

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

SAINT LUCIA

CRIMINAL CASE NOS. SLUCRD 2011/1376, 1384

BETWEEN:

THE QUEEN

Claimant

AND

KERAN LOUIS

Defendant

Appearances:

**Mr. Daarsrean Greene, Counsel for the Defendant
Mr. Stephen Brette, Crown Counsel for the Crown**

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2013: February 27
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JUDGMENT ON SENTENCING

- [1]. **CUMBERBATCH, J. :** On Wednesday 27th July, 2011, the defendant was stopped by the police whilst driving along the St. Jude's Highway, Vieux Fort. A search of the vehicle by the police revealed that the defendant was 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 (\$165,440.00) dollars. On 11th April, 2012, 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 contrary to sections 8 (2) and 8 (3) of the Drugs (Prevention of Misuse) Act. On 16th May, 2012, the defendant pleaded guilty as indicted.

[2]. **THE HEARING**

After the defendant was allocuted, the court ordered a pre-sentence report be produced. On its production defense counsel, Mr. Greene, took issue with an opinion expressed by the Probation Officer that the defendant was reluctant to disclose information about his personal life. Counsel submitted that the Probation Officer was known to the defendant as a former police officer hence the reason for his reluctance to speak freely with him and requested another Probation Officer be assigned to prepare the Pre-Sentence Report. The court denied the request having found the reason submitted therefor to be insufficient and informed the defendant that the Probation Officer was no longer a member of the Royal Saint Lucia Police Force and that he should co-operate with him. The court instead ordered that the defendant be interviewed again by the same Probation Officer and an addendum to the Pre-Sentence Report be produced. Counsel sought and was granted leave to cross-examine the Probation Officer and call character witnesses. However, on an adjourned date during the sentencing hearing, counsel declined an opportunity to cross examine the Probation Officer and decided against calling character witnesses.

Both counsel provided the court with written submissions together with authorities relied on therein.

[3]. Mr. Brette for the crown in his written submissions contends the following to be the aggravating and mitigating factors herein:

MITIGATING FACTORS

1. A late plea of guilty – although obviating a need for trial, but serves to lessen any reduction

AGGRAVATING FACTORS

1. The quantity and value of drugs are significant;

- a. 93.08 kilograms of cannabis - \$165,440.00
2. The prevalence of drug offences, and drug trafficking in St. Lucia and the Caribbean;
3. The seriousness of the offence of possession of drugs and drug trafficking;
4. The defendant has previous convictions – as recent as 2011;
5. Previous conviction for a similar offence.

[4]. Crown counsel further submits that the defendant lied to the police when arrested by telling them he was transporting crops for a farmer and didn't know that what he had was cannabis. Counsel went on to submit that the defendant perpetuated this prevarication in his interview with the Probation Officer. He reminded the court that the defendant has three (3) previous convictions one of which is for possession of cannabis and urged the court not to accept expressions of remorse by the defendant which he considered to be insincere. He also referred to the uncomplimentary opinions expressed by members of the community in which the defendant resides about his character and personality.

[5]. Defence counsel, Mr. Greene, in his written submissions conceded that the defendant is now admitting that he knowingly transported cannabis in the vehicle he drove on the day in question. Counsel further submits that his client disagrees with the estimated value of the cannabis found in his possession and opines that its value is around sixty one thousand, four hundred and thirty-two dollars and eighty cents (\$61,432.80).

[6]. Mr. Greene addressed the court on the application of the four classical principles of sentencing namely retribution, deterrence, prevention and rehabilitation to the circumstances of his client's case and considered the following to be the aggravating and mitigating factors herein:

AGGRAVATING FACTORS

1. The offences are very serious in nature. In particular the charge of intent to supply cannabis;
2. Defendant has a previous conviction for possession of cannabis;
3. Prevalence of drug offences in this jurisdiction;
4. The quantity of Cannabis is significant.

