

COURT OF APPEAL SITTING

TERRITORY OF ANGUILLA

25th – 27th October 2017

		<u>JUDGMENTS</u>
Case Name:		William White v The Queen [MNICRAP2014/0001]
Date:		Wednesday, 25th October 2017
Coram:		The Hon. Mr. Mario Michel, Justice of Appeal The Hon. Mde. Gertel Thom, Justice of Appeal The Hon. Mr. John Carrington, QC, Justice of Appeal [Ag.]
Appearances:		
	Appellant:	Mr. Ralph Francis
	Respondent:	Mr. Oris Sullivan
Issues:		Criminal appeal – Appeal against conviction and sentence – Section 28 of the Drugs (Prevention of Misuse) Act – Possession of cannabis with intent to supply – Whether forfeiture of the appellant’s money and motor vehicle was wrong
Result and Reason:		On 19th January 2013, a contingent of police officers approached the appellant whilst he was seated in the driver’s seat of a motor omnibus parked near his home at Flemmings. The officers informed the appellant that they desired to search his vehicle, to which he consented. However, before leaving the vehicle, the appellant took something out of it which

		he held in his left hand and put his left arm at his back. The police wrestled the item from him, which was a plastic bag containing 142 grams of cannabis. The police also found a large amount of money on the appellant's person consisting of different denominations and currencies. The appellant was arrested and taken to a police station. Thereafter, the police obtained a warrant to search the appellant's home. Upon executing the search in the appellant's presence, the police found two large plastic bags together containing 1.84 kilograms of cannabis, as well as a quantity of money in the house. 2 The appellant was indicted for the offences of possession of cannabis for the purpose of drug trafficking, possession with intent to supply and simple possession. On 16th April 2014, the appellant was acquitted by a jury on the charge of possession of cannabis for the purpose of drug trafficking, but was found guilty of the charge of possession with intent to supply. As a result of this conviction, no verdict was rendered on the simple possession charge. The appellant was sentenced to 3 years' imprisonment and a fine of \$15,000 to be paid within 2 years, in default of payment of which he would serve an additional year in prison. The motor omnibus belonging to the appellant and the sums of money found in his possession by the police at the time of his arrest and at his home during the search were ordered to be forfeited to the Government of Montserrat. Being dissatisfied with the decision in the court below, the appellant appealed against his conviction and sentence on the grounds that: the indictment containing three counts is bad for duplicity in that each count alleges the commission of more than one offence; the conviction is unsafe and cannot be supported in law; the forfeiture of the appellant's taxi and money was wrong in law; and the sentence imposed on the appellant was manifestly excessive. However, during the course of his oral arguments, counsel for the appellant abandoned the duplicity and unfair conviction grounds. Held: allowing the appeal in part; dismissing the
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		appeal against conviction and affirming the conviction of the appellant for the offence of possession of cannabis with intent to supply; allowing the appeal against sentence to the extent that the sentence of one year imprisonment imposed in default of payment of a fine of \$15,000.00 shall run concurrently with the three-year prison term; and quashing the forfeiture order, that: 1. It is an established principle of law that sentences will be deemed to run concurrently unless specified to run consecutively. There being no such specification in this case, the substantive and default sentences will run concurrently. 2. In order for an item to be forfeited by virtue of section 28 of the Drugs (Prevention of Misuse) Act, the court has to be satisfied that the item to be forfeited relates to the particular offence of which the offender has been convicted. In the present case, there is no evidence which relates the money and vehicle forfeited to the offence of possession of either the 142 grams of cannabis which the appellant had in his possession when he was arrested or the 1.84 kilograms found at his residence. Section 28(2) of the Drugs (Prevention of Misuse) Act, Cap 4.07, Revised Laws of Montserrat, 2002 applied; R v Morgan [1977] Crim LR 488 applied; R v Ribeyre (1982) 4 Cr App Rep (S) 165 applied; R v Llewellyn (1985) 7 Cr App Rep (S) 225 applied; R v Cox (1986) 8 Cr App Rep (S) 384 applied; R v Simms (1987) Cr App Rep (S) 417 applied; Richardson and another v The Queen [1989] ECSCJ No. 5 distinguished; Constantine and Williams v The State (1999) 57 WIR 361 distinguished.
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3. It may well be that the money which the appellant had with him at the time of his arrest and the money found at his residence in the course of the search were monies derived from previous sales of cannabis by him (even out of the same consignment); and it may well be that his vehicle had at some time been used to transport cannabis; but, in the absence of any evidence relating the money found on the appellant and at his residence, and the vehicle in which he was sitting prior to his arrest, to the specific offence for which he was found guilty, it would not have been established that the money or the vehicle was relating to the offence. Furthermore, before or at the time of making the forfeiture order, the trial judge said nothing to suggest that he had even averted his mind to whether the vehicle was “relating to the offence”, which is a precondition under section 28(2) of the Act to the making of a forfeiture order. Therefore, the forfeiture order made by the trial judge with respect to the appellant’s vehicle and the money found on his person and at his residence on the day of his arrest in January 2013 must be quashed and the money and the vehicle returned to the appellant.

