

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

SAINT LUCIA

CRIMINAL CASE NO. SLUCRD 2011/1549, 1549 A

BETWEEN:

THE QUEEN

Claimant

AND

ALBERT ROBIN AKA BRIDGEWATER

Defendant

Appearances:

Mr. L. Mondesir, Counsel for the Defendant

Mr. Stephen Brette, Crown Counsel for the Crown

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2013: February 5
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JUDGMENT ON SENTENCING

- [1]. **CUMBERBATCH, J. :** The defendant was indicted by the Director of Public Prosecutions on the 27th August, 2012 for the offences of possession of a controlled drug, to wit cocaine, and possession of a controlled drug with intent to supply, to wit cocaine contrary to sections 8(2) and 8(3) of the Drug (Prevention of Misuse) Act. At his arraignment, on September 14th 2012, he pleaded guilty as indicted.

[2]. **THE FACTS**

The defendant, a native from St. Maarten, was observed by the police in suspicious circumstances carrying a dark coloured bag which he placed in a white SUV. He was followed by the police after he drove off and the said SUV eventually stopped in Rodney Bay, Gros Islet. Police approached the said vehicle and conducted a search of same. During the search the said coloured bag was examined and it was discovered to have a number of rectangular packages wrapped with clear tape and black plastic. On further examination these packages were discovered to contain cocaine with a total weight of 22.38 kilograms.

[3]. **THE HEARING**

At his sentencing hearing the court benefitted from the pre-sentence report. The court learnt that the defendant was educated up to the tertiary level and at the time of the commission of these offences, was meaningfully employed as an Auditor. He's the holder of an associate degree in accounting from the University of South Florida and an associate degree in graphic designing from the International Fine Arts College. He took full responsibility for his actions and expressed remorse for what he did. I will refer to other parts of the pre-sentence report later in this judgment.

Defence counsel, Mr. Mondesir, has submitted the following to be the mitigating factors herein:

MITIGATING FACTORS

1. The defendant's guilty plea at his arraignment;
2. The remorse expressed by the defendant to the probation officer as stated in his pre-sentence report;
3. The defendant's co-operation with the police;

4. The defendant's hitherto clean criminal record;
5. The time spent on remand.

Counsel considered the nature, quantity and value of the drugs to be the sole aggravation factor.

[4]. In his written submissions, counsel relied on the dictum of Sir Dennis Byron QC in the decision of *Desmond Baptiste v Regina*. He urged the court to apply the principles and guidelines enunciated by Sir Dennis in that decision.

[5]. Mr. Brette for the crown considered the following to be the aggravating factors:

AGGRAVATING FACTORS

1. The quantity and value of the drugs are significant;
 - (a) 22.38 kilograms of cocaine valued at \$595,500.00 EC
2. The prevalence of drug trafficking and drug offences in St. Lucia and the Caribbean;
3. The seriousness of the offences of possession and trafficking of drugs;
4. The previous conviction of the defendant.

[6]. Crown counsel considered the defendant's early guilty plea and the remorse expressed to be the only mitigating factors. He took issue with the mitigating factors submitted by defence counsel aforesaid more particularly the time spent on remand and the defendant's co-operation with the police.

[7]. **THE LAW**

The principles of sentencing to be followed are laid down in the decision of Byron, CJ in the decision of **Desmond Baptiste v R** No. 8 of 2003. In that decision, Sir Dennis Byron, CJ, adopted what are described as the classical principles of sentencing, namely retribution, deterrence,

prevention and rehabilitation enunciated by Lawson, LJ in **R v Sergeant** 60 Cr. App. R. 74 at page 77. I will apply those principles to the case at bar.

RETRIBUTION

The defendant left his homeland ostensibly to visit his children who reside here in St. Lucia. However, prior to his arrival here, he had already agreed to be engaged in the business of drug trafficking for an undisclosed sum of money. The amount of cocaine found in the defendant's possession is quite substantial as is the estimated street value. I find that having regard to his educational background and his current employment, the defendant ought not to have succumbed to the temptation of financial reward to enter in to the evil trade of drug trafficking. Moreover, his expressions of remorse and shame are indicative of the fact that he was well aware of the untold misery caused to societies by the blight of the drug trade. The court must show its abhorrence for this defendant's involvement in this unlawful activity especially moreso in light of the defendant's special characteristics.

DETERRENCE

Deterrence can be both of a general and specific nature. The defendant is not known to be regularly involved in illegal activities more particularly drug trafficking. However, the court is not unaware that large sums of money are spent to entice usually law abiding persons to become involved therein as is the case with this defendant. It is incumbent upon the court therefore, to impose that type of sentence to deter others from being enticed by the lure of filthy lucre, to advance the cause of those involved in this evil trade.

PREVENTION

Though the defendant has admitted to a conviction in another jurisdiction for an unrelated domestic matter, I do not consider this ground to be applicable to him.

REHABILITATION

The defendant has stated that this is his first foray in the arena of drug trafficking. He is possessed of advanced academic qualifications and skills which would enable him to earn a decent living in legitimate business upon his release from Bordelais Correctional Facility. Moreover, there is no evidence before me to suggest that he is not a prime candidate for rehabilitation.

