

IN THE COURT OF APPEAL

MAGISTERIAL CRIMINAL APPEAL NO. 2 OF 1992

BETWEEN:

KEITH HERBERT

APPELLANT

AND

THE CHIEF OF POLICE

RESPONDENT

Before: The Honourable Chief Justice Floissac - President
The Honourable Mr. Justice Dennis Byron, Justice of Appeal
The Honourable Miss Justice Monica Joseph, Justice of Appeal

Appearances: Mr. Hesketh W. Benjamin for the Appellant
Mr. Malcolm Holdip for the Respondent

(March 24, 1992)

J U D G M E N T

FLOISSAC, C.J.

The appellant was charged with possession of cannabis on the 9th July, 1991 at Basseterre in the Parish of St. George in the Magisterial District "A" of the Federation of Saint Christopher and Nevis, contrary to Section 7(2) of the Drugs (Prevention of Misuse) Act No. 11 of the Laws of the said Federation.

On the 16th December, 1991 in the Magistrate's Court of the said Magisterial District, the appellant pleaded guilty of the offence charged and was sentenced by Magistrate Lynch-Wade, Snr. to imprisonment for a term of 12 months. He appealed against his sentence.

In support of a reduction of the sentence, counsel for the appellant relied on the facts that -

- (1) The appellant pleaded guilty to the offence.
- (2) This was the appellant's first drug offence.
- (3) The amount of cannabis involved was less than one ounce.

//(4)....

- (4) the appellant was a user rather than a dealer in a controlled drug; and
- (5) the appellant was gainfully employed in his father's business at the time of the commission of the offence.

In imposing the sentence of imprisonment, the learned Magistrate said:-

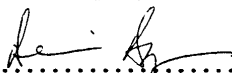
"This offence is of grave concern to the responsible persons in the society and Legislation has been promulgated in an effort to arrest and if possible cure the mischief, which is permeating the Federation with resultant Mental Illness among other Ills. The Court is of the considered opinion that firm action should be taken to assist offenders to desist from being participants in this Anti-Social Behaviour and at the same time serve as a Deterrent to Would-be Offenders".

While this Court shares the learned Magistrate's concern, experience has shown, that severe punishment of the victims of drug abuse, while the predators remain at large, has not solved the international problem of the misuse of drugs.

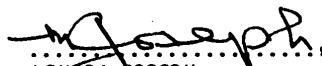
In the circumstances of the case, the Court considers a fine to be an appropriate penalty. The sentence of imprisonment is set aside and a fine of \$5,000.00 is imposed to be payable within one month. In default the appellant shall serve a term of imprisonment of six months.



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V. F. FLOISSAC
CHIEF JUSTICE



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C. M. D. BURON
JUSTICE OF APPEAL


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MONICA JOSEPH
JUSTICE OF APPEAL (AG.)