MITIGATING FACTORS

1. The defendant was cooperative with the police at the time of his arrest and that he posed no threat to them nor did he attempt to evade arrest;
2. The defendant has pleaded guilty although not timely but still deserving of a significant discount as he obviated the need for a trial;
3. The defendant is a father of six (6) children all minors at present;
4. The defendant is remorseful;
5. The defendant has accepted and taken full responsibility for his action;
6. There is a great prospect of rehabilitation in light of the defendant's antecedents.

[7]. Mr. Greene went on to contend that his client is not a drug dealer and should not be treated as such. He submits that the Probation Officer never sought a response from the defendant about the negative opinions expressed of him by members of the community in which he resides. However, the court must take cognizance of the fact that the defence declined an opportunity to cross examine the Probation Officer.

[8]. **THE LAW**

Counsel on both sides are ad idem that the court should apply the four classical principles of sentencing, namely retribution, deterrence, prevention and rehabilitation. That I consider will be a convenient starting point for consideration of the applicable law herein.

[9]. **RETRIBUTION**

The defendant was found with a significant amount of cannabis in his possession. The evidence discloses that the defendant at that time was driving a rented vehicle, which was the second rented vehicle he drove that day, until he was stopped and searched by the police. I find that the defendant planned and premeditated the transportation of cannabis that day and in furtherance thereof was at pains to conceal his method of transportation.

This court is not unaware of the debilitating effects of this drug on the young persons of this nation as those who unfortunately become addicted to this drug often suffer from mental health issues and eventually resort to criminal activity to feed their unhealthy and unlawful habit. Not surprisingly, the business of trafficking in illegal narcotic drugs has been called the evil trade. Accordingly, the court must impose a suitable sentence to show its abhorrence for this evil trade.

DETERRENCE

Deterrence can be both general and specific in nature. Specific to deter the defendant from the commission of offences of a similar nature and general to deter those who are attracted by the significant sums of money to be made in this evil trade from entering same.

The defendant admits to a previous conviction for possession of cannabis for which he was fined two hundred (\$200.00) dollars by the District Court on 31st August, 2009 however, Mr, Greene submits that involved his client's possession of a rolled cannabis cigarette commonly called a joint.

The court is not however unaware of the substantial financial gains to be made by purveyors of this illegal narcotic drug.

The defendant states he's a fisherman, an honorable trade in which he could make a decent wage. Notwithstanding this however, he planned and premeditated a drug trafficking operation from which he stood to gain approximately one hundred and sixty-five thousand (\$165,000.00) dollars.

I find in this case the court must impose a suitable sentence to deter both the defendant and those aspiring to become involved in this illicit trade.

PREVENTION

Defence counsel contends that this offence is no more than an error of judgment by the defendant. Indeed the defendant echoes the same sentiments to the Probation Officer as evidenced in the pre-sentence report. He has also expressed remorse for what he has done.

The goal here is to protect society from those who persist in high rates of criminality. For some offenders, the sound of the shutting iron cell door may have a deterrent effect. Some however, never learn lessons from their incarcerations and the only way of curbing their criminality is through protracted sentences whose objective is to keep them away from society. Such sentences are more suitable for repeat offenders.

Defence counsel submits that the defendant does not fall into that category for which a protracted sentence is appropriate. The court cannot however ignore the fact the defendant has taken his involvement with cannabis from mere possession of a joint to the next level of possession of some ninety-three (93) kilograms of cannabis with intent to supply.

REHABILITATION

The defendant has expressed remorse for his actions and has albeit at a late stage taken responsibility for the cannabis found in his possession. Defence counsel contends that his client is well behaved at the Bordelais Correctional Facility as a remand prisoner. His conduct at the Bordelais Correctional Facility must be considered however, in light of the fact that whilst there he's in a controlled environment. The court cannot ignore the unchallenged uncomplimentary views expressed in the Pre-Sentence Report by members of the community in which the defendant resides.

- [10]. It is incumbent on the court to ensure that the defendant benefits from relevant rehabilitative programs at Bordelais Correctional Facility to assist him with his reintegration to the society.

