

1 **IN THE GRAND COURT OF THE CAYMAN ISLANDS**  
2 **CRIMINAL SIDE**

3 **INDICTMENT NO: 42 of 2019**  
4 **CHARGE #01941/2019**  
5 **CHARGE #02311/19**

10 **THE QUEEN**

11 **V.**

12 **KEMAR ANTHONY BOOTHE**  
13 **AND**  
14 **ORVILLE DOMINIC ADAMS**  
15  
16  
17



18 **Appearances:**

**Mr. Garcia Kelly for the Prosecution**

19  
20 **Mrs. Prathna Boddan for the Defendant**  
21 **Orville Adams**

22  
23 **Mr. Oliver Grimwood for the Defendant**  
24 **Kemar Boothe**

25  
26 **Before:**

**Justice Cheryll Richards Q.C.**

27 **Submissions on Sentencing:**

**23<sup>rd</sup> October 2020**

28 **Judgment:**

**11<sup>th</sup> December 2020**

29  
30  
31 **HEADNOTE**

32 *Criminal Law - Misuse of Drugs Law, s.3 – Sentence - Being Concerned in the*  
33 *Importation of Cocaine - Firearms Law, s.39 - Minimum term*

34  
35 **JUDGMENT**  
36  
37

1           1.       The two Defendants Kemar Anthony Boothe and Orville Dominic Adams are before the Court  
2                   for sentencing in respect of a number of offences following their guilty pleas.

3

4       **THE OFFENCES**

5           2.       On Indictment 42/19, **the Defendant Boothe** is charged with two counts of Possession of an  
6                   Unlicensed Firearm and Ammunition contrary to s.15(1) and (5) of the **Firearms Law**. On  
7                   Count 1 the particulars are that he on the 8<sup>th</sup> May 2019, at #51 Outpost Street, George Town,  
8                   Grand Cayman had in his possession a firearm, namely a Smith and Wesson 9mm pistol, which  
9                   was not under and in accordance with a Firearm User’s (Restricted) License. On Count 2 he is  
10                  charged with possession of 15 rounds of 9mm ammunition at the same date and place. He was  
11                  charged with these offences on the 10<sup>th</sup> May 2019 and first appeared in the Grand Court on the  
12                  17<sup>th</sup> May 2019 where he pleaded guilty upon arraignment. It is accepted that these pleas were  
13                  entered at the earliest opportunity.

14

15          3.       In relation to the **Defendant Boothe**, a further charge of Being Concerned in the Importation  
16                  of Cocaine contrary to s.3(1) a) of the **Misuse of Drugs Law** (2017 Revision), (Charge  
17                  #01941/2019) was brought against him on the 9<sup>th</sup> September 2019. His first appearance in the  
18                  Summary Court was on the 17<sup>th</sup> September 2019 when he pleaded guilty to that offence. On  
19                  the 17<sup>th</sup> October 2019 he provided a witness statement in relation to this offence to the police.  
20                  On the 1<sup>st</sup> November 2019 he agreed to give evidence against co-defendant Orville Adams. On  
21                  the 15<sup>th</sup> April 2020 the Summary Court transmitted the case to the Grand Court for sentencing.  
22                  The Defendant therefore falls to be sentenced for this offence.

23

24

25



1 4. **The Defendant Adams** was charged on the 25<sup>th</sup> October 2019 with the single offence of Being  
2 Concerned in the Importation of Cocaine contrary to s.3(1)(a) of the *Misuse of Drugs Law*  
3 (2017 Revision), (Charge #02311/2019). He appeared in the Summary Court on that day and  
4 thereafter on the 29<sup>th</sup> October 2019 and on the 19<sup>th</sup> November 2019. On the 3<sup>rd</sup> December 2019,  
5 his Attorney indicated to the Court that it was the intention of the Defendant to enter a plea of  
6 guilty. A basis of plea was provided which was not acceptable to the Crown. The Defendant  
7 pleaded guilty in the Summary Court on the 17<sup>th</sup> December 2019. However the issue of  
8 acceptance of his basis of plea remained outstanding.

9  
10 5. On the 15<sup>th</sup> April 2020, the Summary Court also transmitted the case against the Defendant,  
11 **Adams** (in relation to Charge Number #02311/19) to the Grand Court for sentencing and for  
12 review as to the basis of plea. The Defendant therefore falls to be sentenced on this charge.

13

14 **JURISDICTION OF THE GRAND COURT**

15  
16 6. In the case of *R v Perez- Ruiz and others*, Dame Dobbs. J (Actg.) reviewed s.11 of the **Grand**  
17 **Court Law** (2015 Revision) and s.19 of the *Courts Act* 1981 of the United Kingdom. The  
18 learned Judge concluded that the Grand Court has the power to exercise the powers of a  
19 Magistrate of the Summary Court. The rationale is that it would be in the interests of justice,  
20 in respect of cases which relate to the same subject matter and would reduce delay, save public  
21 funds and also ensure that there is consistency of sentence. The Court stated:

22 *“The relevant provisions in the UK can be found in s.19 of the Courts Act 1981*  
23 *which sets out the general jurisdiction exercisable by the High Court, and s.66 the*  
24 *Courts Act 2003 which gives a judge of the high court the powers of a justice of*  
25 *the peace who is a district judge (magistrates’ court/Cayman Summary Court) in*  
26 *relation to criminal causes and matters.*



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*Sentence Judgment. R v. Boothe (Kemar Anthony) and Adams (Orville Dominic) Ind. 42/19; Charge #01941/2019; and Charge #02711/2019. Coram Justice Cheryll Richards Q.C. Date: 11<sup>th</sup> December 2020*



1            *Section 11 of the **Grand Court Law (2015) Revision** states that the Grand court*  
2            *shall be a superior court of record and in addition to any jurisdiction exercised by*  
3            *the court or conferred by that and any other law in force in the Cayman Islands it*  
4            *has the like jurisdiction which is vested in or capable of being exercised in England*  
5            *by the High Court as constituted by the **Senior Courts Act 1981** and any other Act*  
6            *of Parliament of the United Kingdom amending or replacing that Act.”*  
7

8            7.        All Counsel in the instant case are in agreement with this interpretation and have urged a  
9                       conjoined approach to sentencing.

10        **THE FACTS**

11            8.        The Prosecution has provided a detailed Summary of Facts which is, in the main, agreed. There  
12                       is a dispute as to the nature of the roles played by each Defendant in respect of the Importation  
13                       of the cocaine.

14            9.        The matter commenced on the 9<sup>th</sup> November 2018. At about 9:35 pm on that day, Michael  
15                       Palmer, a Jamaican national was an arriving passenger at the Owen Roberts International  
16                       Airport in Grand Cayman. He had travelled from Kingston, Jamaica and was attempting to re-  
17                       enter the Cayman Islands on the basis of a continuing temporary work permit for three months  
18                       from September 2018 to November 2018. He was questioned by Customs Officials and his  
19                       bags searched.

20            10.       Although he initially claimed to be carrying meat seasoning, inside his bags he also had with  
21                       him several boxes of cake and sweet potato pudding mix. In the boxes were four packages  
22                       containing cocaine of a total weight of 1.93 kilograms. Upon his arrest and interview under  
23                       caution in the presence of his attorney, he provided a prepared statement in which he indicated  
24                       that at the Airport in Kingston he had been asked by a lady to take seasoning to the Cayman  
25                       Islands and had been paid US\$30.00 to do so. He denied knowing that anything illegal had  
26                       been in the boxes given to him. CCTV footage was obtained from the Norman Manley  
27                       International Airport in Kingston, Jamaica, which showed that Mr. Palmer did not receive any  
28                        
29

1 package from a lady while at the airport. His phone was seized on his arrest and examined.  
2 From telephone analysis it was observed that he had been in dialogue, regarding the movement  
3 of the packages in question with “Nick” later identified to be the Defendant Adams and with  
4 “Kemar 3” later identified to be the Defendant Boothe.



5  
6 **PHONE EVIDENCE**

7  
8 11. The investigators were able to associate the Defendant Orville Adams with the phone number  
9 for “Nick” as that number had been given by Mr. Adams for his driving license, health  
10 insurance and work records.

11  
12 12. Mr. Palmer first travelled to the Cayman Islands on the 8<sup>th</sup> September 2018. Conversations  
13 between Mr. Palmer and Mr. Adams commenced on the 12<sup>th</sup> September 2018. Prior to Mr.  
14 Palmer’s travel off Island on the 2<sup>nd</sup> November 2018, there were a number of messages  
15 exchanged between them. On the 1<sup>st</sup> November 2018, Mr. Adams told him not to leave his  
16 passport, that he would be picked up and dropped off by “Zeeks”. Mr. Adams provided  
17 directives as to what was to be done and told him that money would be sent by a female for  
18 him to collect and that he was not to delay because they had to ‘stay on top of things’.

19  
20 13. On the 5<sup>th</sup> November 2018, Mr. Adams sent a message to Mr. Palmer that he had to upgrade  
21 Mr. Palmer’s ticket. Thereafter Mr. Palmer sent images of a boarding pass and of a money  
22 transfer remittance transaction.

23  
24 14. On the 8<sup>th</sup> November 2018 Mr. Adams sent a message telling Mr. Palmer how to pack his  
25 suitcase with placement of shirts and shoes under the base of the suitcase with other items on  
26 top. He said that he wanted “them” to see the shoes and seize them in order for duty to be paid.

1 The Prosecution contended that this was an instruction as to how the cocaine was to be packed.

2 The defence say that this was unrelated to the cocaine.

3  
4 15. The phone evidence also shows messages exchanged between Mr. Boothe and Mr. Palmer  
5 commencing on the 12<sup>th</sup> September 2018. On the 2<sup>nd</sup> November 2018, Mr. Boothe complained  
6 that he was not being kept up to date with the arrangements and expressed concern about his  
7 money not being sent on time. He enquired about what was to be the packaging for the drugs  
8 and Mr. Palmer responded indicating that he only knew that he was to pick up the drugs but  
9 did not know how it was to be packaged.

