

SAINT LUCIA

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

CASE NO. SLUCRD2018/0033A, 0033B

BETWEEN

THE CROWN

vs

BRIAN VINCENT MAYERS

Defendant

Appearances:

Bernick Faisal together with Stacey Counsel for the Crown
Leslie Mondesir together with Jeannot Walters for the Defendant

2019: July 19;
August 22.

DECISION

- [1] **TAYLOR-ALEXANDER, J.:** At arraignment, the Defendant a Vincentian National pleaded guilty to the offences of possession of cannabis and possession with intent to supply cannabis. The Defendant, from his first appearance before the Court at the sufficiency hearing expressed his guilt. He is now to be sentenced.

Facts:—

- [2] On the evening of July 21, 2017, South East of Moule-a-Chique, in the Quarter of Vieux Fort, and within the territorial waters of Saint Lucia, Police Officers stationed on board the vessel Papa Oscar 11 (PO11), were alerted to the presence of another vessel in their vicinity. PO11 maneuvered towards the direction of this vessel for a routine search when the Defendant was seen throwing a package

overboard. The parcel was retrieved from the water and was placed on the stern of the PO11. A search in the presence of the Defendant revealed a total of seventeen (17) polythene bags on board the vessel which contained green plant material subsequently tested and found to be cannabis. At arraignment, the Defendant entered pleas of guilty to the two (2) count indictment of possession and possession with intent to supply.

Plea in Mitigation:—

[3] Mr. Leslie Mondesir for the Defendant highlighted the Defendant's positive attributes and guided the court as to the relevant and applicable aggravating and mitigating factors. He reminded the court that:—

- The Defendant pleaded guilty to the two (2) count indictment for which he is entitled to a 1/3 discount;
- He has accepted responsibility and has shown remorse;
- He has no previous convictions and the pre-sentence report spoke favorably of him;
- His circumstances are such that he is a candidate for rehabilitation;
- He has had a difficult life and was only trying to do better for himself and was en route to Dominica to begin this life.

The Crown's Submissions: —

[4] The Crown reminded the court of the relevant sentencing principles identified by Lawton LJ in **R v Sargeant**, (1974) 60 Cr App R 74 and adopted by our court in **Desmond Baptiste V The Queen** and submitted that of these principles General Deterrence and Rehabilitation are to be prioritized.

The Pre-Sentence Report: —

[5] This report was of limited assistance to me, as it largely emanated from an interview between the Probation Officer and the Defendant. The Defendant is a Vincentian national. He is forty-eight years old with no known history of criminal

behavior. The report was generally favorable to the Defendant and identified extenuating circumstances to which I ought to have regard, to ameliorate the harshness of a sentence.

[6] The Defendant has had a difficult and improvised life. He grew up in a single parent household. As the first of eight children, he was often kept at home to care and provide for his siblings to his academic detriment. He says that he is now homeless, as he had occupied a home in dire need of repair in St. Vincent, but after the passage of two recent hurricanes, the condition of the house deteriorated. He describes the home as a two-bedroom, one bath structure made from breadboards.

[7] He informed the Probation Officer that it was his earnest desire to do better for himself that forced him on a pirogue en route to Dominica, that night when he was intercepted by St. Lucia Marine Police. He admitted knowledge of drugs on board the vessel.

Discussion

[8] In **Mervyn Moise v The Queen**¹ Rawlins CJ (Ag) [as then was] in delivering the judgment of the Court offered guidance on a Judge's approach to sentencing. He said this:-

"In summary, the sentencing Judge is required to consider, fully, two fundamental factors. On the one hand, the Judge must consider the facts and circumstances that surround the commission of the offence. On the other hand, the Judge must consider the character and record of the convicted person. The Judge may accord greater importance to the circumstances, which relate to the commission of the offence. However, the relative importance of these two factors may vary according to the overall circumstances of each case."

[9] The Defendant is not a known offender in St. Lucia, and Probation Services did not seek information on him from St. Vincent authorities. He is therefore to be

¹ Criminal appeal No.8 of 2003

treated as having a clean criminal record. He professes to have had a very difficult life from childhood continuing into adulthood and was seemingly attempting to do better for himself, but misguidedly felt that without an education, or finance and being unskilled, his only recourse was to become a trafficker.

[10] Marijuana is A Class a drug, and the ordinary inference of possession in the quantities that the Defendant had, is of a deliberate orchestrated effort to offload them unto the streets, without thought of its effect on the society. The documented reports of the effect of Class A drugs on the streets, are of increased crime and violence, that threatens an already fragile social fabric and one which heavily targets and impacts the youth. The penalty imposed on the Defendant must not just consider his social problems that allegedly forced him to consider this singular detrimental means of relief but must also consider the impact of his seemingly selfish act on the entire society.

[11] His Counsel submits that he should be offered an opportunity to be retooled and to learn a trade that allows him to contribute meaningfully to society and to become self-sufficient. I agree. In my view Retribution, General Deterrence, and Rehabilitation predominate in the circumstances of this case, and are to be reflected in the imposed sentence.²

Starting Point :—

[12] The Drug Prevention of Misuse Act Cap. 3.02 of the Revised Laws of St. Lucia 2013, prescribes a maximum penalty of seven (7) years imprisonment or a fine of two hundred thousand dollars (\$200,000.00) on conviction for the offence of Possession of a controlled drug. Possession with intent to supply attracts fourteen (14) years imprisonment and /or \$200,000.00 as a maximum penalty.

