

1 IN THE GRAND COURT OF THE CAYMAN ISLANDS
2 CRIMINAL SIDE
3
4

5 INDICTMENT NO: 24 of 2020

6
7 THE QUEEN
8

9 v.
10

11 LINTON NYPOLE PILLARCHIE
12 GERANIMO ANTONIO VAUGHANS
13 JERRY BARROWS CRANSTON
14



15 **Appearances:** Mr. Garcia Kelly for the Crown
16 Mr. John Meghoo for the Defendant
17 Linton Nypole Pillarchie
18 Mr. John Furniss for the Defendant Geranimo
19 Antonio Vaughans
20 Mr. Crister Brady of Brady Attorneys at Law
21 for the Defendant Jerry Barrows Cranston
22 **Before:** Justice Cheryll Richards Q.C.
23 **Sentence Hearing:** 29th April 2020
24
25 **Sentence Judgment:** 14th May 2020
26

27 **HEADNOTE**

28 *Criminal Law – Misuse of Drugs Law (2017 Revision)*
29 *– Illicit Trafficking, Large Quantity of Ganja - Principles on Sentencing - United Kingdom*
30 *Sentencing Guidelines –Category of Offence for Trafficking in Class B. Drug.*
31
32
33

SENTENCE JUDGMENT

Sentence Judgment: R v Pillarchie (Linton Nypole), Vaughans (Geranmio Antonio), Cranston (Jerry Barrows). Ind. 24/2020. Coram: Richards J. Q.C. Date: 14.05.2020



1 Introduction

1. The three Defendants are before the Court for sentencing on Indictment 24/20. This charges them with a single count of Illicit Trafficking contrary to s.19(2)(a) of the *Misuse of Drugs Law* (2017 Revision). The matter was transmitted by the Summary Court to the Grand Court on the 24th March 2020. The Defendants were arraigned before the Grand Court on the 3rd April 2020 and entered pleas of guilty. It is agreed by all parties that these pleas were entered at the first reasonable opportunity.

2. The particulars of the offence are that the Defendants, on the 12th day of March 2020, on a ship not registered in any country or territory, which was located 38 nautical miles east of Grand Cayman, Cayman Islands, had in their possession a controlled drug, namely approximately 673 pounds of ganja, knowing or having reasonable grounds to suspect that the drug was intended to be imported into the Cayman Islands.

3. The facts are that on the said day the Joint Marine and Air Support Units of the Royal Cayman Islands Police Service (RCIPS) were conducting proactive counter-smuggling patrols 38 nautical miles from East End in Grand Cayman. Members of the Air Support Unit on board the Police helicopter observed a 28-foot Jamaican canoe at sea with three persons on board. It appeared to be taking evasive action as the helicopter neared its location. The Air Support Unit provided the coordinates for the canoe to the Officers on board the Police vessel. The Police vessel then went in the direction of the canoe. As it approached, the canoe attempted to evade the Police while its three occupants were seen to jettison several packages into the sea. The Police Officers engaged their emergency lights and sirens and the canoe stopped in compliance a short distance away. The three

Defendants, who are all Jamaican nationals, were found on board and were arrested on suspicion of the commission of drug offences. The Officers recovered some 44 packages seen to be thrown from the canoe before towing it to the South Sound dock.

4. On examination, the canoe was seen to have 2 mariner 75 horse power outboard engines. It had the markings "QB: 68" on it. These markings are not consistent with any boat registration number in Jamaica or in the Cayman Islands giving rise to the inference that it is an unregistered vessel. There were no phones, GPS equipment or compass recovered from the canoe.

5. The three Defendants were interviewed separately on Friday the 13th March 2020. Each Defendant gave detailed statements. The facts as presented by the Prosecution, including interview summaries which are referenced below, are all accepted by the Defence.

The Legal Provisions

6. Section 19 of the *Misuse of Drugs Law* is *inter alia* in the following terms:

"(1) This section applies to-

- (a) a Cayman ship;
- (b) a ship registered in a state other than the Islands which is a party to the Vienna Convention; and
- (c) a ship that is not registered in any country or territory.

(2) A person on a ship to which this section applies, wherever it may be who-

- (a) has a controlled drug in his possession; or
- (b) is knowingly concerned in the carrying or concealing of a controlled drug on the ship,

knowing or having reasonable grounds to suspect that the drug is intended to be imported or has been exported contrary to section 3(1) or the law of any state other than the Islands commits an offence and is liable-





- (i) if the controlled drug is a hard drug -
 - (A) on summary conviction to a fine of twenty thousand dollars and to imprisonment for five years; or
 - (B) on conviction on indictment to a fine and to imprisonment for life; or
- (ii) if the controlled drug is not a hard drug -
 - (A) on summary conviction to a fine of ten thousand dollars and to imprisonment for two years; or
 - (B) on conviction on indictment to a fine and to imprisonment for fourteen years.

(3)”

GUIDELINE PRINCIPLES ON SENTENCING

7. The Prosecution relies on the cases of *Mitchell Comrie v the Queen*¹, *R v Adlam (Derrick Anthony)*, *Grant (Glenval George, McCoy (Jason) and Samuels (Noel Alexander))*² and *R v Rovon Pemo Johnson and Albert Roy Campbell*³.

