

THE COURT OF APPEAL OF THE CAYMAN ISLANDS

CRIMINAL APPEALS 24/2019 & 25/2019
IND 88/2019
SC#01648/2019

BETWEEN

ROVAN JOHNSON
ALBERT CAMPBELL

Appellants

AND

HER MAJESTY THE QUEEN

Respondent



Before: The Rt. Hon Sir John Goldring, President
The Rt. Hon Sir Bernard Rix, Justice of Appeal
The Rt. Hon Sir Alan Moses, Justice of Appeal

Appearances: Mr. Oliver Grimwood for the Appellants
Mr. Scott Wainwright, Office of the DPP for the Respondent

Heard: 23 November 2020

Judgment Delivered: 26 November 2020

JUDGMENT

GOLDRING, President.

1. On 20 September 2019 both Applicants pleaded guilty to an offence of illicit drug trafficking in ganja contrary to section 19(2)(a) of the *Misuse of Drugs Law (2017 Revision)*. On 6 November 2019 Acting Justice Carter sentenced each of the Applicants to imprisonment for 6 years. Each seeks leave to appeal against those sentences. We grant leave.

The offence of illicit trafficking

2. Section 19(1) of the *Misuse of Drugs Law (2017 Revision)*, (described in terms of “Ships used for illicit traffic” in the marginal note) 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 14 years.”

The facts

3. On 24 July 2019 the Appellants, both men of previous good character, were the only occupants of a vessel some 38 nautical miles off the shore of Grand Cayman when officers of the Royal Cayman Islands Police Service Marine Unit intercepted it. There was a strong smell of ganja. On board were 44 packages containing ganja weighing 1,063 pounds. The Appellants were arrested. The Appellant Rovon Johnson said they were fishermen from Westmoreland in Jamaica. He said the appellant Albert Campbell was the captain. The arrangement was that the vessel was to sail off a known GPS mark where the drugs would be offloaded. He was to be paid 130,000 Jamaican dollars (approximately 685 pounds sterling). Mr Campbell confirmed that he too was a fisherman from Jamaica. He said he was approached by Mr Johnson with a proposal as to how to earn some money. The agreement was to drop the packages about 50 to 60 miles off Grand Cayman. He was to be paid 200,000 Jamaican dollars (approximately 1050 pounds sterling).

The background and grounds of appeal

4. Before turning to the judge’s sentencing remarks, it is helpful to set out something of the background and, in broad terms, the grounds of appeal.
5. As we have said, the Appellants were indicted for illicit trafficking, the maximum sentence for which is 14 years’ imprisonment. Had they been arrested in Cayman waters, or made their way ashore, it is likely they would have been charged with an offence of importation of ganja contrary to section 3(1) of the *Law*. For the first importation of a pound or more of ganja for someone of

good character, the maximum sentence under section 3(1) is one of seven years imprisonment: see section 16(3) of the *Misuse of Drugs Law*. For a second or subsequent importation, the maximum sentence is one of 15 years. The Summary Court normally deals with offences of importation of ganja. When imposing sentence in the Summary Court in respect of offences contrary to section 3, the current practice is to follow the guidance provided by the Chief Justice in the case of *Comrie* [2012 (1) CIRLR Note 3], SCA 0001/2011. That was an appeal to the Grand Court from the Summary Court. The appellant, a man of previous good character, had, with others, imported 392.5 pounds of ganja on a boat. He acknowledged 50 pounds of the ganja as his. His role was described as secondary. He had pleaded guilty and had provided information about others in the boat. The court stated that the tariff applied in England and Wales may not be apposite given that the maximum penalty for a first offence in England and Wales was 14 years' imprisonment, although the relevant factors of offending may be. The Chief Justice substituted for the sentence of 5 years' imprisonment imposed in the Summary Court, a sentence of 3 years. The court stated that the important factors for consideration are the quantity of ganja, the role played by the offender and whether the offender has previous convictions. It also stated that a starting point of 3-4 years' imprisonment was appropriate in a case of an offender of good character who played a secondary role. Any sentence should also reflect assistance provided to the police. The Chief Justice found that in the light of the overwhelming nature of the evidence against the Appellant, the discount for the plea of guilty should be in the order of 15-20%.

