

1 IN THE GRAND COURT OF THE CAYMAN ISLANDS  
2 CRIMINAL SIDE

3  
4 INDICTMENT NO: 21 of 2021

5  
6  
7 THE QUEEN

8  
9 v.

10  
11 MARVIN ANDRE BROWN  
12 TONEY WILLIAMS  
13 O'NEIL MINOTT  
14 RICARDO KIMON DRYSDALE



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18 **Appearances:**

Mr. Garcia Kelly, Counsel for the Crown

19  
20 Mr. Keith Myers, Counsel for Defendant Brown

21  
22 Mr. James Stenning Counsel for Defendant  
23 Williams

24  
25 Mr. John Meghoo for Defendant Minott

26  
27 Mr. Clayton Phuran for Defendant Drysdale

28 **Before:**

Justice Marlene I. Carter (Actg.)

29 **Jury Trial:**

Commenced 7<sup>th</sup> June 2021

30  
31 **Jury's verdict:**

1<sup>st</sup> July 2021

32  
33 **Sentencing submissions heard:**

24<sup>th</sup> September and 4<sup>th</sup> October 2021

34  
35 **Delivery of Sentence Decision:**

19<sup>th</sup> November 2021

36  
37 **HEADNOTE**

38 *Criminal Law – Possession of Ganja knowing or having reasonable*  
39 *grounds to suspect that the drug is intended to be imported into the*  
40 *Cayman Islands contrary to s.19(2)(a) of the Misuse of Drugs Act*  
41 *(2017 Revision) - Principles on Sentencing - United Kingdom*  
42 *Sentencing Guidelines*

43  
44 **SENTENCE JUDGMENT**

- 1           1.       The Defendants are before the court for sentence in respect of the offence of Illicit  
2                    Trafficking to wit, “*Possession of Ganja knowing or having reasonable grounds to*  
3                    *suspect that the drug is intended to be imported into the Cayman Islands*” contrary  
4                    to s.19(2)(a) of the *Misuse of Drugs Act* (2017 Revision).
- 5
- 6           2.       The sentence has had to be deferred as some of the defendants contracted the Covid-  
7                    19 virus. They have now all recovered and are able to join this hearing by ZOOM  
8                    from the designated location at HMPS Northward.
- 9
- 10          3.       The Defendants were charged with the offence on the 3<sup>rd</sup> of March 2021. On the 30<sup>th</sup>  
11                   of April 2021 the Defendants were all arraigned before the Grand Court, and they all  
12                   entered ‘not guilty’ pleas to the single count on the indictment. The trial commenced  
13                   on the 7<sup>th</sup> of June 2021 and the Defendants were convicted of Illicit Trafficking on  
14                   the 1<sup>st</sup> of July 2021.

15  
16       **LETTER TO THE COURT FROM THREE DEFENDANTS**



- 17
- 18          4.       Before proceeding further, I will address the matter a letter received by this court on  
19                   the 6<sup>th</sup> of October 2021.
- 20
- 21          5.       The court received a letter signed by three of the defendants - Brown, Minott and  
22                   Drysedale - after the sentence hearing for this case. In the letter they apologized “*for*  
23                   *not pleading guilty from the start*”. They alleged that they were misrepresented, in  
24                   that, they each had instructed their attorney that they wanted to change their plea,  
25                   but counsel insisted that their not guilty pleas remain. They also alleged that counsel  
26                   did not explain to them that they may get a discount for a guilty plea.
- 27
- 28          6.       In written response to this Court’s inquiry counsel, Mr. Myers has vehemently  
29                   denied these allegations.
- 30

1       7.       I am satisfied that there was an unequivocal plea of not guilty from these defendants.  
2               These defendants were before the court at every session in which the evidence was  
3               presented before the jury. This was a case that lasted almost one month. The court  
4               is unaware of any disabilities affecting any of these defendants which would have  
5               prevented them from giving some indication to the court themselves if it were the  
6               case that counsel was not following their instructions. The Social Inquiry Report  
7               (SIR) for each defendant gives no such indication of any physical or mental  
8               challenges. In addition, the defendants Drysdale and Brown took the witness stand  
9               and gave their evidence over the course of many hours, without any indication as set  
10              out in this letter.

11       8.       While the authorities indicate that a plea of guilty may be changed right up to the  
12              moment that sentence is passed<sup>1</sup>, it is only in the rare circumstance that a trial judge  
13              should exercise a discretion to allow such a change. It is not appropriate to do so  
14              where the defendant has been represented by experienced counsel as in this case. I  
15              am satisfied that this is not an appropriate case in which the court should exercise its  
16              discretion to allow a change of plea at this stage.

17       9.       I do not take these representations as expressions of genuine remorse but only as an  
18              attempt to mitigate sentence where the custody threshold is obviously passed with  
19              respect to the offence for which the defendants have been found guilty by a jury.  
20  
21

22  
23       **THE EVIDENCE**

24       10.      In summary the evidence presented by the Crown, and accepted by the jury, was as  
25              follows.  
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<sup>1</sup> *S. (an Infant) v Manchester City Recorder* [1971] A.C. 481, HL.

