



IN THE CAYMAN ISLANDS COURT OF APPEAL

CRIMINAL APPEAL 10/2020, 11/2020 & 12/2020

IND. 24/2020

SC#0460/2020

BETWEEN:

LINTON NYPOLE PILLARCHIE

GERANIMO ANTONIO VAUGHANS

JERRY BARROWS CRANSTON

Appellants

- and -

Her Majesty the Queen

Respondent

BEFORE:

**The Rt. Hon Sir John Goldring, President
The Hon John Martin QC, Justice of Appeal
The Hon Sir Richard Field, Justice of Appeal**

Date of Hearing: 23rd April 2021

Appearances: Mr. Keith Myers, Attorney for Appellants
Mr. Garcia Kelly, Office of the DPP for the Respondent

JUDGMENT

Transcript of oral judgment dated 23rd April 2021 and Approved for Release 19th May 2021

Goldring J, President

1. On 29th April 2020, the Applicants pleaded guilty to an offence of illicit drug trafficking in ganja contrary to section 19(2)(a) of the *Misuse of Drugs Act (2017 Revision)*. On 14th May 2020,

Justice Richards sentenced each of the Applicants as follows: Linton Pillarchie to imprisonment for 73 months; Geranimo Vaughans and Jerry Cranston, 51 months. Each seeks leave to appeal against those sentences.

The offence of illicit trafficking

2. Section 19(1) of the Misuse of Drugs Act (2017 Revision) applies to all ships, whether registered or not and whether or not in Cayman waters. By subsection (2):

"A person on a ship ... wherever it may be who —

(a) has a controlled drug in his possession ...Knowing or having reasonable grounds to suspect that the drug is intended to be imported ... commits an offence and is liable —

(ii) if the controlled drug is not a hard drug —

(A) on summary conviction to ... imprisonment for two years; or

(B) on conviction on indictment to ... imprisonment for fourteen years."

The facts

3. On the 12th of March 2020, the Applicants, who are all Jamaican nationals, were seen by a Joint Marine and Air Support Unit of the Royal Cayman Islands Police Service in a 28 foot Jamaican canoe owned by the Applicant Geranimo Vaughans. It was some 38 nautical miles from East End in Grand Cayman. When the police helicopter approached, they were seen to jettison what were packages of ganja into the sea. Linton Pillarchie threw away his mobile phone. Geranimo Vaughans threw away the SAT phone and the GPS device. That meant that others involved could not be identified. Some 44 packages were recovered. They contained some 673 pounds, or 305 kilos, of ganja. The canoe was equipped with two outboard engines and was unregistered.
4. Each of the Applicants was interviewed.
5. Linton Pillarchie was a 39 year old man with previous convictions for importing some 436 pounds of ganja into the Cayman Islands in 2017 and for illegal landing. He had been sentenced on 26th March 2018 to concurrent sentences of 33 and 12 months' imprisonment. His account was that he

had been hired by men he did not know, to transport the packages, which he believed were ganja, to a particular coordinate some 30 to 40 miles off the Cayman Islands, where he would be met by people coming from Cayman. In exchange for the ganja, they would receive fuel. Because they ran low on fuel, they stopped short of the arranged meeting area and contacted those in Cayman to meet them there. He said he knew what he was doing was wrong, but things were hard in Jamaica. He was paid 100,000 Jamaican dollars and was owed 300,000 Jamaican dollars. The Crown's case was that he played a significant or leading role in the enterprise.

6. Geranimo Vaughans was the owner of the vessel, as we have said. He was 38 or 39 without previous convictions. His account was similar to that of Linton Pillarchie. He too said he did not know the names of those who had hired them. He was to be paid 5,000 US dollars. It was he who threw away the mobile phone and SAT device, as we have said, thus protecting other offenders in the enterprise.
7. The account of the third Applicant was similar to that of the other two.

The judge's sentencing remarks

8. As this court recently set out in the case of *Johnson and Campbell*, Criminal Appeals 24/2019 and 25/2019, when it considered the correct approach to sentencing in such cases as the present, the judge considered the United Kingdom Sentencing Guidelines Council provided helpful assistance. At paragraphs 22 to 23 of her judgment, Justice Richards said:

"22. This Court considers that while some allowance may need to be made for local circumstances, in the absence of Cayman Islands Guidelines with respect to drug offences, the present United Kingdom Sentencing Council Guidelines provide helpful assistance, in that, they set out an established criterion which will support consistency of approach in these matters. The sentencing levels in the Cayman Islands for the offence of Illicit Trafficking are the same as in the United Kingdom. The nature of the offending, although differently titled, is broadly similar in scope. The Court proposes to have recourse to these Guidelines in the absence of local Guidelines.