10  
11 16. The phone analysis of the Defendant Palmer's phone led to the search for and arrest of the two  
12 Defendants.



13  
14 **ARREST OF THE DEFENDANT KEMAR BOOTHE**

15  
16 17. On the 8<sup>th</sup> May 2019, a team of Customs Officers went to the work place of the Defendant  
17 Boothe where they arrested him on suspicion of Conspiracy to Import Cocaine. He told the  
18 Officers that he did not own a car and did not have a cell phone as it had been damaged. He  
19 said that he could not recall the number of his phone.

20  
21 18. A search warrant was executed on his home address at 51 Outpost Street in George Town.  
22 While searching the kitchen, the firearm, the subject of Count 1 of the Indictment was found at  
23 the bottom of the oven of the stove. It was examined by firearm officer PS Anthony Stewart  
24 and found to be a 9mm Smith and Wesson semi-automatic pistol bearing serial number VDC  
25 3572 with a loaded magazine. Inside the magazine were 15 rounds of ammunition. The firearm  
26 was test fired and found to be a firearm within the meaning of the *Firearms Law*. Mr. Boothe  
27 is not the holder of a Firearm User's license.



1       19.     Mr. Boothe was subsequently interviewed under caution in the presence of his attorney during  
2             which he provided a prepared statement. He denied involvement in any importation of cocaine.  
3             He accepted the possession of the firearm and stated that he had found it inside a tube whilst  
4             he had been out hunting for iguanas. He said that he took it home immediately because he did  
5             not want to leave it in public. He said that his intention on taking it home was to hand it over  
6             to the police. He did not do so because he felt that the police would not believe him.

7  
8       20.     On the 19<sup>th</sup> September 2019 the Defendant Boothe invited the police to HMP Northward in  
9             order to voluntarily provide information relating to his involvement in the Importation of  
10            Cocaine. He did so in the presence of his Attorney and subsequently provided a statement dated  
11            17<sup>th</sup> October 2019. In that statement he said that he had provided \$2,000.00 towards the  
12            importation venture. He said that the Defendant Adams is a friend of his and had been for a  
13            long time. He said that Mr. Adams asked him if he knew of anyone that could make a delivery  
14            for him. Mr. Boothe said that he made inquiries and was introduced to Mr. Palmer as a possible  
15            courier. He advised Mr. Adams of this and both he and Mr. Adams travelled to Jamaica where  
16            Mr. Adams was able to meet with Mr. Palmer and they discussed arrangements.

17  
18       21.     In pursuance of those arrangements Mr. Adams with the assistance of a girlfriend (Breanna  
19            McFarlane) obtained a temporary work permit for Mr. Palmer by which means he was able to  
20            travel to the Cayman Islands. Upon Mr. Palmer's arrival, arrangements were progressed by  
21            way of discussion as to how the cocaine was to be imported.

22  
23       22.     Mr. Boothe said that he invested in the venture having been advised by Mr. Adams that he  
24            would receive \$5000.00 in return. Mr. Palmer travelled to Jamaica as part of the plan. Both  
25            before and after he travelled, Mr. Boothe was in telephone contact with him and with Mr.  
26            Adams about ongoing arrangements. Mr. Boothe said Mr. Adams informed him of the arrest

1 of Mr. Palmer and it was at that time that he learnt that the cocaine was in food boxes. He was  
2 surprised to hear this as he had not known how the drugs were to be packaged.

3  
4 23. The day before his arrest, Mr. Boothe was warned by Mr. Adams that the Police were looking  
5 for him and that he was to delete messages from his phone and destroy it. Mr. Boothe did as  
6 instructed. In the statement Mr. Boothe also gave information as to additional persons involved  
7 in the venture, (the girlfriend of Mr. Adams who assisted in sending money to Jamaica) and  
8 as to the alias name of the person in Jamaica (“Zeeks”) who allegedly sold the drugs to Mr.  
9 Adams.



10  
11 **ARREST OF THE DEFENDANT ORVILLE ADAMS**

12  
13 24. Mr. Adams was arrested on the 9<sup>th</sup> May 2019, the day following the arrest of Mr. Boothe. He  
14 was interviewed under caution and denied knowing Michael Palmer and denied involvement  
15 in the importation of cocaine. He said that in November 2018 he was using a phone which he  
16 borrowed from a friend whose name he only knew as “Mario.” He denied ever using the phone  
17 bearing the number which had been in contact with Mr. Palmer. He also denied any conspiracy  
18 with Mr. Boothe or engaging in any business activities with him.

19  
20 25. In respect of the charge of Being Concerned in the Importation of Cocaine, the Prosecution’s  
21 Summary of Facts provided states:

22 *“The charge in relation to Mr. Adams was predicated on the telephone evidence*  
23 *recovered, attribution of the telephone number of “Nick” to Mr. Orville Dominic*  
24 *Adams as well as the evidence contained in a statement provided by Mr. Kemar*  
25 *Anthony Boothe on the 17<sup>th</sup> October 2019.”*  
26



1 **SOCIAL INQUIRY REPORTS**

2 **26.** The Department of Community Rehabilitation (“DCR”) has provided a Social Inquiry Report  
3 (“SIR”) in relation to Kemar Boothe dated 24<sup>th</sup> September 2020. He has no previous  
4 convictions. Mr. Boothe has been gainfully employed for over five years up to his arrest. There  
5 were no work issues. Since being at the Prison he has completed various programmes, is  
6 employed as a clinic orderly and is engaged in academic programmes where he is described as  
7 a highly-motivated student who is performing well. He was awarded a certificate for being the  
8 “most outstanding student.”

