



1 **IN THE GRAND COURT OF THE CAYMAN ISLANDS**
2 **CRIMINAL DIVISION**
3

4 **SCA NO: 37 and 38 of 2023**
5
6
7

8 **RAVEN SIMONE ABEEKU BROWN**

9 **AND**

10 **NICOLE AUSTRALIA BRYANT**
11

12 **V.**
13

14 **R**
15
16
17

18 **Appearances:** **Mr. Greg Walcolm for the Appellant Raven Simone Abeeku Brown**
19 **Ms. Stacy-Ann Kelly for the Appellant Nicole Australia Bryant**
20

21 **Mr. Alexander Barbour, Crown Counsel, Office of the Director of Public**
22 **Prosecutions for the Respondent**
23
24

25 **Before:** **The Hon. Justice Cheryll Richards KC**
26
27

28 **Submissions Heard:** **22nd April 2024, 13th May 2024 and 22nd August 2024**
29

30 **Judgment:** **29th August 2024**
31
32
33

34 ***Criminal Law – Section 181 of the Criminal Procedure Code (2021 Revision), Appeal Against Decisions***
35 ***of the Summary Court on Sentence, Being Concerned with the Importation of Mushrooms contrary to***
36 ***section 3 (1)(a) of the Misuse of Drugs Act (2017 Revision), Being Concerned with the Importation of Ganja***
37 ***contrary to section 3 (1)(a) of the Misuse of Drugs Act (2017 Revision). United Kingdom Sentencing***
38 ***Council Guidelines, Principles on Appeal.***
39



JUDGMENT

- 1
2
3
4 1. This is an appeal against sentences of imprisonment imposed by the Summary Court following
5 guilty pleas to the offences of Being Concerned with the Importation of Ganja contrary to section
6 3 (1) (a) of the *Misuse of Drugs Act* (2017 Revision) and Being Concerned with the Importation
7 of Mushrooms contrary to section 3 (1) (a) of the *Misuse of Drugs Act* (2017 Revision).
8
- 9 2. The single ground of appeal of the Appellants Raven Simone Abeeku Brown and Nicole Australia
10 Bryant is that the sentences imposed on each of them of 12 months and 6 years respectively are
11 manifestly excessive.
12

13 POWERS OF THE COURT ON APPEAL

- 14
15 3. The Court's powers on an appeal from a decision of the Summary Court are set out in s.181 of
16 the *Criminal Procedure Code* (2021 Revision).
17

18 *“181. The court may adjourn the hearing of the appeal, and may, upon the hearing*
19 *thereof confirm, reverse, vary or modify the decision of the Summary Court, including the*
20 *passing of some other sentence (whether more or less severe) or remit the matter to the*
21 *Summary Court for retrial, or may make such other order in the matter as it may think just,*
22 *and may, by such order, exercise any power which the Summary Court might have*
23 *exercised, and such order shall have the same effect and may be enforced in the same*
24 *manner as if it had been made by the Summary Court: Provided that the court may,*
25 *notwithstanding that it is of the opinion that the point raised in the appeal might be decided*
26 *in favour of the appellant, dismiss the appeal if the court considers that no substantial*
27 *miscarriage of justice has actually occurred.”*
28

29 THE CHRONOLOGY

- 30
31 4. On the 30th May 2023, the Appellants first appeared before the Summary Court jointly charged
32 with six offences involving controlled drugs. On the 6th June 2023, on their second appearance

1 following service of the case papers on them, the Appellants entered pleas of guilty to two of the
2 charges as follows:

3
4 **Charge 00792/2023 - (1)** Being Concerned with the Importation of Ganja contrary to
5 section 3 (1) (a) of the *Misuse of Drugs Act* (2017 Revision). The particulars are that they
6 on the 27th day of May 2023 at the Owen Roberts International Airport, George Town,
7 Grand Cayman, Cayman Islands, without lawful excuse or without being authorised in that
8 behalf, were concerned in the importation of a controlled drug, namely ganja weighing
9 3,097.16g (6lbs 13.24 oz).

10
11 **Charge 00792/2023 - (2)** - Being Concerned with the Importation of Mushrooms contrary
12 to section 3 (1) (a) of the *Misuse of Drugs Act* (2017 Revision). The particulars are that
13 they on the 27th day of May 2023 at the Owen Roberts International Airport, George Town,
14 Grand Cayman, Cayman Islands, without lawful excuse or without being authorised in that
15 behalf, were concerned in the importation of a controlled drug, namely mushrooms
16 weighing 466.35g (1.028 pounds).

- 17
18 5. Charges 00792/2023 - (3) to (6) were not put and were later withdrawn.
19
20 6. On the 2nd August 2023, following the production of Social Inquiry Reports, and a sentence
21 hearing, each Appellant was sentenced to 12 months imprisonment on **Charge 00792/ 2023 - (1)**
22 and 6 years imprisonment on **Charge 00792/2023 - (2)** to run concurrently.
23
24 7. By Notice of Appeal filed on the said day, the Appellants appeal their sentences on the stated
25 ground.