6. Following *Comrie*, sentences imposed by the Summary Court are in the order of between 30 months and 3 years. The fundamental ground of appeal advanced by Mr Grimwood on behalf of both Appellants is that the criminality involved in the illicit trafficking of ganja in breach of section 19 is in substance no different from that of importing a similar amount of ganja. The only reason importation was not charged in this instance is that at the time of arrest, the boat containing the ganja happened not to be in Cayman waters. There must, it is submitted, be parity in sentence between the two offences. The guidance of the Chief Justice as to length of sentence should apply equally to illicit trafficking and to importation. The starting point should be in the order of 3-4 years. The sentence of 6 years' imprisonment, it is submitted, is therefore manifestly excessive.
7. It is also submitted that the judge should not have taken into account what she found was the increasing prevalence of offences of importing ganja. She failed to have regard to the guidance set out in the English CA case of *Bondzie* [2016] EWCA Crim 552.

8. Finally, it said the facts of this case warranted a discount greater than 20%.

Previous decisions in the Cayman Islands for importing or trafficking in ganja

9. A number of unreported summary decisions were drawn to the judge's attention. None was a guideline case. None purported to decide an issue of principle. Each purported to follow *Comrie*. Mr Grimwood particularly relied upon the case of *R v Xamier Watson and Malson Campbell* (unreported, 11 June 2019). In that case the defendants, men of good character, imported 812 lbs of ganja. They were arrested when at sea in Cayman waters. They attempted to throw the ganja overboard. They also tried to escape. They pleaded guilty at the first opportunity. The Chief Magistrate took as a starting point 4 years imprisonment. He reduced that by 6 months to reflect Campbell's good character. He then further reduced the sentence by giving a discount for plea of one third. The ultimate sentence was of 28 months' imprisonment.

The judge's sentencing remarks

10. We now turn to the judge's sentencing remarks.

11. At paragraphs 18 and 19, the judge said:

“18 In seeking to arrive at the appropriate sentence in this case, I have been assisted by the decisions in the Summary Court referred to by counsel for the defendants. I recognize that most matters concerning the importation of drugs, particularly ganja, are dealt with in our Summary Court where the relevant legislation allows the court to impose significant penalties for such offences.

*19 The Summary Courts have been guided by the dicta in **Comrie** and have acted well within their discretion when dealing with these cases. The Crown has submitted to this court that the approach of the courts, both the Grand Court and the Summary Court may now need to be modified to meet the ever increasing challenge of significant attempts to import substantial quantities of ganja into these Islands.”*

12. The judge then referred to 6 summary cases of importation which the defence had drawn to her attention. They covered a period between 2017 and 2019.

13. At paragraph 21, the court went on to say:

*“21 The sentences imposed in the Summary Court are of course not binding on this court. There is no issue that the Learned Magistrates have consistently applied the correct sentencing principles and have stayed within the **Comrie** guidelines in most instances. However, precedents and guidelines can only be taken so far. They are not meant to inhibit the court to the extent that the court is restricted from moving outside these where the circumstances warrant.*

*22 In the instant case, the maximum sentence for the offence of Illicit Trafficking is 14 years imprisonment. This factor distinguishes the sentence to be imposed from those imposed in the Summary Court where the maximum sentence for importation of ganja is 7 years imprisonment. The principles that were established in **Comrie** remain relevant and applicable in so far as they are the main factors to be considered in cases involving large quantities of ganja being illegally imported into these Islands: The quantity of ganja; the defendant’s role, and any previous convictions, especially for relevant offences.*

23 In line with these principles, and taking note of the exponential increase in the quantities being brought into these islands and the prevalence of these offences, I take as my starting point a sentence of 8 years imprisonment with a sentence range of 6 years to 9 years imprisonment. Repeat importers may attract a sentence in excess of 9 years imprisonment.