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

AGGRAVATING FACTORS

1. The seriousness of the offence;
2. The offence was planned and premeditated;
3. The large quantity of cocaine found in the defendant's possession;
4. The prevalence of the offence of drug trafficking in this country.

MITIGATING FACTORS

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

[9]. Defence counsel, Mr. Mondesir, has urged the court to find that the defendant co-operated with the police and to treat same as a mitigating factor. Crown counsel has as stated aforesaid taken issue with this submission by Mr. Mondesir and his submission that the time spent on remand to be considered a mitigating factor.

[10]. The facts disclose that the defendant, on being apprehended by the police in Rodney Bay, admitted possession of cocaine in the bag found in his vehicle. There is no evidence before me

that the defendant gave the police information as to the source of the cocaine, its intended recipient or any details of the international drug organization of which he had become a part.

- [11]. 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."

[12]. On this question of co-operation with Law Enforcement the learned authors of Blackstone's 2009 stated thus:

“There are a number of long-standing Court of Appeal authorities which, according to P [2008] 2 Cr App R (S) 16, are still relevant despite the introduction of the statutory scheme. The decision in Sinfield (1981) 3 Cr App R (S) 258 establishes that, where an offender has given significant assistance to the police or prosecuting authorities, especially where it leads to the apprehension of other offenders or the prevention of other offences, he may expect a discount, possibly a substantial one, from his sentence. The extent of the discount varies in accordance with a number of circumstances, and there is no set scale of discount. The level of discount will depend on the quality, quantity, accuracy and timeliness of the information given, the offender's willingness to testify if required, and the extent to which his co-operation with the authorities has put himself or his family at serious risk of reprisal. In general, the greater the nature of the criminality revealed by the offender, the greater the consequent risks to the offender and his family. The discount should be set at a level appropriate to show to offenders that it was worthwhile to provide such assistance (Sivan (1988) 10 Cr App R (S) 282).”

[13]. I therefore find that the defendant, by merely acknowledging the presence of cocaine in his possession, has not so reached the threshold of what can be considered to be co-operation as a mitigating factor deserving of a further reduction in sentence.

[14]. The defendant has been in custody for approximately eighteen (18) months before his arraignment and plea of guilt. The court accepts that defendants, who have been held in

custody for inordinately long periods of time, for reasons not attributable to them prior to the hearing and determination of their cases, are entitled to a reduction in sentence for the breach of their constitutional right to a fair hearing within a reasonable time. I find in the circumstances of this case, taking into account the administrative constraints inherent in an overburdened criminal justice system that the period of time spent on remand was not inordinate.

[15]. I have considered and evaluated the aggravating and mitigating factors herein in light of the circumstances of this case and find that the aggravating factors significantly outweigh the mitigating factors.

[16]. **SENTENCE**

I have taken into account the aggravating and mitigating factors in light of the circumstances of this case. I have also considered the personal characteristics of the defendant and the seriousness of this offence. I find that this offence was planned and premeditated. What is even more egregious is that the defendant, whilst in his home country, cultivated a relationship with purveyors of this deadly and dangerous drug in St. Lucia to the extent that he was trusted to traffic their products here.

[17]. 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 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.

- [18]. It is common ground that the quantity and street value of the cocaine found in the defendant's possession is substantial. The mitigating factors are limited to the defendant's early guilty plea and relatively clean criminal record. I have also taken account of the fact that the defendant resides in another country with his daughter and her mother in what appears to be a common law union and the consequential effects of him being incarcerated in a foreign country. In this regard, I find the dictum of the court in Attuh-Benson to be most instructive:

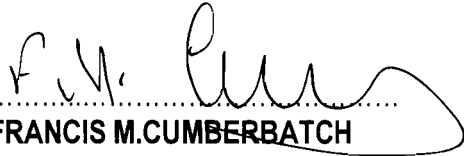
"This Court is acutely conscious of the effect of long sentences upon the families of offenders, be they mothers or fathers. We need no reminding that it is very often the innocent who suffer from crime..."

When a parent, be it mother or father, commits an offence as serious as this, there is, quite simply, no alternative. Drug addiction is a blight on society and causes untold misery throughout the world. The courts of this country and elsewhere have no choice, in our judgment, but to impose substantial sentences upon those who willingly involve themselves in what has rightly been referred to as an evil trade.

- [19]. The maximum sentence for possession of cocaine is seven (7) years imprisonment. I find that a benchmark of four (4) years imprisonment to be appropriate here. I will deduct two (2) years for the early guilty plea and hitherto clean criminal records of the defendant. I also find a benchmark of ten (10) years imprisonment to be appropriate for the offence of possession of cocaine with intent to supply from which I will deduct three (3) years for the reasons aforesaid.

[20]. Accordingly, the defendant is sentenced to two (2) years imprisonment for the offence of possession of cocaine and seven (7) years imprisonment for the offence of possession of cocaine with intent to supply. The sentences shall run concurrently and the defendant shall be credited for all time spent on remand awaiting trial.

[21]. At the termination of his sentence, the defendant shall be held in custody pending the hearing and determination of deportation proceedings in the district court.


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FRANCIS M.CUMBERBATCH
HIGH COURT JUDGE