

COMMONWEALTH OF DOMINICA

IN THE COURT OF APPEAL

MAGISTERIAL CRIMINAL APPEAL NO. 43 OF 1992

BETWEEN

LYNDON JOSEPH - Appellant
and
THE POLICE - Respondent

Before: The Rt. Hon. Sir Vincent Floissac - Chief Justice
The Honourable Dr. N.J.O. Liverpool - Justice of Appeal
The Honourable Mr. Justice S. Singh - Justice of Appeal

Appearances: Mr. Ronald Armour for the Appellant
Mrs. D. Wilson for the Respondent

1992: March 8 and

JUDGMENT

The appellant was charged with the offence of having in his possession one gramme of cocaine contrary to Section 7(2) of the Drugs (Prevention of Misuse) Act NO. 20 of 1988. The offence is alleged to have been committed on the 25th July, 1992 at Woodford Hill in the Parish of St. Andrew in the Commonwealth of Dominica.

On the 1st September, 1992, in the Magistrate's Court of Magisterial District "G" of the said Commonwealth and before Magistrate D.J. Moise, the appellant pleaded guilty of the offence charged. The "Minute of Conviction" reads "The defendant is fined \$10,000.00 payable in two instalments. That is by 30/9/92, \$5,000.00 and on 30/10/92, \$5,000.00. In default 18 months imprisonment with hard labour. Failure to pay the first instalment, automatically the whole amount becomes due. The defendant is also sentenced to 12 months imprisonment suspended for two years if convicted for a similar offence".

Learned Counsel for the appellant argued two grounds of appeal, namely, that the sentence was excessive and that the Magistrate's decision was not in accordance with the law. In support of his second ground learned Counsel submitted that the minute of conviction was wrong on its face firstly because it did not contain the requirement that the further offence which would activate the suspended sentence had to be committed in Dominica and be subject to a term of imprisonment exceeding six months (Section 6(1) of the Criminal Justice Reform

Act, Chap. 12:35); and secondly that the Magistrate's Minute of Conviction "Failure to pay the first instalment, automatically the whole amount becomes due." contravened the provisions of Section 4(2) of the Criminal Justice Reform Act.

The relevant provisions read as follows:-

"4(2) Where any fine is directed to be paid by instalments, the person liable to pay the fine shall, on making default in the payment of any instalment thereof, be liable to be imprisoned for such proportion of the full term passed upon him in default of payment of the fine, as the sum remaining unpaid by him bears to the fine imposed upon him."

"6(1) A Court which passes a sentence of imprisonment on any offender for a term of not more than three years for any offence, may order that the sentence shall not take effect unless, during a period specified in the order being not less than one year or more than three years from the date of the order (hereinafter referred to as the "operational period"), the offender commits in Dominica another offence punishable with imprisonment for a period exceeding six months (hereinafter in this section and sections 7 and 8 referred to as a "subsequent offence") and thereafter a Court having power to do so orders under section 7 that the original sentence shall take effect."

In respect of the minute which refers to the failure to pay the first instalment, it seems to the Court that although the Magistrate's minute differs from the wording of Section 4(2) of the Act, the net effect is the same. Where the fine is to be paid in two instalments; in default, the sum remaining unpaid would bear the proportion of 1 to the fine imposed, and the person convicted would be liable to imprisonment for the entire term.

With reference to the minute in respect of the suspended sentence, the Magistrate's order seems to be more favourable to the appellant than the wording of Section 6(1) of the Act provides. The minute seeks to reactivate the suspended sentence if the appellant is convicted for a "similar" offence; whereas the Act speaks of "another offence" which would, of course, not be limited to an offence involving drugs. The sentence of imprisonment will therefore be varied to read - "The defendant is also sentenced to 12 months imprisonment

which is not to take effect unless, during a period of 2 years from today's date he commits in Dominica another offence punishable with imprisonment for a period exceeding 6 months".

In support of a reduction of the sentence, Counsel for the appellant relied on the following facts and principles (inter alia):-

- (1) The appellant is 28 years old.
- (2) The appellant has had no conviction since 1983 (ten years ago).
- (3) The learned Magistrate made no enquiry into the occupation or means of the appellant.
- (4) In fact, the appellant is a small farmer who earns no more than \$1,000.00 a month.
- (5) A fine should not be imposed on a defendant beyond his ability to pay and if payable in monthly instalments, the instalments should be reasonable.
- (6) A fine should not be imposed on the assumption that someone else would pay it.
- (7) The appellant pleaded guilty and that is a mitigating circumstance.
- (8) The value of a cocaine (\$100.00) bore no reasonable relation to the amount of a fine (\$10,000.00).
- (9) An excessive fine indicates an implicit objective of taxation which is not in keeping with the Court's function.
- (10) Rehabilitation should be one of the objectives in the punishment of the appellant.

Having regard to the matters argued on behalf of the appellant, we are persuaded that the sentence is excessive. We accordingly reduce the sentence to a fine of \$5,000.00 payable in five consecutive monthly instalments of \$1,000.00 each the first to be paid on 15th March, 1993, and in default 12 months imprisonment.

I concur

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SIR VINCENT FLOISSAC
CHIEF JUSTICE

.....
NICHOLAS LIVERPOOL
JUSTICE OF APPEAL

.....
SATROHAN SINGH
JUSTICE OF APPEAL