24 In common with similar cases, in the instant matter, there is no evidence before the court that the defendants’ role was anything other than boatmen. There is a dearth of evidence from which this court could infer that they played any role surrounding the purchasing, packaging, or loading of the ganja or that they were privy to how the drugs were to be distributed or how they may have profited from such distribution.”

14. The judge then considered the appropriate level of discount. She referred to paragraph 10.7.1 of the Cayman Islands Sentencing Guidelines which provide:

“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 judge went on to say at paragraphs 27-9:

“27 On the facts of this case, the prosecution’s evidence was overwhelming. The prosecution does not rely on the defendants’ admissions in order to prove their case. For these reasons, I will discount the sentence by 20% for their guilty pleas, thereby reducing the sentence to 6 years and 4 months imprisonment.

28 I have considered the defendants’ personal circumstances as their counsel has outlined. Neither of the defendants have previous convictions. I have considered the mitigating factors. I will further discount the sentence by 4 months to accord for these factors.

*29 Counsel for the defendants submitted to the court that the defendants “took the most risk with the least reward.” It is hoped that other persons looking to profit from bringing drugs into the Cayman Islands will realise that the risk is very real and that their only reward will be a stern sentence. The sentence of the court is that the defendants will each serve a term of **6 years imprisonment**. Any time that the defendants have spent in custody shall be deducted from this sentence.”*

Other Cayman Islands authorities

16. We now turn to other Cayman Islands authorities.

The decision of the Court of Appeal in *Minzett v R* [2009 CILR Note 24]

17. The appellant, a woman with previous convictions, was in that case sentenced by the Summary Court to 4 years’ imprisonment. Her appeal against sentence had been dismissed by the Grand Court. She appealed to the CA. She had been convicted following a trial of the importation of 964 pounds of ganja. She had previous convictions. That meant the maximum sentence was one of 14 years. Her role was substantial. In dismissing her appeal against sentence, the court indicated that

a sentence in the order of 5-6 years' imprisonment would have been appropriate. Although Mr Grimwood relied on *Minzett* in support of his argument, the reality is that this case was some time ago and the court was doing no more than make general observations when dismissing an appeal. It was not intended to be any sort of guideline case.

The decision of the Grand Court in *Russell, Smith, Straumann and Trench*

18. Acting Justice Carter passed sentence in the present case on 6 November 2019. On 10 September 2019 the case of *Russell, Smith, Straumann and Trench* had been before Justice Marva McDonald-Bishop in the Grand Court. It does not appear to have been drawn to Justice Carter's attention in the present case. That case, like the present, involved a single count of illicit trafficking contrary to section 19(2)(a). The amount of ganja was 454.41 pounds. The defendants, who were members of the crew, were arrested in their Jamaican boat when at sea. They pleaded guilty. In her sentencing remarks at paragraphs 31-2 Acting Justice McDonald-Bishop said:

“31 There is no question that the illicit trafficking in dangerous drugs and the intention to import those drugs into a country unlawfully is a serious offence. Furthermore, the importation of ganja and related offences are well established to be a scourge on this island.

*32 Magistrate Foldats, in the case of **R v Adlam (Derrick Anthony), Cunningham (Demarco Deinton) and Morgan (Leroy Johnoton)**¹ provides a colourful picture of the prevalence of these offences within this jurisdiction, when he observed (page 1 of written reasons for judgment):*

“Yet again we have foreign nationals before the court who are guilty of importing illegal drugs into our country and who must be sentenced by this court.

Sadly, the narrative in these cases have become familiar, almost clichéd - a ganja boat is intercepted, the culprits are apprehended, large quantities of illegal drugs are recovered, and lengthy jail sentences are imposed. And yet, ganja boats continue to arrive in our waters and recently, it seems, almost on a weekly basis.