26
27 **THE FACTS**

- 28
29 8. The facts may be briefly summarised as follows. On the 27th May 2023, the defendants traveled
30 to the Cayman Islands from Miami, Florida on board a Cayman Airways flight. On arrival their
31 suitcases were searched by Customs Officers. In Ms. Bryant's bag there were four vacuum sealed
32 packages. Three contained Ganja of a total weight of 1,336.52 grams (2 pounds 15.14 ounces).



1 The fourth contained several pieces of dried mushrooms which when tested by the Forensic
2 Scientist contained the controlled drug psilocybin of a weight of 466.35 grams (1 pound and 028
3 ounces).

4
5 9. In Ms. Browns' bag there were six vacuum sealed plastic bags all with ganja of a total weight of
6 1,760.64 grams (3 pounds 14.10 ounces).

7
8 10. The street value for the ganja is \$30.00 to \$50.00 per gram or a total value of \$110,000.00 and
9 for the mushrooms \$30.00 per gram or a total value of \$13,600.00.

10
11 11. Both Appellants said that the trip had been gifted to them by a friend called Trey. Trey is someone
12 whom Ms. Brown had known for about a year. It was a trip for Ms. Brown's' birthday. Trey had
13 offered to pack their suitcases for them. He told them that someone would meet them at Customs
14 in Grand Cayman and gave them other instructions. Trey collected Ms. Brown's suitcase from
15 her in order to "pack things for his people". Ms. Bryant's suitcase was provided by Trey and he
16 packed it for her with clothes. On receipt of the suitcases from Trey neither of them checked the
17 contents. Each suitcase had clothing belonging to the other.

18
19 **THE CHIEF MAGISTRATE'S CONCLUSIONS ON SENTENCE**



20
21 12. Defence Counsel in submissions in mitigation before the learned Chief Magistrate ("the
22 Magistrate") stressed the naivete of the Appellants. The Magistrate did not accept this submission
23 and referred to the age of both Appellants, 29 years old, before concluding that on the material
24 before the Court they are mature and sophisticated young ladies.

25
26 13. In sentencing the Magistrate considered whether any real assistance had been provided to the
27 authorities and concluded that the information about Trey was vague and that their offer to go to
28 the hotel to see who would turn up was not real assistance.

29
30 14. The Magistrate noted the submission of the prosecution that under the *United Kingdom*
31 *Sentencing Council Guidelines* for the Fraudulent Evasion of a Prohibition by bringing into or
32 taking out of the UK a controlled drug, the offending fell within a lesser role and in Category 3

1 because of the quantity. The Magistrate stated that there is a widespread problem of drug abuse
2 in the Cayman Islands and that it is no longer the case as in 2002 that cocaine was the concern as
3 the hard drug. The Magistrate noted that there is a trend in sophisticated party drugs and even
4 lethal drugs being brought into the Islands. This is of grave concern and the harm is personal as
5 well as societal.



6
7 15. The Magistrate said this:

8
9 “11. *Magic mushrooms is viewed in the same category of drugs and harm as cocaine.*
10 *In R v Martinez (1984) 6 Cr Appeal R (s) 364 – it was held that no distinction*
11 *should be drawn between different classes of Class A drugs. Accordingly, going*
12 *back to basics and what remains the guiding principles in our Courts, reference is*
13 *made to The Cayman Islands Sentencing Guidelines (“Statement on tariffs and*
14 *guidelines for sentencing certain offences” 16 January 2002) ...”*

15
16 16. Having concluded on the basis of ***R. v. Wilson Humberto Martinez***¹ that there was no distinction
17 between different classes of Class A drugs, the next conclusion of the Magistrate was that the
18 ***Statement on Tariffs and Guidelines for Sentencing Certain Offences 2002*** was applicable.

19
20 17. The Magistrate considered the roles of the Appellants and concluded that they were knowing
21 participants in the enterprise who played a lesser role. The Magistrate stated: -

22
23 “13. *I do not accept naivete by the defendants. They are mature and sophisticated young*
24 *ladies. They hold down their jobs and their lives. Everything points to knowledge*
25 *of what they were engaged in, or at least, from all the evidence, there is an*
26 *irresistible inference of knowledge. I accept that they are both “mules”. I accept*
27 *also that their role is lesser in being limited in their knowledge of the extent of the*
28 *full operations. On what is before the Court, their financial reward would be an*
29 *all-expense paid trip to the Cayman Islands.”*

¹ [1984] 6 Cr. Appeal R (S) 364

1 18. The Magistrate considered that the applicable tariff from the **2002 Guidelines** was 15 years and
2 applied a starting point of 10 years. This was reduced to 9 years due to personal mitigation and
3 by one third, by reason of the guilty plea for a total sentence of 6 years imprisonment.
4

5 19. For the offence of Being Concerned in the Importation of Ganja, the Magistrate applied a starting
6 point of 18 months and discounted this to reach a final sentence of 12 months imprisonment.
7

8 **STATEMENT ON TARIFFS AND GUIDELINES**



9
10 20. In the 2002 **Statement on Tariffs and Guidelines**, the Chief Justice said this: -
11

