

JUDGMENT

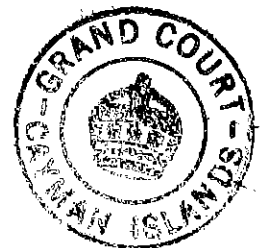
Samuel Bulgin Esq. for the Crown
John Furniss Esq. for the respondent

Schofield J.

This is an unusual appeal, believed to be the first of its kind in these Islands. It is an appeal by the Attorney General against a sentence handed down by the learned Magistrate. The Attorney General asks me to vary the sentence on the ground that it is unduly lenient.

Unusual as the appeal is I am satisfied that I have jurisdiction to entertain it. The power arises from Section 156 of the Criminal Procedure Code, which reads:-

(1) Save as hereafter in this Code provided, any person who is dissatisfied with any judgment, sentence or order of the Summary Court in any criminal cause or matter to



which he is a party may appeal to the Grand Court against such judgment, sentence or order either by motion on matters of law or fact(or both) or by way of case stated on a point of law only as hereafter provided:

Provided that in no case shall the complainant appeal from a decision dismissing a complaint except by way of a stated case on a point of law.

(2) For the purposes of any appeal the Attorney General shall be deemed to be a party to any criminal cause or matter other than those in which the proceedings were instituted and carried on as a private prosecution and in which the conduct of such proceedings has not taken over by the Attorney General under the provisions of subsection (5) of section 11.

A reference to this section by Georges JA in Ritter and Faltz v R 1987 CILR430 at p. 432 indicates his view that an appeal by the Attorney General under its provisions may empower this Court to increase sentence. Counsel for the respondent was not argued the question of jurisdiction to entertain the appeal and I think rightly so. I am satisfied that on an appeal by the Attorney General under section 156 the Court has power to vary a sentence imposed by the Summary Court.

The respondent came up for that trial in the Summary Court on a charge of possession of ganja with intent to supply, contrary to Section 3 (1) (m) of the Misuse of Drugs Law. Initially she pleaded "not guilty" but after the evidence of three witnesses was heard she changed her plea to "guilty"

The facts were that on the 12th July 1993 the respondent checked



in on the Cayman Airways early morning flight to Miami. She had an open onward ticket to Providenciales in the Turks and Caicos Islands. The respondent travelled to Providenciales via Miami and returned on the 14th July 1993. Before she boarded the Miami flight the respondent checked in two suitcases. These suitcases were opened in Miami and were found to contain, in total, 72 lbs of ganja. When interviewed by the police on her return from Providenciales the respondent admitted that she checked the suitcases on to the flight and also admitted that the suitcases were hers.

The learned Magistrate adjourned the question of sentence to enable him to obtain a report on the suitability of the respondent for Community Service. This was received on the 3rd August 1994 and the learned Magistrate imposed a sentence of 180 hours community service. The Attorney-General is concerned that the sentence, in treating such a serious offence in so lenient a manner, will send out the wrong message to would-be offenders. Learned Crown Counsel informs me that the sentence has been cited by defendants in similar cases which have since come before the Summary Court as an argument for similar lenient treatment.

A sentence of Community Service for an offence such as this is almost as unusual as this appeal, or so it ought to be. Possession with intent to supply such large quantities of ganja usually attracts a sentence in the region of eighteen months to two years immediate imprisonment.

Of course the circumstances of a particular offence or a particular offender may operate to mitigate that approach to sentence.



imprisonment is not, and should not be, a hard and fast rule. What is puzzling about the learned Magistrate's approach to sentence is that rather than there being factors which would mitigate against a sentence of imprisonment all the factors should have pointed to a custodial approach to sentence. Firstly, the respondent's plea of "guilty" came very much at the eleventh hour and not as an act of contrition but, from the record, because she felt there was nothing to be gained from continuing to deny the offence. Secondly, the respondent has a bad record including a conviction in 1989 for possession of cocaine with intent to supply. Thirdly, the social worker's evaluation report for Community Service indicated that the respondent had in the past breached the conditions of a Probation Order and he doubted her ability to complete Community Service. Furthermore the respondent, who admits to a cocaine problem, did not attend appointments at the Cayman Counselling Centre. Fourthly, the respondent was in breach of a suspended prison sentence imposed on 11th October, 1992, less than one year prior to the commission of the offence she stood before the learned Magistrate on. True it is that the offence for which the respondent received that suspended sentence was dissimilar to the present offence, selling lottery tickets, but it does display a propensity on the part of the respondent to breach the law for gain .

Not only did the learned Magistrate neglect to activate that suspended prison sentence but he neglected to record his reasons therefor. It is as well to remind the learned Magistrate here of the provisions of section 23A of the Penal Code which require a Court dealing with a person who has committed an imprisonable offence during the continuance of a suspended sentence to activate that sentence "unless it could be



unjust to do so in view of all the circumstances which have arisen since the suspended sentence was passed, including the facts of the subsequent offence." The Court is also required to state its reasons for taking that course. In fact the only clue we have to the learned Magistrate's reasons for choosing the sentence he did is his comment that the respondent had never been offered Community Service in the past. This was an inadequate reason for choosing a sentence which, in all the circumstances of the case, was inappropriate. The sentence was wrong in principle and should not be regarded as one for the Courts to follow.

Having said that, should I vary the sentence and substitute an appropriate one, which of course would be a term of imprisonment? The Community Service Order was imposed on the 5th October 1994, some four months ago. A substantial portion of the Order has been fulfilled. Had the appeal come on for hearing a month or so after the sentence I may have been minded to impose a sentence of imprisonment. As it is the matter has been adjourned once on application of Crown Counsel. I am of the view that it would be unjust, at this stage, to vary the sentence. So despite the fact that the learned Magistrate's sentence was in error and the appeal was a proper one to bring, the appeal fails.

Dated this 10th day of February, 1995.


D. Scherfield
Judge