Why? One reason must be that local demand creates a profitable market for illegal drugs. Until this issue is adequately addressed, ganja boats will continue to arrive; but that is a complex and difficult societal issue that this court is unable to resolve. In the meantime, the lure of money will entice individuals, like these defendants, to engage

¹ Unreported. Charge No 4697/2017 (23rd March 2018)

in drug importation schemes despite the risk of years in jail when captured.”

19. At paragraphs 61-2 she said:

“61 I find that a sentence of 48 months (4 years’) imprisonment is an appropriate starting point for a first-time offence of importation of the quantity of ganja in this case. The intention on the part of the perpetrators would have been the same as that required to import ganja into the Cayman Islands. I would accept that the sentences imposed for the importation of ganja could be treated as a useful guide in determining the starting point to be used for this offence.

62 This offence of Illicit Trafficking is treated by the legislature as being different from the importation of ganja, as evidenced by the elements which constitute the offence and the penalties prescribed for it. I conclude that there is a justifiable basis for utilising a lower starting point for this offence than that used in the cases of importation of ganja. The discount from the usual starting point in importation cases is allowed in recognition of the fact that the boat had not yet reached within the territorial waters of the Cayman Islands at the point of discovery.”

20. She then took as a starting point 3 years 6 months.

The decision of the Grand Court in *Pillarchie, Vaughans and Cranston*

21. That case was before Justice Richards QC on 29 April 2020. It too involved a single count of illicit trafficking contrary to section 19(2)(a). The amount of ganja was 673 pounds. The defendants were arrested in their Jamaican canoe when at sea. They pleaded guilty.

22. In *Pillarchie* Justice Richards analysed the sentences imposed in the Summary Court in cases of crew members. Again, Acting Justice Marva McDonald-Bishop’s decision in *Russell* does not appear to have been drawn to her attention. However, the present case was. As Justice Richards put it (at paragraph 17):

“[Justice Carter had] declined to adopt the four-year starting point. In doing so, the Court noted that the maximum sentence for Illicit Trafficking of Ganja is 14 years’

imprisonment in contrast to the 7 year maximum sentence for first offences of Importation and Possession with Intent to supply.”

23. Justice Richards considered the applicability of the Definitive Guideline in England and Wales with respect to sentence. As had the Chief Justice in *Comrie*, she noted, the offence of possession of a class C drug with intent to supply had a maximum sentence of 14 years’ custody: see the Misuse of Drugs Act 1971, section 5(3). As Justice Richards later observed, the importation of such a drug has a similar maximum sentence in England and Wales: see the Misuse of Drugs Act 1971, section 3.

24. At paragraphs 22-3 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..”

25. By the Definitive Guideline, possession with intent to supply or importation of 200 or more kilogrammes of cannabis would place the category of harm into the highest category, namely category 1. The present case involved 1063 pounds, which amounts to 482 kilos and would place the present offence into category 1 of harm. The amount of ganja in *Pillarchie* also placed it into category 1.

26. Justice Richards 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. That is not the case here. Neither was it in *Pillarchie*.

27. 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 is plainly the case here, as it was in *Pillarchie*.
28. Having analysed the roles played by the individual defendants, and referred to the general sentencing guidance provided by the Cayman Islands Sentencing Guidelines, the judge, who has widespread knowledge of the Cayman Islands went on to say at 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 categorization 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 the cited case of **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)."*

29. Finally, in the light of the overwhelming evidence against the defendants, Richards J reduced the discount for pleading guilty to one of 20%.

Mr Grimwood's submissions on behalf of the Appellants

Disparity and the appropriate approach to sentence under section 19(1)

