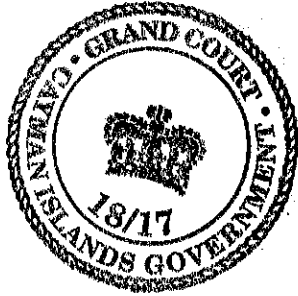


1 **IN THE GRAND COURT OF THE CAYMAN ISLANDS**
2 **CRIMINAL SIDE**

3
4 **INDICTMENT NO: 88 of 2019**



10 **REGINA**

11 **-v-**

12 **ROVAN PEMO JOHNSON**

13 **-and-**

14 **ALBERT ROY CAMPBELL**

15
16
17 **Appearances:** **Mr. Scott Wainwright of DPP for the Crown**
18 **Mr. Oliver Grimwood of Barton Attorney for Defendants**

19
20 **Before:** **Hon. Justice Marlene I. Carter (Actg.)**

21
22 **Sentence Delivered:** **6th November 2019**

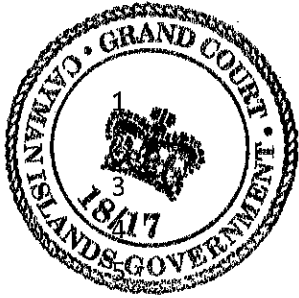
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24 **HEADNOTE**

25 **Misuse of Drugs Law (2017 Revision); Illicit Trafficking; Large Quantities of Ganja;**
26 **Deterrent Sentences**

27
28 **SENTENCE JUDGMENT**

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30 **The Facts**

31 1. The facts presented by the Crown and accepted by the defence are as follows:
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“On the 24th July 2019 RCIPS Marine Unit Officers intercepted a vessel approximately 38 nautical miles off East End. After a brief attempt to evade the police, the vessel and its occupants were detained.

The only persons onboard the vessel were the two defendants. There was a strong smell of ganja. The vessel contained 44 large packages of ganja with a total weight of 1,063 lbs.

Both men were arrested and interviewed under caution. Mr. Johnson stated that Mr. Campbell was the Captain of the boat. Both males were from Westmoreland, Jamaica. They had left Jamaica on the 22nd July 2019 with the intention of sailing to a GPS mark where, presumably, the drugs would be off-loaded. He confirmed that he was aware that the packages contained ganja. The packages had already been loaded onto the vessel when he arrived. He stated that was to be paid 130,000 Jamaican dollars after he delivered the packages.

Mr. Campbell stated that he is a fisherman from Westmoreland, Jamaica. He was approached by Mr. Johnson with a job proposal to drop off something for him approximately 50 to 60 miles from Cayman. When they arrived at that location, the engine went dead. He was to be paid 200,000 Jamaican dollars for the job. Mr. Johnson had given him 100,000 dollars up front and he would receive the balance once the packages had been delivered.

On the 20th September 2019 on their first appearance in the Grand Court, both defendants pleaded guilty to the offence of illicit trafficking contrary to section 19 of the Misuse of Drugs Law (2017 Revision).

The Law

2. Both parties agree that the Court should have regard to the principles set out in *Comrie v R*. [2012] CIRL Note 3, SCA 1/2011. In this decision the Chief Justice established that a sentencing court should focus on 3 main factors in determining the appropriate level of sentence in a case of drug importation. They include:

i. The quantity of the ganja;



- 1 ii. The defendant's role;
- 2 iii. Previous convictions.

3

4 **The Crown's submissions**

5 3. The prosecution raised two matters regarding the starting point for the appropriate
6 sentence. The first related to the weight of ganja in the instant case: it is in excess of the
7 weights involved in previous cases cited by counsel for the defendants. The second point
8 advanced by the Crown concerned the increasing prevalence of importation of ganja cases,
9 especially cases involving large quantities of ganja, in this jurisdiction. The Crown
10 advanced that it is open to the court to impose deterrent sentences in excess of those
11 previously imposed as a result.

12

13 4. The Crown also invited the court to depart from the *Cayman Islands Sentencing Guidelines*
14 in relation to applying a full one-third reduction for the defendants' early guilty pleas. The
15 Crown submits that in this case the evidence was overwhelming, and therefore the court is
16 entitled to withhold the full one-third credit.

17

18 **Defence submissions**

19 5. The defence placed reliance upon the authorities of *R v Adlam, Cunningham and Morgan*
20 (unreported 23 March 2018, Cause number 4697/2017), and *R v Robinson, Ricketts and*
21 *Moxam* (unreported 8 March 2019), both cases involving the importation of substantial
22 amounts of ganja heard in the Summary Court, as cases which could assist the court to
23 determine the starting point for the level of sentence to be imposed in this matter.