8. In the absence of formal Guidelines in this Jurisdiction, the leading case on sentencing in respect of drug offences is the case of *Mitchell Comrie v The Queen*. In that case, the Grand Court was concerned with an appeal against a sentence of 5 years' imprisonment imposed for the offences of Being Concerned with the Importation of Ganja and Possession of Ganja with Intent to Supply. The sentence had been imposed by the Summary Court following a guilty plea in respect of the importation by boat and possession of 395.2 pounds of Ganja. The Grand Court stated that the English tariffs may be inapposite given that the maximum penalty for a first offence of importation of a Class B drug such as cannabis in the United Kingdom was 14 years while in the Cayman Islands it is 7 years under the *Misuse of Drugs Law*. The Court concluded that

¹ SCA 001/2011, GC Judgment dated 29th February 2012, (2012) CILR N3

² Unreported, Case No. 6571/2013, SC Judgment dated 16th April 2014

³ Ind. 88 of 2019, 6th November 2019

1 while the relevant factors to be taken into account may be similar, the starting points in
2 relation to the tariff would be significantly lower. The important factors for consideration
3 are:

- 4 i) The quantity of Ganja.
- 5 ii) The role played by the offender in the enterprise.
- 6 iii) Whether the offender has previous convictions.



7
8 9. The Court referred to the Cayman Islands Court of Appeal (CICA) decision in the 2009
9 case of *R v Sheena Minzette*⁴, in which the Appellate Court found that following a not
10 guilty plea to importation of 964 pounds of ganja and previous convictions, an
11 appropriate sentence would have been one of 5-6 years rather than 4 years.

12
13 10. The Grand Court in the case of *Mitchell Comrie v The Queen* concluded that an
14 appropriate starting point, given the secondary role of the Appellant, the lack of previous
15 convictions and the amount of ganja actually acknowledged by him as his own, (50
16 pounds), would have been 3-4 years' imprisonment and that the appropriate sentence
17 was therefore 3 years' imprisonment.

18
19 11. This guideline case has been followed in the Summary Court where most cases of
20 Importation of Ganja are determined.

21
22 12. In the cited 2014 case of *Derrick Adlam and Others*, the Summary Court considered an
23 appropriate starting point to be three years in the case of importation of 174 pounds of
24 Ganja; this in circumstances where crew members of a vessel were of previous good

⁴ CICA 2nd September 2009

character. The Court after giving credit of 25% for guilty pleas imposed varying sentences of 18 months' to 45 months' custody.

13. The Court reviewed a number of sentences following guilty pleas for Importation of Ganja and or Possession with Intent to Supply Ganja.

Year	Case Name	Weight in pounds	Sentence	Note
2008	<i>Hamilton and Others</i>	134	18 months to 2 years	
2008	<i>Gauntlett and Another</i>	984	2 years	No information on mitigation
2009	<i>Harold Quest</i>	192.42	4 years	Sentence confirmed by Appellate Court - CICA 15/2010

14. In the more recent 2019 case of *R v Rovon Johnson and Albert Roy Campbell*, the Grand Court considered the appropriate starting point for Illicit Trafficking of Ganja contrary to s.19 of the *Misuse of Drugs Law* where the maximum sentence is 14 years' imprisonment.

15. The Court reviewed recent sentences in the Summary Court involving the importation of Ganja by foreign nationals to include:

Year	Case	Weight in pounds	Sentence	Note
2017	<i>R v. Adlam and Others</i>	461	30 months to 64 months	One repeat offender
2019	<i>R v. Robinson and Others</i>	800	42 months	After trial
2019	<i>R v. Watson and Others</i>	812	28 months	



1 16. In each case the Summary Court took four years as a starting point and applied various
2 reductions for guilty pleas and factors in mitigation. In each case, the roles of the
3 Defendants were as crew members.

4
5 17. While reaffirming the guiding principles enunciated in the case of *R v Comrie*, the Grand
6 Court in *R v Johnson et al* declined to adopt the four-year starting point. In doing so,
7 the Court noted that the maximum sentence for Illicit Trafficking of Ganja is 14 years'
8 imprisonment in contrast to the 7-year maximum sentence for first offences of
9 Importation and Possession with Intent to Supply. The Court also considered the
10 increasing prevalence of this offence in the Cayman Islands. The Court stated:



11 *"Within the last two years the Summary Court has imposed sentences in cases of*
12 *importation of ganja for amounts ranging from 461 lbs to 1281 lbs of ganja. The*
13 *amounts have increased exponentially. In 2018 in the case of Leroy Morgan the*
14 *amount was 461 lbs and the defendant received 30 months imprisonment on a guilty*
15 *plea; for R v Johnson, Pillarchie and Ors⁵ the amount of ganja was 438 lbs, and*
16 *the sentences for those defendants ranged from 30 - 36 months imprisonment, again*
17 *on a guilty plea. In R v Rose & Ors⁶, the amount concerned was 424 lbs. The*
18 *sentence was 32 months. In 2019, in the case of R v Swaby-Ebanks and Wright⁷*
19 *the amount of ganja involved was 556 lbs. The sentence ranged from 30 to 34*
20 *months for these defendants. I have already mentioned Ricketts and Ors where the*
21 *amount of ganja was also 556 lbs and Watson and Campbell, 800 lbs of ganja. In*
22 *R v Corey Nikito Brown⁸, the quantity involved was 1281 lbs of ganja imported on*
23 *the 6 August 2019. Brown received a sentence of 3 years imprisonment on a guilty*
24 *plea. The defendants in the instant matter entered the Cayman Islands in July 2019*
25 *with 1063 lbs of ganja"*
26
27

28 18. The Court determined that a starting point of 8 years, with a sentence range of 6 years'
29 to 9 years' imprisonment, was appropriate. The Court also expressed the view that repeat
30 importers may attract a sentence in excess of 9 years' imprisonment. Thus in respect of

⁵ Summary Court #04942/2017 sentenced 26 March 2018

⁶ Summary Court #00577/2018 sentenced 28 February 2019

⁷ Summary Court #00169/2018 sentenced 8 March 2019

⁸ Summary Court #01698/2019 sentenced on 23 September 2019

⁹ Paragraph 20

1 1,063 pounds of Ganja, allowing for a 20% reduction for their guilty pleas and taking
2 into consideration other mitigating factors, the Court imposed sentences of 6 years'
3 imprisonment in respect of each Defendant.