9  
10 **27.** Under ‘attitude towards offending’, he is recorded as being remorseful, accepting that he has  
11 done wrong and that he plans to pay the consequence of his actions. He told the Probation  
12 Officer that he had the gun for approximately three months and would occasionally take it out  
13 to “play” with it. He would watch videos on how to remove the magazine and load the bullets  
14 to learn more about the gun in his possession. Two of the factors under his ‘risk/need profile’  
15 were assessed as high - interactions with individuals involved in pro-criminal behaviours and  
16 leisure/recreation - leading to him being assessed as being at medium level for overall risk of  
17 re-offending.

18  
19 **28.** The DCR has provided a Report for Dominic Adams which is dated 28<sup>th</sup> February 2020. He  
20 has no previous convictions. Under ‘attitude towards offending’ the Probation Officer records  
21 that Mr. Adams sought to clarify that he was not the mastermind behind the scheme and that it  
22 was Mr. Boothe who came up with the idea and he, Mr. Adams went along with the proposed  
23 plan because of his financial circumstances. He was assessed as at low risk of re-offending.  
24 He was productively employed prior to his arrest.

1 **THE FIREARMS LAW**

2 **29.** Section 15 of the *Firearms Law* (2008 Revision) provides that it is an offence for a person to  
3 be in possession of a firearm except under and in accordance with the terms of a Firearm User’s  
4 Restricted Licence. Subject to s.39, the maximum penalty is a fine of up to one hundred  
5 thousand dollars and imprisonment for twenty years. Section 39 of the Law provides for a  
6 mandatory minimum sentence of seven years’ imprisonment following upon a plea of guilty  
7 unless the Court is of the opinion that there are exceptional circumstances relating to the offence  
8 or to the offender which justify its not doing so.



10 **GUIDELINES ON SENTENCING - FIREARMS**

11  
12 **30.** In the *2002 Statement on Tariffs and Guidelines for Sentencing for Certain Offences*<sup>1</sup>, the  
13 learned Chief Justice stated:

14 *“As regards to firearm offences contrary to the firearms law, the Legislation is quite clear*  
15 *that the possession or use of any unlicensed lethal barreled firearm is an extremely serious*  
16 *offence. Under the Firearms Law, the maximum penalty for possession of an unlicensed*  
17 *firearm is 20 years and a fine of \$100,000.00. The tariff for that offence unless there are*  
18 *very mitigating circumstances will be 10 years. If on the other hand aggravating*  
19 *circumstances exists, for instance, the use of the firearm for the commission of a serious*  
20 *offence, the tariff will be in keeping with decided cases and will be significant higher.”*  
21

22  
23 **31.** These Guidelines predated the *Amendment to the Firearms Law* which imposed a minimum  
24 term of 10 years following conviction after trial and seven years upon a guilty plea.

25  
26 **32.** In the 2009 case of *Chavarra-Atily v R*<sup>2</sup>, the Cayman Islands Court of Appeal (“CICA”)  
27 considered the issue of exceptional circumstances following the Appellant’s sentence for the  
28 offence of unlawful possession of an air rifle. The Court stated:

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<sup>1</sup> The Chief Justice’s Sentencing Guidelines  
<sup>2</sup> 2009 CILR 118

1                    *“In the Cayman Islands it has been the massive increase in offences under the*  
2 *Firearms Law that has led Parliament to enact the minimum sentences in respect*  
3 *of those offences while at the same time making special provision for cases of*  
4 *exceptional, circumstances. A mere possession of a firearm even without an*  
5 *intention to use it for a criminal offence can still be a danger to the public for the*  
6 *reason that it could get into the hands of someone who does have that intent”.*  
7

8            33.        The Court referred in its judgment to the cases of *R v Avis*<sup>3</sup> and the *R v Zakir Rehman and*  
9 *Wood*<sup>4</sup>.

10  
11           34.        In the case of *R v Avis*, the English Court of Appeal stated that the appropriate level of sentence  
12 for a firearm offence will depend on all the facts and circumstances relevant to the offence and  
13 the offender. It will usually be appropriate for the sentencing court to ask itself a series of  
14 questions:

15                    i.    *What sort of weapon is involved?*

16  
17                                    1.    *Genuine firearms are more dangerous than imitation firearms. Loaded*  
18 *firearms are more dangerous than unloaded firearms. Unloaded firearms*  
19 *for which ammunition is available are more dangerous than firearms for*  
20 *which no ammunition is available. Possession of a firearm which has no*  
21 *lawful use such as a sawn off shot gun will be viewed even more seriously*  
22 *than possession of a firearm which is capable of lawful use.*



23                    ii.    *What if any use has been made of the firearm?*

24  
25                    iii.    *With what intention, if any, did the defendant possess or use the firearm?*

26  
27                    iv.    *What is the defendant's record?*  
28

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<sup>3</sup> 1998 1 Cr. App. R 420

<sup>4</sup> 2006 1 Cr. App. R. (S) 77

1 35. The seriousness of any firearms offence is increased if the offender has an established record  
2 of committing firearm offences or crimes of violence.

