



In The Supreme Court of Bermuda
CRIMINAL JURISDICTION
2024: No. 28

B E T W E E N:

THE KING

-v-

CHANDRA KOTA

Defendant

Appearances: **Mr Adley Duncan, Senior Crown Counsel (Litigation), for the Prosecution**

Ms Nicole Smith, Legal Aid Counsel, for the Defendant

Date of Sentencing: 14th January 2025

SENTENCING REMARKS

Importation and Conspiracy to Import Cannabis Resin and Cannabis

Richards J:

1. Chandra Kota, you may remain seated until I indicate that it is time for you to stand up.
2. On 21st September last year you arrived in Bermuda aboard a British Airways flight from London. You were in possession of a black backpack and a blue hard-shell suitcase. A

secondary inspection of your baggage was performed and Customs Officers x-rayed both the suitcase and the backpack. An abnormality was noted in the latter. On further examination a rectangular-shaped object, which was wrapped in clear tape was retrieved from the lining of the backpack. The police were contacted and that item was seized. In due course it was submitted for analysis by the Government Analyst and determined to contain some 110.9 grams of Cannabis and 1,531.2 grams of Cannabis Resin. The first of those substances is estimated by a police drug expert to be worth up to \$11,000 and the second up to \$306,210. The total value of the drugs imported by you for the purposes of section 1(4) of the Misuse of Drugs Act 1972 is, therefore, \$317,210.

3. Upon your arrival in Bermuda, a mobile telephone was also seized from you. Investigation of data contained within that device has, I am told, yielded evidence of chat messages revealing a conspiracy between you and others to import controlled drugs into Bermuda (amongst other places). It is also apparent that you have previously visited Bermuda between the 13th and 17th July 2024.
4. The Summary of Evidence also mentions evidence of you having conspired with others to export cash for unknown reasons, but, as Senior Crown Counsel, Mr Duncan, noted during the course of his oral submissions, you have not been charged with any such offence and I have, therefore, disregarded that assertion when determining the appropriate sentences in this case.
5. You were subsequently indicted on six charges. You have pleaded guilty to four of them and the remainder have been left to lie upon the file. The charges which you have admitted are:
 1. Importation of Cannabis;
 2. Importation of Cannabis Resin;
 3. Conspiracy to Import Cannabis; and
 4. Conspiracy to Import Cannabis Resin.
5. As I indicated to Counsel during the course of the hearing last week, I propose to approach the conspiracy counts on the basis that they together reflect the totality of your offending

(including what was in fact imported on 21st September 2024) and the substantive Importation counts on the basis that they together reflect only what was actually imported. The sentences should all therefore be concurrent. I do not understand either Counsel to take exception to me approaching the charges in this way.

6. However tempting it may be, I cannot simply assume that you imported a like quantity of similar drugs in July 2024. Since you were not stopped then, we will never know exactly what, if any, substances did accompany you on that occasion. What is clear, however, is that you were party to an agreement to do more than that which you were doing when you were stopped in September.
7. The Crown initially proposed by way of written submissions (which were not filed by Mr Duncan), a total sentence of 9 years' imprisonment in your case. At that time they were under the mistaken belief that the Cannabis Resin was worth \$612,480. Thanks to the vigilance of your Counsel, Ms Nicole Smith, it has been appreciated that an arithmetical error had been made by the expert and the true value is half that amount. In his oral submissions, Mr Duncan has proposed a total sentence of 6-8 years' imprisonment. Ms Smith has proposed a sentence of 1-4 years' imprisonment.
8. The Court of Appeal has not issued many decisions in the last decade concerning levels of sentence for offences connected with the importation of Cannabis in its various forms. None have been drawn to my attention by Counsel and the only one of which I am aware (*Kimmisha Perinchief v R* [2018] CA (Bda) 20 Crim) concerned drugs worth a much smaller amount (\$86,450). That case nevertheless reminds us that, in cases of Conspiracy to Import, it is important to identify the role played by the particular Defendant. In that regard the Crown has fairly characterised you as a "drug mule" rather than an architect or organizer. I agree and will sentence you accordingly.
9. In the last decade there have been a number of relevant sentencing decisions in the Original Jurisdiction of this Court. All of the cases to which I shall refer concern importations of

Cannabis and/or Cannabis Resin by travelers arriving via the airport with the drugs concealed in their luggage.

