

**IN THE SUPREME COURT OF GRENADA
AND IN THE WEST INDIES ASSOCIATED STATES
HIGH COURT OF JUSTICE
(CRIMINAL)**

GRENADA

CASE NO. GDAHCR2020/0015

BETWEEN:

THE KING

And

JOSEPH HOYTE OLLIVIERE

Appearances:

Ms. Chrisan Greenidge, Senior Crown Counsel for the Crown
Mr. Ruggles Fergusson KC, of Counsel for the Defendant

2024: March 23;
May 27.

JUDGMENT ON SENTENCING

- [1] **INNOCENT, J.:** Mr. Joseph Hoyte Olliviere ('Mr. Olliviere'), the defendant who is presently before the court for sentencing was found guilty of the offence of trafficking in controlled drugs contrary to sections 18(4) (b) and 18(2) (a) of the Drug Abuse (Prevention and Control) Act¹ (the 'Act') on 29th January 2024, after a trial by judge and jury.
- [2] Mr. Olliviere was initially indicted for the subject offence on 8th May 2020. The Crown withdrew the initial indictment and filed an amended indictment on 22nd January 2024 upon which Mr. Olliviere's trial proceeded.

¹ Cap. 84A VOL. V of the 2010 Edition of the Continuous Revised Laws of Grenada

- [3] The chronology of events giving rise to the present criminal proceedings and which are relevant for the purpose of the sentencing exercise may be summarized in the following manner.
- [4] Mr. Olliviere is one of the registered owners of the fishing vessel named RoRo (the 'vessel'). On 1st July 2015, the vessel was intercepted by officers of the Marine Unit of the Royal Grenada Police Force ('RGPF') off the coast line of Grenada and near the vicinity of Grand Mal and Happy Hill in the Parish of St. George.
- [5] At the time that the vessel was intercepted by the RGPF, there were four crew members on board the vessel including Mr. Olliviere. Mr. Olliviere was seen repairing to the vessel's cabin. One of the police officers followed him. Mr. Olliviere was seen throwing an object through the vessel's hatch. He was questioned by the police officer who found his actions suspicious.
- [6] A bucket which was later found to contain ten packages of cocaine each weighing approximately ten kilograms was recovered floating in the water near the vessel. The occupants of the vessel were detained and escorted to the Marine Base. The other crew members of the vessel including the captain were subsequently released except Mr. Olliviere who was charged with the offence of trafficking in controlled drugs.
- [7] Section 37(3) of the Act provides that except where expressly otherwise provided, the Fifth Schedule shall have effect in accordance with subsection (4) with respect to the way in which offences under this Act are punishable on conviction.
- [8] Section 37(4) of the Act reads:
- "In relation to an offence under a provision of this Act specified in the first column of the Fifth Schedule (the general nature of the offence being described in the second column)—
- (a) the third column shows whether the offence is punishable on summary conviction or on indictment or in either way;
- (b) the fourth column shows respectively the punishment which may be imposed on a person convicted of the offence in the way specified in

relation thereto in the third column (that is to say, summarily or on indictment).”

- [9] Therefore, applying the provisions of sections 37(3) and 37(4) of the Act and the Fifth Schedule thereto, the sentence prescribed upon conviction for an offence under section 18(4) of the Act, that is, trafficking in a controlled drugs, is life imprisonment.
- [10] In sentencing Mr. Olliviere, the court is mindful of the fact that the starting point sentence is not usually the maximum penalty or sentence prescribed by law for the commission of the offence. According to the Guidelines, where the prescribed sentence is life imprisonment the usual starting point should be taken as 30 years imprisonment.

Constructing the sentence

- [11] In constructing the sentence the court will be guided by the provisions of the Compendium Sentencing Guideline of The Eastern Caribbean Supreme Court Drugs and Firearms Offences² (the ‘Guidelines’).
- [12] In accordance with the Guidelines the court will first consider the seriousness of the offence. The court will determine the starting point by consulting the Guideline and the grid contained therein. The court will then adjust the figure arrived at within the range for the aggravating and mitigating factors of the offence. The court will go on to adjust the figure within the range for the aggravating and mitigating factors affecting the offender. In the present case, the defendant had been convicted by a jury, therefore, there is no requirement for the court to engage in any further adjustment on assessment of any discount for any plea of guilty.
- [13] Finally, the court will consider whether any ancillary orders, confiscation, and compensation are applicable. The court will also consider whether the drugs should be forfeited and destroyed. In addition, consideration should be given to the confiscation of vehicles, boats and other property used in the commission of the

² Re-Issue 8th November 2021

offence. It may be appropriate to commence an investigation into the proceeds of crime and/or civil recovery of assets. In the present case the prosecution has opted not to make any application for forfeiture of the vessel.