12 *“As regards DRUG OFFENCES under the Misuse of Drugs Law and in particular those*
13 *related to the widespread problem with cocaine abuse in these Islands, the following tariffs*
14 *are now confirmed: ...*

15
16 *At the other end of the scale of gravity, that is to say, trafficking in hard drugs in any*
17 *quantity as defined in the Misuse of Drugs Law, the maximum penalty prescribed for*
18 *offences involving 2 ounces or more is 20 years for the first offence and 30 years for a*
19 *second or subsequent offence with an unlimited fine in each case. That of course is the*
20 *maximum – the sentence for the worse possible offence by the worse possible offender.*

21
22 *The tariff for a first such offence, involving less than 2 ounces of cocaine or less than 4*
23 *grams of cocaine base without mitigating circumstances, will be 8 years.*

24
25 *For offences involving 2 ounces or more or 4 grams or more of cocaine base without*
26 *mitigating circumstances the tariff will be 10 to 12 years.*

27
28 *15 years or more will be imposed where such an offence involves substantial importation*
29 *or dealing in anyway either in powder or crack cocaine. We would define ‘substantial*
30 *importation or dealing’ as any transaction involving several ounces or kilo quantities.*
31

1 *The Courts recognise that many of the people caught are couriers or intermediaries and*
2 *that the worse offenders in the chain of distribution often remain concealed. Therefore*
3 *there will be a substantial discount on sentence for those offenders who are prepared to*
4 *co-operate with the police in their enquiries.”*



5
6 **THE PRIMARY ISSUE ON APPEAL**

- 7
- 8 21. The submissions on this appeal have taken place over multiple hearings, with the Appellants after
9 initial submissions seeking leave to admit fresh evidence. Time was allowed for an expert witness
10 to be identified and evidence obtained. Time was also allowed to the Respondent to make any
11 further submissions or produce any new evidence should they so wish.
- 12
- 13 22. The essential point which emerged during this appeal may be summarised in this way. The
14 **Guidelines** in 2002 while having a broad frame of reference with respect to Category A drugs
15 focused on cocaine and drugs of some similarity.
- 16
- 17 23. In the Cayman Islands, the practice has been to refer to the **United Kingdom Sentencing Council**
18 **Guidelines** for assistance in the absence of specific local guidelines.
- 19
- 20 24. There is a new and emerging trend in the Cayman Islands with respect to synthetic and designer
21 drugs. Magic mushrooms are among this trend. Some mushrooms when processed will contain
22 the ingredient psilocybin which is a Class A drug.
- 23
- 24 25. The English Court of Appeal cases of **R v Martinez** in 1984 and **R v Stephen Francis Thomas**²
25 in 2004 both say that there should be no distinction among Class A drugs in terms of sentence.
26 However, a different approach appears to have been subsequently recommended in 2021 by the
27 **United Kingdom Sentencing Council Guidelines**. This recommends that where the drug is not
28 listed in the table provided in the **Guidelines**, “*sentencers should expect to be provided with*
29 *expert evidence to assist in determining the potency of the particular drug and in equating the*
30 *quantities in the case with the quantities set out in the guidelines in terms of the harm caused.”*

² [2005] 2 Cr. App R (S) 10, [2004] EWCA Crim 3092

1 26. In *R v Martinez* Counsel on behalf of the appellant sought to draw a distinction between heroin
2 and cocaine for the purpose of sentencing. The Court held that no distinction should be drawn
3 among Class A Drugs.

4
5 27. In *R v Stephen Francis Thomas*, the English Court of Appeal upheld a sentence of 2 years
6 imprisonment for possession of magic mushrooms with intent to supply. The appellant had been
7 found at a festival with 73 self sealing bags of magic mushrooms in dried form which contained
8 psilocybin, a Class A Drug.

9
10 28. The Court held that: -



11
12 *“The Court was not helped by way of decided cases as to how the sentence should be*
13 *approached. If the appellant had had the same number of wraps of heroin or cocaine, the*
14 *sentence would have been between four and six years' imprisonment. The Court was in no*
15 *position to determine the public's attitude to this particular Class A drug. Cases of this*
16 *kind rarely came before the courts. Possession of fresh mushrooms was not illegal unless*
17 *the material had been dried or prepared. The appellant admitted that he had picked and*
18 *dried the mushrooms himself. Magic mushrooms had a powerful hallucinogenic effect*
19 *similar to that of LSD. They could be lethal. Once a “trip” had started it could not be*
20 *controlled. The Court had said in Martinez (1984) 6 Cr.App.R.(S.) 364 that no distinction*
21 *should be drawn by the courts between different Class A drugs. The Court rejected the*
22 *submissions that the custodial sentence was wrong in principle and that the drug should*
23 *be treated differently from other Class A drugs. In the Court's view, the sentence was a*
24 *proper one and the appeal would be dismissed.”*

25
26 29. It was argued on behalf of the appellant inter alia that the judge had erred in principle by equating
27 magic mushrooms with other Class A drugs in terms of their seriousness for the purpose of
28 sentencing. The Court said: -