"23. The Guidelines provide for the category of harm to be determined by the quantity of the drug"

9. By that Definitive Guideline, possession with intent to supply or importation, of 200 or more kilograms of cannabis would place the category of harm into the highest category, namely Category 1. We remind ourselves that the present amount was 305 kilos of ganja, which would place the offending into Category 1 of the Guidelines.
10. The learned judge went on to consider culpability as set out in the Definitive Guideline. As she said, the Guideline defines the offender's culpability in terms of the role played. A 'leading role' includes such things as directing or buying and selling on a commercial basis, close links to the original source, and substantial financial gain. She found that that was not the case here. However, a 'significant role' includes operational or management function within a chain. An offender 'motivated by financial or other advantage, whether or not operating alone' plays a significant role. That, of course, was the case here.
11. Having analysed the roles played by the individual defendants, and referred to the general sentencing guidance provided by the Cayman Islands Sentencing Guidelines, this experienced and knowledgeable judge went on to say (paragraphs 66-73):

"66. Under the UK Guidelines, the starting point for a Category 1 class B drug offence for persons who undertake a significant role is 5 years 6 months (66 months) custody with a range of 5 7 years custody. The starting point and range is the same for the offence of Fraudulent Evasion of a Prohibition by bringing into or taking out of the UK a controlled drug which offence may have more similarity with the present circumstances.

67. This starting point is higher than the four year starting point presently applied in the Summary Court. While this Court acknowledges the fundamental importance of consistency in approach to sentencing for similar offences, the Court considers that a higher starting point is justified in circumstances where there is a higher maximum sentence of 14 years available in the Grand Court under s.19 of the Misuse of Drugs Law in contrast to the seven years available to the Summary Court for a first offence under s.16 of the Law.

68. There is a second and more important reason that a higher starting point is considered appropriate.

69. The Defendants are before the Court for a serious offence in which, despite their personal circumstances, the custody threshold is undoubtedly passed. It is evident from the authorities cited that drug importations have been an

ongoing problem in the Cayman Islands since at least 2008, the date of the earliest case cited, and is a problem which has continued through to date. Counsel for the Defendant Vaughans who has been appearing in these Courts for many years described it as 'a steady number'. It appears clear that the sentences being imposed may be of limited deterrent effect given the repeat offenders mentioned in the cited cases who continue to take the risk of drug transportations.

70. *Counsel on behalf the Defendant Cranston asked the Court to consider whether mere transportation of the drug would warrant the categorisation sought by the Crown and each Counsel asked the Court to consider that the master minds are not before the Court.*

71. *In the context of the Cayman Islands as shown from the cited cases, the transportation of the drug into the Cayman Islands by sea appears to be a critical link in the local supply and distribution chain. Indeed the reasonable inference from the cited cases is that it is the life blood of it. Matters appear to be arranged in such a way that the master minds are protected from identification and the transporters, should they be arrested, destroy any evidence which could lead to their identification.*

72. *This Court respectfully adopts the observations of Carter J. in ... R v Johnson et al. The learned Judge took note of the exponential increase in the quantities being brought into these Islands and the prevalence of these offences.*

73. *It is the view of this Court that for this offence of Illicit Trafficking involving the bringing into the Cayman Islands large quantities of drugs, the primary aims of sentencing must be deterrence and punishment and that an uplift in the starting point for sentencing is warranted because of local circumstances. The Court therefore proposes to adopt the starting point suggested by the United Kingdom Guidelines of 5 years and 6 months, (66 months)."*

12. The judge said there was nothing to suggest that any of the Applicants played a leading role in the enterprise. There was no indication they directed or organised the buying or selling of the drug on a commercial scale, or that they had substantial links to, or influenced others in the chain, or that they were close to the original source. Each was motivated by financial gain, something which under the United Kingdom Definitive Guidelines on Drugs meant that they played a significant role.

13. The judge said also that they must have had some awareness and understanding of the scale of the operation given the amount of drugs that there were in this small vessel.

Credit for pleas of guilty

14. In the light of Mr Myers' submissions to this court, we should set out what the judge said regarding the question of a reduction for a plea of guilty. It starts at paragraph 74 of her judgment:

"...The Prosecution and [the] Defence disagree as to the nature of the reduction for guilty pleas which should be allowed in this case. The Cayman Islands Sentencing Guidelines provide at paragraph 10.7.1 that:

'The purpose of giving credit is to encourage those who are guilty to plead at the earliest opportunity. Any defendant is entitled to put the prosecution to proof and so every defendant who is guilty should be encouraged to indicate that guilt at the first reasonable opportunity.'

...Where the prosecution case is overwhelming, it may not be appropriate to give the full reduction that would otherwise be given. Whilst there is a presumption in favour of the full reduction being given where a plea has been indicated at the first reasonable opportunity, the fact that the prosecution case is overwhelming without relying on admissions from the defendant may be a reason justifying departure from the guideline.

