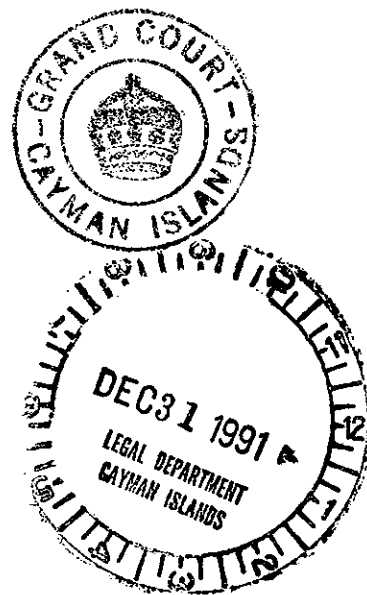


IN THE GRAND COURT OF THE CAYMAN ISLANDS
HOLDEN AT GEORGE TOWN, GRAND CAYMAN

SCA # 78/91
81/91

REGINA v. GEORGE CLYDE SMITH
AND DAVE SHELDON EBANKS.

Mr. Hampson for the Appellant
Mr. Roberts for the Crown



JUDGMENT

On the 13th December, 1990, shortly after mid-day, Police Sergeant Gooding was a passenger in a police patrol vehicle travelling along Boatswain Bay Road, West Bay. He saw three men standing in a yard at the rear of a house which had been under observation in relation to suspected drug offences. Sergeant Gooding alighted from the police vehicle and crept up on the men and observed them from the bushes at a distance of about 12 feet. The appellant Smith and another man, who was subsequently acquitted, were standing in the yard near to a kitchen but partially obstructed by a raised cistern. The appellant Ebanks had a machete in his hand and from time to time walked from one end of the house to the other looking round the corners of the house.

Sergeant Gooding radioed the driver of the police vehicle to drive up to the house, and as he did so Ebanks ran to the other two men and shouted "police coming" three times. The men scattered in different directions and Gooding ran after Smith who had grabbed at something and seemed to be carrying it in his right hand. Smith ran in a circle, dropping the object on the way, but Sergeant Gooding chased him back to the yard and apprehended him. They recovered the object which Smith had dropped and it proved to be a freshly cooked piece of cocaine in rock form weighing 1.529 grams. Although Smith denied possession



of the cocaine in an interview with the police he admitted to Court that he was in possession of the cocaine. However he denied that it was in his possession with intent to supply. He was, after trial, convicted of the more serious offence.

Ebanks subsequently presented himself to the police station and when interviewed admitted giving the warning to Smith that the police were coming but said that he was walking through the yard and alerted them because he suspected them of having cocaine, although he did not know that they did in fact have the drug in their possession. In Court Ebanks elected to remain silent. He was convicted of an offence of being concerned in the possession of cocaine. His urine had proved positive for ganja and cocaine and Ebanks had pleaded "guilty" to consuming ganja but "not guilty" to a charge of consuming cocaine. He was convicted of the latter offence and there is no appeal against that conviction.

Dealing first with Smith, in my judgment the learned Magistrate was driven to the irresistible inference that the cocaine was in his possession with intent to supply. This was a large quantity of cocaine, on the police officer's evidence capable of making 35 to 40 rocks, although on the appellant's evidence capable of making 8 rocks. The learned Magistrate, well experienced in dealing with drugs offences, put the figure at somewhere in between and concluded that the amount was too great for it to be for Smith's own use. The appellant did not tell the Court where he obtained the drug. Perhaps that is understandable. However he did admit in cross-examination that the figure he gave as its purchase-price was an extremely low figure and he had never heard of a better deal. He admitted processing it to rock form. Although the usual paraphernalia associated with an imminent or past supply of the drug was not in Smith's possession the learned Magistrate took that into account. He concluded that the quantity of cocaine found together with rest of Smith's evidence which was not for belief pointed to an



intent to supply the drug. I am satisfied that this was a proper conclusion.

As for Ebanks there is not merit in the appeal. He admitted warning Smith of the arrival of the police vehicle. When set against Gooding's evidence that he had been to and from the corners of the house several times, his statement to the police that he merely warned Smith because of a suspicion that he may have had cocaine is patently untrue. Ebanks was concerned in Smith's possession of the cocaine and was acting as lookout for him.

Smith was sentenced to three years imprisonment for possession with intent to supply cocaine. He pleaded "guilty" to a further offence of consuming ganja and received a sentence of six months imprisonment which was expressed to run concurrently. He is 21 years of age and has several previous convictions, two of which are for drugs offences. I am unable to say that the sentences are manifestly harsh or excessive. His appeal is dismissed both as against conviction and as against sentence. However I note that the commitment warrant does not refer to the sentences running concurrently and I direct the Clerk of the Court to issue an amended warrant to reflect the learned Magistrate's order.

Ebanks was sentenced to 18 months imprisonment for being concerned with possession of cocaine. He received sentences of six months imprisonment for consuming cocaine and for consuming ganja to run concurrently with each other but consecutively with the offence of being concerned. He received further concurrent sentences of six months and nine months imprisonment for offences of consuming ganja and consuming cocaine committed in November, 1990. The total imprisonment imposed was 27 months. Ebanks had three previous convictions one of which was for consumption of ganja. There is nothing to suggest that he was involved in the supply of cocaine. One suspects that he may have been about to be himself supplied. In all the circumstances a sentence of half

that given to Smith for being concerned in Smith's possession is excessive. Furthermore the totality of sentences is harsh. I reduce the sentence for being concerned in the possession of cocaine (559/91) to nine months imprisonment. I reduce the nine month sentence for consuming cocaine (347/91) to six months imprisonment. All sentences are to run concurrently except the sentence in 559/91 which is to run consecutively. The upshot is that Ebanks will now serve a total of 15 months imprisonment. His appeal is allowed to that extent only.



D. Schofield

Dated this 20th Day of December, 1991

