

IN THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

ON MONTSERRAT

CASE MNIHCR 2019/0006

REGINA

V

SHERNYL BURNS

APPEARANCES

Mr Oris Sullivan, the DPP, for the Crown.

Mr Warren Cassell for the defendant.

2021: JUNE 28

SENTENCE

Of well-known sportsman for drug trafficking in cannabis

- 1 **Morley J:** Shernyl Burns aged 29 (dob 11.10.91) falls to be sentenced for two offences of drug trafficking, representing on about five occasions bringing in cannabis to Montserrat past customs from Antigua hidden in KFC buckets, to supply to his uncle Ashel Bramble, between January 2018 and February 2019. He was convicted by the jury on 26.05.21, with mitigation on 23.06.21, leading to a need for sentencing remarks to be in writing, which are these.
- 2 Burns has no previous convictions, and is a well-known sportsman on Montserrat. Younger he could sprint 100m in fractionally over 10 seconds and has represented Montserrat in India and Australia at the Commonwealth games, and in Russia at the 2012 World Championships, also attending the 2012 Olympic trials in London. At the regional university of technology, where he

- gained a science degree in sports management, he also won two gold and four silver medals in the 100m and 200m. More, he has been the captain of the u15, u17 and u19 Montserrat cricket teams, and is the current captain of the senior team, while also coaching the u17 and u19 teams.
- 3 In a 13 page pre-sentence report (psr) filed on 13.06.21, probation officer Stanford Kelly interviewed senior figures on Montserrat who had spoken well of him.
- a. Sir Howard Fergus said Burns is a very talented and promising young man with potential to make a success of his life and contribute to the advancement of his country.
 - b. Mr Wilston Scotland BEM sent the court a letter dated 14.06.21 and in the psr describes Burns as a great leader and ambassador, how he has been his sprint coach, who finds it difficult to come to terms with what he has done.
 - c. Dr Roy Lee said Burns grew up as honest, had good manners, respect for the law and the rights of others, with discipline and hard work, being a pleasant young man, though was not 'street smart'.
 - d. Mr Kenton Weekes said Burns has an intensity and total commitment to his team, showing generosity, loyalty, respect, compassion and authenticity in character, concluding his loyalty to others has led to his downfall.
- 4 In addition, the report spoke of how Burns had been put by Bramble under pressure to help him, while his mother Dr Sharon Burns reports he is embarrassed, she too, his having had almost every advantage, though noting he did not have a father present while growing, and lamenting he may be jailed away from his own daughter, aged one. Further during mitigation, the court heard from:
- a. Basil Morgan, an internationally respected cricket umpire, who spoke of Burns' ability, growing from age nine, and his passion for the great Brian Lara who he would follow, showing the court a match-book from 2008 where Burns is recorded u19 playing across the islands.
 - b. Sylvester Brown, his school vice principal, who described him as a model student, with an easy going nature, perhaps too trusting of others, and is shocked at his conviction, imagining he has trusted another to his detriment.

- c. Jamille Melissa Greenaway, his partner of ten years, a lawyer, and mother of his daughter, Cali, aged one, it seems born in June 2020, mentioning Burns has bonded well with his child, having a good impact, and who trusts being with him, so he has an integral role with her, knowing who he is, while the offending is out of character, he is not one to seek conflict, he does not smoke, including marijuana, and only drinks on social occasions. She also is reported in the psr, where she said Burns cooks, cleans, and washes in the home, is quiet, loving, caring, and very affectionate.
- 5 More, there was an email direct to the judge on 25.06.21, even after the hearing on 23.06.21, from Gracelynn Cassell, who is head of the UWI open campus on Montserrat, knowing Burns since an infant, speaking to how he is 'caring, compassionate and helpful', and perhaps too concerned for his uncle, noting he was particularly kind to Lynn Wyatt in 2019 who he helped find a taxi from Snowdown train station in Kent UK, also sending a picture of the cake Burns made for his daughter's birthday.

The facts

- 6 Cricket took Burns most weekends to Antigua where he played at high level. His uncle Ashel Bramble now 43 (dob 26.03.78) had an accident on a tractor on 11.04.13 on Montserrat, leading to neck injury which it appears required long recuperation, much of it on Antigua between 2014 and 2017. While Bramble seemed to struggle with his injury, not much supported by others, over time though almost 14 years younger Burns grew close to him.
- 7 In February 2019 there was a police investigation into Bramble. He was arrested on 23.02.19 and found in possession of 111g of cannabis at a street value of \$3200ec, with some in 28 bags ready for sale, each for \$50ec. His phone was analyzed and his associates scrutinized. Burns was arrested on 06.03.19. Analysis of Bramble's activities revealed he was bringing girls onto Montserrat for prostitution, while also selling cannabis, brought onto the island by *inter alia* Burns, with TO Shorte street-selling for him.