29
30 *“Information about magic mushrooms indicates that they have a powerful hallucinogenic*
31 *effect similar to that of LSD although the ‘trip’ is often milder and shorter. They alter the*
32 *way the mind perceives things. Depending on the amount of mushrooms taken they can be*

1 *lethal. Like LSD once a ‘trip’ has started it cannot be controlled or stopped and a bad trip*
2 *can be unpredictable.*

3
4 *Even at low doses, a threshold dose being about 2 milligrams of the dried substance,*
5 *hallucinatory effects can occur. The effect of the drugs as described by the defendant in*
6 *interview was to make him ‘high’. He indicated to the psychiatrist that they put him*
7 *somewhere else and that he enjoined the distorted reality which accompanies intoxication*
8 *from the mushrooms. Whilst it is advanced in front of us that this Class A drug can be*
9 *distinguished in many ways, namely the lack of prevalence, the lack of statistics showing*
10 *that (a) it is addictive and (b) that deaths have resulted from the use of the drugs,*
11 *nevertheless, Parliament has seen fit to classify this substance as a Class A drug. We*
12 *remind ourselves that it was said in R v Martinez (1984) 6 Cr App R(S) 364, that no*
13 *distinction should be drawn by the courts between different Class A drugs.”*

- 14
15 30. The *United Kingdom Sentencing Council Guidelines* effective from 1st April 2021 appears to
16 take a different approach and states as follows: -

17
18 **“Harm**

19 In assessing harm, quantity is determined by the weight of the product.



20
21 **Category of harm**

22
23 Indicative quantities of some common drugs, upon which the starting point is to be based, are
24 given in the table below. **Where a drug (such as fentanyl or its agonists) is not listed in the**
25 **table below, sentencers should expect to be provided with expert evidence to assist in**
26 **determining the potency of the particular drug and in equating the quantity in the case with**
27 **the quantities set out in the guidelines in terms of the harm caused.** There will often be no
28 precise calculation possible, but courts are reminded that in cases of particularly potent drugs,
29 even very small quantities may be held to be equivalent to large quantities of the drugs listed.



1 **Category 1**

- 2 • Heroin, cocaine – 5kg
- 3 • Ecstasy – 7,000 tablets*
- 4 • MDMA – 5kg
- 5 • LSD – 250,000 squares
- 6 • Amphetamine – 20kg
- 7 • Cannabis – 200kg
- 8 • Ketamine – 5kg
- 9 • Synthetic cannabinoid receptor agonists (for example ‘spice’) –very large quantity indicative
- 10 of an industrial scale operation

11

12 **Category 2**

- 13 • Heroin, cocaine – 1kg
- 14 • Ecstasy – 1,300 tablets*
- 15 • MDMA – 1kg
- 16 • LSD – 25,000 squares
- 17 • Amphetamine – 4kg
- 18 • Cannabis – 40kg
- 19 • Ketamine – 1kg
- 20 • Synthetic cannabinoid receptor agonists (for example ‘spice’) – large quantity indicative of a
- 21 commercial operation

22

23 **Category 3**

- 24 • Heroin, cocaine – 150g
- 25 • Ecstasy –200 tablets*
- 26 • MDMA – 150g
- 27 • LSD – 2,500 squares
- 28 • Amphetamine – 750g
- 29 • Cannabis – 6kg
- 30 • Ketamine – 150g
- 31 • Synthetic cannabinoid receptor agonists (for example ‘spice’) – smaller quantity between
- 32 categories 2 and 4



1 **Category 4**

- 2 • Heroin, cocaine – 5g
- 3 • Ecstasy – 13 tablets*
- 4 • MDMA – 5g
- 5 • LSD – 170 squares
- 6 • Amphetamine – 20g
- 7 • Cannabis – 100g
- 8 • Ketamine – 5g
- 9 • Synthetic cannabinoid receptor agonists (for example ‘spice’) – very small quantity

10

11 *Ecstasy tablet quantities based on a typical quantity of 150mg MDMA per tablet.”

12 (*Emphasis added*).

- 13
- 14 31. The issues arising for consideration on this appeal include whether the Magistrate erred in not
- 15 having regard to the newly recommended approach and whether it is appropriate for leave to be
- 16 granted to adduce expert evidence as to the relative harm of the drug psilocybin compared to
- 17 others within the class.

18

19 **THE SUBMISSIONS ON APPEAL**

20 **SENTENCE FOR GANJA**

- 21
- 22 32. I will consider the appeal with respect to the sentence for ganja first although it is not
- 23 determinative of the appeal.

- 24
- 25 33. Counsel for the Appellant Brown, Mr. Walcolm, submitted that as per *Guardiola v R*³, the
- 26 starting point for sentence for this offence should be commensurate with the amount and that the
- 27 starting point of 18 months imprisonment for 6.83 pounds of ganja is too high.

28

³ 1994-95 CILR N. 20

1 34. Counsel also referenced the leading case of *Comrie v R*⁴. In this case a sentence of 3 years
2 imprisonment was imposed for being concerned in the importation of a large quantity of ganja,
3 50 pounds of which belonged to the appellant.