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*Sentence Judgment: R v Brown (Marvin Andre), Williams (Toney), Minott (O'Neil), Drysdale (Ricardo Kimon). Coram: Carter J. (Actg.). Date: 19<sup>th</sup> day of November 2021.*

- 1           11.     On Wednesday March 3<sup>rd</sup> 2021, at about 8:58 a.m., officers aboard Cayman Air  
2                     Support Unit (ASU) Police Helicopter were on border patrol duties, when they  
3                     observed a vessel with four (4) males on-board.
- 4  
5           12.     The vessel was approximately 11.2 miles South of Grand Cayman and heading  
6                     towards Grand Cayman. As they were investigating the said vessel, it changed course  
7                     and turned away from Grand Cayman, headed in a southern direction and sped off  
8                     at high speed.
- 9  
10          13.     This aroused the suspicion of the ASU team, hence they conducted further  
11                     observations during which time some of the occupants were observed throwing  
12                     packages off the boat into the water. They maintained observation and requested  
13                     assistance from Cayman Islands Coast Guard vessel “Trident” which responded  
14                     quickly to the stated location. The movements of the vessel and the actions of the  
15                     occupants were video recorded by the police helicopter.
- 16  
17          14.     The vessel “*Sunshine Girl*” was eventually intercepted by Cayman Coast Guard  
18                     vessel “Trident”. Four Jamaican Nationals [the defendants] found on board were  
19                     taken into custody and their vessel seized. A subsequent search was conducted of the  
20                     waters along the area of the chase and a total of twelve (12) packages with suspected  
21                     ganja were recovered from the water.
- 22  
23          15.     The packages were recovered, sealed, and exhibited. When tested by the  
24                     Government Analyst these were found to weigh approximately 360.3 lbs.<sup>2</sup> and  
25                     contain ganja
- 26  
27          16.     The vessel, *Sunshine Girl*, is not registered in the Cayman Islands nor is it registered  
28                     in Jamaica.



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<sup>2</sup> Crown’s sentencing submissions at page 4

1 17. The estimated sale price of the ganja in the Cayman Islands is between CI\$1,000.00  
2 and CI\$1,800 per pound, putting the estimated value of the drugs recovered at  
3 between CI\$360,000 and CI\$648,000.



4  
5 **STATUTORY PROVISIONS AND CASE LAW**

6  
7 18. Section 19 of the *Misuse of Drugs Act* (2017 Revision) states:

8 “19. (1) This section applies to-  
9 (a) a Cayman ship;  
10 (b) a ship registered in a state other than the Islands which  
11 is a party to the Vienna Convention; and  
12 (c) a ship that is not registered in any country or territory.  
13 (2) A person on a ship to which this section applies, wherever it  
14 may be who-  
15 (a) has a controlled drug in his possession; or  
16 (b) is knowingly concerned in the carrying or concealing  
17 of a controlled drug on the ship,  
18 knowing or having reasonable grounds to suspect that the drug  
19 is intended to be imported or has been exported contrary to  
20 section 3(1) or the law of any state other than the Islands  
21 commits an offence and is liable-  
22 (i) if the controlled drug is a hard drug -  
23 (A) on summary conviction to a fine of  
24 twenty thousand dollars and to  
25 imprisonment for five years; or  
26 (B) on conviction on indictment to a fine  
27 and to imprisonment for life; or  
28 (ii) if the controlled drug is not a hard drug -  
29 (A) on summary conviction to a fine of ten  
30 thousand dollars and to imprisonment  
31 for two years; or  
32 **(B) on conviction on indictment to a fine**  
33 **and to imprisonment for fourteen**  
34 **years.**  
35 (3) A certificate purporting to be issued by or on behalf of the  
36 government of a state to the effect that the import or export of a  
37 controlled drug is prohibited by the law of that state is evidence  
38 of the matter stated.”  
39

40 19. The following Section of the Act is also relevant in this case:

41 Section 25

42 “(1) If any constable or customs officer has reasonable cause to  
43 suspect that any vessel is being used or has been used for the  
44 commission of any offence against this Law, he may, without a  
45 warrant, board and search such vessel and, if such search  
46 reveals evidence that the vessel is being used for the commission  
47 of any such offence, seize and detain such vessel.

1 (2) *Where a person is convicted of an offence against this Law, and*  
2 *the court by or before which he is convicted is satisfied that any*  
3 *vessel which was in his possession or under his control at the*  
4 *time of his apprehension -*  
5 (a) *has been used in connection with or for the purpose of*  
6 *committing or facilitating the commission of such*  
7 *offence; or*  
8 (b) *was intended by him to be used for that purpose,*  
9 *the court shall order the forfeiture to the Crown of such*  
10 *vessel.”*  
11

12 20. There are several authorities in this jurisdiction on sentences for offences relating to  
13 the importation of large quantities of drugs. In *Mitchell Comrie v The Queen*<sup>3</sup> the  
14 Learned Chief Justice referred to principles which should guide a sentencing judge  
15 in matters of this nature. These are:

- 16 i. The quantity of ganja;
- 17 ii. The defendant’s role; and
- 18 iii. Whether the defendant has previous convictions.