4 THE UNITED KINGDOM DEFINITIVE SENTENCING GUIDELINES - DRUG OFFENCES

5 19. The Prosecution has invited the Court to consider whether the *United Kingdom*
6 *Definitive Sentencing Guidelines on Drugs* may be of assistance and relies on the case
7 of *Milton and Another v The Queen*.¹⁰ It is submitted that whilst these Guidelines ought
8 not to be followed slavishly, they can guide the Court as to the factors to be considered
9 when considering an appropriate sentence for a Defendant in the Cayman Islands.
10 Counsel highlighted the discussion in the cited case in which Lord Toulson opined as
11 follows:



12 "There are no statutory guidelines and the courts appear to have developed a
13 practice of using the provisions of Schedule 21 of the UK Criminal Justice Act 2003
14 for guidance. The courts are entitled to look for guidance to sentencing practices in
15 other countries, but the Board would not recommend that they bind themselves too
16 closely to the regime of a particular country, including the UK. Local judges are in
17 the best position to assess the appropriate tariff in their jurisdiction, subject to their
18 own statutory provisions."
19

20 20. The Prosecution has also drawn the Court's attention to the Definitive Guidelines in
21 respect of the offence of Possession of a Controlled Drug with Intent to Supply to another
22 contrary to s.5(3) of the *Misuse of Drugs Act* 1971. The maximum sentence for this
23 offence where the drug is a Class B drug, which includes cannabis (Ganja), is 14 years'
24 imprisonment. Under the Guidelines, culpability is demonstrated by the offender's role
25 and the category of harm by the quantity of drug. The starting point once determined
26 applies to all offenders irrespective of previous convictions.

¹⁰ [2015] UKPC 42



1 21. There is much similarity between the approach taken by the Definitive Guidelines in
2 respect of the offence of Possession of a Controlled Drug with Intent to Supply to another
3 in terms of relevant factors and the approach taken in *Mitchell Comrie v The Queen* -
4 the leading case in this jurisdiction which is referenced above. Indeed it is of note that
5 the Grand Court in *Comrie v The Queen* considered that assistance could be had from
6 the factors considered in the English Sentencing Guideline case of *R v Aramah*¹¹.

8 22. This Court considers that while some allowance may need to be made for local
9 circumstances, in the absence of Cayman Islands Guidelines with respect to drug
10 offences, the present United Kingdom Sentencing Council Guidelines provide helpful
11 assistance, in that, they set out an established criterion which will support consistency
12 of approach in these matters. The sentencing levels in the Cayman Islands for the
13 offence of Illicit Trafficking are the same as in the United Kingdom. The nature of the
14 offending, although differently titled, is broadly similar in scope. The Court proposes
15 to have recourse to these Guidelines in the absence of local guidelines.

17 23. The Guidelines provide for the category of harm to be determined by the quantity of the
18 drug. The starting point for Category 1 is based on 200kg of cannabis. In this case, given
19 that the quantity of the drug is 673 pounds or 305 kilograms, this offence would fall into
20 Category 1.

21 24. Culpability is demonstrated by an offender's role in the enterprise. The roles are
22 identified by one or more of a number of characteristics. A leading role would include:
23

¹¹ 76 App. R. 190



- Directing or organizing, buying and selling on a commercial scale.
- Substantial links to, and influences on others in a chain.
- Close links to original source.
- Expectation of substantial financial gain.

25. A significant role would involve an operational or management function within a chain, motivation by financial or other advantage, whether or not operating alone, or some awareness and understanding of the scale of the operation.

26. A lesser role includes factors such as, performing a limited function under direction, being engaged by pressure, coercion or intimidation, involvement through naivety, having no influence on those above in the chain and very little awareness or understanding of the scale of the operation.

SUBMISSIONS ON STARTING POINT AND ATTENDANT FACTORS

27. The Prosecution submits that an appropriate starting point in this case should be eight (8) years' imprisonment with a sentencing range of six (6) to eight (8) years in the case of the Defendants Vaughans and Cranston. It is further submitted that the authorities suggest that in the case of the Defendant Pillarchie, he may receive a sentence in excess of 9 years, in light of his previous conviction for a similar offence.

28. Defence Counsel are all agreed in their submissions that the starting point should be significantly lower than that urged by the Crown. Counsel submit that it should be more in line with the 4-year starting point which would have been the case had this matter

1 remained in the Summary Court. Each Counsel made detailed submissions as to the
2 limited roles played by these Defendants in the enterprise.

3 **DEFENDANT LINTON NYPOLE PILLARCHIE**

4 29. The Defendant Linton Pillarchie was interviewed between 1:49pm and 2:42pm on the
5 13th March 2020 at the Cayman Islands Detention Centre by ADS Kevin Ricketts and
6 SDC125 Gregory Banks of the Crime Task Force after he had received advice from his
7 Attorney. The Prosecution summarises his responses in interview as follows.

