

1 **IN THE GRAND COURT OF THE CAYMAN ISLANDS**
2 **HOLDEN AT GEORGE TOWN, GRAND CAYMAN**

3
4 **S.C.A. NO. 28 OF 2010**

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6
7 **JERRU ANDERSON**

8
9 **V.**

10
11 **REGINA**

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14 **Appearances: Ms. Lucy Organ of Samson & McGrath**
15 **for the Appellant**

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17 **Mr. John Masters of the Govt. Legal Dept.**
18 **for the Respondent**

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21 **Before: Hon. Justice Henderson**

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24 **Heard: June 30, 2011**

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27 **RULING**

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30 1. On this appeal from sentence by Mr. Jerru Anderson, I have been asked to
31 deliver a preliminary ruling on whether events which have taken place after
32 the sentence was imposed can be considered on the appeal in mitigation or
33 aggravation (as the case may be). The Appellant says that he has taken some
34 rehabilitative steps subsequent to sentencing which should persuade this Court
35 to adopt a more lenient view than the one taken by the Learned Magistrate in
36 the Summary Court.

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38 2. Mr. Anderson has pleaded guilty; as a consequence, the appeal is restricted to
39 a consideration of “the extent or the legality of the sentence”: *Criminal*

1 *Procedure Code* (2010 Revision) (the “CPC”), section 167. No question is
2 raised as to the legality of the sentence; what is in issue is the “extent” of it.

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4 5. This is an “appeal by motion”. An “appeal”, in its plain and ordinary
5 meaning, is a challenge to the correctness of a decision. The integrity of the
6 process demands that the appellate tribunal form its own view of the issue by
7 taking into account the same matters, but only those matters, which the
8 decision-maker considered or should have considered. This constraint can, of
9 course, be relaxed by the terms of the legislative provision which clothes the
10 appellate tribunal with its jurisdiction.

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12 6. On an appeal by motion, section 181 of the CPC authorizes this Court to
13 “confirm, reverse, vary or modify the decision of the Summary Court,
14 including the passing of some other sentence (whether more or less severe)
15 ...”. The language of s. 181 does not expressly confine the Court to a
16 consideration of the correctness of the magistrate’s decision but neither does it
17 provide an express authorization to consider subsequent events and conduct.

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19 7. In *Edwards, McBean, Barnes and Dickson v. the Queen*, 2001 CILR 334,
20 Sanderson, J. of this Court said (at para.4), in the course of hearing several
21 appeals from sentence from the Summary Court, that the Grand Court could
22 consider “new factual matters that have subsequently arisen”. He was
23 paraphrasing a passage from *Archbold* which contained a description of the
24 practice in the U.K. Court of Appeal. The judgment of Sanderson, J. does not

1 contain any reference to new matters of fact which he took into account so his
2 reference to that possibility was unnecessary to his decision.

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4 3. The Appellant's position is that an appeal from the Summary Court to the
5 Grand Court against sentence is "analogous to" an appeal from the Crown
6 Court to the Court of Appeal in the United Kingdom. The current practice of
7 the U.K. Court of Appeal is "to have regard to material which was not
8 available at the time sentence was passed and also to have regard to what has
9 happened since sentence has passed": *Archbold; Criminal Pleading, Evidence*
10 *and Practice*; 2011; para. 7-140. The Appellant says that the practice of this
11 Court on a sentence appeal should conform to that of the Court of Appeal in
12 England.

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14 4. The Criminal Appeal Act of 1907 provided for the quashing of a sentence
15 where the Court of Appeal considered that a different sentence should "have
16 been" passed: *Archbold, ibid.* In the *Criminal Appeal Act* of 1968 this
17 language was altered and the Court of Appeal was authorized to quash a
18 sentence where it considered that the appellant "should be" sentenced
19 differently. This change in language appears to have introduced a change in
20 the practice, as the 1907 provision would have restricted the Court to a
21 consideration of the correctness of the decision under appeal while the 1968
22 amendment permits the appellate court to consider all relevant material
23 including events which occurred subsequent to sentencing. (*The Court of*
24 *Appeal Law* (2006 Revision) of the Cayman Islands contains in s. 9(3)
25 language similar to the 1907 English statute.) There are a number of cases,

1 such as *R v. Plows*, (1983) 5 Cr. App. R. (S) 20, where the U.K. Court of
2 Appeal has taken into account a prison governor's report concerning events
3 subsequent to sentencing which stood in the prisoner's favour.

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5 5. The *Criminal Procedure Code* contains (in sections 177 ff.) provisions for the
6 Court to order a re-hearing and to receive fresh evidence. These provisions,
7 which appear to be aimed primarily at appeals from conviction, are, under the
8 wording of the legislation, available on an appeal from sentence also.
9 However, no order for a re-hearing has been made and Ms. Organ has not said
10 she wishes to adduce fresh evidence from the Appellant or from any witness.

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12 8. An appeal by motion is ordinarily confined to a consideration of whether the
13 decision under appeal is right or wrong. The correctness of the decision must
14 be judged against the evidence and arguments presented to the magistrate
15 without regard to fresh material or subsequent events. The rigour of this rule
16 is ameliorated substantially by the right of the Court (in certain circumstances:
17 see *Regina v. Voiculescu* (unreported) March 18, 2010 (Court of Appeal)) to
18 order a re-hearing, to receive additional evidence from witnesses and from an
19 appellant, and (as the Crown concedes here) to order a Social Inquiry Report
20 under section 179. These provisions provide several avenues for the
21 introduction of material which was not before the magistrate, including
22 evidence of events subsequent to sentencing. However, unless one or more of
23 these exceptional processes is invoked successfully by the appellant, the
24 appeal from sentence must remain a simple consideration of whether the

1 magistrate's decision as to the extent of the sentence was correct given the
2 evidence and arguments presented to her.

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4 Dated this 29th day of July, 2011

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7 Henderson, J.
8 Judge of the Grand Court