19  
20 21. In *Comrie*, where the appellant had no previous convictions, the amount of ganja  
21 that could be attributed to him was 50 lbs and he was found to have had only a  
22 secondary role, the sentence after a guilty plea was three years’ imprisonment. The  
23 Court found ~~that~~:

24 *“... in the light of (i) the appellant’s secondary role; (ii) his lack of*  
25 *previous convictions; and (iii) the small amount of ganja in his*  
26 *possession, a starting point of 3 – 4 years’ imprisonment was*  
27 *appropriate.”*  
28

29 22. *R v Rovon Johnson et al*<sup>4</sup>, at Paragraph 45, the Cayman Islands Court of Appeal  
30 (CICA) noted:

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<sup>3</sup> SCA 001/2011  
<sup>4</sup> CICA 24/2019 & 25/2019 judgment delivered on the 26<sup>th</sup> of November 2020 by Goldring J., President.  
*Sentence Judgment: R v Brown (Marvin Andre), Williams (Toney), Minott (O’Neil), Drysdale (Ricardo Kimon). Coram: Carter J. (Actg.). Date: 19<sup>th</sup> day of November 2021.*



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24. *Culpability is demonstrated by an offender’s role in the enterprise. The roles are identified by one or more of a number of characteristics. A leading role would include:*
- \* *Directing or organizing, buying and selling on a commercial scale.*
  - \* *Substantial links to, and influences on others in a chain.*
  - \* *Close links to original source.*
  - \* *Expectation of substantial financial gain.*
25. *A significant role would involve an operational or management function within a chain, motivation by financial or other advantage, whether or not operating alone, or some awareness and understanding of the scale of the operation.*
26. *A lesser role includes factors such as, performing a limited function under direction, being engaged by pressure, coercion or intimidation, involvement through naivety, having no influence on those above in the chain and very little awareness or understanding of the scale of the operation.”*

25. In submissions to this court the Crown and counsel for each of the defendants agreed that the UK Sentencing Guidelines may guide the Court as to the factors to be considered when determining an appropriate sentence for a Defendant. The applicable guideline is for the offence of Possession with Intent to Supply at pages 9 to 15 of those Guidelines.



**THE DEFENDANT MARVIN BROWN**

26. Applying this approach, with respect to culpability, the Crown submitted that the Defendant Marvin Brown should be considered as having a leading role in the enterprise. The Crown submitted:

*“...this venture was organized by Mr. Brown. He packed the bags and directed their disposal at sea. For the quantity of drugs on board the Court can infer that there was for the organizer an expectation of substantial financial gain.”*



1       27.     On the matter of harm, the Crown submitted that the quantity of drugs - 360.3 pounds  
2             of Ganja - should attract a Category 2 finding and that the Court should adopt a  
3             starting Point of 6 years custody with a range of 4 years and 6 months - 8 years'  
4             custody with respect to the defendant Brown.

5  
6       28.     The Crown submitted that there were no mitigating factors in respect of the  
7             defendant Brown but drew the Court's attention to the following as aggravating  
8             factors affecting this sentence and warranting an uplift in the starting point.

9  
10            i.       The Defendant Brown has previous convictions for a similar offence in  
11               the Cayman Islands. The Defendant was sentenced to thirty-two months  
12               imprisonment on the 28<sup>th</sup> of February 2019 for offences of being  
13               concerned in the importation of ganja and possession with intent to  
14               supply ganja. He was also the subject of a deportation order having been  
15               deported from these islands on the 18<sup>th</sup> of October 2019. He stands  
16               charged with breaching this order in the Summary Court.

17  
18            ii.       The defendant Brown attempted to conceal or dispose of evidence. He  
19               "*ordered the bags [of ganja] to be thrown overboard or, in the*  
20               *alternative, is jointly responsible for their disposal as the head of the*  
21               *transportation venture.*" There was evidence from video footage that  
22               seemed to show the Defendant Brown throw electronics overboard just  
23               prior to the point of interception by the police.

24  
25       29.     In his submissions to the Court, counsel for the Defendant Brown argued that the  
26             defendant did not have a leading role in the enterprise. Counsel submitted that there  
27             is no evidence that that was the expectation of substantial financial gain on this  
28             Defendant's part.

1       30.     With respect to harm counsel stated that the case fell into Category 2 harm based on  
2             the quantity of ganja recovered and the nature of the drug itself.

3  
4       31.     Counsel for the defendant Brown agreed that on the facts of this case the defendant's  
5             attempt to conceal or dispose of evidence and the defendant's previous drug  
6             importation conviction, were aggravating factors."<sup>8</sup>

7  
8       **SIR**

9  
10      32.     The SIR reveals that the Defendant left school without completing exams at sixteen  
11             and became a fisherman. The defendant did not report having any issues with  
12             alcohol or drugs.