- [14] The first step in constructing a sentence is to establish the starting point for the offence. A drugs case requires an assessment of the quantity by weight of the drug involved (assuming 100% purity, with adjustment permitted for lower purity and/or higher strength, if known), and the role played by a defendant.
- [15] To establish the starting point for the offence within the relevant range, there are four stages within Step 1. The first stage is to determine the offence category based on quantity. This should include an assessment of the evidence. Categories arising from quantity are as follows: QUANTITY - Category 1 Cocaine - 20 kg or more; QUANTITY - Category 2 Cocaine - 5-20 kg. In the present case, the defendant was found to have trafficked in a quantity of 10 kg, therefore, this places the offence within Category 2. The court did not have the benefit of evidence relative to the purity of the drugs.
- [16] The second stage is to determine the role played by the defendant with reference to the non-exhaustive lists of factors set out in the Guideline. It is open to a court to find that a defendant falls between two roles.
- [17] According to the Guidelines, an offender is considered to have played a leading role in the commission of the offence where he is concerned with directing or organizing; buying and selling on a commercial scale; where the offender has substantial links to, and influence on, others in a chain; where the offender has close links to an original source or supplier; where the offender commits the offence with the expectation of substantial financial gain; where the offender uses his business as cover or front to conduct the illicit activity; and, abuses a position of trust, for example where the offender is employed with law enforcement or holds high office.

- [18] In the present case, the court found none of the above factors set out in the Guidelines present save and except that the defendant used his fishing vessel to traffic the drugs under the guise of a fishing expedition. Also, the fact that the defendant would have engaged in the offending conduct for financial gain cannot be discounted.
- [19] Based on the Guidelines, an offender is considered to have played a significant role where in participates in the operational or management function within a chain; where the offender involves others in the operation whether by pressure, influence, intimidation or reward, especially if those involved are children; where the offender is motivated by financial or other advantage, whether or not operating alone; where the offender has some awareness and understanding of the scale of the operation; or he is engaged in selling drugs to school children or in prison.
- [20] There is no evidence of the presence of any of the abovementioned factors highlighted in the Guidelines from which it can be said that the defendant by his offending conduct can be described as having played a significant role in the operation.
- [21] An offender shall be considered to have played a lesser role in the commission of the offence where he performs a limited function under the direction of another person, for example where he operates as a mule or undertakes the transportation of the illicit substance; where the offender is involved in the illegal activity by pressure, coercion, intimidation; the offender becomes involved because of their youth, naivety or have been exploited by reason thereof; where the offender has no influence on those above in a chain; where the offender has little, if any, awareness or understanding of the scale of operation; where the offender is concerned in the trafficking drugs solely for personal use.
- [22] Having regard to all the circumstances of the case, it appears that the defendant played only a lesser role in the commission of the subject offence. There is no evidence before the court to suggest that the defendant is part of an organised drug trafficking enterprise or that he has significant links to the underworld. It appears

that in the present circumstances Mr. Olliviere was merely the mule or transporter of the drugs in question. This can readily be inferred from the method of transportation and the fact that the drugs were in transit at the time. It is unclear whether the drugs left port or were merely picked up on the water as the vessel made its way northward. Evidence of the provenance of the drugs was not presented in evidence. The prosecution's case was based entirely on the quantity of the drugs found in Mr. Olliviere's possession. There was no evidence presented that was suggestive of any of the factors listed in either of the two preceding roles set out in the Guidelines, except those which the court has highlighted.

[23] Therefore, notwithstanding the modus operandi employed to traffic the illicit substance, the court finds that Mr. Olliviere played a lesser role in the commission of the offence.

[24] In the court's view, and without seeming to palliate the gravity of the defendant's offending, it appears that but for the quantity of the illicit substance involved, this may have otherwise been regarded as a case of simple possession. There was no evidence to suggest that Mr. Olliviere was an accomplished "drug-trafficker" or that he was involved in a drug running scheme in a complex and organised manner.

