

IN THE COURT OF APPEAL

MAGISTERIAL CRIMINAL APPEAL NO. 7 OF 1992

BETWEEN RANDY CASIMIR Appellant
and
THE POLICE Respondent

Before: The Rt. Hon. Sir Vincent Floissac - Chief Justice
The Honourable Mr Justice Singh - Justice of Appeal (Ag)
The Honourable Mr Justice Matthew - Justice of Appeal (Ag)

Appearances: Mrs. Z. Dyer for the appellant
Mrs. D. Wilson for the respondent

1992; September 15 & 17

JUDGMENT

FLOISSAC, C.J.

On the 4th December, 1991, before Chief Magistrate Emmanuel sitting in Magistrate's Court District "E" of Dominica, the appellant pleaded guilty of the offence of having in his possession a certain controlled drug (namely 2.3 kilos of cannabis) with intent to supply it to another contrary to section 7(3) of the Drug (Prevention and Misuse) Act No. 20 of 1988 (hereinafter referred to as the Act). Whereupon the learned Magistrate convicted the appellant of the offence and imposed on the appellant a fine of "\$50,000.00 to be paid by five instalments of \$10,000.00 each, commencing on the 31/12/91 and continuing until the 30/4/92" or an alternative sentence of three years imprisonment in the event of the appellant's default in payment of the fine. The appellant has appealed against his sentence.

The important question of principle involved in the sentence in this case is whether the monetary value of the controlled drug found in the unlawful possession of an offender is a relevant

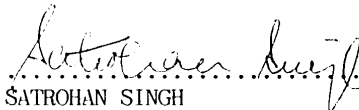
factor in the determination of the severity or otherwise of the punishment of the offender for such unlawful possession. Normally, the monetary value of the subject matter of the crime is a relevant factor unless the legislative policy on intention in regard to the crime otherwise indicates. Since no such legislative policy on intention is discernible, the judicial discretion inherent in the sentencing for drug offences should be exercised with due regard to the principle that in the absence of aggravating circumstances surrounding an offence, the sentence for the offence should bear some reasonable relation to the monetary value of the subject matter of the offence.

In this case, the subject matter of the offence was 2.3 kilograms of cannabis. Counsel agreed that the street value of the cannabis was approximately \$5,000.00. The appellant had no previous conviction. Nor were there any aggravating circumstances surrounding the offence. In these circumstances, a fine of \$50,000.00 transcended that which was necessary to deter the appellant from repeating the offence or to serve as a warning to others.

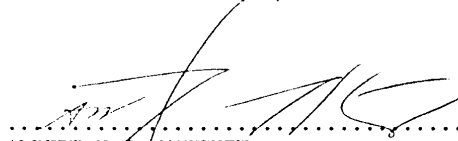
The concept of a fine measured by reference to "three times the street value of the controlled drug" is enshrined in section 16. It is a flexible concept which does not require fines to be measured mathematically and without regard to the circumstances of the case. However, in the particular circumstances of this case, we should be guided by that concept. The fine is accordingly reduced to \$15,000.00 payable within 6 weeks from the date hereof. In the event of the appellant's default in payment of the fine, the appellant shall be imprisoned for a term of one year.



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SIR VINCENT FLOISSAC
CHIEF JUSTICE



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SATROHAN SINGH
JUSTICE OF APPEAL (AG)



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ALBERT N.J. MATTHEW
JUSTICE OF APPEAL (AG)