3  
4 36. In applying the discussed principles to the instant case, the four questions to be considered are:

5  
6 i. *What sort of weapon is involved in this case?*

7  
8 • It is a genuine firearm which is a lethal barreled weapon which  
9 was loaded with 15 rounds of ammunition inside of it.

10  
11 ii. *What if any use has been made of the firearm?*

12  
13 • There is no evidence as to the use of the firearm.

14  
15 iii. *With what intention if any did the Defendant possess or use the firearm?*

16  
17 • The only evidence as to intention comes from the Defendant  
18 himself that he was going to hand in it to the police but did not do  
19 so.



20  
21 *What is the Defendant's record?*

22  
23 • The Defendant is a person with no previous convictions and he is  
24 of good character.

25  
26 37. In *R. v. Zakir Rehman and Wood*, the Court concluded in considering exceptional  
27 circumstances, that it was not appropriate to look at each circumstance separately and then to  
28 conclude that it did not amount to an exceptional circumstance. A holistic approach was  
29 needed. The Court held that there would be cases where there was one single striking feature

1 which related either to the offence or the offender which caused that case to fall within the  
2 requirement of exceptional circumstances and there could be other cases where no single factor  
3 by itself would amount an exceptional circumstance but the collective impact of all of the  
4 relevant circumstances truly made the case exceptional.



5  
6 **THE MISUSE OF DRUGS LAW**

7 38. By s.16 of the *Misuse of Drugs Law* (2017 Revision) and Schedule 2 thereto, the maximum  
8 penalty for Being Concerned in the Importation of more than 2 ounces of a hard drug such as  
9 cocaine is 20 years' imprisonment and a fine without limit in the Summary Court and 35 years'  
10 imprisonment and a fine without limit in the Grand Court.

11  
12 39. I remind myself that both Defendants pleaded guilty to these offences in the Summary Court  
13 where the lower maximum sentence of imprisonment applies.

14  
15 **GUIDELINES ON SENTENCING - BEING CONCERNED IN THE IMPORTATION OF COCAINE**

16  
17 40. In respect of drug offences the *2002 Statement on Tariffs and Guidelines* refers to the  
18 widespread problem with cocaine abuse in these Islands and provides for a tariff for offences  
19 of trafficking in hard drugs involving 2 ounces or more without mitigating circumstances of  
20 10-12 years. A tariff of 15 years or more is proposed when the offences involve substantial  
21 importation or dealing with quantities of several ounces or kilos. A reduction from these  
22 recommended tariffs is to be applied when there has been a guilty plea.

23  
24 41. The Guidelines further state the recognition of the Courts that many of the people caught are  
25 couriers or intermediaries and that the worst offenders in the chain of distribution often remain

1           concealed. Assistance to identify offenders in the chain will attract a substantial discount on  
2           sentence for those offenders who are prepared to cooperate with the police in their inquiries.

3  
4       42.     In the recent and related case of *Michael Palmer v R*<sup>5</sup> the Appellate Court re-affirmed that  
5           these Guidelines remain the definitive source of sentencing guidance in cases such as the  
6           present, notwithstanding the passage of time since they were propounded and notwithstanding  
7           that the maximum sentence for the offences had substantially increased.

8  
9       43.     Mr. Palmer entered a plea of guilty in the Grand Court on the 15<sup>th</sup> July 2019. He was sentenced  
10           on the 3<sup>rd</sup> October 2019 on the basis that he was a courier. In sentencing him Chapple J. (Actg.)  
11           applied a starting point of 15 years. Following reduction for mitigating factors and guilty plea,  
12           the appropriate sentence was determined to be one of 8 years and 3 months.

13  
14       44.     On the 13<sup>th</sup> November 2020, the sentence was upheld on appeal. In its judgment the Appellate  
15           Court stated that this was a substantial importation by a person who had at least some  
16           involvement in the planning.

17  
18       45.     In the earlier case of *R v Millwood*<sup>6</sup>, the Appellate Court considered an appeal against a  
19           sentence of 12 years' imprisonment. This was imposed after trial upon the Appellant who was  
20           convicted of importing 2.86 kilograms of cocaine. The Court concluded that a starting point of  
21           17 years may have been too high given that the Appellant's role in the importation was a lesser  
22           one. The Court stated that in such circumstances the minimum starting point of 15 years laid  
23           down by the above Guidelines would have been more appropriate. The Court noted the  
24           different levels of sentencing in this jurisdiction and in England and Wales.