13  
14      33.     Regarding the Defendant's attitude towards the offence, the defendant denies having  
15             ganja on the boat. He maintained that he was transporting lobster to exchange for  
16             fish, that his boat's engine had broken down and, when the engine started on the third  
17             day and he continued his journey, he did not know that he was within Cayman  
18             Islands waters.

19  
20      34.     The SIR recorded an assessment of the defendant as being at medium risk of re-  
21             offending. Some criminogenic factors - such as companions and pro-criminal  
22             attitude - were listed as high; alcohol/drug problem and leisure recreation were listed  
23             as placing the defendant at medium risk of re-offending; and, the officer found that  
24             the defendant's criminal history, education and anti-social patterns placed him at a  
25             low risk of re-offending. Specifically with regard to criminal history the officer  
26             stated:

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<sup>8</sup> See paragraph 19 at page 6 of Counsel's submission

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*“A low assessment was made in this area as the antecedent record does not indicate that the client is a prolific offender.”*

35. The Crown took issue with this classification which seemed to give too little weight in the assessment of risk in relation to the fact that his defendant had been convicted of a similar offence within a relatively short time before the instant offence. As stated above, the defendant Brown was sentenced to thirty-two months imprisonment on the 28<sup>th</sup> of February 2019 for offences of being concerned in the importation of ganja and possession with intent to supply ganja. I will return to this issue later in this judgment.

**THE DEFENDANT TONEY WILLIAMS**

36. The Crown submitted that, with respect to culpability, the Defendant Williams played a Significant Role in the enterprise; that he was motivated by financial gain and had some awareness of the scale of the operation.

37. The Crown’s submission of Category 2 harm was again based on the quantity of drugs being 360.3 pounds of Ganja. The Crown submitted that the court should adopt a starting point of 4 years’ custody with a sentencing range of 2 years 6 months’ – 5 years’ custody.

38. The Aggravating factor identified by the Crown with respect to the Defendant Williams was related to the attempts to conceal or dispose of evidence, specifically the throwing of the ganja overboard. The defendant, the Crown argued, was part of a joint enterprise and is therefore jointly liable for the disposal of the items overboard.



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*Sentence Judgment: R v Brown (Marvin Andre), Williams (Toney), Minott (O’Neil), Drysdale (Ricardo Kimon). Coram: Carter J. (Actg.). Date: 19<sup>th</sup> day of November 2021.*

1 39. The Crown's submission is that the only Mitigating factor with regard to the  
2 defendant Williams is that he has no Previous Convictions for any criminal offence.

3  
4 40. Counsel for the defendant Williams submitted that there was no evidence before the  
5 court that Williams navigated or ever drove the boat or touched the drugs and is  
6 never seen throwing packages overboard or even gesturing or directing that packages  
7 be thrown overboard. He described Williams as being a naïve crew member.  
8 Counsel submitted that there were none of the factors present to place him in any  
9 categorisation of a 'Leading or Significant' role. Counsel submitted that his was a  
10 lesser role. He performed a limited function on the vessel and was always under Mr  
11 Brown's direction

12  
13 41. Regarding the guidelines, on counsel's submission the starting point should be one  
14 year in custody with a sentence range of 26 weeks to 3 year' custody.

15  
16 **SIR**

17  
18 42. The defendant Williams is now 60 years old. He described being brought up by his  
19 grandparents as his mother had mental health issues which made her unable to care  
20 for him. His family was poor, and Williams was forced to leave school permanently  
21 at the age of 12 to work to help support his family. Williams openly admitted to  
22 being illiterate due to this lack of schooling. He eventually went into farming full  
23 time as an adult, and he has also worked as a fisherman. The defendant disclosed  
24 that he has issues with his eyesight but has no other permanent physical ailments.  
25 The defendant maintains that he was not involved in any enterprise to import ganja  
26 into the Cayman Islands.



27  
28  
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1 43. He was assessed as being at medium risk of re-offending. It appears from the SIR  
2 that although of the eight (8) criminogenic factors considered four of these were  
3 assessed at low or very low, and three at medium risk, it was the assessment of his  
4 companions as very high which resulted in this assessment. Counsel for Williams  
5 took issue with this assessment submitting that it should be a low risk of re-offending  
6 with regard to his client.

7  
8 **THE DEFENDANT O'NEIL MINOTT**

9  
10 44. The Crown's submission on culpability in respect of the defendant Minott was that  
11 he played a significant role in the enterprise.

12  
13 45. The Crown submitted that "*The Defendant Minott was motivated by financial gain*  
14 *and had some awareness of the scale of the operation*". Harm, it was submitted, was  
15 at category 2, based on the quantity of ganja involved and therefore the court was  
16 asked to consider a starting point of 4 years' custody and a sentencing range of 2  
17 years 6 months' to 5 years' custody.

18  
19 46. The Crown identified as an Aggravating factor in Minott's case the attempt to  
20 conceal or dispose of evidence. This Defendant was observed throwing at least three  
21 (3) packages overboard just before the point of interception by members of the  
22 Marine Unit.

23  
24 47. The fact that the Defendant Minott has no previous convictions was the single  
25 mitigating factor identified on his behalf.