[25] Having made this observation, the court goes on to concur with Mr. Fergusson's submission that there was no evidence led that reflected Mr. Olliviere's level of involvement in the drug trade, or the extent of his role in the criminal enterprise. Mr. Fergusson also submitted that there was no evidence relative to the destination of the drugs or to whom they were to be delivered.

[26] The matters identified by Mr. Fergusson has the effect of creating a challenge for the court to properly assess Mr. Olliviere's role in the commission of the subject offence. There simply was no other evidence presented to the court save and except the possession of a trafficable quantity of drugs.

- [27] It appears to the court that it would not be improper to infer that Mr. Olliviere embarked on this unlawful excursion on the sea, notwithstanding that he appreciated the risk involved, with the hopeful expectation of deriving some financial benefit. This fact is consonant with the court's earlier observation that he was merely the transporter of the drugs. The evidence suggested, at the very least, to that extent Mr. Olliviere played a lesser role in the commission of the offence. Therefore, the court will place Seriousness – Quantity at Category 2 and with respect to Seriousness – role played by defendant the court has determined that the defendant had played a lesser role in the commission of the offence.
- [28] The court, having determined the quantity and role, will find the starting point by consulting the grid contained in the Guideline which is applicable for both cocaine and cannabis. Maximum sentence is 'x'³.
- [29] Where, as in the present case, the maximum sentence is life imprisonment, simply for the purposes of the calculation 'x' is to be treated as 30 years, however, it must be noted that this does not have the effect of meaning a sentence where the maximum is life can never be more than 30 years. Also, it must be noted that percentages only apply to custodial terms, not to fines which remain within the discretion of the sentencing court.
- [30] In any event the court wishes to state as a matter of principle that except where a convicted person poses a danger to the community, if a judge at trial has a mind to pass a sentence of life imprisonment on a convicted person, it is necessary that the judge (before passing sentence) should warn the convicted person of his intention and invite representations to be made before sentence is passed. If no invitation to make such representations is made and a sentence of life imprisonment is imposed, the sentence may be upset on appeal.³

³ el Habre (Dib Camille) v R (2002) 63 WIR 15

[31] In the present case no such invitation has been given to Mr. Olliviere by the court. Therefore, there have been representations made to the court regarding the appropriateness of passing a sentence of life imprisonment during the sentencing hearing. The purpose for the court's observation will become apparent in the course of the court's sentencing remarks.

[32] In this instance, the court is inclined to adopt the minimum of 30 years' imprisonment. Applying the grid means that the starting point sentence equates 18 years' imprisonment.

Aggravating factors – offence

[33] The court having determined the starting point, will consider the non-exhaustive list of aggravating and mitigating factors of the offence and adjust upwards or downwards if required, taking care not to double-count factors considered in stages 1 and 2.

[34] The court has initially identified as an aggravating factor Mr. Olliviere's attempt at concealing both the illicit substance and his knowledge of same. Additionally, there was an attempt at disposal of the substance to either avoid detection or involvement in the commission of the offence. Mr. Olliviere had repeatedly denied his knowledge of the illicit substance and the fact that he was or had been in possession of the same.

Mitigating factors – offence

[35] Unfortunately, the court was unable to identify any mitigating factors attendant on the commission of the present offence.

[36] In the circumstances, the court finds that the mitigating factors are outweighed by the aggravating factors. Therefore, the court will adjust the starting point upward by 2 years which equates a sentence of 20 years' imprisonment.

- [37] The court is also required to make an adjustment to the figure within the range for the aggravating and mitigating factors affecting the offender.

Aggravating factors – offender

- [38] The court was unable to identify any aggravating factors relative to Mr. Olliviere. Crown Counsel would have relied on Mr. Olliviere's 2 prior convictions for unrelated offences in 2005. The court did not consider this to be of any relevance in determining aggravation relative to Mr. Olliviere for the simple reason his last offending may properly be regarded as part of his remote and distant past.