8
9 30. During the interview the Defendant said that he was hired by men unknown to him, one
10 of whom goes by the alias "Rasta", to transport packages which he believed contained
11 Ganja, to a coordinate about 30-40 miles off the Cayman Islands where they would be
12 met by persons travelling from the Cayman Islands. They would then hand over the
13 packages and receive fuel in exchange. He said that he and the other two Defendants
14 travelled by car to a location in Negril, Jamaica where they were met by his employers
15 who directed them to the now seized vessel which already had the packages with Ganja
16 and fuel on-board. They launched the vessel on Wednesday, 11th March 2020 between
17 8-9 p.m. with the expectation to reach the meeting point at 9 a.m. on the 12th March
18 2020.

19
20 31. The Defendant further said that they were running low on fuel so they stopped while
21 they were about 20 miles away from the meeting location and contacted the persons from
22 the Cayman Islands who were given new coordinates to meet them. Whilst they were
23 waiting there, he saw the Police marine vessel and tried to avoid them, however, on
24 seeing the helicopter, he and the other two started to throw the packages into the sea. He



1 said that he suspected that the packages contained Ganja because he was given a portion
2 of Ganja from one of the packages whilst at sea. He knew that what he was doing was
3 wrong but he did it because things were hard in Jamaica. He also said that he threw his
4 phone into the sea because it was damaged by water. He was paid J\$100,000.00 and was
5 owed J\$300,000.00 to do the transport.

6
7 32. He admitted to being one of the persons who captained the vessel from Jamaica to where
8 they were eventually arrested. He said that he and his friends only transported the drugs
9 and that none of it belonged to them. He did not know who the drugs belonged to, who
10 the persons were from Cayman and he did not package the drugs.

11
12 33. The Prosecution's submission is that this Defendant played a significant or leading role
13 in the enterprise. He admitted to being one of the persons who captained the vessel from
14 Jamaica to where they were eventually arrested and also that he expected significant gain
15 and had already been paid a sum of money.

16
17 34. The Prosecution also points to the possible aggravating factor of the throwing away of
18 the phone as getting rid of evidence since the phone could have been used to trace who
19 had hired him in Jamaica and would have assisted law enforcement in both jurisdictions.
20 The Defendant has previous convictions for importing some 436 pounds of ganja into
21 the Cayman Islands in 2017 and for Illegal Landing, for which he was sentenced on the
22 26th March 2018 to 33 months' imprisonment and 1 year imprisonment respectively to
23 run concurrently¹². The Prosecution submits that this is a significant aggravating feature.

24

¹² SC case 4942/17



1 **Submissions of the Defence on behalf of Defendant Pillarchie**
2

3 35. Counsel on behalf of the Defendant Pillarchie submitted that given the fact that this is
4 his second offence and that he was involved in another 3-handed importation of ganja
5 into the Cayman Islands, it is accepted that aggravating factors are present and that it is
6 difficult to escape the seriousness of these factors.

7
8 36. Counsel submitted that although this Court has higher sentencing powers, the sentences
9 imposed in the Summary Court should operate as a guide and, that where this Defendant
10 had received a sentence of 33 months in 2018, a sentence of 72 months in respect of this
11 offence, which would be within the range proposed by the Crown for a second-time
12 offender, would be disproportionately high.

13
14 37. Counsel also referred to the 2012 case of *Staines, Swaby and Walters*¹³ in which the
15 Summary Court applied 4 years' imprisonment as a starting point for 633.66 pounds of
16 Ganja and to the cited case of *Adlam & Others* in which Adlam was a second-time
17 offender who was sentenced to 45 months' imprisonment. It was urged that although the
18 offence in this case is technically different, it is factually the same offence.

19
20 38. Counsel's primary submission was that this Defendant was at a lower rank of trafficking.
21 Counsel described him as being no more than "*naive and blinded at the prospect of*
22 *financial gain*". Counsel submitted that the Defendant did not know the real names of
23 the other persons who were involved at a higher level and who asked him to undertake

¹³ 31st July 2012

1 the trip. Counsel stated that no firearm was found on the vessel which would be
2 indicative of a person involved at a higher level of the supply chain. Instead, these were
3 persons who were unarmed and thus quite vulnerable. Counsel asked the Court to note
4 that he arrived at the vessel in Negril, Jamaica when it was already loaded with drugs
5 and that he had no part to play in growing, processing or packing this drug. It was also
6 said that the Defendant did not know the weight of the Ganja as he was not involved at
7 that level.

8
9 39. In mitigation Counsel submitted that the Defendant is 39 years old, a fisherman and
10 farmer by occupation who is resident in St. Elizabeth, Jamaica, in a shared home with
11 other family members. He is the father of one child with another due to be born in about
12 five months. He is described as being of poor financial circumstances and it is said that
13 incarceration in the Cayman Islands will mean that he will be away from his family and
14 new-born child. It was explained that he had taken the previous sentence imposed with
15 seriousness, but that due to the financial rewards to be gained from the trip, he had a
16 lapse of judgement which caused him to undertake this venture.

17
18 40. Counsel asked that the Court give the Defendant the benefit of the doubt with respect to
19 the disposal of the phones and urged that it would be risky to assume that his actions
20 meant that he was hiding evidence.

21
22 41. Counsel stated that the Defendant had cooperated fully in interview and rendered an
23 early guilty plea and should be given the full discount of one-third of any sentence to be
24 imposed.
25





1 **DEFENDANT GERANIMO ANTONIO VAUGHANS**

2

3 42. The Defendant Vaughans was interviewed at the Cayman Islands Detention Centre on
4 the 13th March 2020 between 3:24pm and 4:10 pm by ADS Kevin Ricketts and SDC 125
5 Gregory Banks of the Crime Task Force after he had received advice from his Attorney.
6 The Prosecution summarizes the statements which he made in his interview as follows.