26  
27 48. In his submissions on sentence before this court Counsel for Defendant Minott noted  
28 that:

29





1                                    *“The impact of conviction after trial on sentence is unavoidable. Minott*  
2                                    *falls hard from his previous good character and throws himself at the*  
3                                    *mercy of the court. The court may consider sentencing him at the low*  
4                                    *end of the range of sentencing given his age and previous good*  
5                                    *character.”*

6  
7       49.       Regarding his role in the enterprise, Counsel suggested that as the youngest and  
8                                    easiest to control, the defendant Minott is “a follower not a leader”. He went on to  
9                                    submit that when told by the captain to throw packages overboard he would have  
10                                   feared to disobey.

11  
12       50.       The Defendant Minott did not give evidence at trial. There is nothing before this  
13                                   court to suggest that he was in fear of any of the other defendants.

14  
15                                    **SIR**

16  
17       51.       The report gave a detailed history of the defendant Minott having a mother who was  
18                                   mentally challenged and a father who was an alcoholic with whom he had infrequent  
19                                   contact and it also described him as having “... *significantly traumatic formative*  
20                                   *years. He suffered mental and physical abuse and lived on the poverty line for many*  
21                                   *years.”* He was eventually placed in a boys’ home at age 5 where he suffered  
22                                   repeated physical and sexual abuse. This pattern continued throughout his childhood  
23                                   however the defendant was able to achieve some success at one of the Juvenile  
24                                   correctional centres in which he was placed, attaining three CXC passes.

25  
26       52.       Minott eventually found work as a mechanic but was not in paid work in the two  
27                                   months immediately leading up to his involvement in this offence. It was the  
28                                   probation officer’s opinion that: “...*I am inclined to assess that financial gain was a*  
29                                   *significant driver behind his decision making in this regard.”*





1        57.     The aggravating factor identified by the crown was the attempt to conceal or dispose  
2                    of evidence. The Crown’s submission is that as part of a joint enterprise this  
3                    Defendant is jointly liable for the disposal of the items overboard.

4  
5        58.     The Mitigating factor in this defendant’s case is that he has no previous convictions.

6  
7        59.     On behalf of the defendant Drysdale, counsel agreed that the offence was at category  
8                    2 in respect of harm. On the issue of culpability counsel submitted as follows:

9  
10                                    *“There is an absence of evidence that the 4<sup>th</sup> Defendant played a leading*  
11                                    *or significant role in the enterprise. There is no indication that he*  
12                                    *directed or organised the buying and selling of the drugs on a*  
13                                    *commercial scale or otherwise or that he had substantial links to or*  
14                                    *influenced others. Equally there is no evidence that he influenced the*  
15                                    *chain or that he had close links to the original source. We submit that,*  
16                                    *the 4<sup>th</sup> Defendant, if he played a role, same would be akin to the*  
17                                    *characteristics of that of a “lessor role” and through naivety [naïveté].”*

18  
19        60.     He argued further that

20                                    *“Drysdale was on sunshine girl out of naïveté. He played no role in*  
21                                    *buying, packing or loading the drugs. When he arrived at the point*  
22                                    *where the boat was launched from (sic), the boat was already loaded.*  
23                                    *At best Mr. Drysdale was a patsy.”*

24  
25        61.     Counsel further stated that Defendant Drysdale did not know for whom the drugs  
26                    were being conveyed nor to whom it was to be delivered - factors which were  
27                    consistent with him being on the vessel *“out of pure naïveté or misplaced trust in a*  
28                    *friend.”*

29



1                   **SIR**

2  
3           62.       Defendant Drysdale grew up primarily in the care of his mother as his father did not  
4                   play a significant part in his childhood. He is himself the father of seven children  
5                   ranging from 5 years to 18 years of age. Prior to his conviction for the instant offence  
6                   the youngest three of his children lived with him. He indicated that he has a close  
7                   relationship with all his children. Drysdale is a tiler by profession, is self-employed  
8                   and works in this trade primarily in the construction industry.

9  
10          63.       The defendant does not suffer from any physical or mental issues or disabilities and  
11                   divulged that prior to his incarceration he indulged in smoking ganja.

12  
13          64.       The defendant maintained that he was only on the vessel because he was asked by  
14                   an acquaintance to go on a fishing trip. Drysdale was assessed at being at a low risk  
15                   of re-offending.

16  
17       **INCONSISTENCIES IN ASSESSMENT OF RE-OFFENDING**

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19          65.       As described above each of the defendants have been assessed for re-offending based  
20                   on the eight criminogenic factors that are considered on the Level of Service/Case  
21                   Management Inventory (LS/CMI) instrument when assessing the level of risk and  
22                   need. I note that each of these defendants were assessed by different officers of the  
23                   Department of Community Rehabilitation (DCR). It is of course possible that there  
24                   will be some differentiation based on the subjective views of these officers in  
25                   consideration of these criminogenic factors. I note the comments from the Crown  
26                   and from counsel for the defendants Minott and Williams in particular on this issue.  
27                   However, the officers' assessments are but part of the Court's considerations on  
28                   sentence.