30. Mr Grimwood submits that there is disparity and confusion between the approach of the Summary Court and the Grand Court, and within different constitutions of the Grand Court, with respect to what he submits is essentially similar offending. He submits, "*a sentence should be similar or proportionate to sentences imposed on similar convicted persons for similar offences committed in similar circumstances.*" (See section 4(d) of the *Alternative Sentencing Law (2008 Revision)*)
31. Mr Grimwood points out, that while for a first offence of importation of ganja under section 3(1) of the *Law*, an offender cannot be sentenced to more than 7 years imprisonment, for an offence essentially identical on its facts other than that it happens to have been committed outside Cayman waters, the maximum sentence is 14 years. It cannot, he submits, have been the intention of the Legislative Assembly that someone whose criminality is essentially the same falls to be sentenced substantially more severely because, he happens to be detained before he has entered Cayman waters (that is to say more than 12 nautical miles from the Islands). On the judge's analysis (and

that of Justice Richards in *Pillarche*), submits Mr Grimwood, if arrested outside the Cayman Islands, the starting point is 8 years, if arrested moments after the boat has entered Cayman waters, the starting point is 3 to 4 years.

32. Mr Grimwood further relies on the provisions of section 21(1) of the *Misuse of Drugs Law*, which provides that:

“Proceedings under this Law in respect of an offence on a ship are to be taken, and the offence is, for all incidental purposes, to be treated as having been committed in the Islands.”

33. He argues that section 21 requires the court to approach sentence as if it had been committed on the Islands. That requires, he submits, the same limitation on sentence as under section 3(1), namely 7 years.

34. Mr Grimwood’s next submission relies on what is said to be the distinction between the actual importation of drugs under section 3(1)(a) and the mere intention to import under section 19(1). He submits that the intention to commit the act cannot be considered more serious than the act itself.

35. Mr Grimwood also relies on the provisions of section 18 of the *Law*, which states:

“Anything which would constitute a drug trafficking offence if done on land in the Islands constitutes that offence if done on a Cayman ship.”

36. By section 2(1):

““drug trafficking” means doing or being concerned in any of the following, whether in the Islands or elsewhere-

...(c) importing...a controlled drug where the importation...is prohibited by paragraph (a)...of section 3(1)...”

37. Mr Grimwood’s submission comes to this. Possession of drugs on a Cayman ship would amount to possession with intent to supply contrary to section 3(1)(m). The maximum sentence for a first offence would be 7 years. If on the same facts the charge was trafficking under section 19 (as it could be), the maximum sentence would be 14 years. That cannot have been the intention of the Legislative Assembly.

38. As to the Definitive Guideline, Mr Grimwood submits that the court need not have recourse to it. There is sufficient guidance provided by the cases of *Minzette* and *Comrie*. He commends the approach in *Russell*.
39. As to prevalence, Mr Grimwood submits the court should have followed the procedure laid down by the English Court of Appeal decision in *Bondzie* [2016] EWCA crim 552.
40. Finally, Mr Grimwood submits insufficient credit was given for the plea of guilty on the facts of the present case. Had the appellants not admitted they intended to bring the drugs into the Cayman Islands, it would have been difficult to prove. They were some 38 nautical miles from Cayman. Their two mobile phones were not examined. They were drifting. It could have been advanced on their behalf that they might have been intending to go to Cuba or to meet another vessel. In the circumstances, a full discount for plea should have been allowed.

Our view

41. It is clear that the problem of the use of vessels to transport ganja destined for the Cayman Islands from Jamaica is a serious one. The number of cases drawn to Acting Judge Carter's attention speaks for itself. The position was colourfully described by Magistrate Foldats in *Adlam and others*, mentioned at paragraph 32 of Acting Justice McDonald-Bishop's judgment in *Russell and others* (see paragraph 18 above). As Justice Richards, with her wide knowledge of such matters explained, it is not difficult to take a small boat containing significant quantities of ganja from Jamaica to the Cayman Islands. It may well be that the position has worsened since 2012 when the Chief Justice decided *Comrie*. What is clear is that the present level of sentencing acts as no deterrent to such offending.
42. In deciding the appropriate sentence, the court was entitled to take the extent of such offending into account. We do not accept Mr Grimwood's submission to the contrary. Moreover, as this court made clear in *Ryan Ebanks* (Criminal Appeal 6 of 2020), it is not appropriate in a small jurisdiction such as the Cayman Islands to apply the case of *Bondzie*: see too the observations of the court in paragraph 115 of *Ramoon and Douglas*, Cayman Islands Appeal Reports at 34 and 35 of 2016.
43. When enacting section 19 of the *Misuse of Drugs Law (2017 Revision)*, the Legislative Assembly must be taken to have had in mind both the extent, and the ease of trafficking such drugs by boat

