

4-09-09

IN THE COURT OF APPEAL OF THE CAYMAN ISLANDS

APPEAL NO. 14 OF 2009
SCA NO. 35/06
C#2978/05

BETWEEN:

CLIFF GROVES

Appellant

and

HER MAJESTY THE QUEEN

Respondent



BEFORE: THE RT. HON. SIR JOHN CHADWICK P.
THE HON. MR. JUSTICE MOTTLEY J.A.
THE HON. MR. JUSTICE VOS J.A.

Reasons for Judgment delivered orally on 4 September, 2009.

APPEARANCES:

Appellant
Ms. N. Petit

Self-represented
for the Respondent

1 Friday, 4 September, 2009

2

3

REASONS FOR JUDGMENT

4

5 CHADWICK, President:

6

7

8

9

10

11

12

The applicant, Cliff Ian Groves, was sentenced on 20th December, 2006, in the Summary Court on pleas of guilty to 18 months imprisonment on a charge of supplying a controlled drug (cocaine) and to 30 months imprisonment on a charge of burglary of a residential premises.

13

14

15

16

17

18

19

20

21

These were separate offences, the first committed on the 5th February, 2005, and the second on the 10th August, 2005. Although it was accepted that the second offence was drug related - in the sense that the burglary was to obtain the means to feed a drug habit - the Chief Magistrate properly directed that they should be served consecutively. Together they amount to a sentence of four years.

22

23

24

25

By notice dated 27th December, 2006, Groves appealed to the Grand Court against those sentences on the ground that they were harsh and excessive. That appeal came before

1 Henderson J. on the 25th July, 2008. The
2 appeal was dismissed.

3 After rejecting what the judge described
4 as a threshold issue - that Groves' spent
5 convictions (and there were many) should not
6 have been put before the Magistrate at the time
7 of sentence - he said this:

8 "The sentence of 18 months for
9 social supply of cocaine is
10 likely on the high side for that
11 particular crime. The sentence
12 of 30 months for burglary of a
13 residence in circumstances where
14 the offender has a previous
15 conviction for burglary, albeit
16 an older conviction, is likely
17 on the low side."

18 He then referred to the discount that
19 Mr. Groves could expect for a guilty plea and
20 went on:

21 "It seems to me that, in light
22 of all the circumstances, a
23 sentence of four years for the
24 burglary is justified. After
25 applying a one-third discount to

1 that, one is still left with a
2 net sentence somewhat higher
3 than 30 months. The result is
4 that the aggregate or global
5 sentence is apt in the
6 circumstances. I am satisfied
7 that there was no error."

8 On 6th April, 2009, Groves applied to the
9 Grand Court for leave to extend the time for
10 giving notice of appeal against the decision of
11 Henderson J. He told us that he had thought
12 that notice of appeal had been given by his
13 then advocate and only discovered later that it
14 had not been given.

15 The application came before Foster J. on
16 the 15th July, 2009, and was refused. That
17 judge took the view that there must be finality
18 in the matter. In those circumstances, the
19 Crown was at first minded to submit that this
20 Court had no jurisdiction to entertain the
21 appeal. Plainly, there could be no appeal from
22 the decision of Foster J. refusing to extend
23 time (see Lane and Esdaile (1891) AC 210
24 provided by this Court in Queen v. Shannette
25 Reid Cr. App. No. 17 of 2001, unreported on

1 24th August 2001).

2 But we are not concerned with an appeal
3 from the decision of Foster J. The application
4 to us is an original application under rule 32
5 of the Court of Appeal Rules, read with
6 sections 31 to 33 of the Court of Appeal Law.
7 The Crown did not pursue that point.

8 We are satisfied that it is open to us to
9 extend time and to hear the appeal if the
10 circumstances warrant that course.

11 We turn therefore to consider whether the
12 proposed appeal has merit: for if it has no
13 merit then, plainly, there is no purpose in
14 extending time. But if the appeal is
15 meritorious, then we must consider whether the
16 strict enforcement of the time elements in the
17 rules would, in this case, risk injustice to
18 the applicant.

19 We agree with Henderson J. that the
20 sentence for a social supply of cocaine is on
21 the high side. The facts of the offence as
22 they appear from the police report may be
23 summarised as follows:

24 Officers, who wanted to interview Groves
25 in connection with another matter, had

1 information that he was at the Westin Casuarina
2 Resort. They went there on the 5th February,
3 2005. They were told that he was in room 2011.
4 When they knocked on the door of that room a
5 female voice was heard on the other side of the
6 door asking who it was. When told it was the
7 police, she replied that she needed a minute to
8 put on some clothes.

9 Shortly afterwards she opened the door.
10 The officers went inside. Mr. Groves was found ,
11 to be in the bathroom. He seemed to be
12 attempting to flush something down the toilet.
13 Also found was a crack pipe on the bathroom
14 floor. An item was recovered from the toilet:
15 that was another part of a crack pipe. A
16 search of the room produced some matter which
17 resembled ganja, and a rock-like substance
18 resembling cocaine, also a soda can which might
19 have been used in the consumption of drugs.

