

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

SAINT LUCIA

CRIMINAL CASE NO. SLUHRD 2012/0336

BETWEEN:

THE QUEEN

Claimant

AND

HEATH THOMAS

Defendant

Appearances:

**Mr. Jeanot Walters, Counsel for the Defendant
Mr. Leon France, Crown Counsel for the Crown**

.....
2013: May 31
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JUDGMENT ON SENTENCING

- [1]. **CUMBERBATCH, J. :** The defendant was indicted by the Director of Public Prosecutions for the offences of possession of cannabis and possession of cannabis with intent to supply committed on February 12, 2012 contrary to sections 8(2) & (3) of the Drugs (Prevention of Misuse) Act 2001 ('the Act'). At his arraignment, the defendant pleaded guilty on both counts of the indictment. The court ordered a pre-sentence report be produced and set a date for a sentencing hearing.

[2]. **THE FACTS**

On Sunday February 12, 2012 police executed a search warrant at the home of the defendant in Ciceron in the quarter of Castries and found concealed beneath some empty cement bags, four (4) polythene bags containing green plant material which was suspected to be cannabis. An expert analysis later confirmed the plant material to be cannabis bearing a total weight of 72.56 kilograms at an estimated street value of ninety-five thousand, seven hundred and seventy-two dollars and twenty cents (\$95772.20).

[3]. **THE HEARING**

The pre-sentence report revealed that the defendant is well thought of by members of the community in which he resides. Indeed community members expressed surprise upon learning of his involvement in this offence. He is not known to be a drug peddler in his community. He has taken full responsibility for the cannabis found at his home which he said he accepted there at the instance of a friend. I will again refer to the contents of the pre-sentence report later in this judgment.

[4]. Defence counsel, Mr. Walters, considers the following to be the aggravating and mitigating factors herein:

AGGRAVATING FACTORS

1. The seriousness of the offence;
2. The prevalence of drug offences in this country;
3. The large quantity and value of the illegal drugs found at the convicted man's home

MITIGATING FACTORS

1. The convicted man's plea of guilt at the first available opportunity;
2. The convicted man has taken full responsibility of his actions;
3. The convicted man's standing in the community;
4. The possible destabilizing effects his actions and possible incarceration may have on his young family.

[5]. Mr. Walters in his written submissions addressed the court on the classical principles of sentencing and their application to his client and the facts of this case. He contends that the defendant may be deterred from re-offending by means other than a custodial sentence. He alerted the court to the positive sentiments expressed about the defendant by community residents and that he is an ideal candidate for rehabilitation.

[6]. Crown counsel, Mr. France, also provided the court with written submissions in which he stated what he considered to be the aggravating and mitigating factors herein. Mr. France also submitted previous decisions on sentencing in this region for offences of a similar nature.

[7]. **THE LAW**

I will consider and apply the classical principles of sentencing to the facts and circumstances of this case.

[8]. **RETRIBUTION**

The offence of drug trafficking has been described as the evil trade and not surprisingly so when one considers its effects on the youth of this nation. The large quantity of cannabis found in the defendant's possession is calculated to bring untold misery and psychological damage to citizens

of this country. The effects of drug addiction range from the commission of serious offences to obtain money to feed the addiction, to expenditure of large sums of money for law enforcement services and to provide counseling, treatment and rehabilitation of those addicted to the products of this evil trade. The court must show its abhorrence for this activity conducted by those who seek to benefit from the substantial sums of money illegally earned therefrom by the sentence it imposes.

[9]. **DETERRENCE**

This rapidly developing parallel economy fuelled by large sums of money has attracted several persons including the defendant herein who by the glint of cash are blinded to its devastating effects. The defendant is an admitted user of cannabis which if left untreated may result in recidivism. The court must of necessity impose a suitable sentence to deter the defendant and others from succumbing to the lure of financial rewards to becoming part of this evil trade.