25  

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<sup>5</sup> CICA Appeal 23/2019 Unreported Judgment dated 25<sup>th</sup> November 2020

<sup>6</sup> CICA Appeal 30/2014 judgment dated 7<sup>th</sup> November 2016



1 46. In the case of *R v Lobo, Perez-Ruiz, Taylor-Dominguez and Others*, the Grand Court  
2 considered the appropriate sentences for conspiracy to import a kilo of cocaine and a second  
3 offence of attempted importation of just over 1.8 kilos of cocaine. The Court identified starting  
4 points of 17 years' imprisonment for the leading players in the importation and starting points  
5 of 15 years for middle management. From a starting point of 17 years Mr. Taylor Dominguez  
6 who had given evidence at the trial of the main Defendant, Mr. Lobo, received a sentence of 4  
7 years' imprisonment following discounts for assistance and guilty pleas.



8  
9 **EXCEPTIONAL CIRCUMSTANCES – ASSISTANCE TO THE AUTHORITIES**

10  
11 47. The Cayman Islands Sentencing Guidelines provides that a court may give credit for  
12 cooperation with the authorities. The level of credit will depend on the particular circumstances  
13 of each case. The Guidelines adopt the approach in the English Court of Appeal case of *R v P;*  
14 *R v Blackburn*<sup>7</sup> and state that the usual reduction would be between one half to two-thirds of  
15 the sentence.

16  
17 48. In *R v P;* *R v Blackburn* the Court emphasized that rather than a mathematical computation,  
18 the totality principle is fundamental. The recommended approach is to consider firstly the  
19 criminality of the Defendant, giving weight to any aggravating and mitigating features.  
20 Thereafter consideration should be given to the nature of the assistance - with particular value  
21 to be given to those cases where assistance is provided by way of a witness statement or the  
22 Defendant is prepared to give evidence at any subsequent trial and does so. At the highest level  
23 is where the assistance provided, produces convictions for the most serious offences or leads  
24 to the breakup of major criminal gangs. The personal risks and potential consequences faced

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<sup>7</sup> 2007 EWCA Crim 2290

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1 by a Defendant in providing such assistance is also a consideration. Assessment of a reduction  
2 for assistance given should take place and a notional sentence arrived at before the sentence is  
3 further discounted for a guilty plea.

4  
5 49. In the case of *R v Justin Ebanks*<sup>8</sup> the Defendant was before the Court for sentencing following  
6 his guilty plea to the offence of Possession of an Unlicensed Firearm. Quin J. identified  
7 exceptional circumstances in which the Defendant had provided sustained assistance to  
8 prosecution and enforcement authorities over a considerable period of time and under  
9 considerable threat and stress. The assistance provided led to the conviction of two offenders  
10 for murder. The learned Judge reviewed a number of English cases including *R v P*; *R v*  
11 *Blackburn* and concluded that the assistance constituted an exceptional circumstance. The  
12 Learned judge followed and adopted the approach in *R v Sehitoglu*<sup>9</sup> that the sentencer should  
13 determine the final sentence by calculating a single discount taking into account all the relevant  
14 factors including the plea of guilty and the assistance given to the authorities. On the charge of  
15 possession of unlicensed firearm, the mandatory minimum term of imprisonment of 7 years'  
16 imprisonment on a guilty plea was reduced to one of 18 months.

17  
18 50. Counsel on behalf of the Defendant Boothe submitted that under the Sentencing Council  
19 Guidelines for England and Wales, the Defendant Boothe would fall into the category of a  
20 significant role. It is accepted by him that he invested \$2000.00 towards the purchase of cocaine  
21 and that he did so for financial gain. Further, he involved others by connecting Mr. Adams with  
22 Mr. Palmer. It is said that he did not play a leading role, in that he was not involved in activity  
23 to further the crime. He did not take steps to obtain a work permit for Mr. Palmer as did Mr.

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<sup>8</sup> Unreported Ind. 40/2016 - judgment dated 27<sup>th</sup> September 2016

<sup>9</sup> 1998 1 Cr.App. R. (s) 89 CA



1 Adams and did not make arrangements for accommodation, travel and transfer of money for  
2 flights as was done by Mr. Adams.

3  
4 51. Counsel relies on the sentencing in the cited case of *R v Lesme Perez-Ruiz* and in particular  
5 the sentencing therein of Allan Taylor-Dominguez. That Defendant offered assistance soon  
6 after he had pleaded guilty at the first available opportunity. The Defendant Perez-Ruiz also  
7 gave assistance but subsequent to a not guilty plea. Counsel submitted that the appropriate  
8 starting point in this case is between 15-17 years. It is agreed that the destruction of the phone  
9 is an aggravating factor.

10  
11 52. With respect to the firearm offences Counsel submitted that the assistance offered to the Crown  
12 should be considered to amount to exceptional circumstances so as to allow deviation from the  
13 minimum term. Counsel also submitted that the assistance should apply to all the offences  
14 before the Court and should not be limited only to the drug offence. Counsel relies on the case  
15 of *R v P; R v Blackburn* in which that appellant received credit for assistance given towards a  
16 broad range of offences. Counsel also submitted that none of the aggravating features of *R v*  
17 *Avis* are applicable to the instant case. There is no use or planned use of the weapon to commit  
18 violence.