10. In 2015, Greaves J sentenced *Zicco Pearman* (Indictment 17 of 2015) to 4 years' imprisonment for importation of Cannabis worth \$268,360. Mr Pearman had been convicted after trial. The sentence was not appealed.
11. In 2017, Wolffe J sentenced *Andre Richardson* (Indictment 4 of 2017) to 4 years' imprisonment for importation of Cannabis worth \$267,925. Mr Richardson had also been convicted after trial. The sentence was not appealed.
12. Last year, Wolffe J sentenced a gentleman by the name of *Radcliffe Brown* (Indictment 15 of 2023) who had pleaded guilty to importing some 19.5 kilograms of Cannabis, worth an estimated \$1.9 million. He received a sentence of 8 ½ years' imprisonment which was, I understand, the sentence proposed by both Prosecution and Defence. Assuming that he was afforded full discount for his plea, that presupposes that a sentence of nearly 13 years would have been appropriate if Mr Brown had been convicted after trial.
13. Also last year, Wolffe J sentenced *Mara Faiazza* (Indictment 13 of 2024) for importing only slightly less Cannabis than was involved in Mr Brown's case, but there were particular features of that case which led the Court to discount Ms Faiazza's sentence under section 27E of the Misuse of Drugs Act 1972. The ultimate outcome does not, therefore, offer much general guidance, but I note that the judge's indication was that, were it not for those circumstances, a sentence of 8 years' imprisonment would have been appropriate.
14. With respect, the contention that the appropriate sentence in this case was one of 9 years' imprisonment was unsustainable even when the Cannabis Resin was mistakenly believed to have been worth twice what it actually was. Given the significantly greater quantities of drugs involved in the *Brown* and *Faiazza* cases, this case could not, even then, have merited a longer sentence than was imposed upon Mr Brown.

15. In my judgment this case falls well below those cases in terms of seriousness and is closer to the cases of *Pearman* and *Richardson*. However, it is nevertheless more serious than *Pearman* and *Richardson* for two reasons. First, the value of the drugs actually imported is greater (by almost \$50,000). Secondly, those cases concerned single acts of importation without evidence of involvement in a broader agreement. Those factors aggravate the seriousness of your offending.
16. It is for this reason that I must reject Ms Smith's invitation to impose a sentence as low as 1 year's imprisonment. Such a sentence would only be appropriate in a case involving drugs worth significantly less than those seized here. Indeed, such a case would probably have remained in the Magistrates' Court. However, I have also concluded that Mr Duncan's proposed range extends beyond what is appropriate in this case, in the opposite direction.
17. It is properly said on your behalf that you should have full credit for your guilty pleas. The Crown does not contend otherwise and I agree.
18. It is also said that you facilitated the police's access to your mobile phone by giving them your PIN. They may nevertheless have managed to access your device eventually and extract the evidence they did from it, but that will not always be possible and I agree that you deserve some credit for having cooperated with the investigation in this way.
19. You lack previous convictions, but that is not at all unusual for drug couriers. Indeed, persons with relevant criminal histories are not generally selected for such a function, for obvious reasons.
20. You are young and your incarceration in Bermuda will keep you away from your family, but that is a risk you chose to run when you involved yourself in this criminality. As the Court of Appeal said in *Bachev and Todorov* [2016] CA (Bda) 13 Crim: "*The fact that someone chooses to commit crimes whilst visiting Bermuda and is thereby unable to maintain family life whilst serving a prison sentence because their family is abroad is not mitigation*".

21. Will you stand up please, sir.
22. Taking account of all the cases to which I have referred and the submissions that have been made, I have concluded that, if this matter had proceeded to trial and you had been convicted, the appropriate total sentence in this case would have been one at the bottom of the range proposed by Mr Duncan, namely 6 years' imprisonment. Giving you full discount for your pleas, the appropriate sentences are therefore:
- Count 1: 3 years' imprisonment
- Count 2: 3 years' imprisonment
- Count 3: 4 years' imprisonment
- Count 4: 4 years' imprisonment
23. All of those sentences are to run concurrently. The total effective sentence is, therefore, one of 4 years' imprisonment.
24. Pursuant to section 58 of the Criminal Code, I direct that the time you have already spent in custody on remand in these proceedings will count towards those sentences.
25. Lastly, since it was clearly used by you in the commission of these offences I order forfeiture of your cell phone pursuant to section 37(1)(a) of the Misuse of Drugs Act 1972.

Dated this 14th day of **January 2025**



THE HONOURABLE MR JUSTICE ALAN RICHARDS
PUISNE JUDGE