² As per the principles of sentencing identified by Lawton LJ in **R V Sergeant** and adopted by the Eastern Caribbean Supreme Court of Appeal in **Desmond Baptiste et al V the Queen**.

[13] Both Counsels referred me to a few authorities, that have historically assisted the court in fixing benchmarks for the offences:—

- (i) In **The Queen v Vick Swanson SLUCRD2013/0103A**, (unreported)
The Defendant pleaded guilty to possession with intent to supply a controlled substance. Defendant was caught in the act of disposing of the drugs overboard. Total quantity was 72 Kilos. He was sentenced to three (3) years for possession with intent to supply and one (1) year imprisonment for possession.
- (ii) In **The Queen v Keran Louis SLUCRD2011/1376, 1384**, the Defendant was found transporting a quantity of cannabis amounting to 93.08 kilograms in weight with an estimated street value of one hundred and sixty-five thousand, four hundred and forty dollars (165,440.00). **Cumberbatch J** found the aggravating factors to be the seriousness of the offences, the offences were planned and premeditated, the prevalence of drug trafficking in this country, the substantial quantity of cannabis its estimated street value and the Defendant's previous conviction for possession of cannabis. The Court found the appropriate starting point for the offence of possession of cannabis to be four (4) years imprisonment from which two (2) years were deducted for the guilty plea and the starting point for the offence of the intention to supply was eight (8) years from which three (3) years were deducted for the guilty plea. The Defendant was sentenced to two (2) years imprisonment for possession of cannabis and five (5) years imprisonment for intent to supply which were to run concurrently.
- (iii) In **The Queen v Health Thomas SLUHCRD2012/0336**, the Defendant was found with a total of 72.56 kilograms of cannabis with a street value of ninety five thousand, seven hundred and seventy two dollars and twenty cents. (\$95,772.20). The Court found the aggravating factors to be the

seriousness of the offence, large quantity of cannabis, prevalence of the offence, the Defendant's failure to provide the name of his co-conspirator, admitted cannabis use and lack of remorse. The mitigating factors were the Defendant's early guilty plea and hitherto clean criminal record. A benchmark of four (4) years imprisonment for possession and ten (10) years for intent to supply were deemed to be appropriate. The Court made deductions of two (2) years for possession of cannabis and five (5) years for intent to supply. The Defendant was sentenced to two (2) and five (5) years imprisonment which were to run concurrently and the Defendant was also ordered to receive counselling for his drug use.

- (iv) In **The Queen v Herman Belasse SLUCRD2011/0050**, the police discovered four (4) polythene bags containing a quantity of illegal drugs to wit, 167.5 kilograms of cannabis and 2.17 kilograms of cocaine. The Defendant was charged, inter alia, with possession of cocaine and the estimated value of 2.17 kilograms of cocaine was found to be forty three thousand, four hundred dollars (\$43,400.00). The Court found the aggravating factors to be the seriousness of the offences of drug trafficking. The criminal history of the Defendant (previous conviction for cannabis for which he was given a non-custodial penalty). The Defendant's admissions that he smoked and sold cannabis, the prevalence of drug offences in this country and the large quantity and value of the illegal drugs found in the Defendant's possession, whereas the Defendant's readily pleaded guilty at the first available opportunity and having taken full responsibility for his actions were mitigating. A further deduction was made for breach of the Defendant's constitutional right to a trial within a reasonable time (having remained in custody for five years before his arraignment). Consequently, the Defendant was sentenced to three (3) years imprisonment for possession of a controlled drug and five (5) years imprisonment for the possession of cannabis with the intent to supply.

- [14] Four hundred and forty-nine point zero seven (449.07) is an unprecedentedly large quantity of drugs. It is significantly larger than quantities in the case scenarios referred to me by the parties, with a significant expectation of financial gain. The Defendant was one of the two traffickers' on the vessel and I have no difficulty concluding that he played a significant role in the movement of the drugs. A starting point sentence of 5 ½ years for the conviction of possession and 8 years for the possession with intent to supply is entirely appropriate.
- [15] I have considered the following aggravating features of the offence; that the Defendant tried to dispose of the evidence by throwing the packages overboard; that he moved the drugs at night in an attempt to avoid detection; that there was planning and premeditation in the trans-shipment of the drugs; and prevalence of drug offences in this jurisdiction as earlier discussed. I found no mitigating factors of the offence. I have done an upward adjustment to the starting point sentence to 6 years for the conviction of possession and 10 years for the possession with intent to supply.
- [16] The Defendant from the outset acknowledged his guilt and he must benefit from a one third discount of his sentence as per practice direction No.1 of 2015. He has been in pre-trial custody from the 21st of July 2017, and this should be reflected in the time he is now to serve. Consequently, the Defendant is sentenced to imprisonment for 1 year, 10 months and 28 days for the offence of possession and 5 years, 4 months and 29 days for the offence of possession with intent to supply. The sentences are to be served concurrently.
- [17] I make the following ancillary orders designed to jump start the Defendant's rehabilitation. The Defendant is to be enrolled in the farming program at the Bordelais Correctional Facility. Should he fail to so enroll, he is to serve an additional year on each offence to be served concurrently. He is also to be

enrolled in the education program at the facility and in default, he is also to serve an additional year on his sentences to be served concurrently.

[18] I further order confiscated, the drugs totaling 449.07 kilograms, and the confiscation of the vessel on which the drugs were found with referral to the Financial Intelligence Authority for civil recovery.

V. GEORGIS TAYLOR-ALEXANDER
HIGH COURT JUDGE

BY THE COURT

REGISTRAR