JAMAICA

IN THE COURT OF APPEAL

R. M. CRIMINAL APPEAL No. 1/71

BEFORE : The Hon. Mr. Justice [illegible] - Presiding
The Hon. Mr. Justice S[illegible] - J. A.
The Hon. Mr. Justice Ed[illegible] - J. A.

R. v. Fredrick Chintersingh

Mr. W. Bentley Brown for the Appellant
Mr. Courtney Orr for the Crown

22nd April, 1971

FOX, J.

At the trial of the appellant by the Resident Magistrate for St. Mary for possession of ganja, a Constable and a Special Constable gave evidence of having seen the appellant in Annotto Bay with a box-like parcel which when opened was found to contain four smaller parcels of vegetable matter. Upon examination subsequently by the Government Chemist it was established that the vegetable matter was ganja. The appellant was convicted and sentenced to 3 years' imprisonment with hard labour.

The testimony in the printed record was exhaustively examined before us by Counsel for the appellant for the purpose of showing that it was unreliable. It is overwhelmingly obvious that this contention is untenable. During Counsel's submissions we have said as much, and it is unnecessary to repeat at this stage the observations to this effect which have already been made. There is nothing to show the Magistrate was in error in arriving at her conclusion and no grounds upon which her findings of fact can be disturbed.

Counsel contended that the Magistrate could have herself called another Special Constable who was in a position to speak of the events which had happened, but who had not been called by the Crown. At the trial no such request was made of the Magistrate and there is nothing which constitutes a reason which would have entitled the Magistrate to interfere with the conduct of the case in the way Counsel suggested. This contention is misconceived.

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By virtue of the provisions of Section 22 2(A) of the Dangerous Drugs Law, Cap. 90 as amended by Section 3 of the Dangerous Drugs (Amendment) Act 1964, Law 10 of 1964:

> "Every person who is guilty of the offence of being in possession of ganja shall on summary conviction before a Resident Magistrate, in the case of a first conviction for such offence, be imprisoned with hard labour for a term not less than 18 months and not exceeding 3 years and in the case of a second or subsequent conviction for such offence, be imprisoned with hard labour for a term not less than 3 years and not exceeding 5 years."

These provisions make it obvious that the Legislature recognized that the offence of possession of ganja was subject to degrees of seriousness, and that the extent of the punishment would be dependent upon the circumstances in which the offence was committed. In this respect, the Law describes two broad categories: namely the first offender, and the offender with a second or subsequent conviction. Within these categories, also, the Legislature made a further more precise distinction by way of the provisions for a minimum and a maximum sentence. In arriving at the sentence to be passed in any particular case in either of these categories, a Court would be entitled to consider the purpose for which the offender was in possession of the ganja, and to allow its judgment as to the seriousness of the offence to be guided by an assessment of the reprehensibility of this purpose.

In this case the appellant is a first offender. He was in possession of 3½ lbs. of ganja made up into four parcels. He had apparently arrived from the outlying country village of Enfield to the market town of Annotto Bay on a market day. He was sentenced to imprisonment with hard labour for a period of three years. Counsel for the appellant submitted that this sentence was manifestly excessive. In all the circumstances in which the appellant was found in possession of ganja it is reasonable to infer that he was so in possession as a trafficker. The Magistrate must have so inferred. This is, no doubt, the explanation of the maximum sentence of three years which was given. In our view the particular circumstances of the case do not warrant an imposition of the maximum sentence. We consider a sentence of two years imprisonment with hard labour appropriate. The sentence of the Magistrate will therefore be altered accordingly.

The appeal as to conviction is dismissed. The appeal as to sentence is allowed. Sentence of imprisonment with hard labour for three years is quashed and a sentence of imprisonment with hard labour for two years substituted.

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The appellant was convicted on the 16th of June 1970 and gave verbal notice of appeal on that date. Bail was applied for and refused. Grounds of appeal were filed on the 30th of June 1970. The record was sent up from the Magistrate's Court and received in the Registry of the Court of Appeal on the 7th of June 1971. There is no explanation given to the Court for this inordinate delay. This is a short case. The record should have been printed and forwarded to the Registry before the end of the Trinity term in 1970. The chances are distinct that if the papers had been so forwarded, the appeal would have been disposed of in that term. In these circumstances, we accept the suggestion of Counsel for the appellant that the sentence should run from a date in that period. The sentence should run as from the 31st of July 1970, and we so order.