...Where a court is satisfied that a lower reduction should be given for this reason, a recommended reduction of 20% is likely to be appropriate where the guilty plea was indicated at the first reasonable opportunity."

15. The learned judge went on to say (paragraph 75):

"In this case, the Court considers that the evidence against the defendants was overwhelming. They were caught, by the Police Marine and Air Operations Units, in close proximity to the Cayman Islands, throwing packages into the sea from an unregistered boat, which packages (44) were recovered by the officers before towing the vessel to the South Sound dock. While the admissions made by them added to the picture and provided details, the inference of guilt was clear and

inescapable whether or not they had made admissions. The inference would also have been clear that this was an enterprise for gain. It is therefore proposed that they each be given the recommended discount of twenty percent (20%) rather than the full one third".

16. The Judge considered the position of each of the Applicants. In the case of Linton Pillarchie, there were two aggravating features: firstly, his involvement in the attempt to dispose of the drugs and disposing of a mobile phone; secondly, and as the Judge found seriously aggravating, his previous convictions for similar offending. The Judge accepted he had shown remorse and was a family man with two children, in poor financial circumstances, who, as will the other Applicants, will serve his sentence away from home. The judge took a starting point of 66 months, increased it to 96 months for the aggravating features and discounted 20%, resulting in a sentence of 73 months.
17. As to Geranimo Vaughans, the Judge found that there was the single aggravating factor of attempting to conceal or dispose of evidence by throwing the ganja into the sea and throwing away the SAT phone and GPS device. Again she started at 66 months, increasing the sentence to reflect that aggravating factor to 72 months. The learned Judge accepted he was a family man of previous good character and was sole provider for four daughters. To reflect the general mitigation, she reduced the sentence from 72 to 64 months. Reduction for the plea of guilty reduced it to 51 months.
18. As for the Applicant Jerry Cranston, the judge considered his involvement in the attempt to dispose of the packages of drugs as an aggravating feature. She increased the sentence to 72 months from the 66 month starting point. She commented on his remorse, how disappointed he was to be before the court at the age of 51, and took into account he was a father of eight children. The resultant sentence of 51 months was arrived at by a similar calculation to the other cases.

The grounds of appeal

19. As we have said, this court has recently considered the correct approach to sentencing in these cases in *Johnson and Campbell*. That was not an authority originally referred to by Mr Myers on behalf of the Applicants. It did not feature in his original appeal bundle. The court's analysis in *Johnson and Campbell* means that Mr Myers has an uphill struggling in seeking to overturn these sentences on the basis that the judge was wrong in principle in her approach to sentencing in cases such as the present. Although Mr Myers did briefly seek to urge upon the court that it was not appropriate

to apply the Definitive Guideline of England and Wales, that is a submission which cannot bear scrutiny in the light of *Johnson and Campbell*.

20. Mr Myers' essential submission, was that the judge was wrong only to allow a discount of 20 percent in the light of the pleas of guilty. There should have been a full discount of one third. The discount should have reflected the individual circumstances of each of the Applicants. Mr Myers submitted, there had grown up a policy in the courts of the Cayman Islands of only granting a discount of 20% in cases such as the present. He submitted that the sentencing guidance relied upon by the judge did not reflect the decision of this court in the case of *Dilbert and Samuels* [2010 (1) CILR 10], where, at page 27, the then President said:

"Mr Samuels has no criminal record. He has pleaded guilty to this offence. That entitles him to a discount from what the sentence would otherwise be. The magnitude of that discount varies between 25 and 50 percent, depending upon the individual judge's assessment of the reasons for the discount, the reasons for the guilty plea, and the circumstances in which it has been entered".

21. It is clear to us that whatever had been said in *Dilbert and Samuels*, the position is now definitively set out in paragraph 10.7.1 of the Cayman Islands Sentencing Guidelines. It enables, where the prosecution case is overwhelming, the judge, in the exercise of his or her discretion, to reduce the reduction for pleas of guilty from one third to a lesser amount, having regard to the facts of the particular case. As is characteristic of this learned judge, she carefully analysed the facts in this case, and explained why she restricted the discount to 20 percent. That is something she was perfectly entitled to do. That ground of appeal fails.
22. Finally, Mr Myers submits that the judge took insufficient account of the mitigating features as they applied to the facts of the case. Too much was made of the aggravating features of the case. That was, he submits, particularly so in the case of Linton Pillarchie, where the total uplift amounted to 45 percent.
23. We do not agree. These were matters entirely within the discretion of the judge. We have no doubt that the similar previous convictions of Linton Pillarchie were a significantly aggravating feature.
24. In the circumstances, we refuse leave to appeal against these sentences.