7

8 43. During the interview he said that he was hired by men unknown to him, one who goes
9 by the alias "Black" and "Presi", to transport packages which he knew contained Ganja
10 to a coordinate about 30-40 miles off the Cayman Islands where they would be met by
11 persons travelling from the Cayman Islands. They would then hand over the packages
12 and receive fuel in exchange. He said that he and the other two Defendants, both known
13 to him, travelled by car to a location in Little London, Negril, Jamaica where they were
14 met by his employers who directed them to the now seized vessel which already had the
15 packages with Ganja and fuel on board. He said that he rented the car from someone but
16 has forgotten the name of the person. They launched the vessel on Wednesday, March
17 11, 2020 between 7-8pm with the expectation of reaching the meeting point at 9am on
18 March 12, 2020. He said that they were running low on fuel so they stopped about 20
19 miles off the meeting point and he contacted the persons from Cayman who were given
20 new coordinates to meet them. He does not know the persons from Cayman but
21 communicated with them via a SAT phone which he threw into the sea along with the
22 GPS device that had also been given to him.

23



1 44. The Defendant further said that whilst they were waiting at the meeting point, he saw
2 the marine vessel and started to throw the packages into the sea. He said that he knew
3 that Ganja was in the packages because he could smell it and he also knew because of
4 how the packages were wrapped. He knew what he was doing was wrong but he did this
5 because he has four daughters to take care of. He said that he was promised a payment
6 of five thousand US dollars (US\$5000.00) to do the transport. He admitted to being one
7 of the persons who captained the vessel from Jamaica to where they were eventually
8 arrested. He said that he and his friends just transported the drugs and that none of it
9 belonged to them. He did not know who the drugs belonged to, who the persons were
10 from Cayman and he did not package the drugs. He said that he had received the
11 coordinates a couple days before departing from Jamaica and that he operated the GPS
12 device.

13
14 45. The Prosecution submits that the Defendant Geranimo Vaughans played a significant
15 role as he accepted responsibility during interview as the owner of the boat. He
16 participated in the enterprise for gain. The Prosecution also submits that his disposal of
17 items is an aggravating factor in that it is an attempt to conceal or dispose of evidence.

18
19 **Submissions of the Defence on behalf of Defendant Vaughans**

20 46. Counsel on behalf of the Defendant Vaughans submitted that the starting point of 8 years
21 taken in the case of *R v. Rovon Johnson and Albert Roy Campbell* referenced above
22 represents a 100 percent increase over the 4-year starting point which has been
23 consistently applied in the Summary Court over the years. Counsel submitted that such
24 an increase in the starting point would be manifestly excessive in the present case.



1 Counsel referred to the unreported cases of *Watson and Campbell* where 812 pounds of
2 Ganja attracted a starting point of 4 years and to the case of *Robinson, Ricketts and*
3 *Moxam* with some 800 pounds also with a starting point of 4 years. Counsel submitted
4 that an eight-year starting point was out of line for a case of this nature and that the four-
5 year starting point should be adopted. With reference to the need for greater deterrence
6 in sentencing, Counsel stated that while there has been 'a steady number over the years'
7 there has not been a sudden increase in cases. He stated:

8 *"It is submitted however that we have not had sufficient cases to justify an uplift of*
9 *this nature. If there has to be an uplift to act as a deterrent then 50% to a starting*
10 *point of 6 years should be adopted with a range of some 4 to 8 years as the range.*
11 *This would enable the Court in a very high poundage case to look at the 8 years but*
12 *would not unduly penalize the likes of Vaughans, A starting point of 6 years is a very*
13 *substantial sentence in any event."*
14
15

16 47. Counsel said that, but for the Crown electing to bring this matter to the Grand Court, the
17 men would have been looking at a 4-year starting point. Counsel agreed that account
18 should be taken of the UK Sentencing Guidelines but said that the sentence should not
19 be much higher than that which would have been imposed by the Summary Court.
20

21 48. As to the role of the Defendants: Counsel submitted that these three Defendants are
22 clearly seamen and farmers and that the real organizers and potential major beneficiaries,
23 had the Ganja been landed, are not now before this Court. Counsel submitted further that
24 the Defendant Vaughans and the others followed instructions and were not a part of any
25 planning for the enterprise. They were taken to the dock where the Ganja was already
26 loaded onto the canoe. They were handed the GPS device and SAT phone and given
27 instructions as to where to meet the Cayman connection and what to do if the authorities
28 intervened.



1 49. By way of mitigation, Counsel submitted that the Defendant Vaughans has no previous
2 convictions. He is 38 or 39 years old. He is the sole provider for his four daughters - the
3 eldest of whom is 15 years old and the youngest is about 4 years old. He is responsible
4 for their school fees and other expenses. He was promised money and succumbed. He
5 has to and does take responsibility for the fact that he was on the boat. Counsel further
6 said that the Defendant regrets what has happened and tenders his apologies. He did this
7 for his family to whom he is anxious to return.

8
9 50. Counsel also submitted that the canoe with the three men had been found outside the
10 territorial waters of the Cayman Islands. This Defendant, as did the others, made full
11 admissions. He asked the Court to consider that the canoe stopped at the direction of the
12 Officers and what the evidential position would have been, had no admissions been made
13 by the Defendants.

14
15 51. Counsel urged that despite being found in the boat and with ganja, this Defendant should
16 be given a full discount of one-third of any sentence to be imposed.

