



IN THE CAYMAN ISLANDS COURT OF APPEAL

CRIMINAL APPEAL 22 of 2021

IND# 21/21

SC#0358/21

BETWEEN:

MARVIN A. BROWN

Applicant

- and -

His Majesty the King

Respondent

BEFORE:

**The Rt. Hon Sir John Goldring, President
The Hon Sir Richard Field, Justice of Appeal
The Rt. Hon Sir Alan Moses, Justice of Appeal**

Date of Hearing: 2nd December 2022

Appearances: Mr. Jonathan Hughes of Samson Law for Appellant
Mr. Garcia Kelly, Office of the DPP for the Respondent

JUDGMENT

Transcript of oral judgment dated 2nd December 2022 and Approved for
Release 30th January 2023

MOSES, JA.

1. This is an application for permission to appeal against a sentence of 6 years that was passed on the 19th of November 2021, by Mrs. Justice Carter in the Grand Court. It is important to note that it was after conviction, so that this Applicant lost the benefit of any mitigation

by admitting his guilt, though he was caught red-handed and it also gave the opportunity for the judge to hear and form an impression about the facts.

2. He was caught with three other men in the morning, being seen by an Air Support Unit police helicopter in his own boat, "The Sunshine Girl", importing at least 360 pounds of ganja. He and his fellow defendants were all Jamaican nationals but tried to escape and, in aggravation of the offence, he was seen disposing of some of the ganja he was seeking to import onto these islands. A total of twelve packages were recovered.
3. It is central to this application to observe that this Applicant, on the 28th of February 2019, was concerned in similar offences; namely, importation of ganja and possession with intent to supply, for which he was sentenced to 32 months' imprisonment and now less than 2 years after, he was attempting to import the ganja in the instant case. He was deported from these islands. The judge, in sentencing this Applicant, remarked that although he was not the leader, he had played a significant role and that cannot be gainsaid, bearing in mind that this was his boat and the fact that the three others he had brought along with him had either no or insignificant previous convictions. They were sentenced to a shorter period of imprisonment.
4. The 6 years imposed by the judge was based upon the Sentencing Guidelines relevant in the United Kingdom. It was agreed between both the defence and the Crown that the case fell within category 2 and therefore the starting point was one of 4 years with a range of 2 1/2 to 5 years. The Applicant's case turns on the submission advanced by Mr. Jonathan Hughes that having started with a starting point of 4 years, with which he does not quarrel, to uplift the sentence by what he describes as 62 percent serves to take the case out of the category range of between 2 1/2 and 5 years, was manifestly excessive and had no proper explanation in the reasoning of the judge. We do not agree. The judge was required to take an overall view of the seriousness of this offence, aggravated as it was by the fact that so shortly before, this applicant had been caught committing exactly the same type of crime and by the fact that he sought to dispose of the evidence. The judge gave perfectly adequate reasons for why she was imposing a sentence of 6 years and we would add that that sentence was

entirely appropriate since this Applicant had failed to take any steps to distance himself from this sort of criminal behaviour so soon after he had previously committed a similar offence. We do not think it arguable to the contrary. In those circumstances, this application is refused.