4
5 35. The submission is that against the background of this case, it is wrong in principle for the
6 Magistrate to apply a starting point of 18 months for less than 10 pounds of ganja. It is also said
7 that the Magistrate erred by failing to apply any reduction for the Appellant's personal mitigation
8 before applying the reduction for the guilty plea. The Appellants were of previous good character
9 and a reduction of at least one quarter would have been appropriate.

10
11 36. The submission is that the appropriate sentence should have been 7-8 months imprisonment for
12 the offence of Being Concerned in the Importation of Ganja.

13
14 37. Counsel for the Appellant Bryant, Ms. Kelly, adopted these submissions.

15
16 38. The Respondent submitted in reply that the starting point of 18 months for 6.83 pounds of ganja
17 cannot be considered excessive in light of the sentences imposed in the cases of : -

18
19 *R v Grant and McCoy*⁵ - one pound of ganja with intent to supply. A starting point of 9
20 months imprisonment was applied.

21 *R v. Errol Ricketts*⁶ - 9.41 pounds of ganja with intent to supply. A starting point of 12
22 months imprisonment was applied.

23
24 39. Counsel concedes however that the Magistrate did not apply any discount for personal mitigation
25 in addition to the discount for the guilty plea and that a 1/10th discount should be applied for the
26 ganja offence. Counsel submitted that as this is a concurrent sentence there is no need to make
27 any adjustments to the sentence imposed.

28
29 40. In my view there was no error in principle with respect to the starting point adopted. This was a
30 sophisticated importation exercise with a substantial quantity in weight of the drug of high value.

⁴ [2012] 1 CILR Note 3

⁵ BC 00004/2012 and 5 of 2012- Summary Court judgment unreported dated 1st December 2014

⁶ Summary Court judgment unreported dated 13th April 2015



1 The starting point adopted cannot be said to be much out of line with the range of sentences
2 imposed in the Courts.

- 3
4 41. However, the Respondent's concession as to the applicable discounts appears to be well made.
5 In detailing the sentence for the ganja, the Magistrate said this: -

6
7 *"15. All Authorities for the quantity of ganja places this in the region of a starting point of*
8 *18 months and with the discount, it comes to 12 months. This will run concurrent with*
9 *Court 2."*

- 10
11 42. There is a reference to a singular discount. A discount, however limited, should have been
12 afforded for personal circumstances. The sentence is therefore reduced by reason of this to one
13 of 10 months imprisonment.



14
15 **SENTENCE FOR MUSHROOMS**

- 16
17 43. Counsel for the Appellant Brown, Mr. Walcolm, submitted that the sentence on the second
18 offence is of greater concern on the appeal. The submission is that the starting point applied of
19 10 years is too high. It is further submitted that in applying that starting point the Magistrate
20 clearly considered that the same starting point was to be applied for like offences involving
21 cocaine. It is said that this approach was wrong in principle and resulted in a higher starting point.

- 22
23 44. Counsel submitted that the *United Kingdom Sentencing Council Guidelines for Fraudulent*
24 *Evasion of a Prohibition by bringing into or taking out of the UK a Controlled Drug* (which
25 came into force in April 2021) are the appropriate guidelines. Counsel said that while there is no
26 direct reference to these *Guidelines* by the Magistrate, there is reference to harm and roles which
27 suggests that they were in fact being applied.

- 28
29 45. The Appellants accept that there were factors from which it could be concluded that they played
30 a 'lesser role' namely: -

- 31
32 i. Performed a limited function under direction;



- 1 ii. No influence on those above the chain;
2 iii. Very little, if any awareness or understanding of the scale of the operation; and
3 iv. Expectation of limited, if any, financial or other advantage.

4
5 46. It is said that the conclusion of the Magistrate was appropriate but that there ought not to have
6 been rejection of the factual basis put forward by the Appellants without giving them an
7 opportunity for a Newton hearing during which oral evidence could be heard. This aspect of the
8 written submissions was not pursued with vigour during oral submissions.

9
10 47. Counsel's primary submission is that the Magistrate erred in concluding that magic mushrooms
11 are to be viewed in the same category of drugs and harm as cocaine. The submission is that there
12 is no basis to equate the potency of mushrooms with cocaine. It is also that the Magistrate was
13 not assisted by expert evidence as to potency and no submissions were made as to the relevance
14 of such evidence.

15
16 48. Counsel submits that it is not appropriate to apply the *2002 Guidelines* in the instant case and
17 that applying the *United Kingdom Guidelines*, the level of harm would mean a starting point at
18 the level of Category 4, which would be 4 years imprisonment at the most, to be thereafter
19 reduced by reason of the personal mitigation and guilty plea.

20
21 49. The further submission is that there was additional personal mitigation in that the offer to
22 participate in a sting operation should have increased their personal mitigation. It is also said that
23 there was poor treatment of the Appellants while in custody in that for three days they were
24 without essential feminine personal hygiene items.

25
26 50. The submission is that the appropriate sentence should have been 2 to 2 ½ years imprisonment
27 for the mushrooms.

