IN THE GRAND COURT OF THE CAYMAN ISLANDS
HOLDEN AT GEORGE TOWN, GRAND CAYMAN

SCA 0001/2011

BETWEEN:	**MITCHELL COMRIE**	**APPELLANT**
AND:	**THE QUEEN**	**RESPONDENT**

IN OPEN COURT
BEFORE THE HON. ANTHONY SMELLIE, CHIEF JUSTICE
THE 25TH NOVEMBER 2011; 29TH FEBRUARY 2012

Appearances: **Miss. Lucy Organ of Samson & McGrath for Appellant**
Ms. Laura Manson for Crown

RULING

Introduction

1. On 11th January 2011 in the Summary Court the Appellant pleaded guilty to being concerned with the importation of ganja; to importation of ganja and to possession of ganja with intent to supply, all contrary to section 3(1) of the Misuse of Drugs Law (2009 Revision).

2. The Appellant was sentenced to 5 years' imprisonment for each of those offences, with the sentences to run concurrently. He was also sentenced for an additional offence of illegal entry into the Cayman Islands contrary to section 78(1) (A) of the Immigration Law (2007). For that offence he received a sentence of 7 months

imprisonment which was ordered to run concurrently to his sentences for the drugs offences.

3. The Appellant now appeals against the length of sentence of five years imprisonment imposed in respect of the drug offences on the ground that it is manifestly excessive.

Background Facts

4. According to the summary of facts presented by the Crown; on Tuesday the 20th April 2010 at about 12.00am, officers from the Royal Cayman Islands Police Marine and Drugs Task Force were conducting a special operation in East End acting upon intelligence. According to the statement of PC Maxwell, observations were made of the movement and activity of boats on the beach near # 2384 Seaview Road, East End, during the early hours of the 20th April 2010.

5. At approximately 3am that morning, the Appellant was seen walking west on Austin Connolly Road in the company of another. This was a short distance away from the beach. His clothes were wet and sandy. He ran when approached by police officers. At 7am he was spoken to by PC Malcolm on John McLean Drive in the same area of East End. He identified himself as Mitchell Comrie and admitted that he was from Higgins Town, St. Ann, Jamaica and did not live in the Cayman Islands. He told the police officer "I came on a boat last night and the boat turn over with us". He was asked what was on the boat and said "you know what on the boat already man".

6. At 7.30 am John Andrews, a police officer, recovered from the water of East End Sound, ten plastic bags wrapped with yellow tape and containing ganja. From the beach south of #147 b Austin Connolly Drive, a further plastic bag containing ganja was recovered. Six plastic bags were recovered from a small shallow cave close to

where the bag was found on the beach. In total 17 packages were recovered (Exhibit JA 1-17). These packages were analysed and were all found to contain ganja. The total weight of all the packages combined was 395.2lbs., as confirmed by the certificate of analysis presented by the Analyst Mr. Alan Glasgow.

7. At 8.16am on the 20th April 2010, the Appellant was interviewed under caution by PC Malcolm. No lawyer was present and according to the record of the interview none was offered. The Appellant admitted landing illegally in Cayman. He admitted arriving on a boat from Jamaica. He admitted that the vessel was carrying drugs. He stated that he had paid JA$ 20,000 to travel on the boat from Jamaica to Grand Cayman. He stated that the payment was small because "they were there doing their business already". He stated that he saw some of the ganja being loaded on the boat and he loaded some onto the boat. Further, he admitted that there were four people on the boat including him and that about 50lbs of the ganja belonged to him. He stated he intended to sell the ganja once he got to Cayman. On arrival at the reef, East End, the ganja was unloaded from the boat he travelled on from Jamaica, on to a smaller boat and that this boat turned over and he swam for shore. He accepted that he ran from the police when he was seen at 3am but later did not put up any form of resistance because: "You have to just submit to the law when you wrong". The Appellant was interviewed a second time on the 23rd April 2010 at 2.23pm. Again no lawyer was present but he was offered one on this occasion. He again made admissions regarding his own involvement in the offence.

8. I am told that it is confirmed that the Appellant is originally from the parish of St Ann, Jamaica. He was born on 6th May 1968 and is 43 years of age. He has 7

children, 5 of whom are dependent on him financially. He is a carpenter by trade. He cannot read or write. He has no previous convictions in the Cayman Islands and Miss Organ informs the Court without demurrer from the Crown, that the Appellant has no previous convictions in any jurisdiction for drugs offences.

