

THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
(CRIMINAL)

ANTIGUA AND BARBUDA

CASE NO: ANUHCR2019/0051a

THE QUEEN

v

COLIN AVERY MURRAINE

Appearances:

Mr. Anthony Armstrong of the Director of Public Prosecutions for the Crown
Mr. Lawrence Daniels and Mr. Wendell Robinson for the Defendant

2020: February 24, 25, 26, 27, 28
2020: March 23

SENTENCE

- [1] **JOHN, J:** In the early morning of 02nd February 2018, the prisoner Colin Murraine then Chief Pilot employed with Caribbean Helicopters, left his home in Paynters Community in his pilot uniform and went to the V.C Bird International Airport to board a light aircraft which he had chartered to go to Bermuda.
- [2] Unbeknown to him, officers of the ONDCP, in a well planned and executed operation coordinated by Officer Trevor Walkes kept eyes on him from several vantage points from the moment he came out of the parking area. The prisoner was seen speaking on his mobile phone and shortly thereafter a white van stopped abreast of him and he entered. The driver of that vehicle, shortly before meeting Murraine, was given two suitcases by a person known to him and was instructed to pick up the prisoner.
- [3] That vehicle drove directly to an area reserved for crew and after the usual formalities he was allowed entry and he drove to a designated area. The prisoner alighted from the vehicle and the driver retrieved the two suitcases which he had earlier collected and placed them beside the prisoner who wheeled them to the aircraft and seated himself in that aircraft.

[4] Shortly before takeoff several ONDCP Officers ordered the aircraft to be immobilized. Upon boarding the aircraft, the two crew members along with the prisoner were asked to identify their luggage. They all complied. The prisoner identified the two suitcases which he brought onto the aircraft. When opened they were found to contain blocks of a white powdery substance later analyzed as the “prohibited drug cocaine”.

[5] The prisoner was arrested and charged for several drug related offences.

[6] The D.P.P preferred an indictment charging him with the following offences -

- 1) **Possession of a controlled drug**
- 2) **Possession with intent to supply**
- 3) **Drug Trafficking**
- 4) **Attempted exportation of a controlled drug**

[7] On the 28th February, after a trial, a jury found him guilty on all four charges. He must now be sentenced according to law.

[8] As this court has said time and time again, sentencing is the most difficult aspect of a trial judge’s function. No pleasure is derived from sentencing but unpalatable as it is, it is the duty of the court to impose a sentence in accordance with the solemn oath of office.

[9] **WHAT FACTORS GUIDE THE COURT?**

In this region, the Locus Classicus from which the Courts derive guidance is the case of **Desmond Baptiste v. the Queen. Crim. App. No.8 of 2003**: It is in that case that Sir Denis Byron said ***“Perhaps the most difficult and controversial area for the sentencer is fitting the punishment to the crime committed”*** In some jurisdictions, a sentencing Act has been enacted e.g. Australia. A sentencing handbook is now available in other jurisdictions e.g. Trinidad and Tobago and sentencing guidelines have been formulated in this region. They have all been helpful in this sentencing exercise.

[10] It was Lord Justice Lawton in the case of **R v Sargeant 60 Cr. App. R at page 77** who identified the classical principles of sentencing as being **retribution: deterrence: prevention and rehabilitation**. The element of deterrence is paramount in this case; deterrence of the offender and deterrence of likely

offenders. In dealing with retribution Lord Justice Lawton had this to say **“The Old Testament concept of an eye for an eye and tooth for tooth no longer plays any part in our criminal law. There is, however, another aspect of retribution which is frequently overlooked: it is that society, through the courts, must show its abhorrence of particular types of crime, and the only way in which courts can show this is by the sentences they pass. The courts do not have to reflect public opinion. On the other hand courts must not disregard it”**.

[11] In this jurisdiction, as is now the practice in so many other jurisdictions, a plea of guilty would normally entitle the person to a significant reduction in the sentence, usually one-third. A plea of guilty spares the judge, the jury, and witnesses the stress and rigours of a trial. Time as well as money is saved. It is therefore only natural that a benefit accrues to the accused person who pleads guilty.

[12] That benefit however, is not applicable in this case as the prisoner elected in the light of the clearest of evidence which were his own utterances to the officers and a detailed statement, to enter a plea of not guilty and proceed to trial. That was his constitutional right, and let me say right away that no harsher punishment is imposed upon him for exercising that right.

