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IN THE GRAND COURT OF THE CAYMAN ISLANDS
HOLDEN AT GEORGE TOWN, GRAND CAYMAN

SCA. 318/93

CURTIS MCCOY V. REGINA

4164/92: Being concerned in the
possession of ganja with
intent to supply

4161/92: Possession of ganja
4160/92: Consumption of ganja

Appellant in person
Mrs. T. Escalante for the Crown

CORAM: SMELLIE J

JUDGMENT

This matter came before the Court by way of an appeal against sentences imposed respectively on the above-mentioned charges.

On the 10th February the appellant was convicted before the Magistrate's Court on the his own plea of guilty in respect of each charge. Immediate custodial sentences totalling 21 months imprisonment were imposed. Those sentences included an earlier term of imprisonment, suspended on 24th September 1992, which was activated.

The appellant had 5 previous convictions for drug related offences.

The circumstances surrounding the offences which are the subject of appeal are as follows.

The appellant and two other young men were arrested following a raid by the R.C.I.P.F. Drug Squad at a residence at Prospect Park, Grand Cayman.

Various quantities of drugs were found in a room in that residence occupied at the time by the three, one of whom resided at the premises. The appellant and the other were visiting.

The three were arrested and charged variously in respect of the drugs recovered from the room.

One was known to be a juvenile and was tried before the Juvenile Court. The appellant and the third were tried jointly before the Magistrate's Court.

The appellant was unrepresented throughout those proceedings as well as on this appeal.

On the hearing of this appeal the appellant on his own behalf raised the plea that he was in fact also a juvenile at the time of his conviction before the Magistrate's Court on the present charges and as such was not liable to any form of immediate imprisonment.

This is a plea which he failed to raise before now. He explains rather cryptically in his written submission to the Court that, "I was charged with two other people one a juvenile, the other an adult. I know I should have spoken earlier but I was stupid."

He attached to that written submission a certified copy of a certificate of birth from the Registrar's Office. It bears his name and his date of birth as 8th March 1976. Crown Counsel has confirmed, from her own research, that the document relates to the appellant and that it verifies therefore that he was yet only 16 years and 11 months at the time of trial.

The appellant's age notwithstanding, as his co-defendant was over 17 years at the time of trial, the Magistrate's Court was seized of jurisdiction to try them jointly pursuant to Section 18 of the Judicature Law 1990 which must be taken to have amended by implication the Juveniles (Joint Trial with Adults) Law (law 12 of 1976) so far as

offences triable summarily are concerned.

The irregularity to be now resolved arises entirely therefore from the sentences imposed.

Section 9 (1) paragraphs (a) to (j) of the Juveniles Law 1990, sets out the types of orders which the Juvenile Court might make upon convicting an offender.

Those provisions do not include orders for immediate terms of imprisonment.

Section 20 subsection (2) of the Juveniles Law 1990 provides that: "Where under the provisions of the Law offences (sic) against a juvenile are heard before any court which is not a Juvenile Court, then that Court shall have in relation to that juvenile all the powers of a Juvenile Court including the power to exclude the general public from the hearing."

If one reads the expression "offences against a Juvenile" as it appears in Section 20 subsection (2) as meaning "charges or indictments against a Juvenile" as I think it must be read, then the Magistrate in the circumstances of this case would have had power to make such orders as a Juvenile Court would have had under section 9 of the Law upon hearing the present charges.

It follows that the sentences of imprisonment inadvertently imposed in this case were wrong in law and must be quashed.

By the time the appeal came on for hearing the appellant had already been imprisoned for over seven months and, on the then immediately apparent merits of his appeal, was granted bail pending this decision.

This was a very unfortunate turn of events but one which would no doubt have been avoided had the appellant not been reluctant to mention to the Magistrate's Court the fact that he was not yet

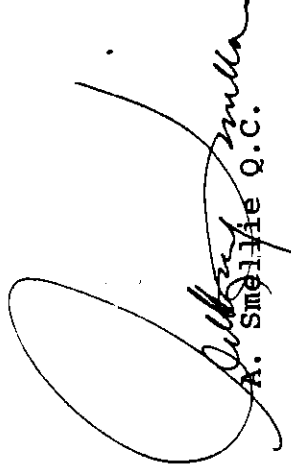
seventeen. It was not that the significance of this had escaped the appellant at the time rather, I discern, he was reluctant not to be seen as "breaking ranks" with his co-accused at the time by seeking to be differently dealt with. No doubt also, the outcome was a consequence of the appellant not having been legally represented at the trial.

As the case presently stands, it appears the only proper disposition, the sentences having been quashed, is to let the matter lie at that.

The appellant spent more than 7 months unlawfully in prison. He is no longer a juvenile and can no longer appropriately be dealt with as such.

Having quashed and set aside the sentences of imprisonment, and so as to formally dispose of the matter, I make an order pursuant to section 9 (1) (a) of the Juvenile Laws, dismissing the case.

3rd November 1993



A. Smellie Q.C.
Judge