

IN THE COURT OF APPEAL OF THE CAYMAN ISLANDS

CICA (Crim) No 2/2012

SCA No 14/11

SC No 8126/06

BEFORE

Rt Hon Sir John Chadwick, President
Hon Dr Abdulai Conteh, Justice of Appeal
Rt Hon Sir Anthony Campbell, Justice of Appeal

ON APPEAL FROM THE GRAND COURT

BETWEEN

STEPHEN WHITTAKER

Appellant

and

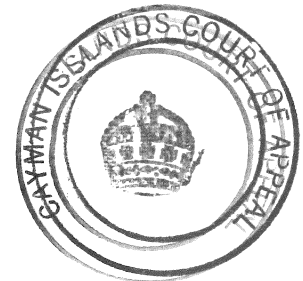
THE QUEEN

Respondent

Mr. John Meghoo appeared for the Appellant
Mr Trevor Ward instructed by the Director of Public Prosecutions appeared for the Crown

Hearing: 22 March 2012
Reasons released: 25 April 2012

JUDGMENT
Revised from transcript and Approved



Sir John Chadwick, President:

1. On 2 February 2011 the applicant, Stephen Whittaker, was sentenced by the Chief Magistrate on three counts involving the possession of cocaine; including a count of possession with intent to supply. The offences occurred as long ago as 23 November 2006; when the applicant was apprehended at the Owen Roberts International Airport and found to be in possession of two packages, one in his baggage, and one strapped to his inner left thigh. The packages contained some 375 grams of cocaine base. He was sentenced in the summary court to twelve years imprisonment on each count; those terms to be served concurrently. On appeal to the Grand Court the sentences

were reduced to ten years. The applicant now applies to this Court for leave to appeal against sentence and for an extension of time in which to do so.

2. In the course of her sentencing remarks on 2 February 2011, the Chief Magistrate observed that the applicant had not pleaded guilty until 16 December 2010: that is to say, some four years after he had first been brought before the court following arrest. She reminded herself that the Chief Justice's Sentencing Guidelines indicated a starting point of some 10 to 12 years on a not guilty plea for an amount of cocaine of this quantity. She went on to say this:

“For some years, a defendant who pleads guilty has generally been able to expect some discount in sentence. This practice recognised that a guilty plea (depending on the timing) avoids the need for a trial, saves the witnesses and the victim from having to give evidence, reduces the cost to the public of dealing with the case and shortens the time between charge and sentence. The UK sentencing guidelines suggest that the level of the reduction in sentence should be gauged on a sliding scale, ranging from a maximum of:

- one third, where the guilty plea was entered at the first reasonable opportunity; to
- one quarter, where a trial date has been set; to
- one tenth, for a plea entered ‘at the door of the court’ or after the trial has begun.”

She pointed out (as was the case) that the guilty plea in this case had been entered very late in the day; and she went on to say this:

“The matter has had numerous trial dates, several changes of attorney and more recently was delayed by the defendant's nearly 5 month absence from the jurisdiction. His not guilty plea, like his frequent change of lawyers, appears to have been entered for the sole reason of delaying the outcome. The prosecution's case was overwhelming. The packages of cocaine were found strapped to the defendant's legs. He had no viable defence. His conduct of the matter did not save time. In the circumstances, I am of the view that no discount ought to be given.”

So, having started with an indicated tariff sentence of twelve years, that is where the Chief Magistrate ended up; giving no discount either for a guilty plea or for mitigating circumstances.

3. The applicant appealed against sentence to the Grand Court. That appeal came before Justice Williams on 23 September 2011. As I have said, he reduced the sentences from twelve years to ten years. He did so, on the grounds that he was persuaded that the circumstances called for some recognition of the fact that a guilty plea had been entered, albeit at a late stage.

