

BETWEEN:

HER MAJESTY THE QUEEN

Respondent

- and

Limborn Myles

Appellant

Before:

The Hon John Martin QC, Justice of Appeal
The Hon Sir Richard Field, Justice of Appeal
The Hon Dennis Morrison, Justice of Appeal

Appearances: Appellant in person, Greg Walcolm for DPP

JUDGMENT

Revised from transcript of oral judgment 27 February 2017 and Approved
Released 7 March 2017

Honourable Sir Richard Field, J.A.

Limborn Myles appeals against the decision of Justice Quin made on 3 November 2016 in the Grand Court whereby he upheld the sentence of 'nine and-a-half years' imprisonment imposed by Magistrate Donalds for the importation of 1327 grams (2.9 lbs) of cocaine brought into Owen Roberts Airport with intent to supply.

In the course of giving his reasons for upholding the sentence of nine and-a-half years, Justice Quin noted with approval that the learned Magistrate took as the starting point in the sentencing exercise 15 years' imprisonment. The judge further noted that the Magistrate had taken into account the appellant's previous good character, his guilty plea, his genuine remorse and the specific circumstances of the offence, including the fact that the appellant had brought the cocaine from Colombia to pay off a debt, as to which there was some evidence of duress and/or financial hardship.

Starting at the level of 15 years, the Magistrate had given the appellant the full reduction of 33 and-a-third percent for his guilty plea -- notwithstanding that the prosecution case against him was very strong -- and a further six months' reduction was made, having regard to the fact that the appellant had made a statement exonerating his co-accused.

Justice Quin rejected the submission that the Magistrate's six-month reduction for personal mitigation fell well short of what the appellant was entitled to. There was considerable material put before the judge attesting to how well the appellant had applied himself in prison. But the judge held he had no jurisdiction to have regard to this material. The judge also referred to a number of cases including; Gunter (SCA 36 of 2002); Whittaker (CICA (Crim) 2 of 2012); Edwards (2001) CILR; and Seaford Laborde (CICA No 19 of 2013), noting that in the latter case where the quantity of cocaine unlawfully imported was 987 grams, this Court upheld the sentence of 14 years imposed after a trial, the sentencing Magistrate, having taken a starting point of 15 years, from which she deducted one year for the offender's previous good character.

In Justice Quin's view, the instant case concerned a very serious offence involving a substantial amount of cocaine and the sentence passed was neither manifestly excessive nor wrong in principle.

The appellant appeared in person in this appeal. He told us - very eloquently we might observe - of what he has been doing whilst in custody promoting the welfare of other prisoners. He has been doing this work for two to three years. Understandably, he felt it appropriate that we should know of this contribution that he was making to the welfare of his other prisoners and, in a broader sense, to the general community of the Cayman Islands.

We have not heard argument on whether Justice Quin's decision that he had no jurisdiction to take into account the reports that came from the prison on the appellant's good progress in custody that had not been available when the magistrate passed sentence. In fairness to this appellant, we propose without deciding the point to proceed on the basis that Justice Quin did have jurisdiction to have regard to this material. The question then is whether or not, having regard to that material, it would have made any difference or ought to have made any difference to the nine and-a-half years' sentence that Justice Quin upheld.

In our opinion, no sufficient grounds for overturning Justice Quin's decision upholding the Magistrate's sentence are before the Court. What was relevant in deciding whether or not that sentence was manifestly excessive or wrong in principle was the circumstances of the offending itself. We agree with Justice Quin that this was a serious offence. It involved a substantial quantity of dangerous drugs. The starting point of 15 years was plainly the correct starting point. The learned Magistrate gave this appellant full credit for his guilty plea, notwithstanding that the prosecution's case against him was overwhelming. We are also of the view that the further reduction of six months the Magistrate gave in respect of the appellant's other mitigation was sufficient and that there is no scope for the argument that she or Justice Quin erred in concluding that six months was the appropriate discount in that respect.

Accordingly, for these reasons, notwithstanding the eloquent submissions we have heard from the appellant, this appeal must be and is dismissed.