

CA. Criminal Law Rm. Court - Unlawful possession of ganja
(iii) dealing in ganja (iv) using a vehicle to convey ganja (v) attempting
to export ganja.
Sentence - 3 months to dangerous drugs Act -
✓ comp.

J A M A I C A

IN THE COURT OF APPEAL

RESIDENT MAGISTRATE'S CRIMINAL APPEAL NO. 81/87

BEFORE: THE HON. MR. JUSTICE ROWE, PRESIDENT
THE HON. MR. JUSTICE WRIGHT, J.A.
THE HON. MR. JUSTICE FORTE, J.A.

REGINA

VS.

STEPHEN ANDERSON
DAVID BLASCO
DANIEL DOMINGUEZ

Wentworth Charles and Tom Tavares-Finson for the Appellants

Miss Heather Dawn Hytton for the Crown

January 25, 1988

ROWE P.:

This is an appeal by Daniel Dominguez, Stephen Anderson and David Blasco, who pleaded guilty to a number of charges under the Dangerous Drugs Act, for having unlawful possession of ganja, for dealing in ganja, for using a vehicle to convey ganja and for attempting to export ganja, the quantity of ganja being in excess of 5,000 lbs.

We understand that Dominguez and Blasco are Cuban citizens and that Anderson is a citizen of the United States. They were found on a ship in Jamaican waters and the vessel contained over two hundred packages of compressed ganja and that led to the several charges. They were tried and convicted in the Resident Magistrate's Court, Clarendon, on the 14th of August, 1987 and penalties were imposed against each one. Each was fined \$4,000,000.00 for possession of ganja, and in default of payment, each should serve a term of three years imprisonment at hard labour. They were each imprisoned for twelve months at hard labour on the charge for dealing in ganja and in addition each was fined \$50,000.00 and in default of payment to serve

two years imprisonment at hard labour. They were each also fined \$50,000.00 or two years imprisonment at hard labour for conveying this ganja in a motor boat and they were each fined \$50,000.00 or two years imprisonment with hard labour for attempting to export ganja. Each one was also imprisoned for twelve months at hard labour on the conveyance charge and the attempting to export charge.

They have appealed against their sentences but Mr. Tavares-Finson said that the only sentence against which he proposed to advance any argument was that dealing with possession of ganja for which each was fined \$4,000,000.00.

He sought to rely upon an amendment to the Dangerous Drugs Act which came into force on the 14th of September, 1987, which stipulates that for possession of ganja a Resident Magistrate may fine \$100.00 for each ounce of ganja but the fine is not to exceed \$15,000.00. Now that amendment came in the wake of another amendment which was made to the Dangerous Drugs Act, on the 24th of July 1987 and which came into effect on the 28th of July, 1987. The July amendment provided that on a summary conviction before a Resident Magistrate the person would be liable to a fine not exceeding \$100.00 for each ounce of ganja which the Resident Magistrate is satisfied is the subject-matter of the offence or \$15,000.00 whichever is the greater.

Now, at the time therefore, when these appellants pleaded guilty the only fine which a Resident Magistrate was empowered to impose on a conviction for possession of ganja, was at the rate of \$100.00 per ounce and if the sum exceeded \$15,000.00, whatever that greater sum may be. What this meant was that in August of last year the Resident Magistrate had no discretion to determine the amount of fine which he could impose on a conviction for possession of ganja. He simply had to find the number of ounces, multiply that by one hundred and arrive at the sum total. In this case, \$4,000,000.00 arrived at by that multiplication process, was the only fine he could have imposed. Mr. Tavares-Finson appreciated the force of that argument and therefore could not press the appeal because the amendment in September could

not cover his particular case.

We suggested to him in argument that if he wants the matter redressed, his only course will be to apply to the Governor-General in Privy Council for a remission of a portion of the fine on the basis that the Government policy on the maximum fine for possession of ganja changed radically between August and September of last year. In the result the appeals against sentence are dismissed and the sentences are affirmed.