IN THE GRAND COURT OF THE CAYMAN ISLANDS
HOLDEN AT GEORGE TOWN, GRAND CAYMAN
S.C.A. #9/97

Crim

4/2/97

REGINA v RICHARD MILTON STEINER

405/97 IMPORTATION OF COCAINE

406/97 IMPORTATION OF A UTENSIL USED IN THE CONSUMPTION OF A CONTROLLED DRUG

407/97 IMPORTATION OF A UTENSIL IN THE CONSUMPTION OF A CONTROLLED DRUG

APPEARANCES : S. Bonnar for Crown/Appellant
J. Furniss for Respondent

4th February, 1997

ORAL REASONS FOR DECISION

[The admitted facts upon which the respondent was sentenced are set forth in the Summary Court record.]

After submissions of counsel, Murphy J. gave the following oral reasons:

"I have considered carefully the submissions of counsel and all authorities to which I was referred, and those which resulted from my own research.

Without for a moment downplaying the seriousness of drug trafficking in and into this jurisdiction, I say at once that I accept that on the continuum of seriousness these offences rank at the lower end of their scale. I say this taking into account, in particular, the relatively small quantity (I accept for purposes of this appeal the quantity upon which the learned Magistrate based his sentences), and the facts that there was no commercial element or dealing and that the intention was "social use" (though I would not want that term to connote any element of social acceptance).

I also make it clear that I accept and take into account, as did the learned Magistrate, the substantial range of mitigating factors, among them the respondent's complete cooperation with the Cayman Islands authorities, the immediate guilty plea, and his apparently unreserved contrition. I also consider to a somewhat lesser extent his personal hardship.

For these reasons, the sentence that I decide is appropriate for these offences in the circumstances of this case must be regarded as being at the very low end of the sentencing scale for the importation of cocaine and related offences.

The English case of R v. Spinks (digested in [1987] Criminal Law Review 786) was cited to me. That case involved the offence of being concerned in the supply of heroine. There a small quantity of heroine was shared by the accused with

his friend for immediate consumption. It appears that the appellate court did not accept the submission that the sentence should have been on the same level as for simple possession: "this was an act of supply, albeit on a very limited scale, and the sentence should have been slightly more than would have been appropriate for simple possession". Startlingly, nonetheless, a sentence of twelve months was reduced to time served, approximately 3 months. I regard this as an isolated case. I observe that it did not involve importation. I also have grave doubts, on the basis of Cayman Islands authority, that such a sentence would properly be meted out in similar circumstances in the Cayman Islands for the offence of possession of cocaine with intent to supply. In fact, I have no doubt that in similar circumstances a proper sentence would be a significantly longer term of incarceration.

I must not and do not lose sight of the fact that these charges involve the importation of a hard drug.

I accept the Crown's submission that importation may be regarded as even more serious in nature than possession with intent to supply, all other factors such as quantity, commercial intent, etc. being equal. That is by the very nature of the offence. The act of importation adds to the illicit drugs already in this jurisdiction.

On the basis of Guardiola v R. noted in[1994-1995] CILR N-20 and related authority, I accept that the learned Magistrate made an error of principle in wholly suspending these sentences where a foreign resident accused was involved. That was properly conceded by the respondent's counsel.

Apart from that element, I make it clear that the mere fact that the respondent is a foreign resident can have no bearing whatsoever on my review of these sentences. I do not accept the respondent's counsel's submissions that that factor should be taken into account in mitigation.

As to the sentences themselves, accepting the circumstances of the commission of the offences and the substantial mitigating factors, in my view the low point of the range for importation of cocaine must be higher than 12 months. In the context of a conviction, in any set of circumstances, for importation of cocaine, a sentence of 12 months fails to take adequate account of the elements of deterrence and punishment. In this regard I am of opinion that the learned Magistrate imposed a sentence that was manifestly lenient and inadequate.

Accordingly, the Crown's appeal against sentence is allowed by substitution of the following:

In respect of charge 405/97, a sentence of 18 months immediate imprisonment and a fine of a $1,000 or 4 months in default.

In respect of charge 406/97, a sentence of 6 months immediate imprisonment and a fine of $250 or 1 month in default.

In respect of charge 407/97, a sentence of 6 months immediate imprisonment and a fine of $250 or 1 month in default.

Sentences to run concurrently.

I choose to make no comment on the recommendation of deportation."

J.D. Murphy
Judge of the Grand Court