

IN THE CAYMAN ISLANDS COURT OF APPEAL
HOLDEN AT GEORGE TOWN, GRAND CAYMAN
C.I.C.A. # 21/88

BEFORE: THE HON. PRESIDENT, MR JUSTICE E. ZACCA
THE HON. MR. JUSTICE KERR J.A.
THE HON. MR. JUSTICE HENRY J.A.

80-11-88
Reported

JOEL JASON SMITH V. REGINA

APPEARANCES:

MR. JOHN FURNISS OF RITCH & CONOLLY FOR THE APPELLANT
MS. SHERIDAN BROOKS FOR THE CROWN

HEARING: AUGUST 10, AND NOVEMBER 30, 1988

JUDGMENT

The Appellant pleaded guilty in the Magistrate's Court to eight offences in respect of which he was thereupon sentenced to imprisonment as follows:

<u>#</u>	<u>CHARGE</u>	<u>SENTENCE</u>
1.	6028/87 WOUNDING	6 months imprisonment
2.	6030/87 BURGLARY	2 years imprisonment
3.	5062/87 FAILING TO GIVE A URINE SPECIMEN FOR ANALYSIS	6 months imprisonment
4.	5063/87 POSSESSION OF COCAINE	2 years imprisonment
5.	5065/87 POSSESSION OF UTENSILS USED IN THE CONSUMPTION OF A CONTROLLED DRUG	6 months imprisonment
6.	6113/87 BURGLARY	2 years imprisonment
7.	6114/87 ESCAPING LAWFUL CUSTODY	6 months imprisonment
8.	6116/87 FAILING TO GIVE A URINE SPECIMEN FOR ANALYSIS	9 months imprisonment

The sentences on the 1st, 3rd, 5th, 7th and 8th charges were ordered to run concurrently with each other and with the sentences on charge 6030/87, but the sentences on charges 6030/87, 5063/87 and 6113/87 were ordered to be consecutive, so that the Appellant was required to serve a total of 6 years imprisonment. His appeal to the Grand Court having been dismissed, he appeals to this court against the sentences imposed.

The principal ground of appeal is that the Learned Magistrate had no power to impose consecutive sentences amounting in the aggregate to more than 4 years imprisonment. The basis of this ground is the interpretation which counsel for the Appellant submits ought to be placed on sections 6 and 7 of the Criminal Procedure Code. Those sections are as follows:

"6. (1) The Grand Court may pass any sentence authorised by law to be inflicted in respect of the offence for which it is imposed.

(2) Subject to the express provisions of any other law a Summary Court may, in a case in which such sentence is authorised by law to be inflicted in respect of the offence for which it is imposed, pass sentences as follows -

(i) imprisonment for a term not exceeding two years;
(ii) a fine not exceeding two hundred dollars.

(3) Any court may pass any lawful sentence combining any of the sentences which it is authorised by law to pass.

(4) In determining the extent of a court's jurisdiction under this Code to pass a sentence of imprisonment, the court shall be deemed to have jurisdiction to pass the full sentence of imprisonment permitted under this section in addition to any term of imprisonment which may be awarded in default of payment of a fine, costs or compensation.

7. (1) When a person is convicted at one trial of two or more distinct offences the court may sentence him, for such offences, to the several punishments prescribed therefor which such court is competent to impose; such punishments when consisting of imprisonment to commence the one after the expiration of the other, unless the court directs that such punishments shall run concurrently.

(2) In the case of consecutive sentences it shall not be necessary for the Summary Court, by reason only of the aggregate punishment which it is permitted to impose on conviction of a single offence, to send the offender for trial before the Grand Court:

Provided that the aggregate punishment shall not exceed twice the amount of punishment which the Summary Court, as constituted to try that particular offender, is competent to impose in the exercise of its ordinary jurisdiction."

Counsel for the Appellant submits that by virtue of section 6 the amount of punishment which the Summary Court is competent to impose in the exercise of its ordinary jurisdiction is two years and consequently the proviso to section 7(2) limits the aggregate punishment which the Summary Court may impose to twice that amount. In my view that is not necessarily so.