19  
20 53. In submissions, Counsel on behalf of the Defendant Adams referenced his basis of plea. Mr.  
21 Adams accepts that he is the man named Nick in the telephone evidence. He accepts his role in  
22 the importation but does not accept that he played the role alleged by Mr. Boothe. He states  
23 that they both had equal roles at all times and were partners. He says that it was a joint plan  
24 between them and that both were each to receive one half of the profits



1 54. Mr. Boothe on the other hand urged that Mr. Adams played more of a leading role than he did.  
2 He argued that while he had been initially involved, it was Mr. Adams who made the  
3 arrangements for Mr. Palmer's temporary work permit and for the importation.

4  
5 55. It was agreed by both sides that the differences urged do not change the categorization for the  
6 purpose of sentence and that both Defendants played a significant role as set out in the United  
7 Kingdom Sentencing Council Definitive Guideline on Drug offences



8  
9 **SENTENCE**

10 56. There are differences between the Defendants as to the actions done in furtherance of the  
11 enterprise. However this does not appear to be the sort of case where it would be appropriate  
12 to add up each action performed by one or the other and to say more was done by one as distinct  
13 from the other as Mr. Boothe urges. I note that, while Mr. Adams may have been the more  
14 active of the two in the middle and latter stages, Mr. Boothe was critical to the start of the  
15 enterprise. Had it not been for the actions of Mr. Boothe in identifying Mr. Palmer as a possible  
16 courier, the enterprise would not have gotten off the ground.

17  
18 57. Secondly both contributed funds to purchase the cocaine. This is a significant factor and  
19 evidences the high level of participation of both. Both were motivated by financial gain. Both  
20 kept in phone contact with Mr. Palmer. Mr. Boothe sought by messages to be kept informed as  
21 to what was going on. He did not retreat after his first action. In my view there is ultimately  
22 little to distinguish between them in terms of the major building blocks of the enterprise and  
23 thus the roles that they played. They each played significant roles. They were both more than  
24 couriers or middle men and were either at the top of the chain or close to the top of the chain.

25

1 58. This was a carefully planned scheme rather than one by impulse. It involved some long-range  
2 planning, including, but not exclusive to: A search for a possible courier; an initial trip to  
3 Jamaica by both in part for an introductory meeting with Mr. Palmer; the obtaining of a  
4 temporary work permit for Mr. Palmer; a misuse of the work permit process; waiting for a  
5 period for Mr. Palmer to arrive on Island and travel back to Jamaica; and the sending of funds  
6 for various arrangements using money remittance services. This was a substantial importation  
7 by offenders who were higher in the chain than Mr. Palmer. Given the nature of the roles played  
8 by both defendants, I would adopt a starting point of 17 years for the drug offences.

9  
10 59. In respect of the Defendant Adams, his personal mitigation includes the fact of the absence of  
11 previous offending. He is 37 years old and married with a wife and children who require  
12 support. The youngest of his three children is 8 years old. He completed high school, took  
13 courses and was gainfully employed up to the time of his arrest; this is despite a difficult  
14 childhood which involved abuse, instability and an absent father. He is described by his peers  
15 as a hardworking and respectful individual and by his former employer as a good worker.

16  
17 60. Additionally, his 'risk of re-offending' is assessed as low. The motivation behind his offending  
18 is said to be an attempt to help his family although there was no evidence of desperate need.  
19 He is remorseful. With respect to his health, while in prison he contracted the Covid-19 virus  
20 leading to a requirement to quarantine, a period which must have been uncomfortable for him.  
21 It is also said by his Counsel that his health has significantly deteriorated whilst he has been in  
22 prison on remand and that he now has back issues for which he is receiving treatment.

23  
24 61. I take into account all these matters in his favour and all that has been said about him.  
25 Consequently the sentence is reduced to one of 14 years.





1       62.     The Prosecution submits that in accordance with the Cayman Islands Sentencing Guidelines,  
2             given the overwhelming nature of the evidence in this case, the Court should consider a  
3             reduction of less than one third in respect of his guilty plea.

4  
5       63.     Counsel for the Defendant Adams submits that in accepting responsibility Mr. Adams has  
6             saved significant time and cost. Counsel also submits that the case against Mr. Adams is not  
7             overwhelming - including as it does the co-defendant as a witness. It is said that not only did  
8             Mr. Boothe's account come after the finding of the firearm in his home but that he has a self-  
9             serving purpose to minimize his own involvement.

10  
11       64.     It is noted that Mr. Boothe's account would have been strongly supported by the phone  
12             evidence, the travel records and the evidence of Breanna McFarlane as to the request from Mr.  
13             Adams for her to obtain a work permit for Mr. Palmer.<sup>10</sup> Nevertheless this is the sort of case  
14             where much would have turned on the assessment of Mr. Boothe by the tribunal of fact, had  
15             the case gone to trial.

16  
17       65.     Given the circumstances, I give **Mr. Adams** the benefit of the doubt and apply the full discount  
18             of one third, thereby reducing the sentence to one of 9 years' and 4 months' imprisonment.