20 Groves and his female companion,
21 Ms. Rivera, were taken to the police station.
22 Groves admitted using cocaine but denied ganja.
23 A medical analysis confirmed that he had not
24 tested positive for ganja.

25 So this then was, essentially, a social

1 supply of cocaine in an apartment where both
2 parties seemed to be enjoying drugs and
3 probably sex.

4 In her sentencing remarks, the Magistrate
5 said this:

6 "For supplying cocaine, taking
7 into account that it was social
8 supply and also considering the
9 totality of the sentence I
10 intend to impose, I impose a
11 sentence of 18 months, a
12 sentence perhaps more
13 appropriate for simple
14 possession."

15 Then there is a note:

16 "Chief Justice's Statement on
17 Tariffs: The tariff for
18 possession has for many years
19 been and will continue to be 9
20 to 12 months for a first
21 offence. For a second or
22 subsequent offence, 1½ years..."

23 It is true that Groves had previous
24 convictions for consumptions of cocaine. There
25 were two old convictions in 1987 and 1988 and

1 one more recent conviction in 1999. On the
2 latter conviction he had been given a probation
3 order and required to abstain from consumption
4 of alcohol and drugs. He seems to have
5 observed that condition.

6 A progress report in September 2005 was
7 positive; and a social inquiry report in the
8 same month obtained in connection with this
9 offence recommended a suspended sentence and
10 probation order. Sadly, in the course of the
11 next 12 months the position changed radically.

12 From a social inquiry report obtained in
13 November 2006, shortly before the sentence in
14 this case, it was clear that there had been a
15 relapse. The report of the 27th November,
16 2006, said this:

17 "Unfortunately for Mr. Groves,
18 residential treatment may be his
19 alternative to incarceration
20 and, after his many
21 opportunities in treatment,
22 could even be his way out of
23 incarceration, yet sobriety has
24 not been sustained after leaving
25 the institutions and his

1 subsequent re-offends. As a
2 result, Mr. Groves is assessed
3 as at high risk to re-offend.
4 It is noted that his most recent
5 residential treatment was early
6 in 2006 and he relapsed without
7 attending an outpatient
8 treatment as agreed."

9 And the probation officer commented that:

10 "... good social supports [had
11 not] prevented Mr. Groves from
12 relapsing and re-offending. He
13 knows the life changes required
14 and again faces the challenge to
15 unlearn his criminal behaviour
16 and sustain his reformed
17 behaviour."

18 Nevertheless, the probation officer
19 regarded a suspended sentence and a
20 compensation order as a possible way forward.

21 It was, we think, that social inquiry
22 report that led the Magistrate to take the view
23 that a sentence of immediate imprisonment was
24 necessary in this case. We do not dissent from
25 that view. But we think, taking all the

1 circumstances into account, an appropriate
2 sentence on a guilty plea for a social supply
3 of this nature and in these circumstances would
4 have been nine months. Eighteen months
5 imprisonment in this case on the drugs charge
6 was, in our view, manifestly excessive.

7 We turn to consider the sentence on the
8 burglary conviction. Again, we can take the
9 facts from the police report made in connection
10 with that offence.

11 The burglary was of a condominium at
12 Dolphin Point, West Bay, Grand Cayman. It was
13 at the time empty. The owner and the occupants
14 were, I think, off Island, and it was in the
15 charge of a Miss Jodi L. Reineking who did not
16 live there.

17 Miss Reineking went to the apartment at
18 about 5:50 a.m. on the 10th August. She went
19 back there about five o'clock in the afternoon.
20 She then discovered the dead-bolt lock on the
21 front door was unlocked, the window on the
22 upper part of the same door was broken, broken
23 glass was on the floor and the metal grill work
24 on the upper part of the door over the window
25 area was prised. She also noticed a plastic

1 plate with cat food that had been left inside
2 the apartment was outside, downstairs on the
3 lower deck. She also stated that she checked
4 the cupboard and the refrigerator and noticed
5 that all canned goods, beers and frozen meats
6 were gone.

7 Miss Reineking stated that she checked the
8 bathroom and noticed that the dive gear was
9 missing and the bedroom was ransacked. She
10 telephoned the police and reported the matter.
11 The police attended the scene and observed that
12 the louvres were removed from the front door
13 and the glass was broken from the front door
14 also.

15 In due course, Groves was interviewed
16 under caution. He admitted to accompanying two
17 others, Norman McLaughlin and Mark Bush, to the
18 condominium where, as he said, McLaughlin and
19 he entered the apartment while Bush stayed on
20 the patio. That is fleshed out by the written
21 notes of the interview itself in which he said
22 this:

23 "We were taken to the apartment
24 by McLaughlin in order to obtain
25 something which could be

1 exchanged for drugs with a
2 dealer. We went upstairs,
3 Kennedy [that is Bush] and I
4 stood on the patio while Chris
5 McLaughlin pried open the window
6 and the door. Chris took one
7 wooden louvre blade out and he
8 pushed the plexiglas in, put his
9 hand through and opened the
10 door. Upon entering Chris asked
11 me to put the lower blade back
12 in and I did. [McLaughlin]
13 entered the kitchen and began
14 taking out food items from the
15 refrigerator and cabinet, asked
16 me to put these food items into
17 plastic shopping bags which he'd
18 also found in the cabinet. On
19 near completing putting these
20 items in the bag, [McLaughlin]
21 said check that bedroom over
22 there, there might be snorkel
23 gears which he knows the
24 suppliers would probably buy. I
25 entered the bedroom, picked up a

1 yellow dive bag which had this
2 yellow pair of fins in it that
3 I'm now pointing out to you.
4 Also there was in the bag two
5 pairs of masks and snorkel. I
6 picked up an additional two
7 pairs of fins, one black and one
8 blue, put them in the bag. I
9 exited the room and we left the
10 interior of the building."