9. In summary as to mitigation, the Appellant made full admissions in interview. He also co-operated with the police and provided as much information about the names and details of other participants as he seemed able to. The Appellant entered guilty pleas.

Sentencing

10. The following submissions on the law were presented by Miss Organ on behalf of the Appellant. I regard them as a helpful summary of the state of the law on sentencing for this kind of offence.

11. The maximum penalty for a first offence of importation or possession with intent to supply ganja is 7 years and for a second offence, 15 years (section 16 of the Misuse of Drugs Law (2009 Revision)).

12. The Chief Justice's Sentencing Guidelines in this jurisdiction contain no tariffs specifically in respect of those offences.

13. The sentencing guideline case of ***R v Aramah*** ***76 App. R. 190*** from the Court of Appeal of England and Wales cannot assist with the appropriate starting point in this jurisdiction, but can assist with the relevant considerations a sentencing judge should consider when sentencing an offender for offences of importation and possession with intent to supply drugs. It was emphasized in ***R v Aramah*** that this was an area of criminality where it was particularly important that offenders should be encouraged to

give information to the police. A confession of guilt, coupled with assistance to the police, can properly be marked by a substantial reduction in what would otherwise be the proper sentence (this was in reference to Class A drugs but Miss. Organ submitted that the dictum also applies to other illegal drugs). It was also said that the sentence for the supply of heroine and morphine "will largely depend on the degree of involvement, the amount of trafficking and the value of the drug being handled'. Regarding sentencing for the importation of cannabis, it was said that the lowest range of sentence should be reserved for those who entered guilty pleas and where there has been but little profit to the defendant. Similarly, when looking at the supply of cannabis, the court observed that the level of sentence would depend on the scale of the operation and the individual's role in the operation.

14. The Court observed that there will be few, if any, cases where anything other than an immediate custodial sentence is proper for offences involving large quantities (multiple kilos) of cannabis. Medium quantities will attract sentences of three to six years imprisonment, depending upon the actual amount involved and the other circumstances of the case. Large scale or wholesale importation of massive quantities will justify sentences in the region of ten years for those playing anything more than a subordinate role.

15. As already mentioned, the English tariffs may be inapposite, set as they are in the context of legislation prescribing a maximum penalty of fourteen years imprisonment for a first offence of importation of a Class B Drug like cannabis. (Misuse of Drugs Act 1971 S.3 as read with the Customs and Excise Management Act 1979 S.50 (4)), that compares to a maximum of seven years for a first offence under the Misuse of

Drugs Law here. So, while the relevant factors to be taken into account may be similar, our starting points in relation to the tariff would be insignificantly lower.

16. The quantity of drug is often the most important factor in sentencing for drug offences. It was held in ***Guardiola v. R (Grand Ct.), 1994–95 CILR N–20***, that the length of sentence is to be measured by the quantity of drugs involved. It was further held that a sentence of at least two years' immediate imprisonment for importation of approximately 100 lbs. of ganja was appropriate.

17. ***In R v Williams (Grand Ct), February 10th, 1995***, it was held that possession of large quantities of ganja with intent to supply usually attracts a custodial sentence of between 18 months and 2 years, although immediate imprisonment should not be a hard and fast rule. Presumably this dictum contemplated a first offence of the kind.

18. In the more recent and therefore more relevant case of Hylton v. R. (Grand Ct.), 2000 CILR 257; a sentence of 3½ years' imprisonment was found to be appropriate for importation of 180 lbs. of ganja on a guilty plea. For a first offence, the Court also observed that discounts should not be awarded for guilty pleas in circumstances where an offender had been caught red-handed, had no defence and therefore had little option but to admit to the offence. This may seem a sensible view and one which may be adopted but it must be ameliorated. A discount in exchange for a guilty plea in such cases must nonetheless be allowed to take account of other factors, as recently explained by the Cayman Islands Court of Appeal in ***R v O'Neil Robinson (Crim. Appeal 37 of 2010***) following ***R v Last and others [2005] EWCA Crim. 106*** in these terms at paragraph 13:

"A reduction in sentence is appropriate because a guilty plea avoids the need for a trial (thus enabling other cases to be disposed of more expeditiously), shortens the gap between charge and sentence, saves considerable cost, and, in the case of an early plea, saves victims and witnesses from the concern about having to give evidence.

It is a separate issue from aggravation and mitigation generally.

