

IN THE GRAND COURT OF THE CAYMAN ISLANDS
HOLDEN AT GEORGE TOWN, GRAND CAYMAN
SCA# 33/94

4-11-94

REGINA v JOSEPH ALBERGA GREEN

3178/93 POSSESSION OF GANJA

3179/93 POSSESSION OF GANJA

3180/93 POSSESSION OF GANJA WITH
INTENT TO SUPPLY

Mr. Collins for the appellant.
Mr. Helfretch for the Crown.

Schofield J.

JUDGMENT

Joseph Alberga Green ("the appellant") appeals against a sentence of two years imprisonment imposed by the learned Magistrate on a charge of possession of ganja with intent to supply, contrary to Section 3(1)(m) of the Misuse of Drugs Law (Revised). Sentence was handed down on the 18th May, 1994.

When the appeal first came on for hearing the appellant, who had been represented by Mr. Collins in the Summary Court, was unrepresented. It was noted that the record of proceedings tendered to this Court did not show that a plea was taken, although the proceedings were conducted as if a plea of "guilty" was entered. The appellant's



representations in that regard were somewhat ambiguous and so the matter was adjourned out for the learned Magistrate's note to be obtained and for Mr. Collins to assist the Court.

At the adjourned hearing Mr. Collins agreed to represent the appellant. He informed the Court that the appellant pleaded guilty to three charges, the charge in respect of which this appeal is lodged and two further charges of possession of ganja simpliciter which the learned Magistrate determined to leave on the file.

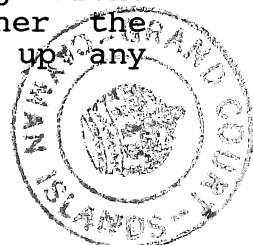
The matter was put beyond a doubt by reference to the learned Magistrate's note and the file cover of the lower court proceedings upon which the learned Magistrate had recorded two weeks before sentence was passed, on 4th May 1994:

"Charges put pleads guilty".

I would refer the learned Magistrate to this Court's decision in Brenton Gilbert Rankin v R (SCA 18/91). After reciting Section 63 of the Criminal Procedure Code, which places a duty on the Court to record an accused person's admission to a charge, I said:

" Before the requirement placed on the prosecution to prove every ingredient of the charge is replaced by an admission by the accused the court must be satisfied that the accused understands and admits every ingredient of the offence charged. It is the best procedure for the Magistrate, after hearing the facts from the prosecutor, to ask the accused whether he accepts the facts as related. Ideally the court should record the accused's admissions ensuring that they are addressed to each and every ingredient of the charge.

In that way the Magistrate can ensure that the accused admits each and every ingredient of the charge and determine whether the accused's version of events throws up any possible defence.



Furthermore, his mitigation should be heard before a conviction is recorded to ensure that the accused is not putting before the court anything which could amount to a defence to the charge."

I realize the burden which this places on a busy Magistrate's Court but the reason why it is imperative for a careful record to be made of an accused person's answer to each charge and his response to each ingredient of each charge is twofold. First, it addresses the Magistrate's mind to every ingredient of every charge and ensures that he is fully satisfied of the accused person's admission thereto before he accepts a plea of "guilty".

Second, it demonstrates to any appeal Court, beyond a peradventure, that a plea of "guilty" to any charge is unequivocal and avoids the risk of an appellant persuading an appellate Court that he did not intend to admit every ingredient of an offence.

Be that as it may in this case I am satisfied that the plea was properly tendered and accepted.

Turning now to the sentence, the facts as were briefly presented to the Court are that the appellant was seen to enter a house in which a substantial quantity of ganja was found. He was located at his place of work, the Radisson Hotel on Seven Mile Beach. Inside his car was found 5.9 grammes of ganja and in the trunk a further 39.3 grammes of the substance .

The appellant admitted that he obtained these amounts from two



sources and admitted to Court his intent to supply them. A substantial quantity of money was found on him some of which was accepted by the learned Magistrate as coming from the appellant's own bank. However a total of CI\$500 and US\$771 was determined by the learned Magistrate as coming from the proceeds of sale of the drug and was ordered to be forfeited. His motor car, of nominal value, was also ordered to be forfeited.

The appellant was 21 years old at time of conviction. He is married with one child and his wife is expecting their second. She has had to go to the appellant's mother in Jamaica because she cannot support herself and the child in Cayman. The appellant is of previous good record and was well thought of by his employers.

The sentence imposed was severe. The money taken from the appellant was money he gained from this illicit activity, so represents no loss to him. The motor car which was forfeited was by no means a valuable asset. It is true that the appellant's family will suffer as a result of his imprisonment, but it is unfortunately true that any illegal activity tends to have repercussions on the innocent including the offender's family. The Court must also take into account the results of the appellant's illegal activity on society in general. Although severe I am unable to say that the sentence chosen was manifestly excessive or wrong in principle.

The appeal is dismissed.



Dated 4th November, 1994.




D. Schofield

Judge