1 66. These assessments of the individual defendants are helpful but are not in any way  
2 determinative of the court’s conclusion of an appropriate sentence in the case of each  
3 defendant.

4  
5 67. As the level of Harm is being determined by the nature and amount of the drug, there  
6 is no issue that this should be assessed at Category 2 harm in the case of each  
7 defendant.

8  
9 68. At issue is the court’s conclusion on the role played by each defendant. For while  
10 the defendants are found to be part a joint enterprise to commit the offence of illicit  
11 trafficking, the role of each defendant must be assessed in determining sentence. I  
12 have considered the submissions of counsel for the Crown and each defendant as  
13 outlined above.

14  
15 **ANALYSIS AND SENTENCE FOR DEFENDANT BROWN**

16  
17 69. Regarding the culpability of the defendant Brown, This court is mindful of the  
18 observations of Richards J in *Pillarchie* that:

19  
20 *“The role of captain of the boat does not appear to fit comfortably within*  
21 *the factors indicating a leading role.... It appears to be an operational*  
22 *function within the chain as is set out in the factors for a significant*  
23 *role.”*  
24

25  
26 70. In that case, the evidence before the court was that the defendant *Pillarchie* captained  
27 the vessel from Jamaica to where they defendants were eventually arrested. He  
28 admitted that he expected significant financial gain and had already been paid a sum  
29 of money.



30  
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1       71.     In the instant case, Brown’s role, in addition to being the captain of the vessel, was  
2             to involve others in the operation for reward. He also provided the vessel in which  
3             the drugs were transported, packed the bags that contained the drugs and then  
4             directed their disposal at sea when it appeared that the vessel was about to be  
5             intercepted.

6  
7       72.     In many instances involving sentences for drug importation or illicit trafficking, this  
8             court has determined sentence after pleas of guilty were entered. The court was  
9             therefore, in those cases, in possession of much more detailed evidence of a  
10            defendant’s involvement in the enterprise, from the defendant himself, in assessing  
11            the role of the defendant *vis à vis* the UK Guidelines. This is not possible in this  
12            case.

13  
14       73.     I am not satisfied that these actions of Brown described above accord with the  
15             classification of a leading role as per the UK Guidelines. While I am mindful that  
16             these characteristics which may define a defendant’s role are not exhaustive, they  
17             are of a kind that, without some direct evidence, it is difficult to find that the  
18             defendant:

- 19  
20            i.       Directed or organised buying and selling on a commercial scale;  
21  
22            ii.       Had substantial links to, and influence on, others in a chain;  
23  
24            iii.       Had close links to original source;  
25  
26            iv.       Had an expectation of substantial financial gain.

27  
28       74.     I find that Brown had a significant role and I therefore find that the starting point for  
29             this court must be at 4 years’ custody with a range of 2 ½ to 5 years.

30

1 75. I take into account the aggravating factors identified by the Crown, that, the  
2 defendant has previous convictions in this jurisdiction for similar offences - offences  
3 of being concerned in the importation of ganja and possession with intent to supply  
4 ganja, and offences for which he was convicted on the 28<sup>th</sup> of February 2019 and  
5 sentenced to thirty two months imprisonment. He was only deported from these  
6 islands on the 18<sup>th</sup> of October 2019.

7  
8 76. I also take into account the attempt to dispose or conceal evidence, his instructing  
9 other members to throw bags of ganja overboard and also his disposing of what  
10 appeared to be electronic items just prior to interception by the police.

11  
12 77. The court's starting point is 4 years' custody. Taking into account the aggravating  
13 factors above, the sentence is increase 6 ½ years' custody.

14  
15 78. This defendant has shown no remorse. There is little in the way of personal  
16 mitigation. I do consider that he is a foreign national and the effect of incarceration  
17 may cause some hardship in relation to his family. This may be mitigated by the fact  
18 that his mother is resident in the Cayman Islands. I note that he has a young daughter  
19 but there is no indication that she is dependent upon him. By way of personal  
20 mitigation, I will reduce the sentence by 6 months. The sentence of the court in  
21 respect of the defendant Brown is 6 years' custody.

22  
23 **ANALYSIS AND SENTENCE FOR DEFENDANT WILLIAMS**



24  
25 79. The Crown submitted that the defendant Williams played a significant role based on  
26 his motivation by financial gain and his awareness of the scale of the operation. The  
27 Crown's submission on the defendant's awareness of the scale of the operation is  
28 based on the dicta in *Pillarchie* wherein Richards J. stated with regard to the drugs  
29 on the vessel:

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*Sentence Judgment: R v Brown (Marvin Andre), Williams (Toney), Minott (O'Neil), Drysdale (Ricardo Kimon). Coram: Carter J. (Actg.). Date: 19<sup>th</sup> day of November 2021.*

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*“Each person travelled on the relatively small canoe with some 44 packages of Ganja. Each knew that these were being transported to the Cayman Islands to be delivered to Cayman contacts. The commercial nature of the enterprise could not have been lost on them. There was therefore, at the very least, some awareness and understanding of the scale of the operation.”*