17 **DEFENDANT JERRY BARROWS CRANSTON**

18 52. The Defendant Cranston was interviewed between 5:17 p.m. and 5:49 p.m. on the 13th
19 March 2020 at the Cayman Islands Detention Centre by ADS 424 Kevin Ricketts and
20 SDC 125 Gregory Banks of the Crime Task Force in the presence of his Attorney. The
21 Prosecution summarises his responses in interview as follows.

22
23 53. During the interview he said that he and his friend Pillarchie were picked up in his
24 community by Geranimo aka "Brown Man", a man he saw only for the second time, and

1 who drove them to a location in Negril where they boarded the vessel in which he was
2 arrested. He said he was taken along in order to remain with the motor vehicle until
3 Geranimo and Pillarchie returned from their trip. However, he was asked by men at the
4 location to go on the trip in place of someone who had fallen ill. He said that he told
5 them that he would go on the trip if they paid him to do so to which they agreed. He said
6 that when he boarded the vessel, it already had on packages which he knew contained
7 Ganja and it had fuel on it. He said that he knew that the packages of Ganja were to be
8 delivered to persons from Cayman at a location about 60 miles off Cayman Islands. He
9 said they left Negril about 9:10pm on Wednesday, March 11, 2020 and were to reach
10 their destination on the morning of March 12, 2020. He did not know who the Ganja
11 belonged to or who the persons were from the Cayman Islands who were to meet them
12 at sea. He does not have a phone and said that the only person who spoke on a phone
13 during their journey was Geranimo. He said he also steered the vessel when Pillarchie
14 took a break to eat something. He said that when he saw the Marine Police approaching,
15 he immediately threw packages into the sea.

16
17 54. The Prosecution submitted that this Defendant played a significant role in that he
18 expected to gain from the enterprise and that he was aware of the scale and nature of the
19 operation. There is no indication that he was involved through coercion. By way of
20 aggravating factors, the Prosecution submits that when the Police marine vessel was seen
21 he participated in throwing packages overboard and thus he attempted to conceal or
22 dispose of evidence.



1 **Submissions of the Defence on behalf of Defendant Cranston**

2 55. Counsel on behalf of the Defendant Cranston submitted that, given that in the cited case
3 of *Campbell*¹⁴, a sentence of six years imprisonment was imposed for illicit trafficking
4 of 1063 pounds of Ganja, the proportionate view is that the starting point should be
5 significantly less in this case because the quantity is less, that is, it is just over one half
6 the amount in that case.



7
8 56. With respect to the roles of the Defendants, Counsel submitted that it may be difficult to
9 differentiate between the roles each played in terms of control and whether they played
10 a leading role or lesser role. This Defendant, it is said, only assisted with captaining the
11 boat when the others were otherwise engaged.

12
13 57. Counsel pointed to the absence of sophistication in the disposal of the Ganja and urged
14 that the efforts at disposal of the Ganja in this case could well be interpreted as the acts
15 of desperate, frightened men upon realising the awful truth of their predicaments.
16 Counsel asked that the Court not make much more of this than necessary and submitted
17 that they may also face the prospect of reprisals against them and their families and that
18 there is the fear of being held responsible for the loss of a valuable consignment.

19
20 58. Counsel invited the Court to look at the cases that have comparative facts and to apply
21 a sentence that is proportional and comparative, despite the different sections of the Law
22 which govern this matter. Counsel asked that the Court consider whether mere
23 transportation in the grand scheme would warrant the categorisation sought by the

¹⁴ *Supra*

1 Crown. Counsel said that the master minds are not before the Court and these Defendants
2 are at the bottom in terms of potential benefit.

3
4 59. In mitigation, Defence Counsel urged the Court to find the appropriate balance between
5 justice and mercy and between prevalence and deterrence and to pass the lowest possible
6 sentence that could be passed. Counsel submitted that the Defendant is 53 years old and
7 the father of 8 children. He is a man of little formal education and has no recorded
8 convictions against him. He pleaded guilty at the earliest opportunity and albeit that he
9 was caught red-handed, he wasted no time and accepted responsibility at the time of his
10 interview. This Defendant is said to be very remorseful and disappointed that he is before
11 the Court at this stage of his life. Any period of incarceration will be significant for him.
12 Additionally the Defendant was said by Counsel to have a number of medical conditions
13 which were not specified for which he takes medication. Counsel urged that the real
14 punishment for him will be in his not being able to see his children and being absent
15 from them and that the decision to be part of the enterprise was not out of greed but out
16 of need.

17
18 60. Finally Counsel urged that the Defendant should receive a full one-third discount for his
19 guilty plea.

20 ASSESSMENT AND CONCLUSIONS

21 61. The Cayman Islands Sentencing Guidelines provides general guidance as to the aims of
22 sentencing, assessing the seriousness of an offence, the custody threshold and the
23 principle of proportionality. The Court reminds itself of this guidance, including that in
24 sentencing an offender, the Court has to balance a number of competing interests and

objectives and to tailor the punishment to the individual circumstances of the offender while ensuring that it is in line with the seriousness of the offence. The Court should consider which of the aims which govern the sentencing process will be best served by the sentence to be passed. The aims which are set out in the *Alternative Sentencing Law* 2008 include deterrence, punishment, rehabilitation and restitution. The Guidelines also provide that a custodial sentence should not be passed unless the offence is so serious that no other sentence can be justified for the offence. Custody should be reserved for the most serious offences. Even where the custody threshold is passed, custody can still be avoided in light of personal mitigation or if there is a suitable community intervention which would meet the aims of punishment and rehabilitation.

