

1070

IN THE COURT OF APPEAL FOR THE CAYMAN ISLANDS

CRIMINAL APPEAL NO. 1/1982

BEFORE: THE HON. MR. JUSTICE ZACCA - PRESIDENT  
THE HON. MR. JUSTICE CAREY, J.A.  
THE HON. MR. JUSTICE ROSS, J.A.

ALPHANSO DENNIS v REGINA

MR. JOHN MARTIN - COUNSEL FOR THE CROWN

November 29, 1982

CAREY, J.A.

This is an appeal against sentences imposed upon this appellant in respect of charges of importation of a controlled drug, namely ganja, and also for possession of that drug. For the charge of importation of ganja, a sentence of imprisonment for four years was imposed and in addition, before the magistrate he was sentenced to pay a fine of \$5000 or six months imprisonment. For the charge of possession he was similarly sentenced to imprisonment for four years and a fine of \$500 or one month's imprisonment imposed.

On an appeal to the Grand Court, the learned Chief Justice confirmed the sentences of imprisonment imposed but reduced the fine of \$500 to \$25 or seven days. The appellant, this morning, has said that the sentences are manifestly excessive. He says further that he has a hard life in Jamaica and for those reasons the court ought to reduce the sentences and he also points to the fact that his co-accused has received, on appeal to the Grand Court, reduced sentences of five months imprisonment in respect of the same charges.

At the trial before the magistrate, the co-accused, James Ebanks, had been sentenced to a similar term as this accused but on appeal to the Grand Court sentence was reduced in the manner already stated.

The short facts in this appeal are these: On the 15th of December, a boat foundered off Tortuga. When the police went there, they found a number of containers bobbing around the boat. The containers had some 88 pounds of ganja. The appellant, in an interview with the police, was very cooperative and explained he was a fisherman from Jamaica and had been approached by several persons who had requested him to make this trip, bringing this

1071

controlled drug into the Cayman islands. He was promised a substantial sum; he told us \$5000, to bring all the stuff into the Cayman islands.

The first observation we think we ought to make is this: this court sits as the Court of Appeal for the Cayman Islands, not Jamaica, We must, therefore, have regard to what obtains in these islands, and it is plain that the policy of the relevant statutes dealing with drugs is to regard trafficking with great seriousness, and these matters are dealt with by the court quite severely. Having said that, it seems to us that in dealing with these cases, however, a trial judge ought to have regard to the degree of responsibility of the particular participant before him.

In this particular case, the co-accused, as we understand it, was the prime mover. He was the person who went to Jamaica to secure the services of the appellant to provide transportation of the stuff into the country. In our view, it would be right, in those circumstances, in imposing any penalty, to differentiate in the sentence being imposed on the ring-leader and the tool. That was not done in this case.

We should make it quite clear that this court makes no comment as to whether it was proper, in the circumstances, for the Grand Court to reduce the sentence of the co-accused to five months on compassionate grounds. It is merely noted as historical fact. Moreover, that appeal is not before us. We think as a matter of principle, which we wish to emphasize, that the degree of complicity ought to be reflected in a differentiation of sentence unless there are compelling reasons prompting a different course. In this case, the penalties awarded were similar. We, therefore, set aside the sentences imposed below and in lieu thereof substitute a sentence of two years imprisonment on each count. Insofar as the fines are concerned, those sentences are affirmed.