

The Hon Mr Justice Howe

IN THE CAYMAN ISLANDS COURT OF APPEAL
HOLDEN AT GEORGE TOWN, GRAND CAYMAN

C.I.C.A. (CRIMINAL) NO. 34 OF 1991

BEFORE:

THE RT. HON. THE PRESIDENT EDWARD ZACCA, PC, OJ
THE RT. HON. MR. JUSTICE TELFORD GEORGES, PC, JA
THE RT. HON. MR. JUSTICE JAMES S. KERR JA

GEORGE DEXTON POWERY VS. REGINA

Mr. Charles QUIN of PAGET-BROWN QUIN and HAMPSON
for the Appellant

Miss Lorna DILBERT of Crown Counsel for the Crown

NOVEMBER 26th & 27th 1992

JUDGMENT

GEORGES JA

The Appellant pleaded guilty to three charges - two of burglary and one of selling cocaine. On the charge of selling cocaine he was sentenced to 3 1/2 years imprisonment and fined \$1,000.00 with an alternative of 4 months imprisonment in default. On one of the charges of burglary he was sentenced to 3 months imprisonment concurrent and on the other charge to 6 months imprisonment consecutive, amounting in all to a term of 4 years peremptory imprisonment.

The chronology of the offences is strange. Acting on information received officers of the Drug Squad approached the Appellant at a West Bay bar on July 12th, 1991. He was arrested, told of the information received and searched. A sum of money was found on him which the officers retained. Interviewed under caution he admitted selling cocaine. In spite of this he was not formally charged until September 10th, 1991. Although there is

no allegation that the police found cocaine in his possession he was served with a Section 6 Notice on November 12th, 1991.

The Appellant, it would appear, was at large throughout this period for on November 1st, 1991 Melba Ebanks opened the front door of her house to find a man, whom she later identified as the Appellant, inside her house. In reply to her question the man stated that he was looking for food. On November 13th, 1991 she saw the man near West Bay Police Station, identified him and notified the police. The man was arrested and it was the Appellant. This was the subject matter of the burglary charge on which the 3 month sentence was imposed.

On Wednesday October 9th, 1991 Lorna Holiness returned home to find her home had been broken into, and a gold chain with pendant was stolen. It was subsequently found in possession of a person who was arrested for handling. Information from this person led to the Appellant who admitted that he had broken into the house and stolen the chain and pendant. This was the incident which formed the subject matter of the charge in which the sentence of 6 months was imposed.

No argument was addressed in relation to the burglary charges but they are mentioned to give some indication of the type of character the Appellant is. He is 23 years old and he has 9 previous convictions - three for drug related offences - consumption of ganja in February, 1988; refusing to give a urine sample in July, 1988 and consumption of ganja in February 1991. He has 3 previous convictions for offences involving dishonesty - burglary in March 1989; theft also in March 1989 and burglary in December 1989.

Mr. Quinn informs us that the appellant suffers from a speech defect - severe stammering, and has a low intelligence quota. We accept this as accurate.

In the average case the personal circumstances of an offender can only marginally affect the penalty which is imposed. The significant factors in assessing punishment are the quantity of drugs involved, the degree to which the offender has co-operated with the investigators, particularly the volunteering of

information which could lead to other arrests and a plea of guilty which saves time and is some indication of remorse.

In this case, however, our view is that a discount should be made in respect of the Appellants low intelligence. His record indicates that he consumes ganja, a habit which would make it comparatively easy to recruit him as a distributor to earn the money to indulge the habit. Proof of the offence of selling was simplified by his prompt confession on being confronted.

In the circumstances we are of the view that a sentence of 2 years imprisonment would be adequate.

Accordingly the appeal is allowed in part; the sentence of 3 1/2 years imprisonment in respect of selling cocaine is quashed and a sentence of 2 years imprisonment substituted. The fine of \$200.00 substituted by the Grand Court for the fine of \$1,000.00 imposed by the magistrate is confirmed as is the term of imprisonment fixed in default of payment. The sentences in respect of the burglary offences are affirmed.