19  
20       66.     In respect of **Mr. Boothe** for his sentencing for the drug offence, I take into account all his  
21             personal mitigation. This includes that he has no previous convictions. He is a father with one  
22             son aged 23 years old. He has made a contribution to society by his involvement as a player  
23             for the Cayman Islands National Football team in 2008. He has been gainfully employed  
24             continuously for almost all of his adult life both here and in Jamaica. While in Prison he  
25             continues to be productive and has engaged in continuing education to the extent that he was

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<sup>10</sup> Witness statement dated 31<sup>st</sup> October 2019

1 awarded a certificate for being the most outstanding student. His overall risk of re-offending  
2 is assessed as medium. He is remorseful.

3  
4 67. Taking all these matters into account, the sentence is reduced to one of 14 years' imprisonment.  
5 There is one aggravating factor of the destruction of his phone, amounting to the concealment  
6 or disposal of evidence which would serve to increase the sentence to one of 14 years' and 6  
7 months' imprisonment.

8  
9 68. In respect of the assistance he has provided, I take into account as urged by  
10 Counsel the following matters:

- 11 • The offer of assistance to the Prosecution by Mr. Boothe was made prior to his being  
12 charged;
- 13  
14 • The offer of assistance to the Prosecution by Mr. Boothe was made at a time when Mr.  
15 Boothe was on remand and before Mr. Adams was charged. Mr. Boothe was to remain in  
16 prison with a co-defendant, Mr. Palmer, which would have presented a greater risk of  
17 retribution had his assistance been known at that stage;
- 18  
19 • Mr. Boothe cannot use the gym facilities in prison as his co-defendant uses these, and so  
20 there is a risk to his safety if he does;
- 21  
22 • Mr. Boothe does not have the Immigration status which would permit him to remain in  
23 the Cayman Islands and faces the possibility that he may have to return to Jamaica from  
24 where the cocaine was sourced. He may face risks to his personal safety in this  
25 jurisdiction, and also upon his return to Jamaica. Additionally he has family in Jamaica;



- Mr. Boothe was willing to provide evidence in court at any trial and his witness statement was served as part of the Prosecution's case;
- Mr. Boothe provided cogent evidence that Nick was an alias for Mr. Adams.

69. I accept that while the Prosecution would have been able to establish a phone connection with Mr. Adams, the evidence provided by Mr. Boothe made the case more cogent and compelling. It was served as part of the Crown's case against Mr. Adams and must have played a role in his pleading guilty. It therefore led to the conviction of Mr. Adams.

70. Those who assist the authorities and do so at risk to their personal safety are deserving of a substantial discount on sentence. I have considered the appropriate level of discount in this case. I note the possible risks to himself and his family and the restriction on his use of the gym facilities whilst in prison. There is however no evidence of specific threats or intimidation or of an ongoing period of stress. While the assistance is significant, I do not consider that it rises to the highest level of value in the sense described in *R v P; R v Blackburn*, for example as having led to the breakup of a major criminal gang. I consider that the appropriate discount for assistance in this case is one-half. The sentence is therefore reduced by one-half to 7 years' and three months' imprisonment.

71. The sentence is further reduced for his guilty plea to one of 58 months' or 4 years' and 8 months' imprisonment.



1 72. In respect of the offence of Possession of Unlicensed Firearm, I also take into account the  
2 assistance as detailed above. Though an entirely separate offence, I accept the submission of  
3 his Counsel that his assistance to the authorities falls into the category of exceptional  
4 circumstances and may properly be reflected in a discount of the mandatory minimum sentence  
5 of 7 years.

6  
7 73. I apply a discount of one-half for a sentence of 42 months' or 3 years' and five months'  
8 imprisonment.

9  
10 74. In respect of the offence of Possession of Unlicensed Firearm, ammunition, a sentence of 12  
11 months' imprisonment reduced by one-half to six months' imprisonment is imposed.

12  
13 75. The Cayman Islands Sentencing Guidelines set out the general principles as to totality and  
14 concurrent/consecutive sentences. In this case the offences of Possession of Unlicensed  
15 Firearm and Being Concerned in the Importation of Drugs arise out of unrelated facts or  
16 incidents. Considering the seriousness of the offences and the overall criminality, save for the  
17 sentence in respect of the ammunition, the sentences in respect of Mr. Boothe are to run  
18 **consecutively**.

19  
20 76. The sentences imposed are therefore:



21  
22 i. **Orville Adams:** for Being Concerned in the Importation of Cocaine:  
23 a. Imprisonment of 9 years and 4 months with time served to be deducted.

24  
25 ii. **Kemar Boothe:**  
26 a. Being Concerned in the Importation of Cocaine:  
27 i. Imprisonment of 4 years and 8 months;

- 1                                   b. Possession of Unlicensed Firearm:  
2   i. Imprisonment of 3 years and 5 months to run consecutively;  
3                                   c. Possession of Unlicensed Firearm, Ammunition:  
4   i. Imprisonment of six months, to run concurrently to all other sentences.  
5                                   d. Time served is to be deducted in each case.  
6                                   e. The firearm and ammunition are ordered forfeited and are to be destroyed.

7

8   **Dated this the 11<sup>th</sup> December 2020**



9

10 \_\_\_\_\_  
11 **Justice Cheryll Richards QC**  
12 **Judge of the Grand Court**  
13