Mitigating factors – offender

- [39] Mr. Olliviere has relied extensively on his good character in mitigation. It appears that since his recent offending, Mr. Olliviere has not reoffended and has not had any further infractions registered against him for any or any similar offence. Therefore, the court is inclined to treat him as having no previous convictions for any or any similar offence. It did not appear that the Crown had mounted any challenge to Mr. Olliviere's good character.
- [40] Counsel appearing for Mr. Olliviere made a passionate plea for leniency on Mr. Olliviere's behalf praying in aid his good character and good standing and reputation in the general community. In these circumstances, Mr. Fergusson has invited the court to find that the imposition of a custodial sentence is not warranted in the present case.
- [41] Mr. Olliviere is a married man. He is now over the age of 60 years. He is the father of 5 children. From all indications he is well educated. Not only is he an experienced seafarer, but he is also an operator of heavy equipment and has worked on several major marine construction projects in Grenada. Mr. Fergusson's argument it seems, was that Mr. Olliviere was a productive member of society and therefore, the imposition of a custodial sentence would serve no other meaningful aim other than punishment.

[42] It also appeared that Mr. Fergusson's suggestion was that there is no likelihood of the risk of Mr. Olliviere reoffending and that there is no need to protect society from harm from Mr. Olliviere; and that furthermore, there is no need for prevention or rehabilitation of this offender. The court finds merit in Mr. Fergusson's suggestions.

[43] Mr. Fergusson also highlighted what he described as Mr. Olliviere's cooperation with the police authority. The court thinks that it is appropriate to say a little bit about the court's approach to cooperation with investigative and police authorities.

[44] In **R v A; R v B**⁴ Bingham, CJ opined thus on what amounted to co-operation to merit a discount in sentence:

"It has been the long-standing practice of the courts to recognize by a further discount of sentence the help given, and expected to be given, to the authorities in the investigation, detection, suppression and prosecution of serious crime:... The extent of the discount will ordinarily depend on the value and quantity. If the information given is unreliable, vague, lacking in practical utility or already known to the authorities, no identifiable discount may be given or, if given, any discount will be minimal. If the information given is accurate, particularized, useful in practice, and hitherto unknown to the authorities, enabling serious criminal activity to be stopped and serious criminals brought to book, the discount may be substantial. Hence little or no credit will be given for the supply of a mass of information which is worthless or virtually so, but the greater the supply of good quantity information the greater in the ordinary way the discount will be. Where, by supplying valuable information to the authorities, a defendant exposes himself or his family to personal jeopardy, it will ordinarily be recognized in the sentence passed. For all these purposes, account will be taken of help given and reasonably expected to be given in the future. It is important that information be given in the form indicated by the decided cases."

[45] On the question of co-operation with Law Enforcement the learned authors of Blackstone's 2009 stated thus:

"There are a number of long-standing Court of Appeal authorities which, according to P [2008] 2 Cr App R (S) 16, are still relevant despite the introduction of the statutory scheme. The decision in *Sinfield* (1981) 3 Cr App R (S) 258 establishes that, where an offender has given significant assistance to the police or prosecuting authorities, especially where it leads to the apprehension of other offenders or the prevention of other offences, he may expect a discount, possibly a substantial one, from his sentence.

⁴ [1998] Crim LR 757

The extent of the discount varies in accordance with a number of circumstances, and there is no set scale of discount. The level of discount will depend on the quality, quantity, accuracy and timeliness of the information given, the offender's willingness to testify if required, and the extent to which his cooperation with the authorities has put himself or his family at serious risk of reprisal. In general, the greater the nature of the criminality revealed by the offender, the greater the consequent risks to the offender and his family. The discount should be set at a level appropriate to show to offenders that it was worthwhile to provide such assistance (Sivan (1988) 10 Cr App R (S) 282)."

- [46] In the present case, the court is unable to find that the defendant, by merely permitting the police to board the vessel and accompanying the police to the marine base amounted to cooperation with the police that warrants any discount. It cannot be said that Mr. Olliviere's conduct has met the threshold of cooperation with police and investigative authorities. Therefore, the court will award no discount on that ground.
- [47] In all the circumstances of the case, it appears that the mitigating factors operating in Mr. Olliviere's favour far outweigh the aggravating factors relative to him which the court has already deemed virtually non-existent. Mr. Olliviere's previous good character operates substantially in his favour. Having regard to Mr. Olliviere's personal circumstances, the court is of the view that he is entitled to a substantial discount from the starting point sentence. Therefore, the court will discount a period of 10 years from the sentence of 20 years' imprisonment previously indicated. Therefore, the sentence will be scaled down to 10 years' imprisonment.
- [48] Mr. Fergusson has impressed upon the court that it would be inappropriate to impose an immediate custodial sentence on Mr. Olliviere and therefore, the court ought to treat with him by the imposition of a fine.
- [49] The imposition of a fine as opposed to a term of imprisonment for drug trafficking offences is an exception rather than the norm.⁵ However, ultimately the decision lies in the exercise of the court's discretion.