- 8 Bramble has previous convictions, notably for possession of cannabis in 2004, 2005, and 2008. On 19.12.19, he pleaded guilty to 'procuring a woman to become a prostitute' and to 'living off the earnings of prostitution', between January 2018 and February 2019, and to possession on 23.02.19 of the 111g cannabis with intent to supply it to others. On 27.07.20 he was sentenced, having pleaded at the earliest opportunity, attracting maximum credit, to 16 months concerning prostitution and to eleven months consecutive concerning the cannabis, making a total of 27 months imprisonment, noting the maximum sentence for possession with intent is 14 years.
- 9 TO Shorte also has previous convictions, notably in 2016 for possession of cannabis and assaulting police. On 19.12.19, he pleaded guilty to one count of 'drug trafficking', minimally as street-dealer for Bramble, consistent with his admissions in a caution statement on 19.03.19. On 23.07.20 he was sentenced, having pleaded at the earliest opportunity, attracting maximum credit, to six months imprisonment, noting the maximum sentence for drug trafficking is life.
- 10 Records produced in court show Burns traveled to Antigua 22 times between January 2018 and February 2019. At some point he agreed to bring back cannabis for Bramble. On Bramble's phone, there are whatsapp voicenotes between 11.10.18 and 16.02.19 of drug dealing activity, where both can be heard discussing the purchase of Kush, Ari, Jamaican, and other forms of cannabis, usually for sums of money measured in the hundreds of ec, regularly thousands, and at one point on 17.01.19 discussing moving cannabis to the value of \$10000ec during St Patrick's day celebrations coming in March. Evidence was offered 100g of cannabis retails for about \$3000ec. Moreover the voicenotes record:
- On 13.10.18 and 16.02.19, where packing cannabis into KFC buckets is discussed, and how to disguise its smell via the cooked chicken;
 - On 26.01.19, where Bramble agrees to return a \$500ec profit per \$1000ec lent by Burns for drug purchases, where Burns is contemplating borrowing \$5000ec from the Bank of Montserrat; and
 - On 16.02.19, where Burns does a drugs deal with 'Killer' on Antigua, with moment-by-moment reports between him and Bramble.

- 11 Following arrest, and represented by Counsel Cassell, Burns made no comment to police in interview on 06.03.19 and 07.03.19. He was then charged on 08.03.19, but after volunteered a further statement to police, making a full confession to bringing in cannabis for Bramble in KFC buckets *'probably on five occasions or more'*.
- 12 At trial, commencing 17.05.21, intelligent argument was raised to exclude his confession, which was not successful and is the subject of a separate detailed ruling. During *voir dire*, Burns admitted his confession was true. After the ruling, the trial continued, though Burns offered no defence: being represented by Counsel Cassell, he did not plead guilty.
- 13 It is a troubling feature of this case Counsel Cassell accepts it was not Burns idea to press on with the trial, but his, *'to save Burns reputation'* as he told the court during mitigation. Ordinarily a defendant gives instructions which counsel follow, but here it appears Burns just placed himself in Counsel Cassell's hands. Burns blames him for the trial, which he agrees. Asked if he has any regrets, Counsel Cassell has none, notwithstanding it had been open to the defence to plead out, preserving credit for plea, perhaps minimizing culpability, to a lesser number of offences not pleaded as drug trafficking which attracts so severe a penalty.
- 14 While it is always open to any defendant to require the case proved by the Crown, even where there is no defence offered, as here, such a course is very rare. Importantly it should not be the idea of counsel, who being an officer of the court is expected to advise carefully on the advantage of plea where there is no defence. Instead what it appears has happened is Counsel Cassell ran a trial, hoping perhaps to find something to appeal, and hoping perhaps Burns' popularity, led astray by Bramble, might lead a jury to acquit him, making the decision for Burns he should trust him, that he may 'pull a rabbit out of the hat' irrespective of the truth Burns has been importing cannabis. Counsel should not push a defendant into a trial. In my judgment what has happened here is conduct playful of the court's process and is to be pointedly criticized, the result of which has been to place Burns in more jeopardy than merited. The court is disappointed as Counsel Cassell is capable of effective work as counsel, but this case is no example.