24

25 6. *R v Adlam, Cunningham and Morgan* was a case involving the importation of 461 lbs of
26 ganja by foreign nationals. The starting point was set at 4 years for importation of a
27 significant quantity of ganja by an offender whose role is that of "crewmember". The court
28 considered and applied the principles set out in *Comrie* and imposed a sentence of 30
29 months imprisonment for *Cunningham and Morgan*, where there were no identifiable
30 aggravating factors and the matter resolved by way of guilty pleas, and imposed 64 months
31 imprisonment for *Adlam* where the defendant had been convicted of importation of ganja

1 on a prior occasion and for which the maximum sentence was therefore increased to 15
2 years from 7 years.

3
4 7. In *R v Robinson, Ricketts and Maxam*, a case involving the importation of approximately
5 800 lbs of ganja by foreign nationals who all played a similar role as “crewmen”, the court
6 followed *Comrie*, and imposed 42 months imprisonment *after trial* for all three after
7 applying the 4 year starting point and reducing the sentence by 6 months in mitigation.

8
9 8. In *R v Xavier Watson and Malson Campbell*, (unreported 11 June 2019), this case
10 concerned two Jamaican nationals who had imported 812 lbs of ganja into the Cayman
11 Islands. The defendants were detained at sea with the drugs on board their boat, as in the
12 instant case. They attempted to avoid arrest, requiring the Customs officials to give chase,
13 and also attempted to dispose of the evidence by throwing the packages overboard. Guilty
14 pleas were entered at the first reasonable opportunity. The Learned Magistrate took the
15 starting point to be 4 years, and then reduced this by 6 months to reflect Campbell’s good
16 character, and applied a full one third discount for the guilty plea. A sentence of 28 months
17 imprisonment was imposed.

18
19 9. Defence counsel invited the court to adopt a similar approach to that utilised in the
20 Summary Court in the case of *Watson and Campbell*, noting that the aggravating features
21 of the attempt to escape and dispose of the evidence, are not present in the instant case.

22
23 10. Counsel for the defendants submitted that the prosecution do not present any evidence to
24 draw any distinction between these defendants in terms of their role in the importation:
25 both men were crewmen delivering drugs for other people.

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27 11. Counsel for the defendants offered submissions relating to personal mitigation.



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Rovan Johnson

12. On behalf of Johnson counsel related that he is a 38 year old man of good character, having had no prior involvement with drugs or crime or any sort. He entered his guilty plea at the first opportunity in the Grand Court and also fully admitted the offence in interview.

13. It was submitted further that he was not an organiser that stood to make any significant financial gain from committing this offence and that it was in fact financial vulnerability drew him in to the enterprise. Johnson usually maintains himself through factory and labouring work when available.

Albert Campbell

14. Defence counsel submitted that, like Johnson, Campbell was not an organiser that stood to make any significant financial gain from this offence. His role being that of a crewman. There is no reason to doubt that he would have been paid no more than the 200,000 Jamaican dollars he stated that was to be his fee.

15. It was further submitted that Campbell is a 59 year old man of previous good character, having no prior involvement with drugs. He is a fisherman who, to provide for his family, committed this offence to help meet the costs of school fees for his children, and is remorseful for his actions. His guilty plea should attract full credit which he entered at the first opportunity in the Grand Court.

Aggravating Factors

16. The aggravating factor present in this case:

- (i) The substantial quantity of drugs imported

Mitigating Factors

17. The mitigating factors:

- (i) No sophisticated attempt to conceal the offence or avoid detection.



1 (ii) No attempt to dispose of the evidence, for example, by the dumping of
2 packages overboard.
3

4 **Court's conclusions**

5 18. In seeking to arrive at the appropriate sentence in this case, I have been assisted by the
6 decisions in the Summary Court referred to by counsel for the defendants. I recognize that
7 most matters concerning the importation of drugs, particularly ganja, are dealt with in our
8 Summary Court where the relevant legislation allows the court to impose significant
9 penalties for such offences.
10

11 19. The Summary Courts have been guided by the *dicta* in *Comrie* and have acted well within
12 their discretion when dealing with these cases. The Crown has submitted to this court that
13 the approach of the courts, both the Grand Court and the Summary Court may now need
14 to be modified to meet the ever increasing challenge of significant attempts to import
15 substantial quantities of ganja into these Islands.
16

17 20. Within the last two years the Summary Court has imposed sentences in cases of
18 importation of ganja for amounts ranging from 461 lbs to 1281 lbs of ganja. The amounts
19 have increased exponentially. In 2018 in the case of *Leroy Morgan* the amount was 461
20 lbs and the defendant received 30 months imprisonment on a guilty plea; for *R v Johnson,*
21 *Pallarchie and Ors*¹ the amount of ganja was 438 lbs, and the sentences for those
22 defendants ranged from 30 - 36 months imprisonment, again on a guilty plea. In *R v Rose*
23 *& Ors*², the amount concerned was 424 lbs. The sentence was 32 months. In 2019, in the
24 case of *R v Swaby-Ebanks and Wright*³ the amount of ganja involved was 556 lbs. The
25 sentence ranged from 30 to 34 months for these defendants. I have already mentioned
26 *Ricketts and Ors* where the amount of ganja was also 556 lbs and *Watson and Campbell,*
27 800 lbs of ganja. In *R v Corey Nikito Brown*⁴, the quantity involved was 1281 lbs of ganja
28 imported on the 6 August 2019. *Brown* received a sentence of 3 years imprisonment on a

¹ Summary Court #0942/2017 sentenced 26 March 2018

² Summary Court #00577/2018 sentenced 28 February 2019

³ Summary Court #00169/2018 sentenced 8 March 2019

⁴ Summary Court #01698/2019 sentenced on 23 September 2019





guilty plea. The defendants in the instant matter entered the Cayman Islands in July 2019 with 1063 lbs of ganja.

