

No report 725

J A M A I C A

IN THE COURT OF APPEAL

R.M.C.A. No. 225/65

BEFORE: The Hon. Mr. Justice Duffus (P)  
The Hon. Mr. Justice Henriques  
The Hon. Mr. Justice Moody (Ag.)

R. v. LLOYD MALCOLM

Mr. C. Orr for the Crown.  
Appellant in person.

29th November, 1965.

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DUFFUS, P:

This appellant, Lloyd Malcolm, was found guilty of the offence of possession of ganja and sentenced to three years imprisonment with hard labour.

Before the learned Resident Magistrate two police officers stated that they saw him in possession of ganja, actually cutting up the ganja on a board. The appellant did not give evidence on oath, nor did he make any statement not on oath, nor call any witnesses. In the circumstances, the learned Resident Magistrate convicted him and on seeing his police record discovered that he had two previous convictions for ganja offences.

On appeal, the appellant complained that the learned Resident Magistrate ought not to have taken into account these two previous convictions, as he had appealed against them and had been successful in his appeal. This took place in 1961. The Court called for the records in the Resident Magistrate's Court and asked the Registrar to check with the Police to find out if it is correct that this appellant had been successful in his appeal. The Court is informed that the appellant's statement is correct and that these two previous convictions ought to have been deleted from the

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records by the Police, but that this was not done.

The learned Resident Magistrate was therefore deceived as to these convictions, and as a result he imposed the mandatory minimum sentence of three years imprisonment with hard labour which the law requires in cases of second or subsequent convictions. In the circumstances, this Court will not interfere with the conviction which appears to be proper, but in so far as the sentence is concerned, the sentence of three years imprisonment is set aside and the mandatory minimum sentence of 18 months imprisonment with hard labour, in the case of a first conviction is substituted. The appeal against conviction is dismissed.

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