Constructing the sentence

- 15 Constructing the sentence, it shall proceed on the basis there are two counts, representing five occasions of importing cannabis to supply to Bramble. Drug trafficking attracts up to life imprisonment. The sentence shall be concurrent per count as reflecting a course of conduct, rather than separate offending, though aggravating where Burns is clearly on the voicenotes comfortable purchasing drugs, discussing quantities, the profit element, raising his own money for purchases, and how drugs will be hidden in the KFC. His was no minor role.
- 16 There are sentencing guidelines in the ECSC concerning drug offences. In assessing step 1, being the circumstance of the offence, a significant question is, what is the quantity of drugs Burns supplied from Antigua to his uncle. It is a reasonable inference the cannabis found on Bramble on 23.02.19, being 111g, was purchased by Burns from Killer on 16.02.19. If each trip totaling five brings in the same amount, then brought in would be between 500-600g. However, this figure is speculative, while the plan was to import more for St Patrick's.
- 17 In my judgment, the proper approach to this sentence is to concentrate on how practiced and professional each importation was, gliding past customs with KFC to disguise the smell, so that the quantity is to be set against the aspiration, or vision, that Burns and Bramble were settled together in the business of supplying cannabis on Montserrat, though not in vast quantity. In this context, the quantity in contemplation is relevant, which must be at least 1kg, placing the offence in category 3, where the range is 1-50kg. As to role, there is good argument Burns is in a 'leading' role, as he is abusing a position of trust with the immigration officers who see him so often they will likely not stop him, with an expectation of financial gain, and buying on a commercial scale. However, equally he might be said to be in a 'significant' role, as having an 'operational function' in a chain of supply, set against a background Bramble is to my mind the moving force, older, directing his nephew 14 years younger, who others have described as too loyal and trusting to his detriment. In the circumstances I will approach Burns as being in a significant role, not leading role, and therefore assessed as '3B', where he is at the lowest end of category 3, but squarely in level B. This contemplates a starting point of 20% of the maximum, being life, notionally treated

- as 30 years, 20% meaning 6 years; however the quantity assessed is at the lowest end of the range, being 1kg in a range of 1-50kg, also recalling Burns cooperated by making full admissions in third interview, in combination meriting 10%, meaning 3 years, which is the absolute minimum at 3B.
- 18 It should be mentioned although cannabis is to an extent being legalized in Antigua, it remains illegal on Montserrat, well known to Burns, so it cannot be mitigation nearby Antigua takes cannabis supply less seriously to excuse smuggling it through customs. However the relaxation so near is bound to affect local perception of the criminality of cannabis, which is a relevant consideration, though can never be an excuse, possibly evolving cannabis use into the category of moderate offending rather than very serious offending as it once may have been. That said, let it be understood by the public, supplying cannabis onto Montserrat remains a jailable offence.
- 19 Turning to step 2, the circumstances of the offender, Burns is of good character, with many folk speaking well of him. It is to his credit he has been a sporting hero representing Montserrat at high level, though equally this should not mean he gets special treatment, meaning he avoids jail because he hits a cricket ball to great effect. However it is good mitigation he teaches the youngsters and is so widely highly regarded. Moreover, he has a daughter, Cali, who is one, and who is growing close to him, conceived it seems six months after his arrest, showing his life is much changed since this offending. In sum, his lack of convictions reduces the sentence by three months, his good works for the community and in representing Montserrat in sport by six months, and his changed family circumstance by six months, so that in total his personal mitigation substantially reduces the sentence 15 months from three years to 21 months.
- 20 Turning to step 3, credit for plea, there should be none, as Burns did not plead guilty. However, I take the view that was mostly the fault of Counsel Cassell, well recalling the integrity and directness with which during *voir dire* Burns told the court his confession was true. Exceptionally I will reduce his sentence by almost but not quite the equivalent of one-third for early plea, which will be six months, not seven, which if offered after the *voir dire* would have been a late plea but for good reason. This means the sentence reduces from 21 months to 15 months.

- 21 TO Shorte got less, being six months, but he was merely street dealing on one count, not said cleverly smuggling in the cannabis; Ashel Bramble got less, being eleven months, but he pleaded to less serious possession with intent of merely 111g. Some might say it seems unfair for the cannabis Burns will get more than Bramble. However, there has been a trial on the more serious charge of drug trafficking, on two counts, even though Burns was not offering a defence. Insofar as folk wonder how did it happen Burns gets more, the answer is Counsel Cassell did not seek to plead this case out to less offences and lesser culpability, where a stronger argument may then have been available to avoid custody. The court has done what it can to mitigate Counsel Cassell choosing to run a trial, but cannot go behind the jury's decision Burns is a drug trafficker and must be sentenced as such.
- 22 The question arises whether to suspend the sentence. I cannot. Only an immediate custodial sentence can be justified. The offending was too planned, too sophisticated, too prolonged, and too repeated. More, suspension would suggest Burns gets special treatment owing to his excellence at sport, which the public would rightly consider wrong. It is with regret the court concludes Burns must spend time in jail, having been such a bright star in the Montserrat sky. A sentence of 15 months is the absolute minimum the court can pass, being with one-third remission for good behaviour less than a year away, hoping his relationship with Cali and her mother can afterwards continue, as can his coaching and sporting ability, so he can put himself back on the right path and achieve his potential.
- 23 *Shernyl Burns, please stand up.* For the reasons I have explained, for both counts of drug trafficking the sentence is 15 months imprisonment, to run concurrently. Any time on remand will count, and you will be eligible for one-third remission of your sentence if of good behavior. You may go with the gaoler.

The Hon. Mr. Justice Iain Morley QC

High Court Judge

28 June 2021