[13] Other factors that are usually taken into account are age, the fact that the prisoner is a first time offender, the Social Inquiry Report of the 16th March 2020 and submissions submitted by counsel.

[14] The prisoner is now 33 years of age. The courts have stressed that the more serious the offence, the less relevant will be the fact that you are a first time offender. In **Turner v. the Queen 1975 Crim. App. Rep. 47 at page 91** Lord Lane in a case of armed robbery said **“the fact that a man has not much of a criminal record, if any at all, is not a powerful factor to be taken into account when the Court is dealing with cases of this gravity”**. Accordingly, in the instant case his previous clean criminal record is of little importance.

[15] **The Approach:**

In **Baptiste v. the Queen (supra)** Sir Denis said on the approach to be taken to sentencing **“When about to sentence an offender, a judicial officer should first approach the matter from the standpoint of determining whether a custodial sentence or non-custodial sentence is appropriate”**. In this case a custodial sentence is most appropriate and will be imposed by the court.

[16] Let me now address the Social Inquiry Report. His parents, his eldest sister Mrs. Carol Leonard and your Fiancé Ms. Krystal Knowles were interviewed by the Senior Probation Officer. From the report, the court is satisfied that his parents fulfilled their role admirably. They ensured his attendance at Church and during his pre-teen and teenage years looked to his every need. They have been his support both emotionally and financially. Even his flight school loans are still being repaid by them. The court commends them for their efforts.

[17] Persons in his community who were interviewed particularly his Pastor have described him as calm and respectable. He has certainly have been portrayed as a person who appreciates the value and importance of family life and in the eyes of his community the offence is totally out of character.

[18] According to the Senior Probation Officer, the prisoner told him during interview that he was forced to deliver the packages because his life was threatened with a gun to his head. Additionally, the lives of his family members were similarly threatened. I pause here to mention that he gave a statement from the dock and nothing close to that was told to the court.

[19] Before the court addresses the penalties to be imposed upon him, the court has sought to give a balanced approach to the sentencing process. Careful consideration has been given to both the aggravating factors and mitigating factors of the offence. The court has sought to tabulate them. In so doing I have found that there are no mitigating factors in relation to this offence.

Aggravating Factors	Mitigating Factors
He compromised the aircraft company which could have lost its license and confiscation of the aircraft.	N
The large quantity of drugs that was in his possession 103lbs 8oz	I
The prevalence and seriousness of the offence.	L
The act was clearly premeditated, deliberate and planned.	L
The ruse used to avoid detection.	
The sophisticated nature of concealment.	

[20] **What the Legislature provides as the maximum sentence –**

Possession of a controlled drug	7 years and a fine not exceeding \$200,000.00
Possession with intent to supply	14 years and a fine (at the discretion of the Court)
Drug Trafficking	Life imprisonment and a fine of \$300,000.00 or 3 times the street value. In this case the street value has been estimated at USD1,667,601.00 or XCD4,519,198.00

[21] The packaging of the drugs suggested that it was a well organized operation.

Starting Point -

[22] In deciding the starting point for the offences the court considered decided cases in the region.

[23] In the case of the **State v. Robert Brown H.C 53/2010** a case out of Trinidad and Tobago Rampersad J imposed a sentence of two years after taking into account the five years and eight months that the accused spent in custody awaiting trial. He was found guilty of being in procession of 2.25 kg of cocaine.

[24] In the case of the **State v. Grace Pierre and Ors.** The Court used a starting point of eight years and imposed a sentence of six years for being in procession of 769 grams of cocaine for the purpose of traffic.

[25] In the case of **Uraz Mohammed v. The State CR. Appeal 23 of 2011** the Trinidad Court of Appeal after taking into account the fact that the applicant has no previous convictions upheld a sentence of twenty years for being in possession of cocaine for the purpose of trafficking. The quantity there was 12.98 kg.

[26] More recently in the **State v Stephen Gocking Crim. NO. 4609** Wilson J imposed a term of imprisonment of twenty years where the accused had in his possession 136.82 kg. of cocaine for the purpose of trafficking.