28
29 51. In response to the Court's inquiry, Counsel submitted that if there is an absence of evidence then
30 the benefit of the doubt ought to be weighed in favour of the Appellant and that there is no
31 indication of the relative potency of the drug. Counsel said that no expert evidence had been

1 obtained to be placed before the Court and that the Appellants had very little means to obtain this
2 evidence.

3
4 52. Counsel Ms. Kelly adopted the submissions of Counsel Mr. Walcolm.

5
6 53. Counsel for the Respondent in reply submitted that the sentence of 6 years cannot be said to be
7 manifestly excessive given the reductions made by the Magistrate and the guidelines applicable
8 to the Cayman Islands.

9
10 54. Counsel accepts that the Appellants performed a lesser role but stated that this was a group
11 activity and they were paid to have a holiday in the Cayman Islands.

12
13 55. Counsel submitted that no distinction should be drawn between the dried substance and the isolate
14 for the purpose of sentencing. Counsel referenced the cases of *R v Michael Palmer*⁷ and *R v*
15 *Kenecia Millwood*⁸ as reflective of the present position in the Cayman Islands. In those cases,
16 the Cayman Islands Court of Appeal (“CICA”) refers to the *2002 Guidelines* as setting out the
17 definitive position in relation to sentencing for drug offences.



18
19 **APPLICATION FOR LEAVE TO ADDUCE EXPERT EVIDENCE**

20
21 56. By further submissions made on the 13th May 2024, the Appellants sought the leave of the Court
22 to admit fresh evidence pursuant to s.178 and 179 of the *Criminal Procedure Code* (2021
23 Revision).

24
25 57. This provides for the procedure on the hearing of an appeal and states that the court may decide
26 on facts as well as law: -

27
28 *“178. At the hearing of an appeal on motion, the appellant shall, before going into the*
29 *case, state all the grounds of appeal on which the appellant intends to rely, and shall not,*
30 *unless by leave of the court, go into any matters not raised by such statement, nor shall the*

⁷ CICA Crim. Appeal No 23/2019, Unreported Judgment dated 25th November 2020

⁸ CICA Crim Appeal No, 30/2014, Unreported Judgment dated 7th November 2016

1
2 61. The Respondent submitted that the late stage of the application and the potential for possible
3 further delay would militate against the grant of leave.

4
5 62. At that stage I declined to give a ruling because it appeared to me that a determination could not
6 properly be made as to whether the proposed evidence met the criteria identified by the CICA
7 without seeing it even in draft form.



8
9 **THE EXPERT EVIDENCE**

10
11 63. An Expert statement dated 30th May 2024 was provided from Professor David Nutt. He is stated
12 to be a psychiatrist and professor of neuropsychopharmacology at Imperial College London. He
13 has worked for almost all his professional life in the latter field which covers the effects of drugs
14 on the brain. He is a fellow of the Royal College of Physicians and of Psychiatrists. There is no
15 challenge to his expertise or extensive experience. Professor Nutt gives a detailed exposition on
16 the effects of psilocybin on the brain and compares it with the drug cocaine.

17
18 64. Having reviewed the statement I am satisfied that it is not material which was available at the
19 time of the sentence hearing. It is relevant to the issues on sentencing and to this appeal. It is
20 credible and capable of belief and had it been available at the time of the sentence hearing it may
21 have impacted on how the sentencing was approached. I am therefore satisfied that it would be
22 in the interests of justice to grant leave for its admission and do so.

23
24 65. In considering the evidence as it relates to the instant appeal, I bear in mind the usual directions
25 as to expert evidence. As the Respondent notes, Professor Nutt does make statements about the
26 proper classification of the drug psilocybin which are plainly not matters for this Court.

27
28 66. The Respondent's submissions as to the questions to be raised about some of the assertions made
29 by Professor Nutt appear to be well made. Counsel notes that there are no cited studies supporting
30 some of his conclusions as to the experiences of those taking hallucinogenic substances and that
31 in the absence of such studies, comment on the "ambition" of those taking such substances or
32 how often the substances are taken is unsupported.

1 67. Counsel also notes that the studies conducted appear to relate to therapeutic microdosing and are
2 not studies on the effects of macrodosing. Professor Nutt also appears to put some focus on what
3 he says normally occurs which is microdosing of psilocybin because of the absence of its
4 addictive potential compared to cocaine.



