



In The Supreme Court of Bermuda

APPELLATE JURISDICTION

2015: No. 20

COLLIN MOODIE

Appellant

-v-

THE QUEEN

Respondent

EX TEMPORE JUDGMENT

(in Court)

Appeal against sentence- conspiracy to import and possession with intent to supply-cocaine-undesirability of simultaneous plea negotiations and cooperation negotiations before accused has entered a guilty plea-sentence excessive

Date of Hearing: April 28, 2016

Mr. Javon Rogers, Mussenden Subair Barristers and Attorneys Limited, for the Appellant
Ms. Cindy Clarke, Deputy-Director of Public Prosecutions (Litigation), for the Respondent

Introductory

1. The Appellant in this matter appeals against the sentence of 6 years imprisonment imposed on him in the Magistrates Court by the then Senior Magistrate (Wor. Archibald Warner) on the 23rd of July 2013 for conspiracy to import a controlled drug and possession of a controlled drug with intent to supply. The drug in question was cocaine and the quantity was an amount in the region of 241 grams¹.

¹ The street value of the drugs was \$52,000. The Appellants in that case were sentenced on June 19, 2012.

The respective arguments

2. The Appellant complains through his counsel, Mr. Rogers, that the sentence is harsh and excessive and he relies upon various authorities or previous sentences imposed during the time period in question which he contends support that proposition.
3. One case was the case of *Trotman*² where, in the Supreme Court, the Defendant pleaded guilty to importing almost twice as much cocaine as the Appellant and was sentenced to 6 ½ years on 17th September 2013. Another case that was referred to was the case of *Nicol* where, for a comparable amount of cocaine, the Defendant received 3 years imprisonment in the Magistrates' Court on the 26th January 2011³.
4. Ms Clarke for the Crown conceded that it was difficult to contend that the sentence imposed was not at the very high end of the range. The most recent judgment of this Court that she referred to where the sentence was not further appealed was the case of *James and Duncan-v- Lyndon Raynor (Police Sergeant)* [2013] Bda LR 7 where this Court, in respect of an importation of 219 grams,⁴ of cocaine reduced a sentence of 9 years imprisonment imposed in the Magistrates Court to 7 ½ years following a trial. Ms. Clarke submitted that on that basis a sentence of 5 years following a guilty plea would perhaps be closer to the right mark.

Early pleas: undesirability of defendants negotiating with the Crown on providing assistance with a view to obtaining a discounted sentence before entering a guilty plea

5. The Appellant sought to rely upon the fact that he pleaded guilty at the earliest opportunity. The position appears to have been that he was seeking to provide assistance to the authorities and his counsel contends that various adjournments before he eventually pleaded were to facilitate that end. In the event that assistance was not sufficient in terms of its impact to qualify him for a statutory reduction, but nevertheless Mr. Rogers invited the Court to treat him as having pleaded guilty at the earliest opportunity.
6. Ms Clarke submitted that it would be dangerous for there to be a practice of plea negotiations and co-operation negotiations taking place at the same time. I agree that any such practice could undermine the integrity of any plea that is entered and is not a practice that should be encouraged. Be that as it may I do accept, because the Record bears this out, that the Appellant in this case was seeking to provide assistance and that this may have been a reason why he did not plead at the earliest opportunity.

² Supreme Court Criminal Jurisdiction 2013: No. 25 (unreported); '*Cocaine smuggler jailed for six-and-a-half years*', Jonathan Bell, The Royal Gazette, September 1, 2013.

³ 11CR00047 (unreported); '*Three years in jail for Canadian woman caught drug smuggling*', Jonathan Bell, The Royal Gazette, January 27, 2011.

⁴ The street value of the drugs was \$52,000. The Appellants in that case were sentenced on June 19, 2012.

Disposition of the appeal

7. Looking at matters in the round, it is clear to me that a wide range of sentences have been imposed in recent years for this level of offence. It is difficult to expect the Courts to adopt a mathematical approach; all that one can expect is for there to be a measure of consistency.
8. In all the circumstances of the present case I am satisfied that the sentence received by the Appellant in this case was excessive. But the reduction that he seeks from 6 years to 3 ½ years is too great, in my judgment, to meet the justice of the present case. The Appeal is allowed and the sentence of 6 years imprisonment is quashed and substituted with a sentence of 4 ½ years' imprisonment.

Dated this 28th day of April 2016 _____
IAN RC KAWALEY CJ