from Jamaica to the Cayman Islands, not to mention the deleterious effect of the consequential widespread consumption on the Islands. The gravamen of the offence under section 19, unlike under section 3, is the use by individuals of a vessel for the importation of drugs into the Cayman Islands. The sentence of up to 14 years' imprisonment on indictment under section 19(2)(b)(ii) must be taken to reflect the Legislative Assembly's view of the seriousness of such offending, whether the offender is of good character or not. In the circumstances, we do not agree with the remarks of Acting Justice McDonald-Bishop in *Russell*, cited in paragraph 18 above, at paragraphs 61-2 of her judgment.

44. That being the case, the court is entitled when dealing with a case under section 19(1) to have regard to the maximum sentence of 14 years and to have as a starting point a sentence greater than 3-4 years.
45. We would add this. More than 8 years have passed since the judgment of the Chief Justice in *Comrie*. He did not have the benefit of the sort of argument considered by this court (albeit in the context of section 19). It may well be that were he now considering the matter, he would have in mind a somewhat higher starting point than he suggested then, even in the context of importation contrary to section 3(1).
46. As to Mr Grimwood's other points, we would say this.
47. Section 18 is intended to do no more than extend in respect of certain offences the jurisdiction of the Cayman Islands to Cayman Islands' ships. Its purpose is to equate offences committed on Cayman Islands' ships with similar offences committed on the Islands. It has nothing to do with sentence.
48. Section 21 of *the Law* is plainly intended to apply to process and/or jurisdiction. It is saying no more than that any prosecution under section 19 will follow a process similar to that which applies when an offence is committed in the Cayman Islands. Again, it has nothing to do with sentence.
49. As to Mr Grimwood's submission that because section 19 refers to a mere intention to import and section 3(1)(a) to the completed offence of importation, the section 19 offence cannot have been intended to be more serious and deserving of heavier punishment, we do not agree. The gravamen of the offence under section 19 is the use of a ship for the illicit trafficking of drugs. It is that which

is deserving of the severe penalty provided for. Moreover, it is not as a general principle the case that the completion of an offence involves greater criminality and is hence deserving of greater punishment. It must depend on the facts of the particular case.

50. In our judgment, there is good reason to follow the Definitive Guideline for the reasons Justice Richards gave in *Pillarchie*. There is no Cayman guidance. The maximum sentences for the offending are similar. The characteristics relating to culpability and harm, are equally apposite. As Justice Richards said, the starting point for a Category 1 class B offence in respect of someone who undertakes a significant role is 5 years 6 months (66 months) custody, with a range of 5-7 years.
51. It is therefore appropriate to apply the Definitive Guideline to the facts of the present case. Doing so results in a sentence of 66 months, less the appropriate discount for the plea of guilty. In our judgment, for the reasons she gave, the judge was entitled to allow a reduction of only 20%. That would result in sentences of 4 years 6 months. The judge made a further reduction of 4 months to reflect the other mitigating features of the cases. We think it appropriate to do the same. While that would result in sentences of 4 years 2 months' imprisonment, we will round them down to 4 years. We therefore substitute for the sentences of 6 years, terms for imprisonment for 4 years. To that extent, these appeals are allowed.
52. We would make these two final observations.
53. First, it has so far been the practice of the Director of Public Prosecutions not to charge trafficking in cases in which the arrest has taken place when the vessel is within the jurisdiction of Cayman. Although of course it is a matter for him, there appears to be no reason why in such cases the charge should not be laid under section 19. To do so would reflect the intention of the Legislature in respect of such cases. It would also obviate the sort of submissions which have featured in the present case.
54. Second, we do think the time has come for the Cayman Islands to have some formal sentencing guidance with respect to drugs offences.