5
6 68. The evidence as to comparison of harm with cocaine is that: -
7

8 “48. *Systematic assessments of magic mushrooms harms compared with cocaine [and*
9 *other psychoactive drugs] have recently been conducted by four independent*
10 *groups using state of the art methodology – Multi Criteria Decision Analysis*
11 *[MCDA]. These groups were 1. UK experts [Nutt et al 2010] 2. European experts*
12 *[van Amsterdam et al 2014] 3. Australian experts [Bonomo et al 2018] and 4. New*
13 *Zealand experts [Crossin et al 2023].”*
14

15 69. Additionally, Professor Nutt states: -
16

17 “54. *Cocaine is more harmful than magic mushrooms on every harm except drug*
18 *specific mental impairment, the psychedelic state experienced during a “trip”.*
19 *Even there, magic mushrooms are only 50% more harmful than cocaine.*
20

21 55. *In total regarding the harms to users, magic mushrooms score one sixth that of*
22 *cocaine.*
23

24 56. *In terms of harms to others on six out of seven criteria magic mushrooms score*
25 *zero, and on one just 1. Overall, for all harms to others cocaine scores 140 times*
26 *that of magic mushrooms.*

27 *a) The major reason for this is the international damage caused by the cocaine*
28 *trade.*

29 *b) Secondary reasons are harms to family, the economy and crime which are all*
30 *much greater for cocaine than magic mushrooms.*
31

1 57 *The major reasons for the low harms of magic mushrooms compared with cocaine*
2 *are -*

3
4 (a) *They are used only intermittently – often just once – whereas cocaine is often*
5 *used repeatedly, especially in binges.*

6
7 (b) *Use does not lead to addiction unlike cocaine which does.*

8
9 (c) *Magic mushrooms have a very large safety margin – the lethal dose overdose*
10 *psilocybin is about 1000 times that of recreational dose. For cocaine this ratio*
11 *is much lower around 5 times. Moreover the use of cocaine with alcohol*
12 *increases its harm due [to] its combining with alcohol to produce a more toxic*
13 *compound – coca-ethylene.*

14
15 (d) *Data on magic mushrooms lethality is available from the UK government’s*
16 *annual survey on deaths from a range of recreational drugs [ONS]. It is*
17 *estimated that about one million people a year in the UK use magic*
18 *mushrooms. Only one fatality possibly linked to their use has been reported in*
19 *the past 20 years in comparison with several thousand from cocaine. Cocaine*
20 *deaths in the UK have been rising over the psst twenty years reaching a peak*
21 *of over 800 in 2022, the last data set [ONS 2022].”*

22
23 70. At Table 2 of his statement, Professor Nutt compares the harm of magic mushroom with cocaine
24 in terms of harm to users and harm to others: -

25
26 “Table 2 comparison of magic mushrooms with cocaine on the 17 criteria of harm

27

HARMS TO USERS	MAGIC MUSHROOMS	COCAINE
Drug Spec Mort	0	20
Drug Rel Mort	1	35
Drug Spec Damage	0	30





Drug Rel Damage	0	60
Dependence	0	50
Spec Impair Ment Fun	85	60
Rel Impair Men Func	10	35
Loss of Tangibles	0	35
Loss of Relat	0	60
Subtotal	95	385
HARMS TO OTHERS	MAGIC MUSHROOMS	COCAINE
Injury	0	5
Crime	0	10
Environm Damage	0	1
Family Adversities	0	10
International Damage	0	100
Economic Cost	0	10
Community	1	5
Subtotal	1	141
Overall Harm Total	97	526”

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71. Counsel for the Appellant submits that in *R v Michael Palmer* and *R v Kenecia Millwood* the CICA dealt with sentences for cocaine offences and did not consider the applicability of the 2002 Tariffs to any other Category A drug. The legislature has provided maximum sentences and sentences can be imposed reflective of different levels of harm within the same category.
72. Counsel for the Respondent argued that the cases of *Martinez* and *Thomas* remain persuasive in this jurisdiction as the common law position prior to any sentencing guidelines which are not directly applicable to the Cayman Islands. Counsel submits forcefully that the drug is a hard drug and should so be treated.



1
2 73. Counsel also submits that there is no need for expert evidence to be heard in sentencing cases
3 and that expert evidence as it relates to the Cayman Islands may not be available. Counsel submits
4 that: -

5
6 “28 *The other applicable guidance, aside from the Statement on Tariffs, is the general*
7 *Cayman Islands Sentencing Guidelines (2015), which sets out the aims of sentencing,*
8 *as per s.4 of the Alternative Sentencing Law. Sentencing goes beyond a purely*
9 *scientific or statistical approach, and harm is more than potency or lethality. The*
10 *experience of Judges and Magistrates in this jurisdiction is particularly important*
11 *to assess broader concepts of harm to society in ‘party drugs’ being brought into the*
12 *Cayman Islands for onward distribution and sale, being careful all the while not to*
13 *overstep and frustrate the aims of Parliament in designating certain drugs as hard*
14 *drugs.”*

15
16 74. Counsel said that there are questions as to whether the expert report fully complies with the
17 guidance in *R v Powery*¹². Counsel said that applying the common law position and the *2002*
18 *Guidelines*, the sentence cannot be said to be manifestly excessive.

19
20 75. It was agreed by all Counsel that if the *United Kingdom Guidelines* were to be applied, this
21 offending, using the comparative harm table of Professor Nutt and the weight of the drug, would
22 likely fall into Category 3 with a starting point of 3 years and a range of sentencing of 18 months
23 to 5 years custody.

24
25 76. Counsel for the Appellants submitted that it is accepted that given the different maximum
26 sentencing levels, 16 years in the UK and 20 years in the Cayman Islands, some adjustment would
27 need to be made. Counsel suggested an upwardly adjusted starting point of 4 years rather than 3
28 years.