11 It is clear from that statement that
12 Groves was not admitting the damage to the door
13 and the windows; and there is nothing there
14 which amounts to an admission of "ransacking"
15 the bedroom, other than the admission that
16 items were plainly taken from the bedroom area.

17 When the matter came before the Magistrate
18 in December 2006, Groves' co-accused,
19 McLaughlin and Bush, were put on a drug
20 rehabilitation programme. It is plain that
21 Groves was not put on that programme for the
22 reason that he had already been on one.

23 Bush, it seems, did not re-offend: at
24 least there is no evidence of his re-offending.
25 McLaughlin did re-offend. He committed a

1 number of quite serious offences; and was
2 eventually sentenced for those offences and the
3 offence of this burglary in July 2008. He
4 received two years for the burglary on that
5 occasion.

6 We are satisfied that in the circumstances
7 of this case - where it seems clear that Groves
8 was not the ringleader or instigator of this
9 burglary but a follower of McLaughlin; and
10 where there is no evidence that he did any
11 damage in the property - a sentence of 30
12 months on a guilty plea (representing a
13 sentence after trial of some four years) is
14 manifestly too high. The appropriate sentence,
15 in our view, would have been some 15 to 18
16 months on the burglary. That would be
17 commensurate with the sentence subsequently
18 passed on McLaughlin, who (on Groves' account)
19 was the moving spirit in the burglary.

20 Groves has been in custody for a total of
21 40 months since the time of his arrest for the
22 burglary. That is made up of two periods: two
23 months between November 2005 and January 2006
24 (when he was bailed) and 38 months from July
25 2006 to September 2009.

1 If the sentences passed on the 20th
2 December, 2006, had been the only sentences
3 that Groves was serving, he would have been
4 released from prison some time ago. A prisoner
5 sentenced to four years could expect to serve a
6 little less than 27 months before being
7 released on licence.

8 But these were not the only sentences that
9 Groves was serving. On the 27th March, 2007,
10 he was sentenced to terms of six years, to run
11 concurrently, on counts of attempted rape and
12 indecent assault.

13 The offences of attempted rape and
14 indecent assault were committed on the 12th
15 November, 2005. As we have said, there was
16 plainly a crisis in his life at or about that
17 time which led to a relapse into serious
18 criminal behaviour.

19 The six-year sentences were to be served
20 consecutively to the sentences for the drug
21 offence and the burglary which he was already
22 serving and with which we are now concerned.

23 On the 8th April, 2009, this Court reduced
24 the sentences for attempted rape and indecent
25 assault to four years and two years

1 respectively, to run concurrently, but still to
2 be served consecutively to the earlier
3 sentences.

4 The time that Groves has actually spent in
5 prison, 40 months, is equivalent to a six-year
6 sentence. That is to say, had Groves been
7 serving a six-year sentence, he would have
8 expected to be released after some 40 months.

9 As things now stand, he is serving
10 consecutive sentences of four years each: that
11 is, eight years in all. If his sentence on the
12 offences with which we are concerned were
13 reduced - so that the aggregate was six years
14 or thereabouts - he could expect to be out
15 immediately.

16 We have been impressed by the efforts
17 Mr. Groves has made to put his life back on
18 track. He has provided us with testimonials
19 which speak of his achievements in favourable,
20 indeed glowing, terms, and with certificates
21 indicating the courses that he has undertaken
22 and passed to improve himself.

23 In those circumstances, we think it is
24 right to extend time and grant leave to appeal.
25 The time we think has now come for Groves to

1 that the time has come when you can safely come
2 back into the community. You know better than
3 anyone what the risks are if you do not fulfill
4 the confidence that we have in you. You will
5 be back before this Court or another court.
6 And what I have said will be noted and
7 recorded.

8 THE DEFENDANT: Yes, sir.

9 CHADWICK, President: But you can go on
10 this occasion.

11 THE DEFENDANT: Thank you so much, sir.
12 God bless you, sir.

13 MS. PETIT: Deeply obliged, My Lord.

14 CHADWICK, President: All right. Court
15 will rise.

16

17

18

19

COURT REPORTER'S CERTIFICATE

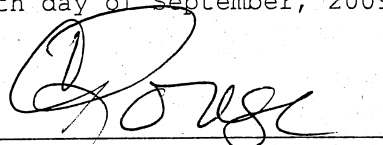
20 Certified correct to the best of my skill and ability, dated
21 the 7th day of September, 2009.

22

23

24

25



Kerri Francella