[27] Additionally, I have found the sentences passed in the following cases in this jurisdiction to be very instructive:

- **The Queen v Eraquio Gonzalez et al. {ANUHCR2011/0161} (unreported)**

In that case the defendants had arrived in Antigua on a boat from Venezuela carrying 909.95 kg of cocaine. **The captain of the vessel pleaded guilty** to all counts on the indictment. He was sentenced as follows -

Possession: 4 years imprisonment and a fine of \$200,000.00, failing to pay he will serve 1 year imprisonment.

Drug Trafficking: 14 years imprisonment, and a fine of \$200,000.00. In default of payment of the fine an additional 1 year imprisonment.

- **The Queen v Luke Joseph {ANUHCR2012/0003} (unreported)**

The defendant was the captain of a chartered sailboat which arrived in Antigua carrying 169.5 kg of cocaine. **He pleaded guilty** to possession with intent to supply and was sentenced to 6 years and a fine of USD\$300,000.00.

- **The Queen v Jenoure Craig {ANUHCR2016/2006} (unreported)**

The ONDCP intercepted the defendant as he was removing two suitcases from a room at a guesthouse which he had not been occupying. The lining of those suitcases were found to have packets of cocaine weighing 6.9kg.

He was convicted by a jury of all the counts on the indictment and was sentenced as follows:

Possession with intent to supply: 7 years imprisonment

Drug Trafficking: 10 years imprisonment and a fine of \$300,000.00. On appeal the Court of Appeal reduced the sentence to 6 years.

- **The Queen v Ndru Greaves {ANUHCR2015/0038} (unreported)**

The defendant was intercepted by the ONDCP Officers in a parking lot where he was removing a suitcase from a parked vehicle to his own. That suitcase lining was found to contain 19.15kg of cocaine. The defendant was convicted after trial on all 3 counts on the indictment. He was sentenced as follows –

Possession with intent to supply: 4 years

Drug Trafficking: 7 years and a fine of \$200,000.00.

[28] The quantity of cocaine in the instant case is 103lbs 8 ounces which falls within category 1 of the sentencing guidelines. On the evidence the role played by the prisoner was not a leading role. He nevertheless was a significant player who used the authority of his uniform and his profession to execute the plan.

[29] The following are the aggravating and mitigating factors in relation to the prisoner.

[30] **Aggravating Factors**

The singular aggravating factor as it relates to the prisoner is that at the time he was a mature individual 33 years of age and fully responsible for his actions.

[31] **Mitigating Factors**

- The prisoner has no previous convictions.
- The prisoner is now 33 years of age.
- The prisoner is the father of 2 children ages 12 and 2 years respectively.
- His prospect of being reintegrated into society is good.
- The prisoner was previously of good character.
- The prisoner has strong family support.

[32] The prisoner prior to incarceration was in a relationship with Ms Krystal Knowles who has been described as his Fiancé for a period of 1 year. While the mitigating factors paint a picture for the court of the person to be sentenced they do not in my view further mitigate the sentence.

[33] Counsel for the prisoner has urged upon the court to consider the principles in the Court of Appeal's decision in **Luke Joseph v The Queen** (supra). However it must be born in mind that Joseph entered a plea of guilty and therefore became a beneficiary of a significant reduction in his sentence.

[34] Having considered all the factors including the principles enunciated from the deciding cases and the written submission of counsel for the prisoner and that from the office of the D.P.P. the sentences for each offence is as follows –

[35] **COUNT 1**

Possession of a controlled drug: the starting point is 6 years, and the sentence of the court is 5 years imprisonment.

COUNT 2

Possession with intent to supply: the starting point is 12 years, and the sentence of the court is 9 years imprisonment.

COUNT 3

Drug Trafficking: the starting point is 20 years, and the sentence of the court is 18 years. Additionally, a fine of \$300,000.00 in default of payment of the fine, 1 year imprisonment.

COUNT 4

Attempted exportation of a controlled drug: the sentence of the court 2 years imprisonment.

[36] The sentences imposed will run concurrently. However, in the event that the fine of \$300,000.00 is not paid the sentence of 1 year will run consecutively to the concurrent sentences.

[37] This court hopes that this sends a strong message to drug traffickers in this society and will deter those bent on this type of unlawful practice.

[38] In closing, I wish to highly commend the officers of the ONDCP who were part of this operation. I trust that my remark will be conveyed to the appropriate quarters.

Justice Stanley John (Ag.)

By the Court

Registrar