The sentencer should address the issue of remorse, together with any other mitigating features present, such as admissions to the police in interview, separately, when deciding the most appropriate length of sentence before calculating the reduction for the guilty plea."

19. Expressed in practical terms therefore, it would appear that a discount (albeit one less than the usual one-third) may be appropriate when a guilty plea arises in the kind of case where it is obvious that a defendant would have little hope of resisting a conviction and where therefore, his plea may not be prompted by a genuine sense of remorse or contrition. Treating the present as such as case, the Appellant would be entitled to expect at least the smaller discount of between fifteen – twenty percent from the tariff which would be applicable when guilt is proven only after a trial.

20. In ***O'Neil Robinson*** *case*, although dealing with the very different offence of attempted murder, the Court of Appeal found that the sentencing Judge should have given credit for a guilty plea and as he did not explicitly do so in his sentencing remarks, the sentence would have to be altered to give credit for the plea otherwise:

"...the defendant would be left with a legitimate sense of grievance because he would not know to what extent (if at all) the judge gave credit for his guilty plea" (paragraph 17)

21. It is difficult to identify more recent case authority for cases involving the importation of marijuana given that most such cases are dealt with in the summary court where there is no record of sentencing compiled. However, it may be thought that an appropriate sentence for this type of incident is exemplified by the sentences imposed by Magistrate Grace Donalds in the relatively recent matter of ***R v Barnes, Heron, Reid and Roxburgh*** ***(5th February 2010)*** which was reported in the *Caymanian Compass.* In this case Barnes received a sentence of four years imprisonment for the importation of 632 lbs of ganja. This was following a guilty plea. Barnes was said by the Crown to be the apparent ring leader of the enterprise and had previous convictions. His previous conviction was for the importation of ganja and resulted in the activation of a suspended sentence of 18 months which had been imposed for that offence and increased the maximum sentence for the new offence to 15 years' imprisonment. Thus, his total sentence was one of five years and six months. Reid and Roxburgh (both Jamaican nationals) who were said to be minor players and only acted in a minimal capacity and pleaded guilty at an early opportunity; were sentenced to 12 months' imprisonment for the charge of importation and one month concurrently for illegal landing in Cayman. Heron, who was in a similar position to Reid and Roxburgh but for whom it was his second offence in the Cayman Islands, received a sentence of two and a half years' imprisonment and one month concurrently for illegal landing.

22. In ***R v Sheena Minzette*** **CICA 2nd September 2009,** the offender was sentenced to four years' imprisonment for the importation of 964 lbs of ganja after a trial. She appealed to the Court of Appeal and her appeal was denied. The Court of Appeal found that in light of her "not guilty" plea and previous conviction, the appropriate sentence was one of five- six years (since the maximum sentence was fifteen years because of her previous conviction) but did not interfere with the sentence of four years.

Conclusion

23. The maximum sentence in this case as prescribed by law is 7 years' imprisonment.

24. It is submitted by Ms. Organ that in light of the total amount of ganja involved in this case, the Appellant's co-operation with the police and admissions in interview, guilty plea and lack of previous convictions; the sentence of 5 years imprisonment is manifestly excessive. The Appellant received a sentence which the Court of Appeal said would have been appropriate for someone who imported three times as much ganja, insisted upon a trial and had previous convictions (and therefore was liable to a maximum sentence of 15 years' imprisonment) (***R v Minzette***)

25. In addition, the appellant has only ever accepted that 50lb of the total quantity recovered was possessed by him. This was stated in interview and seemingly cannot be disproved by the Crown and as Miss Organ also submitted, was a basis of his plea was accepted by the Crown.

26. The starting point used by the Magistrate in sentencing the appellant was, in my view manifestly excessive. An appropriate starting point in this case would have been somewhere in the region of three to four years' imprisonment given the Appellant's

secondary role, lack of previous convictions and the amount of ganja acknowledged by him.

27. The learned Magistrate did not make reference to the giving of any credit for the Appellant's guilty plea in her sentencing remarks and should have done so (***R v O'Neil Robinson***). In light of his admissions and co-operation; the Appellant would be entitled to a significant discount. It is accepted by the Crown that the Appellant should have been given credit for his guilty plea but no indication to that effect is given by the Magistrate.

28. I find that the appropriate sentence should have been three years' imprisonment when credit is given for the plea of guilty and order that sentence to be substituted.

Hon. Anthony Smellie
Chief Justice

29th February 2012