4 21. The sentences imposed in the Summary Court are of course not binding on this court.
5 There is no issue that the Learned Magistrates have consistently applied the correct
6 sentencing principles and have stayed within the *Comrie* guidelines in most instances.
7 However, precedents and guidelines can only be taken so far. They are not meant to inhibit
8 the court to the extent that the court is restricted from moving outside these where the
9 circumstances warrant.

10

11 22. In the instant case, the maximum sentence for the offence of Illicit Trafficking is 14 years
12 imprisonment. This factor distinguishes the sentence to be imposed from those imposed
13 in the Summary Court where the maximum sentence for importation of ganja is 7 years
14 imprisonment. The principles that were established in *Comrie* remain relevant and
15 applicable in so far as they are the main factors to be considered in cases involving large
16 quantities of ganja being illegally imported into these Islands: The quantity of ganja; the
17 defendant's role, and any previous convictions, especially for relevant offences.

18

19 23. In line with these principles, and taking note of the exponential increase in the quantities
20 being brought into these islands and the prevalence of these offences, I take as my starting
21 point a sentence of 8 years imprisonment with a sentence range of 6 years to 9 years
22 imprisonment. Repeat importers may attract a sentence in excess of 9 years imprisonment.

23

24 24. In common with similar cases⁵, in the instant matter, there is no evidence before the court
25 that the defendants' role was anything other than boatmen. There is a dearth of evidence
26 from which this court could infer that they played any role surrounding the purchasing,
27 packaging, or loading of the ganja or that they were privy to how the drugs were to be
28 distributed or how they may have profited from such distribution.

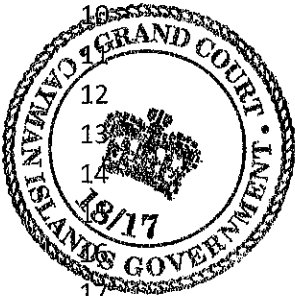
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⁵ In *R v Corey Nikito Brown*, the Learned Magistrate did not find it inappropriate to infer that the defendant was anything other than a boatman for similar reasons.

1 25. The defendants pled guilty on their first appearance in the Grand Court. Crown Counsel
2 invited the court to consider the principles surrounding the application of a credit to the
3 sentence for a guilty plea.

4
5 26. At Paragraph 10.7.1 the Cayman Islands Sentencing Guidelines sets out as follows:

6
7 *“The purpose of giving credit is to encourage those who are guilty to plead*
8 *at the earliest opportunity. Any defendant is entitled to put the prosecution*
9 *to proof and so every defendant who is guilty should be encouraged to*
10 *indicate that guilt at the first reasonable opportunity.*



11
12 *Where the prosecution case is overwhelming, it may not be appropriate to*
13 *give the full reduction that would otherwise be given. Whilst there is a*
14 *presumption in favour of the full reduction being given where a plea has*
15 *been indicated at the first reasonable opportunity, the fact that the*
16 *prosecution case is overwhelming without relying on admissions from the*
17 *defendant may be a reason justifying departure from the guideline.*

18
19 *Where a court is satisfied that a lower reduction should be given for this*
20 *reason, a recommended reduction of 20% is likely to be appropriate where*
21 *the guilty plea was indicated at the first reasonable opportunity.*
22

23 27. On the facts of this case, the prosecution’s evidence was overwhelming. The prosecution
24 does not rely on the defendants’ admissions in order to prove their case. For these reasons,
25 I will discount the sentence by 20% for their guilty pleas, thereby reducing the sentence to
26 6 years and 4 months imprisonment.

27
28 28. I have considered the defendants’ personal circumstances as their counsel has outlined.
29 Neither of the defendants have previous convictions. I have considered the mitigating
30 factors. I will further discount the sentence by 4 months to accord for these factors.

31
32 29. Counsel for the defendants submitted to the court that the defendants “took the most risk
33 with the least reward.” It is hoped that other persons looking to profit from bringing drugs
34 into the Cayman Islands will realise that the risk is very real and that their only reward will
35 be a stern sentence. The sentence of the court is that the defendants will each serve a term

1 of 6 years imprisonment. Any time that the defendants have spent in custody shall be
2 deducted from this sentence.

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4 30. A forfeiture order is made in favour of the Crown for the vessel, engines and associated
5 equipment. The drugs are ordered destroyed.


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Justice Marlene Carter

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Acting Judge of the Grand Court