⁵ Uraz Mohammed v The State Cr. App. No. 23 of 2011 (20th May, 2014) at paras [89] – [92]

[50] It is beyond peradventure that the quantity and street value of the cocaine found in the defendant's possession is substantial. The mitigating factors are limited to the defendant's clean criminal record and his personal circumstances. The court has also taken account of the fact that the defendant resides with his family and the consequential effects of him being incarcerated for a substantial period of time. In this regard, the court finds the dictum of the court in **R v Attuh-Benson**⁶ to be most instructive:

"This Court is acutely conscious of the effect of long sentences upon the families of offenders, be they mothers or fathers. We need no reminding that it is very often the innocent who suffer from crime... When a parent, be it mother or father, commits an offence as serious as this, there is, quite simply, no alternative. Drug addiction is a blight on society and causes untold misery throughout the world. The courts of this country and elsewhere have no choice, in our judgment, but to impose substantial sentences upon those who willingly involve themselves in what has rightly been referred to as an evil trade."⁷

[51] The amount of cocaine found in the defendant's possession is quite substantial as is the estimated street value. The court finds that having regard to his educational background and his current employment, the defendant ought not to have succumbed to the temptation of financial reward to enter in to the evil trade of drug trafficking. Moreover, the court has formed the view that the defendant must have been very alive to the untold misery caused to societies by the blight of the drug trade. The court must show its abhorrence for this defendant's involvement in this unlawful activity especially more so in light of the defendant's special characteristics.

[52] The court having made the preceding observation is reminded of the permissible aim of deterrence. Deterrence can be both of a general and specific nature. The defendant is not known to be regularly involved in illegal activities more particularly drug trafficking. However, the court is not unaware that large sums of money are spent to entice usually law abiding persons to become involved therein as might very well be the case with this defendant. It is incumbent upon the court therefore,

⁶ [2004] EWCA Crim 3032

⁷ Per Hallett J at para [18]

to impose that type of sentence to deter others from being enticed by the lure of filthy lucre, to advance the cause of those involved in this evil trade.

Delay

- [53] Mr. Fergusson has argued strenuously for a substantial discount from the notional sentence which the court is minded to impose on account of what he describes as an inexplicable and inordinate delay in this matter coming on for trial. Although not specifically and discretely presented to the court on the basis of the breach of the defendant's constitutional right to a fair hearing within a reasonable time, the court is mindful of the approach which the court must adopt in making a discount relative to delay when sentencing offenders.
- [54] Although the defendant has been on bail from the time of his arrest to the present time the matter took approximately 9 years for the trial to be completed. Mr. Fergusson has set out the chronology of procedural events. There was no explanation from the Crown as to the reasons for the delay.
- [55] In considering whether there had been a breach of the reasonable-time guarantee, it was appropriate first to consider the overall period of time that had elapsed. If, on its face, the period appeared to be overly lengthy, then it would be appropriate for the court to interrogate all the relevant facts and circumstances with a view to determining whether the state had provided a satisfactory explanation or justification for any lapse of time that appeared to be excessive. The extent of the delay in the present case raised real and serious concern. This is especially the case since nearly all of the witnesses in the case were police officers. The delay was inordinate, excessive and unreasonable.
- [56] In the circumstances, the court will grant a discount of 3 years from the notional sentence to take account of the delay.

Immediate custodial sentence?

[57] The court has given serious consideration to whether the imposition of the custodial term of 7 years' imprisonment should be served immediately. The court, having looked at the matter in the round and having also considered the personal circumstances of this defendant including the inordinate delay in the matter, has decided that the sentence ought not to be served immediately.

[58] In the premises, the court has given serious consideration to what would be an appropriate fine to impose on the defendant to reflect the permissible aims of punishment which the court has mentioned in this judgment. The court thinks that a fine of \$250,000.00 would be appropriate in the circumstances to reflect the meaningful aims of punishment and the gravity of the defendant's offending.

Sentence

[59] In the circumstances, the defendant is fined the sum of \$250,000.00 to be paid in 1 year in default 7 years' imprisonment. The drugs are to be forfeited and immediately destroyed. The RGPF shall submit proof by way of declaration of such destruction to the court within 30 days of the date of this judgment.

Shawn Innocent
High Court Judge

By the Court

Registrar