4. The judge followed the Chief Magistrate in taking, as starting point in a case of this nature, a term of imprisonment of twelve years imprisonment or thereabouts on conviction after a trial. He thought that was appropriate, given the quantity of cocaine involved in this case. Further, a term of twelve years following a trial was in line with the sentence in the case of *R v Gunter*. The judge expressed the view that what he saw as the Chief Magistrate's clear frustration at the conduct of the applicant was, to a degree, understandable. He observed that:

"The strength of the evidence should have led anyone properly advised to enter a guilty plea at the earliest possible stage of the proceedings and thus receive the maximum credit for the plea available having regard to the strength of the evidence."

But he took account of the fact that there were no previous convictions for drug matters; that there had been no previous custodial sentence passed on the applicant; and that, although (as the judge put it) caught red handed, the applicant was cooperative with the police. The judge thought that justice would best be served if the sentence was reduced to ten years on each count, to be served concurrently, with credit given for time already spent. He said this:

"I agree with the [Chief Magistrate] that 12 years is the right starting place but a reduction of 2 years for his plea and the limited other mitigating circumstances is appropriate. If an earlier plea had been entered his sentence would have been further reduced as greater credit could then have been given. It is important that sentences for these drug offences reflect the serious nature of them and also act as a deterrent to others."

5. It is from that decision, reducing the sentences from twelve years to ten years, that the applicant seeks to appeal to this Court. This would be a second appeal, brought under section 29 of the Court of Appeal Law (2006 Revision). The applicant needs leave to appeal; and he needs an extension of time to appeal.
6. Put shortly, it is said on his behalf that the starting point of twelve years after a trial was too high; the appropriate starting point for an offence of this nature should have been in the region of ten years after a trial. If the judge had adopted a starting point of ten years as appropriate, then the effect of the guilty plea and mitigating circumstances would have reduced the sentence in this case to around seven or eight years. A reduction from ten years to eight would reflect a discount of some 25 per cent: a reduction to seven years would reflect a discount of 30 per cent.

7. The mitigating factors in this case are slight. The applicant cooperated with the authorities when he was arrested at the airport. But it can be said that, in practice, he a little choice: the packages containing the drugs were found on him. He could hardly deny being in possession of the packages; and forensic tests established that the packages contained cocaine. But he was entitled to advance, in mitigation, that these were the first serious drug offences with which he had been charged; and the first time that he has been sentenced to prison. He is also entitled to say that, at the time of the offence, he was of a relatively young age.
8. Further, the applicant is entitled to some credit for a guilty plea. But, again, the amount of such credit must be limited in the circumstances that, given the substantial quantity of cocaine found on him at the airport, conviction for attempted exportation and for possession with intent to supply could never have been really in doubt. And given the admissions which he made at the time of his arrest in 2006, there was little that could have been advanced by way of a defence to the offences with which he was charged. In those circumstances the applicant could not expect a full discount of one third – or anything approaching that figure – on a guilty plea entered more than four years after his arrest.
9. It was clear from the submissions made on behalf of the applicant in this Court, that – although, as appears from the notes of his interview, he accepted from the time of his arrest in 2006 that he was in possession of cocaine for export and with intent to supply - his decision not to enter a guilty plea at that stage was made deliberately, in the expectation that, if he did not plead guilty, the applicant could expect to obtain bail. That anticipation was realized in the event: the applicant was on bail for the four years from 2006 until 2010. Given that his decision not to plead guilty when he could and should have done was made in order to obtain that advantage, the applicant, having obtained the advantage he sought, cannot now expect to be treated as if he had taken the opportunity to plead guilty at the earliest opportunity available to him.
10. Taking all those matters into account, we can see no basis upon which it would be right for this Court to interfere with the conclusion of Williams J that a reduction of two years from a sentence of twelve years - that is to say, a reduction which reflects a discount of some sixteen and a half per cent – gave sufficient recognition both of the mitigating factors in this case and of the guilty plea.

11. In those circumstances, there is no basis upon which leave to appeal or an extension of time for appealing should be granted. An appeal would have no prospect of success. Accordingly, the applications are dismissed.

