

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

Claim No. DOMHCR2010/0036

BETWEEN:-

THE STATE

-and-

EMMANUEL AZILLE

Appearances:

Mr Gene Pestaina, Director of Public Prosecutions., with him is Mr Clement Joseph, State Counsel for
The State
Defendant pro se

2011: January 31
February 7

Judgment on Sentencing

[1] **Brooks J.**: *"...all Judges would agree that sentencing is perhaps the most difficult area of their work in the criminal Courts and this difficulty is not made any easier when Judges have a wide discretion available to them."*¹

[2] The Defendant, Emmanuel Azille, has been found guilty under section 7(2) of the Drugs Prevention of Misuse (Amendment) Act, Cap 4:07, as amended by section 16(1)(b) of the Drugs Prevention of Misuse (Amendment) Act no 3 of 1993 of being in possession of Cocaine on the 3rd December 2008 at Portsmouth.

¹ Per Byron CJ in **Desmond Baptiste –v- The Queen** - St Vincent High Court Criminal Appeal number 8 of 2003 page 20 para 26

- [3] He has also been found guilty of being in possession of cocaine with intent to supply under section 7(3) of the said Act, in that he was found to have in his possession 12 grams of cocaine.
- [4] An antecedent report was requested on the Defendant which report stated that he is 53 years old having been born on the 8th December 1957, and at the time of his arrest the Defendant was involved in sculpting and was resident in Pembroke St, Portsmouth. The Defendant in this matter has some 47 previous convictions for all kinds of offences.
- [5] The Drugs Prevention of Misuse (Amendment) Act provides that if a person is found **in possession** of a class A Drug -Cocaine is a class A drug - upon indictable conviction he is liable to a fine of \$100,000 and 3 years imprisonment. The Drugs Prevention of Misuse (Amendment) Act also provides that if a person is found in possession of a Class A Drug (Cocaine) with intent to supply upon indictable conviction he is liable to a fine of EC\$200,000.00 and life in prison.
- [6] There are certain principles of sentencing which must be applied. These principles have evolved out of concern over the disparity in sentencing and concerns whether sentences should reflect the expectations of society in that whether they should be deterrent or purely punitive.
- [7] The goals of sentencing has been adopted and stated by our Court of Appeal in the **Desmond Baptiste –v- The Queen**² as:
- “[a] to punish the offender to an extent and in a manner which is just in all the circumstances; or
 - [b] to deter the offender or other persons from committing offences of the same or a similar character; or
 - [c] to establish conditions within which it is considered by the Court that rehabilitation of the offender may be facilitated; or
 - [d] to manifest a denunciation by the Court of the type of conduct in which the offender is engaged; or

- [e] to protect the community from the offender, or
- [f] a combination of two or more of those purposes.”

[8] The Defendant in his plea in mitigation asked the court to take into consideration the fact that his daughter is getting married shortly and expects him to walk her up the aisle; and that this is the tourist season and it is at this time of the year, as an artist, he is able to sell his art work and to send him to prison would deprive him of his ability to be productive; and that his nephew- a serving member of the Commonwealth of Dominica Police Force, recently died and he wanted to attend the funeral.

Court considerations:

[9] The court has to take into account the serious nature of the offence with which the Defendant has been charged and that is, of being in possession of cocaine which is a class A drug with the intention to distribute. The amount that the Defendant was found with is 12 grams and in fact the court could take two views of this amount: that the Defendant bought that amount for his extended use as in the person who buys a bag of sugar and a bag of rice as opposed to buying 8 pounds of sugar every week or two gallons of rice every week; or that the Defendant had that amount of cocaine in his possession so as to make a quick turn over in sales.

[10] The court also has to take into account the prevalence of the offence that the Defendant has been found guilty of and the message that the court will send out there to all the young men and women who may want to make that kind of choice, they must be deterred.

[11] I also have to take into account the age of this Defendant and the fact that he has had multiple convictions before the court for various offences including possession of Cannabis. I find that at his age, 53 years, the question of rehabilitation of this man does not arise; he has clearly chosen to carve out the kind of life he has over these years.

[12] The court has also sought to look at decisions in our region that deal with matters such as these and the kind of draconian sentencing recommendations set by the provisions of the Drug Prevention Misuse Act in an attempt to do justice and to be fair to all concerned. I am of the view

that the sentence to Life Imprisonment in this matter would not be appropriate; I am however aware that the Defendant must be sentenced to a period of incarceration and bear in mind that the Act also speaks to a fine.

[13] I note that the Defendant has been charged both with Possession of Cocaine and with Possession with intent to Supply and I propose to reprimand and discharge him on the first count of possession and to sentence him on the second count of possession with intent to supply.

[14] I have reviewed and taken into account the cases of **The Queen –v- Malcolm Maduro**³ and noted the reasoning and sentencing of the Learned Judge Harriprashad-Charles and also the Court of Appeal in **Joyce Warner –v- The Queen**⁴.

[15] I also bear in mind the main objectives of sentences as stated above: retribution, deterrence and prevention and the Defendant's many previous convictions. Therefore taking all matters into consideration the Defendant is sentenced as follows:

Count 1: Reprimanded and Discharged

Count 2: Fine: \$105,000.00 to be paid in one year or one year in prison and sentenced to 8 years in prison. The sentences to run concurrently.

Birnie Stephenson-Brooks
High Court Judge

³ British Virgin Islands Case no 09 of 2007

⁴ St Vincent and the Grenadines Criminal Appeal no 11 of 1996