

CRIMINAL LAW ¹⁴ B. Dangerous Drugs Act ^{Ganja} Dealing in (1) Possession
of (iii) preparing for export — Appeal abandoned — Ct of Appeal
Comments on inadequacy of sentence

J A M A I C A

IN THE COURT OF APPEAL

RESIDENT MAGISTRATE'S CRIMINAL APPEAL NO. 22/87

BEFORE: The Hon. Mr. Justice Rowe, President
The Hon. Mr. Justice Carey, J.A.
The Hon. Mr. Justice White, J.A.

R. v. CLARENCE GAYLE

Ms. Portia Nicholson instructed by Spaulding
& Co. for the appellant.

Ms. Jennifer Straw for the Crown.

30th March, 1987

ROWE, P.:

On the night of the 13th August, 1986, a party of policemen went to the home of the appellant at premises known as Central Park, in Negril. Together with the appellant they went to a house owned and occupied by the appellant which, apparently, was locked. The appellant was informed that the police wished to search the house for ganja, and after caution he said, "If a ganja unno come fe search me house for, the little me did have other day me sell it to Almo Hogg, so me no have any up there now." The appellant searched his pockets and pretended that the key for his house was in Lucea having been left

there in a taxi. The police gained entrance to the house through a window. The appellant took them upstairs and pointed to a room occupied by him. On a search of this room a trap-door was discovered under the carpet and in the hidden space were found thirteen boxes containing ganja, one box containing paper resembling cigarette paper and one barrel containing ganja.

As soon as the first parcel was discovered the appellant ran out of the room and escaped. Two days later, on August 15, he was seen at the police station at Sav-la-Mar. He was arrested and charged for dealing in ganja, possession of ganja, and preparing ganja for export. The receptacles contained 196 lbs. 13 ozs. of ganja.

In his defence the appellant said he was not present at the time when the police alleged that they found ganja in his room. He admitted having the only key for the house and denied that he had any ganja hidden there on the 13th August.

The learned resident magistrate found that the appellant was present on the premises when the police arrived, that the ganja was found in the upstairs bedroom and concluded that the accused not only had knowledge of the trap-door but also knowledge and control of the ganja. Nevertheless, he found the appellant not guilty of taking steps to prepare ganja for export and dealing in ganja.

For our part, we do not see on what basis he could properly have failed to convict on the information charging the appellant for dealing in ganja. In the first place there was this enormous quantity of ganja and secondly, the presence of the paper resembling cigarette paper, from which the inevitable inference must have been that the ganja would be packaged for distribution. However, startling that may be, we fail to see how the learned resident

3. The police entered the house through a window. The appellant took them upstairs and magistrate exercising a judicial discretion could have arrived at the sentence which he did impose for possession of ganja. The appellant had four previous convictions for possession of ganja between 1968 and 1975, and whereas the learned resident magistrate could impose a fine of up to \$2,000 and in addition imprisonment of up to five years he chose to impose a sentence of a fine of only \$1,000 and in addition imprisonment for 12 months at hard labour. We think that these sentences were inordinately low and do not in any way reflect the gravity of the offences committed by the appellant.

However, as counsel for the appellant told the court that there was no arguable point in the appeal we treated this as a case in which the appeal was abandoned, and did not go on to exercise our powers to increase the sentences. As there was absolutely no basis on which the conviction and sentence could be assailed on behalf of the appellant, we ordered that his sentence of imprisonment should begin to run from today.

... arrived, that the ganja was found in the upstairs bedroom and concluded that the accused not only had knowledge of the trap-door but also knowledge and control of the ganja. Nevertheless, he found the appellant not guilty of taking steps to prepare ganja for export and dealing in ganja. For our part, we do not see on what basis he could properly have failed to convict on the information charging the appellant for dealing in ganja. In the first place there was this enormous quantity of ganja and secondly the presence of the paper resembling cigarette paper, from which the inevitable inference must have been that the ganja would be packaged for distribution. However, stating that may be, we fail to see how the learned resident