62. In determining the appropriate starting point for sentencing in this case, it is noted that there is an absence of evidence that any of the three men, played a leading role in the enterprise. There is no indication that they directed or organised the buying and selling of the drug on a commercial scale or that they had substantial links to or influenced others in the chain or that they had close links to the original source.

63. They all assert that they were hired in one way or another and given specific but limited instructions. The role of captain of the boat does not appear to fit comfortably within the factors indicating a leading role as is urged by the Crown. It appears to be an operational function within the chain as is set out in the factors for a significant role.





64. Secondly while it does not appear that there was the expectation of *substantial* financial gain, there was in the case of each defendant clear evidence of motivation by financial or other advantage. This single factor of motivation by financial or other advantage is, under the Guidelines, sufficient to lead to a conclusion that each of these Defendants played a significant role.

65. In addition, there may well be the presence of a second factor. While the Defendant Pillarchie claimed not to have been aware of the amount of Ganja and each Defendant asserts that he had nothing to do with the loading or packing of the drug onto the vessel, each person travelled on the relatively small canoe with some 44 packages of Ganja. Each knew that these were being transported to the Cayman Islands to be delivered to Cayman contacts. The commercial nature of the enterprise could not have been lost on them. There was therefore, at the very least, some awareness and understanding of the scale of the operation.

66. Under the UK Guidelines, the starting point for a Category 1 class B drug offence for persons who undertake a significant role is 5 years 6 months (66 months) custody with a range of 5-7 years custody. The starting point and range is the same for the offence of Fraudulent Evasion of a Prohibition by bringing into or taking out of the UK a controlled drug which offence may have more similarity with the present circumstances.

67. This starting point is higher than the four-year starting point presently applied in the Summary Court. While this Court acknowledges the fundamental importance of consistency in approach to sentencing for similar offences, the Court considers that a higher starting point is justified in circumstances where there is a higher maximum

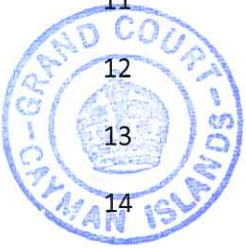
1 sentence of 14 years available in the Grand Court under s.19 of the *Misuse of Drugs*
2 *Law* in contrast to the seven years available to the Summary Court for a first offence
3 under s.16 of the Law.
4

5 68. There is a second and more important reason that a higher starting point is considered
6 appropriate.
7

8 69. The Defendants are before the Court for a serious offence in which, despite their personal
9 circumstances, the custody threshold is undoubtedly passed. It is evident from the
10 authorities cited that drug importations have been an ongoing problem in the Cayman
11 Islands since at least 2008, the date of the earliest case cited, and is a problem which has
12 continued through to date. Counsel for the Defendant Vaughans who has been appearing
13 in these Courts for many years described it as “a steady number”. It appears clear that
14 the sentences being imposed may be of limited deterrent effect given the repeat offenders
15 mentioned in the cited cases who continue to take the risk of drug transportations.

16
17 70. Counsel on behalf the Defendant Cranston asked the Court to consider whether mere
18 transportation of the drug would warrant the categorization sought by the Crown and
19 each Counsel asked the Court to consider that the master minds are not before the Court.
20

21 71. In the context of the Cayman Islands as shown from the cited cases, the transportation
22 of the drug into the Cayman Islands by sea appears to be a critical link in the local supply
23 and distribution chain. Indeed the reasonable inference from the cited cases is that it is
24 the life blood of it. Matters appear to be arranged in such a way that the master minds



1 are protected from identification and the transporters, should they be arrested, destroy
2 any evidence which could lead to their identification.

3
4 72. This Court respectfully adopts the observations of Carter J. in the cited case of *R v*
5 *Johnson et al.* The learned Judge took note of the exponential increase in the quantities
6 being brought into these Islands and the prevalence of these offences.

7
8 73. It is the view of this Court that for this offence of Illicit Trafficking involving the
9 bringing into the Cayman Islands large quantities of drugs, the primary aims of
10 sentencing must be deterrence and punishment and that an uplift in the starting point for
11 sentencing is warranted because of local circumstances. The Court therefore proposes to
12 adopt the starting point suggested by the United Kingdom Guidelines of 5 years and 6
13 months, (66 months).

14
15 **REDUCTION FOR GUILTY PLEA**

16
17 74. The Prosecution and the Defence disagree as to the nature of the reduction for guilty
18 pleas which should be allowed in this case. The Cayman Islands Sentencing Guidelines
19 provide at paragraph 10.7.1 that:

20
21 *“The purpose of giving credit is to encourage those who are guilty to*
22 *plead at the earliest opportunity. Any defendant is entitled to put the*
23 *prosecution to proof and so every defendant who is guilty should be*
24 *encouraged to indicate that guilt at the first reasonable opportunity.*

25
26 *Where the prosecution case is overwhelming, it may not be*
27 *appropriate to give the full reduction that would otherwise be given.*
28 *Whilst there is a presumption in favour of the full reduction being*
29 *given where a plea has been indicated at the first reasonable*
30 *opportunity, the fact that the prosecution case is overwhelming*
31 *without relying on admissions from the defendant may be a reason*
32 *justifying departure from the guideline.*

1
2 *Where a court is satisfied that a lower reduction should be given for*
3 *this reason, a recommended reduction of 20% is likely to be*
4 *appropriate where the guilty plea was indicated at the first reasonable*
5 *opportunity.*
6

7 75. In this case, the Court considers that the evidence against the Defendants was
8 overwhelming. They were caught, by the Police Marine and Air Operations Units, in
9 close proximity to the Cayman Islands, throwing packages into the sea from an
10 unregistered boat, which packages (44) were recovered by the officers before towing the
11 vessel to the South Sound dock. While the admissions made by them added to the picture
12 and provided details, the inference of guilt was clear and inescapable whether or not they
13 had made admissions. The inference would also have been clear that this was an
14 enterprise for gain. It is therefore proposed that they each be given the recommended
15 discount of twenty percent (20%) rather than the full one-third.



