

IN THE CAYMAN ISLANDS COURT OF APPEAL

CRIMINAL APPEAL 23/2019

IND 87/2018

SC#2493/18

BETWEEN:

**MICHAEL PALMER**

**Appellant**

- and -

Her Majesty the Queen

**Respondent**



BEFORE:

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

Date of Hearing:

13<sup>th</sup> November 2020

Appearances:

Mr. Keith Myers Attorney for the Appellant  
Mr. Garcia Kelly, Office of the DPP for the Respondent

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JUDGMENT

Transcript of oral judgment dated 13<sup>th</sup> November 2020

Approved for Release 25<sup>th</sup> November 2020

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**MARTIN, J.A.:**

1. On 3 October 2019 the applicant, Michael Palmer, was sentenced by Justice Chapple to 8 years and 3 months' imprisonment on a single count of importation of cocaine, contrary to section 3 (1) (a) of the *Misuse of Drugs Law (2017 Revision)*, to which he had pleaded guilty.
2. He now seeks leave to appeal against his sentence on the ground that it is manifestly excessive. In essence, it is said that the judge adopted too high a starting point and gave insufficient credit for mitigation.

3. The circumstances of the offence were as follows:
4. On 9 November 2018, the applicant arrived at Owen Roberts International Airport on a flight from Jamaica. He was stopped and searched by a customs officer. He told the officer that he had some meat seasoning powder which he had brought for someone.
5. In his luggage there were boxes containing white powder labelled as "cake mix" and "sweet potato seasoning". The powder was subsequently found to be cocaine of a total weight of 1.93 kilograms. The applicant was arrested and his mobile phone was confiscated.
6. In interview on 11 November 2018, the applicant told the police that he had been paid \$30 US by an unnamed woman to take the packages from Jamaica to the Cayman Islands and that he did not know they contained anything illegal.
7. Subsequent analysis of his mobile phone revealed voice and text messages in which the applicant was instructed by persons called "Nick" and "Kemar" to transport the drugs.
8. On 15 July 2019, the applicant entered a plea of guilty to a single count of importation of cocaine. Sentence was deferred as a result of the applicant's offer to provide assistance to the police. The information he provided turned out, however, to be of a limited assistance and the police made it clear they would not be calling on the applicant to provide further information for prosecutions.
9. When sentencing the applicant on 3 October 2019, Justice Chapple said, among other things, the following:

*"I am satisfied that in your case the correct starting point is a sentence of 15 years. I take into account particularly your good character, your personal circumstances in Jamaica, the relative lack of sophistication of the importation, the quantity less than in Millwood, and the assistance you gave to the police.*

*As Mr. Wheeler [who was then appearing for the applicant] says, there are two parts to assistance given to the police: Firstly, the substantial mitigating effect of wanting to assist the police, but I have to take into account as well, on all the authorities, the value of the assistance given.*

*Particularly taking all of those points into account, I reduce the starting point from 15 years to 11 years. I then apply the reduction to reflect your guilty plea. Applying that reduction of one quarter, arrives at a sentence of 8 years and 3 months' imprisonment, and that is the sentence of the court."*

10. As we have indicated, the applicant contends that the ultimate starting point of 11 years was too high and that the judge failed to give adequate credit for the available mitigation.
11. As is evident from the part of the sentencing remarks we have quoted, the judge's initial starting point was 15 years. He derived that starting point from the Chief Justice's Sentencing Guidelines, promulgated in 2002 and still in force. As the judge said:

*"My starting point in deciding what the right sentence is are the guidelines laid down by the Chief Justice issued in 2002, but I am satisfied that they remain the guidance which this court should follow. I have no reason to think that the problem of cocaine is any less real in 2019 than it was in 2002 when those guidelines were laid down. Indeed, the recent experience of these courts is that cocaine is still as wide spread a problem now as it ever was, if not more so.*

*I note that Parliament has increased the maximum sentence for cocaine importation from 20 years, as it was when the Chief Justice laid down those guidelines, to 35 years as it is now. I appreciate and accept guidelines are not tramlines. That guidance suggests that 15 years or more is appropriate for kilo quantities, as we are dealing with here".*

12. As the judge indicated, the Chief Justice's Guidelines suggested a prison term of 15 years or more. In relevant part they state as follows:

*"The tariff for a first offence, involving less than 2 ounces of cocaine or less than 4 grams of cocaine base without mitigating circumstances, will be eight years. For offences involving 2 ounces or more or 4 grams or more of cocaine base without mitigating circumstances the tariff will be 10 to 12 years. Fifteen years or*

*more will be imposed where such an offence involves substantial importation or dealing in any way either in powder or crack cocaine. We would define 'substantial importation or dealing' as any transaction involving several ounces or kilo quantities".*