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¹² [2009] CILR N 7



1 **CONCLUSION**

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3 77. In this case, it is clear that the Magistrate was not assisted with submissions on this point.
4 Different Counsel appeared in that Court. There is nothing to suggest that this point and the
5 possible change in approach was at any time drawn to that Court's attention for consideration.
6 As such the Magistrate did not have the opportunity to consider these matters and cannot be
7 faulted for the approach taken.

8
9 78. Having considered all the material before this Court and the extensive submissions for which
10 much gratitude is extended to all Counsel, I accept many of the submissions made by the
11 Appellants' Counsel. I accept that there is presently in this jurisdiction a lack of specificity as to
12 how to deal with these new and emerging drugs. The fact that they are within the category of
13 hard drugs indicates the seriousness with which they are and must be viewed. The question is
14 how they should be approached within that category.

15
16 79. I accept that all the pronouncements in the *2002 Guidelines* and in the cited cases in this
17 jurisdiction involved the hard drug cocaine. The cases of *R v Michael Palmer* and *R v Kenecia*
18 *Millwood* dealt with the hard drug cocaine. Even in the case of *Thomas* which is the only cited
19 case dealing with mushrooms it is of significance that the Court said this: -

20
21 *“If the appellant had had the same number of wraps of heroin or cocaine, the sentence*
22 *would have been between four and six years' imprisonment.”*

23
24 80. The inference is that the sentence would have been higher for heroin and cocaine.

25
26 81. All Counsel have indicated that their research has not identified any recent cases involving
27 mushrooms.

28
29 82. While the *United Kingdom Sentencing Council Guidelines* do not apply to the Cayman Islands,
30 it has been the practice where there is an absence of specific guidance in this jurisdiction to
31 consider these in so far as they may be of assistance. In this case there is guidance to be obtained
32 from the *United Kingdom Guidelines* which is of assistance. I hesitate to say as the Respondent



1 suggests that these *Guidelines* should be disregarded, in the context of this case, particularly
2 where they may be of assistance to an appellant charged with very serious offences. I cannot see
3 a just reason for having regard to them in some cases or to some aspects - such as roles - but not
4 in or to others. This is in circumstances where there does not appear to be a definitive and clear
5 position in the Cayman Islands on these new and emerging drugs. These are Class A drugs. The
6 recommended approach does not change the categorisation but suggests that rather than a broad
7 brush for all drugs within this category, consideration be given to the distinctions or comparative
8 harm as evidenced by expert evidence.

9
10 83. However, while having regard to the approach in these *Guidelines* and the evidence of lesser
11 comparative harm, my view is that the difference in jurisdictions is a significant factor. This is
12 one of the factors compared by Professor Nutt. He has community as the last criteria of harm in
13 the table provided. The Cayman Islands is a very small community where practices and
14 behaviours are far more easily spread. The impact on the community in these circumstances must
15 be substantially magnified. I consider there to be a sufficiency of distinguishing factors to allow
16 for the adoption of an alternative starting point rather than that which is suggested by Counsel
17 and the *Guidelines*. I am also mindful of the observations of the Court in the case of *Thomas*. I
18 would therefore adopt a starting point of 6 years or 72 months.

19
20 84. As to mitigating circumstances, the offer of participation in a sting operation does not in my view
21 appear to be of significance, as the Magistrate found.

22
23 85. The submissions as to the treatment of the Appellants while in custody have been considered.
24 The Respondent produced the custody records which indicate that as early as the 28th May 2023
25 at 10:14 am, the prisoners were checked and asked if they needed anything. The response from
26 both was no. There appears to be nothing in this point.

27
28 86. From the starting point of 72 months, I take into account the absence of previous convictions and
29 their personal circumstances but note that as was said in the case of *Martinez*: -

30
31 *“Unhappily the good character of the importer, or the person dealing with importation is*
32 *seldom of any weight when it comes to sentence. People who are employed to import are*
33 *usually, for obvious reasons, selected largely because of their good character.”*

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87. The sentence is reduced by 6 months by reason of mitigating factors to 66 months. With full credit of one third for their guilty pleas, the sentence would be further reduced to one of 44 months.

88. The conclusion is thus that the sentence imposed for Being Concerned in the Importation of Mushrooms was wrong in principle and or manifestly excessive.

89. The appeal is allowed to this extent. In respect of each Appellant, the sentence for the offence of Being Concerned in the Importation of Ganja is varied to one of 10 months imprisonment. The sentence for the offence of Being Concerned in the Importation of Mushrooms is varied to one of 44 months imprisonment. The sentences are to run concurrently with time served to be taken into account.

90. Let me add that in considering this appeal, it is to be noted that the evidence provided in respect of the harm from Mushrooms is one sided. This decision is thus not to be regarded as establishing points of principle or reference. There could conceivably be entirely different outcomes based on the material before another Court.

20 **Dated this the 29th August 2024**



21
22 **The Hon. Justice Cheryll Richards KC**
23 **Judge of the Grand Court**