80. The submission on behalf of Williams is that he was unaware of the presence of ganja on the vessel. However, this was not a large vessel, each of these defendants on their own evidence was aboard this vessel together for almost three days before interception. The drugs were packed into 12 packages and some of these were relatively large. On the evidence presented by the Crown the clear inference accepted by the jury was that each of the defendants knew that these were being transported for delivery to the Cayman Islands. In these circumstances, it is reasonable to find that the commercial nature of this enterprise could not have been lost on them. This is sufficient for this court to find that there was:

*“... at the very least, some awareness and understanding of the scale of the operation.”<sup>9</sup>*

81. On this basis, which indicates a significant role in line with the UK Guidelines, the starting point in respect of the defendant Williams is 4 years’ custody with a sentence range of 2 ½ years’ to 5 years’ custody.

82. This defendant has shown no remorse for his actions. The Crown submitted that an aggravating factor for the court’s consideration may relate to the attempts to dispose of the evidence overboard, that as part of the joint enterprise this Defendant is jointly liable for the disposal of the items overboard.



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<sup>9</sup> See *Pillarchie* at paragraph 65





1 ANALYSIS AND SENTENCE FOR DEFENDANT MINOTT

2  
3 88. I find that the defendant did play a significant role in the enterprise to commit the  
4 offence for the same reasons as outlined above in relation to the defendant Williams.  
5 The defendant was on a small fishing vessel for almost three days before  
6 interception. The drugs were packed into 12 packages some of these were relatively  
7 large. On the evidence presented by the Crown the clear inference accepted by the  
8 jury was that each of the defendants knew that these were being transported for  
9 delivery to the Cayman Islands. In these circumstances, it is reasonable to find that  
10 the commercial nature of this enterprise could not have been lost on them. This is  
11 sufficient for this court to find that there was:

12 “... at the very least, some awareness and understanding of the scale of  
13 the operation.”<sup>10</sup>

14  
15 89. In Minott’s case, he did not give evidence at trial but I note this statement in his  
16 SIR: “*Mr. Minott claimed that he had no idea that the boat was carrying ganja until*  
17 *dawn broke and he could see the bags for himself.*” This statement lends weight to  
18 him having some awareness and understanding of the scale of the operation. I take  
19 as a starting point 4 years’ custody with a range of 2 ½ years to 5 years’ custody.

20  
21 90. The aggravating factor in relation to the defendant ~~Mr.~~ Minott is that he was actively  
22 involved in the attempt to dispose of evidence. There are instances on the police  
23 video submitted into evidence at trial showing the Defendant throwing at least 3  
24 packages, later recovered, and found to contain ganja overboard. This aggravating  
25 factor will increase the sentence from 4 years’ custody to 4 ½ years’ custody.

26

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<sup>10</sup> See Pillarchie at paragraph 65

1 91. Defendant Minott has no previous convictions. I consider his personal  
2 circumstances as outlined by his counsel and also set out his SIR. His was a difficult  
3 upbringing to say the least. At 29 years of age it is difficult to describe this defendant  
4 as being a “youth” but it does appear that his lack of employment and expectation of  
5 some financial gain may also have been his driving factors. I consider too the  
6 hardship that he will suffer ~~in~~ being incarcerated in a foreign jurisdiction. From 4 ½  
7 years’ imprisonment there will be a reduction of 6 months to 4 years’ custody. This  
8 is the appropriate sentence.

9  
10 **ANALYSIS AND SENTENCE FOR DEFENDANT DRYSDALE**

11  
12 92. As with both Williams and Minott, and for the reasons described above, I find that  
13 this defendant too played a significant role in the enterprise to commit the offence of  
14 illicit trafficking because he had some awareness of the scale of the operation. The  
15 starting point in sentence is 4 years’ custody. The sentence range is 2 ½ years’ - 5  
16 years’ custody.

17  
18 93. As stated above with regard to the defendant Williams, while the principle of joint  
19 enterprise has been proved with regard to the commission of the offence of illicit  
20 trafficking, even within a joint enterprise persons may take different roles. I am not  
21 satisfied that it is enough on the facts of this case to find that because this defendant  
22 was part of a joint enterprise, that this fact alone is sufficient to attribute an attempt  
23 to conceal or dispose of evidence by others in the joint enterprise with the effect of  
24 making it an aggravating factor against this defendant on the matter of sentence.  
25 There is no aggravating factor in respect of the defendant Drysdale.

26  
27  
28



1 94. The defendant has no previous convictions. The defendant has shown no remorse.  
2 In terms of personal circumstances, this defendant has 7 children, three of whom  
3 depend on him for financial assistance. I take into account that he is a foreign  
4 national who will be incarcerated away from his home and family and the hardship  
5 that may be caused thereby. I find that the sentence should be reduced by 6 months  
6 on account of these aspects in mitigation. The appropriate sentence is 3 years' 6  
7 months' custody.

8  
9 95. In the case of each Defendant, any time served on remand is to be deducted.