13. The guidelines go on to indicate that the courts recognise that many of the people caught are couriers or intermediaries and that the worst offenders in the chain of distribution often remain concealed, and therefore there should be a substantial discount on sentence for those offenders who are prepared to co-operate with the police in their enquiries.
14. The judge was also referred to the United Kingdom Definitive Guidelines on sentencing drug offences. Those guidelines have no direct application in the Cayman Islands; but the criteria contained in them for determining the level of involvement of an offender - whether the role that the offender played was leading, significant, or lesser and the relevance of the amount of drugs - may be helpful in determining culpability and category of harm.
15. The judge referred to them for this purpose; taking the view that the applicant's role was significant since it was for financial reward and the amount imported was nearly 2 kilograms. In this connection the judge said the following:

*"I sentence you on the basis that you were not the brains or organiser of this importation. You were a courier bringing drugs from Jamaica to the Caymans. Your reward was \$2000. Viewed against your financial circumstances, that was a large amount of money.*

*It is said you succumbed to temptation. I have heard about how things were in Jamaica, your concern for the proper education of your daughter and how that weighed heavily with you. The prosecution say that you were rather more involved and rather less innocent than Mr. Wheeler now submits. I do not find it necessary to hold a detailed enquiry about that; the truth probably lies somewhere in the middle.*

*The phone messages do demonstrate that you knew you were dealing with professional, experienced drug dealers. The planning took a matter of weeks and*

*you were involved - on the phone messages - for some weeks. You had ample opportunity to come to your senses and withdraw from all of this, but you did not do so. The personal circumstances in which you found yourself no doubt weighed substantially with you as well".*

16. A little later he said:

*"I have approached this case on the basis that you were a courier, although with an awareness of the operation in which you were becoming involved and you were involved in the planning for some weeks".*

17. It is evident, from other passages in the sentencing remarks we do not find it necessary to quote, that the judge also took into account, and gave credit for, the applicant's lack of previous convictions, took note that the importation was not sophisticated (although he was satisfied that the applicant knew perfectly well what it was that he was bringing to the island), and took into account the assistance given to the police. These matters were all again referred to in the first of the quoted passages from the sentencing remarks that we have cited above.

18. For the applicant, Mr. Myers contended first that the judge was wrong to conclude that the applicant's role was significant within the terms of the UK Guidelines. In essence, he said that the court should have treated the applicant simply as a courier and that in the circumstances, the starting point of 15 years subsequently reduced to 11 was too high. There is a question as to the extent of the deduction from the 15 year initial starting point, which we will address shortly; but at this stage it is necessary to point out that the Chief Justice's Guidelines mandate an initial starting point of 15 years for an offence of this nature. No criticism can be directed at the judge for having started at that level.

19. Mr. Myers says, though, that the deduction of a total of four years before a further deduction for the guilty plea fails to reflect adequately the circumstances of the case.

20. He says that the reality of the matter was that the applicant was not involved in the organisation at all; that he was simply a courier; that the level of financial interest which he obtained, the \$2000 which was agreed was the amount he would get, was a tiny amount of the likely profit that could be obtained on the deal; and that when viewed overall, the involvement of the applicant in the

planning and otherwise was so minimal that it was correct only to treat him as being a courier with little voluntary involvement in the importation.

21. We prefer to look at this matter in the round. The judge, as we have said, deducted a total of four years for the available mitigation, which included the assistance given to the police and an acknowledgment by the judge that that assistance came at a risk to the applicant, even though in the event it turned out to be of little importance to further investigations. It included personal mitigation and it included the judge's assessment of the role, as the judge considered the role of the applicant was greater than that of the typical ordinary courier.
22. It is true to say that his financial involvement was small but, as the judge rightly pointed out, the involvement and the planning, at least of this particular importation, extended over a period of time and the applicant was involved in it. It is not simply the case, as the applicant himself sought to get the police initially to believe, that he had been approached out of the blue at the airport and asked to take in drugs to the Cayman Islands without knowing what he was doing.
23. In our judgment, there is no merit in this application. The judge was entirely justified in treating the relevant guidelines as being those promulgated by the Chief Justice in 2002. Unless and until they are replaced, they remain the definitive source of sentencing guidance in cases such as the present, notwithstanding the passage of time since they were propounded and notwithstanding that the maximum sentence for the offences had substantially increased.
24. The judge was therefore justified in taking from those guidelines the starting point of 15 years. In reducing that starting point by four years, he took into account all relevant mitigation. In doing so he was, in effect, treating the applicant as more than a mere courier, in the sense that that term is normally understood, and he was treating his role as significant within the categorisation of the United Kingdom Guidelines. In giving credit for the assistance provided by the applicant to the police, the judge was entitled at the same time to have regard to the fact that the assistance was very limited. Overall, it does not seem to us that the reduction of four years to reflect all the various factors can be said to have been less than this applicant was entitled to. This was a substantial importation by a person who had at least some involvement in the planning and we consider that the sentence imposed by the judge was appropriate in all the circumstances.
25. The application is accordingly dismissed.