

IN THE CAYMAN ISLANDS COURT OF APPEAL

CRIMINAL APPEAL 22 of 2019

SCA 026/2019

SC#02723/2011



ARON JAMES BUSH

Appellant

- and -

Her Majesty the Queen

Respondent

BEFORE: **The Rt. Hon Sir John Goldring, President**
 The Hon John Martin QC, Justice of Appeal
 The Hon Sir Richard Field, Justice of Appeal

Date of Hearing: 29 April 2020

Appearances: Appellant in Person
 Ms Candia James-Malcolm, Office of the DPP for Respondent

JUDGMENT

Transcript of oral judgment dated 29 April 2020 and Approved for Release 28 May 2020

GOLDRING, President.

1. This is a second appeal. It may only be made on a point of law: see *Court of Appeal Law (2011 Revision)*, section 29. Much of which the applicant seeks to complain raises issues previously rejected by the magistrate, Ms. Gunn, at first instance and by acting Justice Dobbs on his first appeal.

2. On the 15th of May 2019, the applicant was convicted after a trial on four charges of supplying cocaine, contrary to section 31(f) of the *Misuse of Drugs Law (2009 Revision)*. The charges arose out of four transactions. They took place on the 2nd of March, the 12th of March, the 19th of March and the 16th of April 2011. The applicant was subsequently sentenced to five years' imprisonment on each count to run concurrently. There was a deduction for time spent on curfew and when electronically monitored.
3. There are a number of grounds of appeal. Some the Applicant has raised orally before us. Some simply remain in writing. We shall regard all the grounds with equal seriousness. For convenience, we set them out:
 1. Miscarriage of justice.
 2. Misrepresentation by counsel.
 3. Unlawful acts by the Attorney-General or his agents.
 4. Abuse of the court's process.
 5. Breach of the appellant's constitutional rights.
 6. Entrapment.
 7. Affront to justice; the magistrate erred in law.
 8. Biased judgment and perverse verdict.
 9. Procedural impropriety.
 10. Delay.
 11. Breach of disclosure; lack of evidence.

Summary of the Crown's case.

4. The Crown's case rested primarily on the evidence of a former police officer, Detective Constable Rachel Johnson. She gave evidence on the 26th of November 2015 and the 21st of September 2016. She was attached to the Drugs and Serious Crime Force. She was part of a team of undercover officers assigned to an operation called "*Operation Spackle*".

5. On 5th April she was deployed to Coconut Joe's bar on Seven Mile Beach. She said the applicant approached her while she was sitting at the bar and introduced himself. He began speaking with the bartender about smoking weed and having access to stronger stuff. He asked her whether she wanted to smoke weed. She told him she needed something whiter than that. The defendant told her he could hook her up. He asked whether she wanted some now. She told him if he could get it; that she only had \$50. The applicant made a telephone call. He was heard saying that he needed one G. They exchanged telephone numbers. They made arrangements to meet again at Hammerheads Bar. The applicant told her he used to deal in ganja and cocaine. He had access to the best cocaine. He explained the best way to test it.
6. On the 2nd of March 2011 the applicant contacted the officer by telephone when she was at Coconut's bar. He asked her what she wanted. She told him she wanted one G. He handed her a small bag for which she paid him \$50. That was the first charge.
7. There were three further encounters between the two of them. They are reflected by charges two, three and four. Each time he supplied her with a quantity of white powder resembling cocaine in respect of which she paid \$150 on the 12th and 19th of March 2011 and \$50 on the 16th of April 2011. When later examined, the powder was confirmed to have a cocaine base.
8. The Applicant was arrested. When interviewed, he admitted providing the officer with cocaine on more than one occasion. He admitted trying to call her several times. He described how he would obtain the cocaine from his supplier and how he handed it over to the witness. He gave details of the transactions which accorded with the evidence of the officer. He appeared to believe that because he had obtained the cocaine from a third party, he was not supplying it. He said that he had passed the money over to the supplier and was doing the officer a favour.
9. The applicant, as we have indicated, seeks to raise many arguments which raise issues of fact and are not open to him on appeal. Moreover, they are wholly without merit. However, we shall take them shortly, expanding slightly where he has made oral submissions.

10. It is said he should not have been interviewed without a lawyer being present. The magistrate found he agreed to such an interview. She was entitled to. That is an end to that point for the present purposes.
11. He criticises his legal representation. It is a criticism he renewed before us. He blames his attorney, Ms. Fosuhene, for the fact he did not give evidence. It seems to us perfectly clear that he is not somebody unable to make up his own mind. It is inconceivable that she is to be blamed for his decision not to give evidence. No doubt it is something he now regrets.
12. He seeks, in his written submissions, to re-argue the issue of entrapment. That was evidence which the magistrate carefully analysed and rejected it. She was entitled to.
13. He complains about the subsequent loss of the officer's mobile phone and the drugs. He has drawn to our attention the magistrate's observations at paragraph 47 of her judgment, where she said:

"[The officer] was unaware of what became of the police phone and the drug exhibits, as these were matters that she had dedicated to other officers on the team".

14. That was a matter which was considered by the magistrate with great care. No criticism can be made of her analysis of the issues. There is nothing in that ground.
15. He makes an allegation of bias against the magistrate. There is no basis for such an allegation.
16. He submits there was a miscarriage of justice. We can find no basis for so concluding.
17. As acting Mrs. Justice Dobbs put it in paragraph 24 of her judgment dismissing his first appeal:

"The grounds of appeal are in effect a disagreement with the findings and verdict of the magistrate and no more. They disclose no error of law or material error of fact. This appeal against conviction is hereby dismissed".

18. As to sentence, the applicant submits it was manifestly excessive. He submits it was not in accordance with the Chief Justice's Guidelines. We cannot agree. We cannot improve upon the observations of Justice Dobbs, when in paragraphs 25 and 26 of her judgment, the learned justice considered the care with which the magistrate approached sentence. She took a starting point of eight years in the light of the amount of cocaine supplied and the number of deals. Moreover, at the time of the offences, the applicant was on probation and in breach of a suspended sentence. The learned justice said that the magistrate had given credit for the extreme delay in the case coming to court and the significant gap in the Applicant's offending history. In conclusion, Justice Dobbs said this:

"There can be no proper complaint about the sentence. The magistrate went through the process impeccably and reached a sentence which cannot be criticised for being manifestly excessive. This appeal against sentence is also dismissed".

19. We agree. We refuse permission to appeal.

