In the Grand Court of the Cayman Islands
Holden at George Town, Grand Cayman

Before the Hon. Sir John Summerfield, Chief Justice

On 23rd April 1985

Case No. 432/85
S.C. App. No. 17/85

23-04-85

SAMUEL COLBYLEE MYLES

V

REGINA

Mr. Frank Phipps Q.C. (with him Mr. Peter Polack) for appellant
Mr. Anthony Smellie for respondent.

JUDGMENT

The appellant pleaded guilty to the offence of possession of ganja. The amount of ganja involved was about 5½ ounces. He was sentenced to 2 years imprisonment and a fine of $3000 or 6 months imprisonment in default.

The circumstances surrounding the appellant's arrest for the offence were outlined by the prosecutor. Shortly before mid-day police officers went to the home of the appellant's sister. On arrival the appellant was seen with a grey plastic bag in his hand outside the house. He ran inside and was followed by the police officers. He ran to a room at the back, put the bag on the floor and sat down beside it. The bag was seized. Following his arrest for possesssion the appellant made no reply when cautioned. In his possession were $283 C.I. and $55 U.S. When asked to account for the money he said he was saving. The learned Magistrate noted that the ganja was divided into several parcels. It is not clear how many there were. The appellant had no previous convictions. He was unrepresented.

In passing sentence the learned Magistrate observed that because the ganja was packaged in several packets the appellant must be a dealer and that he had the ganja for sale to school children - two aggravating features not warranted by the charge to which the appellant pleaded guilty or the facts outlined by the prosecutor. Clearly those features were reflected in the sentence passed.

It is perhaps unfortunate that in this country there is no offence of possesssion of a controlled drug with intent to supply. The offence of possession of a controlled drug is limited to simple possession. However, there can be no doubt that if the circumstances of the case satisfy the Court that possession of a controlled drug was not for personal consumption but was intended for supply to others it would be justified in passing a more severe sentence than it would had the controlled drug been for personal consumption.

The maximum sentence for selling, dealing in or supplying a controlled drug that is not a hard drug is the same as for the possesssion of such a drug. However, it is well established that the courts deal less severely with the offence of possession than they do with the offence of supplying, selling or dealing.

One of the most basic principles of sentencing is that an offender should not be sentenced for an offence with which he has not been charged or convicted - R v Reeves 1983 Crim L R 825; R v Foo 1976 Crim L R 456; R v Ribas 1976 Crim L R 520; R v Rubinstein and Grandison 1982 Crim L R 614.

Here the appellant was sentenced as a dealer (aggravated by being a seller to schoolchildren) when he was charged and convicted of simple possesssion. It is conceded that the learned Magistrate could not properly proceed on that basis. Apart from conflicting with basic principles one should observe that such an approach to sentencing puts an accused person

under a further handicap, namely, he has no opportunity of dealing with and dispelling the notion that he is a dealer. Further, if he were to be made aware of the fact that he was going to be dealt with as a dealer on a charge of possession he might be minded to plead not guilty and challenge the basis for being treated as a dealer.

For the foregoing reasons the sentence imposed cannot be allowed to stand. There remains the question of what the appropriate sentence should be. Lists of precedents have been exhibited, but I must confess that I have been unable to discern a pattern from which I could determine a sentencing policy. At all events in several cases involving a similar amount of ganja or more the sentence was a fine and a nominal prison sentence. Perhaps it might be useful to observe here that it is important that there should be an underlying uniformity in sentences in cases which frequently come before the courts, the variations from one to another merely reflecting the circumstances peculiar to each case.

Although the learned Magistrate wrongly referred to "dealing" and "dealer" when passing sentence, there were elements before him which might have justified him in concluding that the ganja found in the possession of the appellant was not for personal use. However, this court must not enter into the realm of conjecture. Unfortunately, the ganja exhibit has been destroyed and I am deprived of the opportunity of determining for myself whether it was packaged in such a way as to indicate an intent to supply. The record is unhelpful and conflicting on this aspect.

These loose ends make the assessment of the appropriate sentence particularly difficult and the end result should not be looked to as a precedent. It may well be too lenient.

In all the circumstances of the case I am of the opinion that the proper course is to reduce the sentence of imprisonment to one which will allow of the appellant's immediate release and to allow the fine and sentence of imprisonment in default to remain unaltered. It is so ordered. The

appellant will have seven days from today to pay the fine.

Sir John Summerfield

23rd April 1985.