In construing the proviso to section 7(2) it is necessary to have regard both to the constitution of the court and to the particular offender. Section 12(1) of the Summary Jurisdiction Law provides as follows:

"12. (1) A court shall be duly constituted by -

- (a) a magistrate, sitting either alone or with one or more Justices of the Peace; or
- (b) subject to any limitation of jurisdiction imposed by the Judge or Senior Judge from time to time, not less than two Justices of the Peace, one of whom, either by agreement between the Justices or by virtue of any direction given in that behalf by the Judge shall preside."

The section empowers "the Judge or Senior Judge" of the Grand Court to impose a limitation on the jurisdiction of the summary court (and presumably on the penalties which may be imposed by it) in circumstances where the court is constituted by two or

more Justices of the Peace independently of the Magistrate. This possible limitation is recognized by the words "as constituted to try that particular offender" in the proviso to section 7 (2). A Summary Court consisting of the Magistrate alone or with one or more Justices of the Peace may be able to impose imprisonment for two years for a particular offence while a Summary Court consisting of Justices of the Peace alone is limited to imposing imprisonment for twelve months for the same offence. In those circumstances the aggregate of consecutive sentences for that offence under the proviso would be limited in the one case to four years and in the other to two years.

It is necessary also to have regard to the particular offender and to the offences with which he is charged. Section 6(2) is expressed to be "subject to the express provisions of any other law". Section 6 therefore imposes a limit on the sentencing power of a Summary Court in the exercise of its ordinary jurisdiction not only by reference to the 2 year limit imposed under section 6 (2)(i) but also by reference to "the express provisions of any other law". That other law may impose a limit which is either lower or higher than the 2 year limit specified in section 6 (2)(i). If that other law creates a summary offence for breach of which it provides a maximum period of imprisonment of less than two years, then by virtue of section 6(4), in determining for the purpose of the proviso to section 7(2) the amount of punishment which the Summary Court is competent to impose, the Court "shall be deemed to have jurisdiction to pass "only that lesser maximum period of imprisonment. By the same token if that other law creates a summary offence for breach of which a maximum period of more than two years imprisonment may be imposed, the Court for the purpose of the proviso to section 7(2) would be deemed to have jurisdiction to pass that higher maximum period of imprisonment.

Counsel for the Appellant submits that if this is so, that higher maximum period of imprisonment may be applied for the purpose of the proviso to section 7(2) only where all the offences with which an offender is charged are offences for which that higher maximum period of imprisonment may be imposed. We do not accept this submission.

In relation to a particular offender "the full sentence of imprisonment permitted" under section 6 must be the highest sentence which may by virtue of section 6 be imposed on that offender. Where an offender is charged with several offences which attract different maximum sentences the "full sentence of imprisonment permitted" under section 6 in respect of that offender must clearly be the maximum sentence on whichever of those charges attracts the highest sentence. It follows that in order to determine the aggregate punishment permissible by way of consecutive sentences under the proviso to section 7(2), it is necessary to consider the particular offender, the offences with which he is charged and the maximum sentence which may be imposed by the Summary Court for each of those offences.

In the present case one of the offences to which the Appellant pleaded guilty was that of possession of cocaine. This is a summary offence under the Misuse of Drugs Law, the maximum penalty for which is imprisonment for 7 years. The effect of section 7 would therefore be to permit the Magistrate to impose in respect of all the offences to which the Appellant pleaded guilty consecutive sentences amounting in the aggregate to 14 years imprisonment. Accordingly the learned Magistrate in ~~our~~view had power to impose the consecutive sentences which he did, amounting in the aggregate to 6 years imprisonment.

Counsel for the Appellant also submitted that having regard to all the circumstances including the fact that the Appellant pleaded guilty, a total sentence of 6 years was excessive. We can

see no merit in this submission. The first burglary involved the theft of jewellery valued at \$85,000.00 of which some \$19,850.00 was recovered. The second burglary was committed after the Appellant escaped from custody and involved the theft of jewellery valued at \$80,000.00 none of which has been recovered. The Appellant admitted 9 previous convictions including 5 for burglary. In our view the learned Magistrate was fully justified in imposing the maximum sentence he was permitted to impose for these offences, notwithstanding the plea of guilty. Nor can we see anything wrong in principle either with the sentence imposed for possession of cocaine or with the totality of the sentences in all circumstances.

We therefore dismiss the appeal and affirm the sentences.