Section 28(2) of the Drugs (Prevention of Misuse) Act, Cap 4.07, Revised Laws of Montserrat, 2002 applied; R v Morgan [1977] Crim LR 488 applied; R v Ribeyre (1982) 4 Cr App Rep (S) 165 applied; R v Llewellyn (1985) 7 Cr App Rep (S) 225 applied; R v Cox (1986) 8 Cr App Rep (S) 384 applied; R v Simms (1987) Cr App R (S) 417 applied; Richardson and another v The Queen [1989] ECSCJ No. 5 distinguished; Constantine and Williams v The State 1999) 57 WIR 361 distinguished.

		<u>HIGH COURT CIVIL APPEALS</u>
Case Name:		Keithley Lake v Richard Vento et al [AXAHCVAP2016/0012]
Date:		Wednesday, 25 th October 2017
Coram:		The Hon. Dame Janice M. Pereira, Chief Justice The Hon. Mr. Mario Michel, Justice of Appeal The Hon. Mde. Gertel Thom, Justice of Appeal
Appearances:		
	Appellant:	Mr. Brian Barnes
	Interested Party:	Mrs. Dia Forrester, Watching Brief
	Respondents:	Mr. Gerhard Wallbank
Issues:		Application for variation of order – Application for stay pending appeal – Application for adjournment of appeal
Type of Oral Result / Order Delivered:		Oral Judgment or Decision
Result:		[Oral Delivery] 1. The submissions of the appellant, Mr. Lake, filed on 23rd October 2017 in support of his appeal filed in December 2016 are hereby deemed to be properly filed. 2. Due to the untimely filing of the appellant's submissions, and the issues of law discretely raised therein, the respondent shall file and

		serve additional submissions by Friday 29th December 2017. 3. The hearing of this appeal is hereby adjourned to the next sitting of the Court of Appeal in the Territory of Anguilla during the week commencing 30th April 2018. 4. The Appellant having occasioned the adjournment by the late filing of submissions shall bear the costs of the respondents thrown away in respect of the hearing of this appeal today. 5. The appellant shall accordingly pay to the respondents by way of wasted costs the sum of US\$3000.00 to be paid by the appellant on or before Thursday, 30th November 2017. 6. In the event that the appellant, Mr. Lake, fails to make payment of the costs hereby ordered the appellant's appeal herein shall stand dismissed. 7. The appellant Mr. Lake shall have carriage of the order.
Reason:		The Court was of the opinion that given the lateness of the submissions and authorities filed by the appellant, the respondent had not had sufficient time to respond. Accordingly, the appeal could not proceed and the appellant was liable for the costs of the respondent as occasioned by the adjournment.
		<u>APPLICATIONS</u>
Case name:		Martin Dinning et al v Satay Limited et al [AXAHCVAP2017/0004]
Date:		Friday, 27 th October 2017
Before:		The Hon. Mr. Davidson K. Baptiste, Justice of Appeal The Hon. Mr. Mario Michel, Justice of Appeal

		The Hon. Mde. Gertel Thom, Justice of Appeal
Appearances:		
	Appellant:	Ms. E. Ann Henry, QC, and with her, Ms. Navine Fleming
	Respondent:	Mr. John Carrington, QC, and with him, Ms. Rayanna Dowden
Issue:		Application to strike counter notice of appeal
Type of Oral Result / Order Delivered:		Oral Judgment or Decision
Result / Order:		[Oral Delivery] 1. The application to strike out the counter notice of appeal filed by appellant on 4th July 2017 is dismissed. 2. Costs to the respondent to be agreed within 21 days failing which they will be assessed by the master.
Reason:		The application concerns a counter notice filed by the respondent on 20th June 2017 and against an order made by Webster JA. The notice of application to strike out the counter notice was filed by the appellant on 4th July 2017. The basis of the application was that the counter notice had to be filed within 14 days of the notice of appeal but was actually filed 35 days after. There was no indication that the respondent obtained leave to extend time. The respondent filed the counter notice on 20th June 2017 together with an amended application for an extension of time. The appellant's permission to strike out the counter notice was not before Webster JA when he considered the amended application of

		the respondent. Section 29(2)(b) of Anguilla Supreme Court Act states that an appeal does not lie against an order granting an extension of time. This Court does not have the jurisdiction to set aside or overrule or interfere with the decision of Webster JA. Accordingly, the Court has no other choice but to dismiss the application and order costs to be paid by the appellant to the respondent.
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