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**JAMAICA**

**IN THE COURT OF APPEAL**

**RESIDENT MAGISTRATES' CRIMINAL APPEAL NO: 5/2009**

**BEFORE: THE HON. MR. JUSTICE PANTON, P.  
THE HON. MR. JUSTICE MORRISON, J.A.  
THE HON. MRS. JUSTICE McINTOSH J.A. (Ag.)**

**JOSEPH JACKSON v R**

**Patrick Atkinson for the appellant**

**Mrs. Caroline Hay and Mr Nigel Parke for the Crown**

**May 26, 27, 28 and 29, 2009**

**ORAL JUDGMENT**

**MORRISON, J.A.**

The appellant in this matter was convicted on the 2 July 2007 in the Corporate Area Resident Magistrate's Court on three informations. Information No. 8737/04, charged him with possession of ganja. 8738/04 charged him with dealing in ganja and 8740/04 charged him with taking steps proprietary to exporting ganja. He was convicted largely on the basis of his own admission to the police, during an investigation into the finding in the American Airline's hangar at the Norman Manley International Airport on the 28<sup>th</sup> July 2004 of five suitcases and 13 other

packages of ganja. He has appealed against conviction and sentence but his appeal against conviction was not pursued by his counsel.

Mr Atkinson for the appellant asked us to consider the question of sentence, having regard in particular to the fact that it had taken some 19 months for the papers to get to this court from the Resident Magistrate's Court. He has asked us to review the sentence itself in relation to what appears to have been a sentence of imprisonment in addition to the fines which were imposed on the appellant.

I will refer to the actual endorsement by the Resident Magistrate on the informations which set out the sentences which she imposed: on information no. 8737/04, the possession of ganja, she imposed a fine of \$15,000.00 or 3 months imprisonment. And there is a note which says "if fine not paid sentence to run concurrently but consecutive to mandatory sentence of 18 months."

On information no. 8738/04, which is in relation to dealing in ganja, the sentence is a fine of \$394,400.00 or 1 year's imprisonment and on information no. 8740/04, the sentence is fine of \$500,000.00 or 18 months and the note reads: "if fine not paid sentence to run concurrently but consecutive to mandatory sentence of 18 months."

Despite the reference in those endorsements to a "mandatory sentence of 18 months" it does not clearly appear that such a sentence was in fact imposed by the learned Resident Magistrate on any of the

informations. It may well be that her intention was to do what the law allows her to do, which was to impose a sentence of imprisonment in addition to the fines which she had imposed. At all events, it certainly was her intention to impose a sentence of imprisonment and it is quite clear that in her view such a sentence was mandatory.

When one looks at the relevant sections of the Dangerous Drugs Act, section 7a, b and c, it is quite clear that a Resident Magistrate has the power to impose a fine and also to impose a sentence of imprisonment. But It is not a matter of compulsion. It is something she does in her discretion. There is certainly is no mandatory sentence to be found in section 7a, b and c of the Dangerous Drugs Act. In the result the appeal against conviction must be dismissed, but the appeal against sentence must be allowed so as to vary the sentence to omit all references to the "mandatory sentence of 18 months". It does not appear to us in any event that a sentence of imprisonment in addition to the fines that were imposed was warranted on the evidence and so, therefore, we wish to make it clear that the sentence of the court should be a fine of \$15,000.00 or 3 months on 8737/04 for possession, on 8738/04 a fine of \$393,400.00 or 1 year's imprisonment, and on 8740/04 a fine of \$500,000.00 or 18 months imprisonment. Stay of execution granted for 6 weeks with one or two sureties.