[10]. **PREVENTION**

This defendant is a first offender and ordinarily this principle would not be applicable to him. However, the court observes that there is no evidence that this defendant has co-operated with the police notwithstanding his story that the cannabis was delivered by a friend to his home. Indeed the pre-sentence report reveals that the defendant was complicit in maintaining the secrecy of the person who allegedly delivered the large quantity of drugs to his home.

[11]. **REHABILITATION**

There is no evidence before me which indicates that this defendant would not be receptive to rehabilitation. The court is encouraged by the fact that he has an employable skill and that he has a dedicated family support system in place to assist with his re-integration to the society.

[12]. I find the following to be the aggravating and mitigating factors herein.

AGGRAVATING FACTORS

1. The seriousness of the offence and its undesirable impact on the society;
2. The large quantity of cannabis found at the home of the defendant;
3. The prevalence of this offence in this jurisdiction;
4. The defendant's failure to co-operate with the police by providing valuable information about his co-conspirator in this transaction;
5. The defendant's admitted cannabis use;
6. The lack of remorse expressed in the pre-sentence report.

MITIGATING FACTORS

1. The defendant's early guilty plea;
2. The defendant's hitherto clean criminal record.

[13]. **SENTENCE**

I have evaluated the aggravating and mitigating factors herein and find that the aggravating factors significantly outweigh the mitigating ones. I have also considered with concern the defendant's lack of expressed remorse in the pre-sentence report. The defendant in the pre-sentence report though eventually claiming full responsibility for the cannabis found at his home prays that the court

finds favour in his actions that caused him to stand in this matter and that a no-custodial disposal could be reached. I find this to be compelling evidence that the defendant remorse if any is that he's sorry to have been caught and not for what he has done, a most misguided concept. I must also take into consideration the defendant's complicity in protecting the identity of his alleged co-conspirator and his lack of co-operation with the authorities.

- [14]. I am not impressed by the favourable comments made by community residents as I am satisfied that when the defendant agreed to accept delivery of a large quantity of cannabis at his home he did so as a member of a larger conspiracy of which the community members may be oblivious.
- [15]. The governing legislation herein is the Drug (Prevention of Misuse) Act CAP. 3:02 of the Revised Laws of St. Lucia ('the Act'). The Act provides inter alia that persons tried and convicted on indictment for offences of possession of class A drugs, to wit cannabis are liable to imprisonment of seven (7) years or a fine not exceeding two hundred thousand (\$200,000.00) dollars. The Act further provides that a person convicted of possession with intent to supply a Class A drug to wit cannabis is liable to imprisonment of fourteen (14) years and /or a fine not exceeding two hundred thousand (\$200,000.00) dollars.
- [16]. I have taken account of the fact that the quantity and street value of the cannabis found in the defendant's possession are substantial. The mitigating factors which are significantly smaller than the aggravating ones are limited to the defendant's early guilty plea and hitherto clean criminal record. I have also considered the submissions of Mr. Walters for the defendant for a non-custodial sentence.

- [17]. I find that with the prevalence of this offence and the devastation caused by this evil trade a custodial sentence is almost always inevitable. There are no overwhelming mitigating factors to cause the court to conclude otherwise.
- [18]. I find that in the case of possession of cannabis a benchmark of four (4) years imprisonment is appropriate whilst in the case of possession with intent to supply a benchmark of ten (10) years imprisonment is appropriate. I will deduct two (2) years for the defendant's early guilty plea for the offence of possession of cannabis. I will deduct five (5) years for the possession with intent to supply.
- [19]. Accordingly, the defendant is sentenced to a period of two (2) years imprisonment for the offence of possession of cannabis and a period of imprisonment of five (5) years for the offence of possession of cannabis with intent to supply. The sentences shall run concurrently. The defendant shall receive counseling for his drug use. The defendant shall be credited or all time spent on remand whilst awaiting his trial.



FRANCIS M. CUMBERBATCH
HIGH COURT JUDGE