10  
11 **FORFEITURE OF VESSEL**

12  
13 96. The Prosecution applies for an order of forfeiture of the vessel pursuant to s.25 of  
14 the *Misuse of Drugs Act*. Section 25(2) provides that:-

15 “(2) *Where a person is convicted of an offence against this Law, and*  
16 *the court by or before which he is convicted is satisfied that any*  
17 *vessel which was in his possession or under his control at the*  
18 *time of his apprehension -*  
19 *(a) has been used in connection with or for the purpose of*  
20 *committing or facilitating the commission of such*  
21 *offence; or*  
22 *(b) was intended by him to be used for that purpose, the*  
23 *court shall order the forfeiture to the Crown of such*  
24 *vessel.*  
25 *(3) Facilitating the commission of an offence shall be taken for the*  
26 *purposes of this section to include the taking of any steps after*  
27 *the offence has been committed for the purpose of disposing of*  
28 *any property to which it relates or of avoiding apprehension or*  
29 *detection.”*  
30

31 97. Given the agreed evidence, provisions of s.25(2) are satisfied. The vessel, engine  
32 and contents are therefore ordered forfeited to the Crown. The drugs are ordered  
33 forfeited to the Crown to be destroyed.





1   **PREVALENCE**

2  
3       98.     Counsel for Mr. Brown raised with this court the matter of considerations of  
4             prevalence as being a factor for sentencing and referred the court to a number of  
5             authorities in this regard. Having considered those submissions, it appears to this  
6             court from its reading of the recent CICA decisions relating to Illicit Trafficking that  
7             the CICA has found that prevalence is a factor to be considered. However, it is a  
8             factor that led the court to find that the UK sentencing guidelines endorsed as being  
9             useful in terms of sentencing for this offence, were appropriate to ensure and support  
10            consistency of approach in these matters. In both *Pillarchie* and *Rovan Johnson*  
11            the CICA found that the acceptance by the Grand Court of the prevalence of these  
12            types of drug offences was relevant to the increase in the starting point from the  
13            starting point of 4 years' in the summary court for a similar offence to a starting point  
14            of 5 ½ years' imprisonment for the offence of illicit trafficking. The dicta of  
15            Richards J at paragraphs 68 -73 is instructive in this regard. So too is the observation  
16            of the CICA in *Rovan Johnson* in which the following is recorded:

17                           *"It is clear that the problem of the use of vessels to transport ganja*  
18                           *destined for the Cayman Islands from Jamaica is a serious one. The*  
19                           *number of cases drawn to Acting Judge Carter's attention speaks for*  
20                           *itself. The position was colourfully described by Magistrate Foldats in*  
21                           *Adlam and others, mentioned at paragraph 32 of Acting Justice*  
22                           *McDonald-Bishop's judgment in Russell and others. As Justice*  
23                           *Richards, with her wide knowledge of such matters explained, it is not*  
24                           *difficult to take a small boat containing significant quantities of ganja*  
25                           *from Jamaica to the Cayman Islands. It may well be that the position*  
26                           *has worsened since 2012 when the Chief Justice decided Comrie. What*  
27                           *is clear is that the present level of sentencing acts as no deterrent to*  
28                           *such offending."*

29  
30                           *In deciding the appropriate sentence, the court was entitled to take the*  
31                           *extent of such offending into account. We do not accept Mr Grimwood's*  
32                           *submission to the contrary. Moreover, as this court made clear in Ryan*  
33                           *Ebanks (Criminal Appeal 6 of 2020), it is not appropriate in a small*  
34                           *jurisdiction such as the Cayman Islands to apply the case of Bondzie:*  
35                           *see too the observations of the court in paragraph 115 of Ramoon and*  
36                           *Douglas, Cayman Islands Appeal Reports at 34 and 35 of 2016."*

37  
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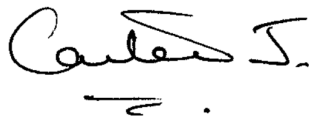
1           99.       At paragraph 115 of **Ramoon and Douglas** the Court of Appeal observed:

2                               *“We do not accept that this experienced, local judge was not entitled to*  
3                               *make the comments he did about gun crime in the Cayman Islands. It*  
4                               *was not necessary for evidence to be called. This is a small jurisdiction.*  
5                               *Judges such as Mr Justice Quin are familiar with the prevalence of*  
6                               *particular forms of crime and offending. The accuracy of his comments*  
7                               *is to some extent borne out by Mr Justice Henderson's comments, to*  
8                               *which we have referred. Moreover, there is no dispute, as the appellants'*  
9                               *submissions have underlined, that the use of guns, at least in cases of*  
10                              *murder, is frequent. The concern in the Cayman Islands regarding gun*  
11                              *crime is also illustrated by the statutory requirement upon the courts to*  
12                              *impose severe, mandatory sentences for the possession of firearms.”*  
13  
14

15           100.       There is nothing further for this court to add on this point.

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**Dated this 19<sup>th</sup> day of November 2021.**



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**Madam Justice Marlene I. Carter**  
**Judge of the Grand Court (Acting)**