The court finds the following to be the aggravating and mitigating factors herein:

AGGRAVATING FACTORS

1. The seriousness of the offences;
2. The offences were planned and premeditated;
3. The prevalence of drug trafficking in this country;
4. The substantial quantity of cannabis and its estimated street value;
5. The defendant's previous conviction for possession of cannabis.

MITIGATING FACTORS

1. The early guilty plea by the defendant;
2. The remorse expressed by the defendant;

[11]. Mr. Greene contends that the defendant co-operated with the police at the time of his arrest and that he posed no threat to them and has urged the court to find that to be a mitigating factor to be considered in his client's favour. There is no evidence that the defendant gave the police information as to the source or recipient of the cannabis found in his possession, nor has he provided any details of his drug trafficking operation. The uncontroverted fact is that he lied to the police at the time of his arrest and detention as to the circumstances of his possession of cannabis. I have in a previous decision stated the law as it relates to a defendant's co-operation with the authorities and it may be worthwhile to repeat it here.

[12]. In *Rv A & B Bingham*, CJ opined thus on what amounted to co-operation to merit a discount in sentence:

"It has been the long-standing practice of the courts to recognize by a further discount of sentence the help given, and expected to be given, to the authorities in the investigation, detection, suppression and prosecution of serious crime:... The extent of the discount will ordinarily depend on the value and quantity. If the information given is unreliable, vague, lacking in practical utility or already known to the authorities, no identifiable discount may be given or, if given, any discount will be minimal. If the information given is accurate, particularized, useful in practice, and hitherto unknown to the authorities, enabling serious criminal activity to be stopped and serious criminals brought to book, the discount may be substantial. Hence little or no credit will be given for the supply of a mass of information which

is worthless or virtually so, but the greater the supply of good quantity information the greater in the ordinary way the discount will be. Where, by supplying valuable information to the authorities, a defendant exposes himself or his family to personal jeopardy, it will ordinarily be recognized in the sentence passed. For all these purposes, account will be taken of help given and reasonably expected to be given in the future. It is important that information be given in the form indicated by the decided cases."

I have considered and balanced the aggravating and mitigating factors herein in light of the circumstances of this case and find that the aggravating factors outweigh the mitigating ones.

[13]. **SENTENCE**

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 cocaine and 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 is liable to imprisonment of fourteen (14) years and /or a fine not exceeding two hundred thousand (\$200,000.00) dollars.

[14]. The defendant is not a first offender and has not co-operated with the police. Apart from a previous conviction for possession of cannabis the defendant was placed on a bond for one (1) year on 11th June 2011 and on 27th July, 2011 in breach of the bond he commits this offence. This offence was planned and premeditated and the defendant took various steps including changing vehicles during the course of the day in an obvious attempt to avoid apprehension by the police. Though the defendant protests to being labelled a drug dealer, I find the steps taken by him to

avoid apprehension and his purported knowledge of the price of cannabis to be compelling evidence of his prior acquaintance and involvement with this evil trade.

- [15]. The use and abuse of this narcotic has put a strain on the scarce financial resources of any small developing nation such as this as provision has to be made for the detection, apprehension and prevention of drug traffickers. The consequences to the nation's youth are devastating as can be seen by the upsurge in criminal offences by persons addicted to drugs, the cost of their rehabilitation and the effects of mental health issues arising from drug use.
- [16]. I find an appropriate starting point for the offence of possession of cannabis to be four (4) years imprisonment from which I will deduct two (2) years for the early guilty plea. The starting point for the offence of possession with intent to supply in the circumstances of this case is eight (8) years imprisonment from which I shall deduct three (3) years for the early guilty plea.
- [17]. Accordingly, the defendant is sentenced to two (2) years imprisonment for possession of cannabis and five (5) years imprisonment for possession of cannabis with intent to supply. The sentences shall run concurrently. He shall be credited for all time spent on remand whilst awaiting his trial.


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FRANCIS M. CUMBERBATCH
HIGH COURT JUDGE