16
17 76. Having considered the facts and all the submissions made in this matter, these are the
18 conclusions in respect of each Defendant.

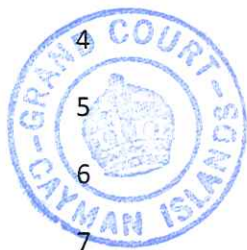
19
20 77. In respect of the Defendant Geranimo Vaughans, the Court finds that there is the single
21 aggravating factor of attempting to conceal or dispose of evidence. Not only did he assist
22 in throwing the Ganja packages into the sea, he it was who threw away the SAT phone
23 and the GPS device. The undoubted inference is that he threw away the latter items in
24 the knowledge that these could provide evidence for the Police whose approach was
25 imminent. From the starting point of 66 months, his sentence would be increased to 72
26 months.



1 78. By way of mitigation he has no previous convictions and has shown significant remorse.
2 He is also the sole or primary carer for his four daughters. He is a foreign national.
3 Incarceration will mean separation from his family which will cause hardship to him.
4 Given all the factors in mitigation raised by his Counsel it is appropriate that the sentence
5 be reduced from 72 months to 64 months. When the credit for his guilty plea of 20% is
6 taken into account the sentence imposed is one of 51 months' imprisonment.

7
8 79. In respect of the Defendant Jerry Barrows Cranston, Counsel's submission on the
9 desperation felt on the approach of the Police is noted. However such desperation is not
10 inconsistent with a deliberate attempt to dispose of evidence. While the actions of the
11 three men were relatively unsophisticated, they were effective in relation to disposal of
12 devices and phones and, but for the proximity of the two Police Units, may well have
13 been successful in relation to disposal of the drugs. The Court finds in the case of the
14 Defendant Cranston that there is also the single aggravating factor of attempting to
15 conceal or dispose of evidence. From the starting point of 66 months, his sentence would
16 be increased to 72 months.

17
18 80. By way of mitigation he has no previous convictions and has shown significant remorse.
19 He is 53 years old and the father of 8 children for whom he is the sole or primary
20 provider. He is a foreign national and incarceration will mean separation from his family
21 which will cause hardship to him. He has unspecified medical conditions for which he
22 is on medication. Given all the factors in mitigation raised by his Counsel it is
23 appropriate that the sentence be reduced from 72 months to 64 months. When the credit
24 for his guilty plea of 20 % is taken into account the sentence imposed upon him is one
25 of 51 months' imprisonment.



1 81. The Defendant Linton Nypole Pillarchie also participated in the disposal of the drug on
2 the approach of the Police. He discarded his phone, claiming that it had been damaged
3 by water. The Court finds in respect of his disposal of the drug that this was an attempt
4 to conceal or dispose of evidence and that this is an aggravating factor. In his case there
5 is a second aggravating factor, in that, he has a previous conviction for a previous
6 importation of drugs into the Cayman Islands. The Court agrees with his Counsel as to
7 the serious nature of this aggravating factor. From the starting point of 66 months, given
8 the two aggravating factors, one of which is particularly significant as it involves the
9 same conduct in relation to the transport of drugs into the Cayman Islands in relatively
10 close proximity in time to the present case, his sentence would be increased to 96
11 months.

12
13 82. By way of mitigation, he has shown remorse. He is the father of two children and his
14 financial circumstances are poor. He too is a foreign national and incarceration will mean
15 separation from his family which will cause hardship to him. Given all the factors in
16 mitigation raised by his Counsel it is appropriate that the sentence be reduced from 96
17 months to 92 months. When the credit for his guilty plea of 20 % is taken into account
18 the sentence imposed upon him is one of 73 months' imprisonment.

19
20 83. Standing back and reviewing all the circumstances of this case as a whole, the nature of
21 the offending, the roles played, the amount of the drug, the personal circumstances of
22 each offender, the Court considers that the proposed sentences are proportionate to the
23 offending and are the minimum sentences which could be imposed in these
24 circumstances.

1 84. In the case of each Defendant, any time served on remand is to be deducted.

2
3 **FORFEITURE OF VESSEL**

4
5 85. The Prosecution applies for an order of forfeiture of the canoe pursuant to s.25 of the
6 *Misuse of Drugs Law*. Section 25 (2) provides that:-

- 7 “(2) Where a person is convicted of an offence against this Law, and the court
8 by or before which he is convicted is satisfied that any vessel which was in
9 his possession or under his control at the time of his apprehension -
10 (a) has been used in connection with or for the purpose of committing
11 or facilitating the commission of such offence; or
12 (b) was intended by him to be used for that purpose, the court shall
13 order the forfeiture to the Crown of such vessel.
14 (3) Facilitating the commission of an offence shall be taken for the purposes
15 of this section to include the taking of any steps after the offence has been
16 committed for the purpose of disposing of any property to which it relates
17 or of avoiding apprehension or detection.”
18

19 86. Given the agreed evidence, it is plain that the provisions of this section are satisfied.

20 The vessel, engine and contents are therefore ordered forfeited to the Crown. The drugs
21 are ordered forfeited to the Crown to be destroyed.

22
23 **Dated this 14th day of May 2020**

24 



25 **Honourable Justice Cheryll Richards Q.C.**
26 **Judge of the Grand Court**