

IN THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

ON ANTIGUA & BARBUDA

CASE NO. 2017/0172

REGINA

V

KEVIN WALLEN

APPEARANCES

Mr Adlai Smith for the prosecution.

Mr Michael Archibald for the defence.

2018: JANUARY 22

SENTENCE

- 1 **Morley J:** Kevin Wallen falls to be sentenced for importation into VC Bird airport from Jamaica of a controlled drug, namely 47.25 pounds (21.5kg) of cannabis on 29 September 2016, to which he pleaded guilty at the earliest opportunity on 19 January 2018.
- 2 As he came through immigration, suspicion was aroused by his answers to questions as to where he would stay. He said Sandals, which is expensive, for two weeks, but there was no booking. It was then established he was booked in to Connies Suites, though no money had been paid yet. He is 44, believed to be of good character, a welder, with 10 children, living with three and his wife who is a nurse. He only had US\$449 on him. His person and carry-on bag

- was searched with no result. However, a checked-in bag ascribed to him per its tag was found unaccompanied on the luggage belt. He denied it was his. In it, were 12 brown packages of a compressed substance, found to be cannabis, with a street value of \$189000ec. By his plea, he has accepted that it was his bag and that he imported the drugs into Antigua.
- 3 In mitigation, he is Jamaican and said to be a mule, whose reward was simply a holiday in Antigua, not having been abroad before. He agreed to carry the drugs, and it was expected he would be met later, though had wanted not to go through with the arrangement, but as his counsel put it, 'could not get out of it'.
 - 4 It is well known that within the Caribbean there is considerable trafficking of cocaine and cannabis. The purpose of this sentence being presented in writing and published is to offer a guideline structure to drugs sentencing¹.
 - 5 The first step will be to assess the starting point of the sentence, by reference to the quantity of the drug and role of the defendant, weighing the aggravating and mitigating factors pertaining to the offence. The second step will be to adjust the sentence weighing the aggravating and mitigating factors pertaining to the defendant. The third step will be to consider the effect on the sentence of any plea. The fourth step will be to adjust the sentence for totality, if arising, (though not here as there is only one count). The fifth step will be to consider ancillary orders. The sixth step will be to show the reasoning for the sentence, which constitutes this written judgment.
 - 6 First step. The quantity of the drug, is 47.25 pounds, which I will refer to as 21.5kg in keeping with international drug-weights references. For cannabis, this is a moderate amount: it is neither small (eg less than 5kg), nor large (eg greater than 50kg). As to whether he was in a leading, supporting or lesser role, I will accept he was in a lesser role, being a mule, supported by the unsophisticated nature of the importation, and his having so little money on him. I find no aggravating nor mitigating factors to the offence: it was what it was, he brought in the drugs, naively in the hope of a holiday, wishing he had not gotten into this. Being a moderate quantity in a lesser role, I assess the starting point at 50% of the maximum sentence, which counsel

¹ This sentence structure anticipates future and further guidance from the recently established Sentencing Advisory Committee, under the leadership of the Chief Justice.

- are agreed on Antigua is a maximum of eight years for importation of a controlled drug, contrary to s4 of the *Misuse of Drugs Act as amended by Act no. 11 of 2014*. It follows therefore that the starting point is 4 years prison.
- 7 Second step. I find no aggravating factors pertaining to the defendant, but do find his good character and family circumstance a mitigating factor, to the extent they reduce the sentence by 12 months, to 3 years.
- 8 Third step. His plea at the earliest opportunity attracts a discount of one-third, so that the sentence is reduced by a further 12 months, to 2 years (being 24 months).
- 9 Fourth step. No issue as to totality arises as there is only one count.
- 10 Fifth step. Concerning ancillary orders, I order the drugs destroyed, and that time served on remand shall count toward the sentence. The defendant has been in custody since 29 September 2016, almost 16 months, which I calculate to be 480 days up to 22 January 2018. The defendant will be eligible for remission of one-third of his sentence for work and good behaviour. This means that I anticipate this defendant will likely be released in the near future, whereupon I order that on that day he is immediately deported back to Jamaica. I wish to add that I expect arrangements for his deportation to begin immediately, calculated against his date of release, so that what does not happen is that he is gate-arrested by immigration to be held in custody for many months awaiting his moment of deportation.
- 11 **Kevin Wallen**, please stand up. For the offence of importing 47.25 pounds of cannabis into Antigua on 29 September 2018, for the reasons given, you are sentenced to two years imprisonment. Time served on remand will count toward your sentence. You will be eligible for remission of up to one-third of your sentence. You are to be deported back to Jamaica on the same day your sentence ends. I order the drugs destroyed. You may go down.

The Hon. Mr. Justice Iain Morley QC

High Court Judge

22 January 2018