

IN THE CAYMAN ISLANDS COURT OF APPEAL

Criminal Appeal No. 4 of 2009

(Indictment No. 56/08)

(Summary Court No: 05497/08)

Between:

HER MAJESTY THE QUEEN

Respondent

- and -

RONNY ALBERTO FRAZIER DILBERT

Appellant

NOTIFICATION TO AUTHORITIES OF RESULT OF APPEAL

To: The Attorney General

This is to give you notice that RONNY ALBERTO FRAZIER DILBERT having sought leave to appeal against *his* SENTENCE passed upon *him* by the Grand Court on the 6th day of February, 2009 as set out below:

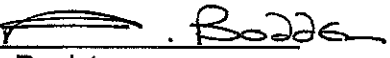
Ind 56/08 **IMPORTATION OF COCAINE – Count 1**
8 years imprisonment with time spent in custody since 9th June, 2008 to be taken into account.

The Court of Appeal has finally determined the said appeals, and has this **3rd day of March, 2010** given judgment therein to the effect following:

- 1. Appeal against sentence dismissed.**
- 2. Sentence affirmed**
- 3. Oral transcript of reasons to be released.**

Dated this 29th day of March, 2010




Registrar

ORIGINAL

IN THE CAYMAN ISLANDS COURT OF APPEAL

ON APPEAL FROM THE GRAND COURT

CAUSE No. 5497 of 2008
IND No. 56 of 2008
CRIMINAL APPEAL No. 4 of 2009

BETWEEN:

RONNY ALBERTO FRAZIER DILBERT

Appellant

- AND -

HER MAJESTY THE QUEEN



Respondent

BEFORE: THE RT. HON. SIR JOHN CHADWICK, P.
THE HON. MR. JUSTICE FORTE, J.A.
THE HON. MR. JUSTICE CONTEH, J.A.

Reasons for Judgment delivered orally on 3rd March 2010

Judgment (Chadwick, P.)

JUDGMENT

1
2
3 Chadwick, President (Orally):
4

5 The appellant, Ronny Dilbert, was
6 convicted on a guilty plea on the 5th of
7 February 2009 of the offence of importation of
8 cocaine. The offence had been committed on the
9 9th of June 2008. The appellant was stopped
10 and searched at Owen Roberts International
11 Airport on his visit to the Cayman Islands. He
12 was found then to have on his person 16.8
13 ounces of cocaine hydrochloride, having a
14 purity of 61 percent. The equivalent pure
15 value weight of the drug was therefore 10.2
16 ounces or thereabouts.

17 When the appellant came before the Grand
18 Court on the 5th of February 2009, it was
19 indicated to the Chief Justice that he wished
20 to consider entering a guilty plea; and that,
21 for that purpose, the court was invited to give
22 an advance indication of sentence in line with
23 the procedure laid down by the Court of Appeal
24 in England and Wales in the case of *R. v.*
25 *Goodyear* [2005] 2 Cr.App.R. 20.

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1 The Chief Justice acceded to the request
2 for an advance indication of sentence and gave
3 that indication on the same day. He set out,
4 in particular, the Guidelines in *Goodyear*
5 itself; and the facts on which the indication
6 as to maximum sentence was based.

7 The indication that he gave was that, with
8 those factors in mind - and in particular the
9 discount to be afforded for an admission of
10 guilt and substantial cooperation with the
11 authorities - the indication would be of a
12 maximum sentence of eight years' imprisonment.

13 On the basis of that indication, the
14 appellant pleaded guilty. He was convicted and
15 was then sentenced. He was sentenced to eight
16 years' imprisonment for the reasons which the
17 Chief Justice set out in a subsequent ruling on
18 the following day, the 6th of February 2009.
19 It is from that sentence of eight years that
20 the appellant now seeks to appeal.

21 The Chief Justice reminded himself, when
22 giving his *Goodyear* ruling, of the Guidelines
23 of 16th January 2002 in relation to drugs
24 offences. In particular, he reminded himself
25 that for an offence involving substantial

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1 importation, or dealing in anyway, either in
2 powder or crack cocaine, the tariff would be 15
3 years or more; and that substantial importation
4 in that context involved any transaction
5 involving several ounces or kilo quantities of
6 the drugs. He went on to remind himself of
7 that, as the Guidelines point out:

8 "The courts recognise that many
9 of the people caught are
10 couriers or intermediaries and
11 that the worst offenders in the
12 chain of distribution often
13 remain concealed, therefore
14 there will be a substantial
15 discount on sentence for those
16 offenders who are prepared to
17 cooperate with the police in
18 their inquiries."

19 The basis on which the Chief Justice
20 sentenced included a note recording the
21 cooperation and assistance rendered or to be
22 rendered by the appellant which, for
23 understandable reasons, was not read out in
24 open court, but, plainly, was a matter which he
25 took into account. He also took into account

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1 an agreed statement which had been the basis of
2 the plea for the purposes of the advance
3 indication sought. The basis of plea contained
4 these four paragraphs:

- 5 1. Ronny Dilbert will plead
6 guilty to the offence of
7 importation of cocaine, as per
8 the indictment and prosecution
9 papers.
- 10 2. The cocaine was in the form
11 of cocaine hydrochloride,
12 weighing 16.8 ounces. The
13 purity of the drug was 61
14 percent.
- 15 3. Ronny committed the offence
16 acting under pressure but which
17 he accepts does not amount at
18 law to the defence of duress.
- 19 4. He was a courier only of the
20 drugs with no greater
21 involvement.

22 When the Chief Justice came to sentence on
23 the following day, following conviction on a
24 plea of guilty, he referred to the *Goodyear*
25 indication that he had given. In particular,

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1 he referred to three primary considerations
2 which he had then taken into account. Those
3 were, first, the intended plea of guilty
4 involving an admission of importation of
5 cocaine powder equivalent to 10.2 ounces of
6 pure cocaine. Second, the defendant's
7 cooperation with the authorities resulting in a
8 further arrest and prosecution, as well as his
9 stated willingness to telephone for the
10 prosecution. And, third, the starting point of
11 a tariff sentence of 15 years as set out in the
12 Guidelines and case law, from which there could
13 be a significant reduction for the two other
14 factors stated above.

15 He went on to observe that defendant's
16 counsel had, at the stage of the *Goodyear*
17 hearing, mentioned alleged threats to the
18 defendant and his family members' lives as a
19 reason for the defendant's actions; and as a
20 mitigating factor while acknowledging that they
21 could not amount to a defence of duress. The
22 Chief Justice said this:

23 "Having considered the
24 defendant's account of these
25 threats, given both in the

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1 witness statement which he gave
2 and in his cautioned interview,
3 I am not satisfied that his
4 account should be taken in
5 further mitigation of his
6 sentence. This is not only
7 because his account can be so
8 easily contrived - and there are
9 aspects which do seem contrived
10 - but also because they are
11 refuted by a most objective and
12 independent factor. That is,
13 the fact of the defendant's
14 ticket having been bought and
15 sent for him in Honduras from
16 someone - now it seems an
17 accused person - here in
18 Cayman."

19 The judge observed that that simply was not
20 consistent with the defendant's narrative of
21 having been abducted and forced at gunpoint by
22 a gang in Honduras to bring the drugs here; and
23 that he did not accept that account as a
24 further consideration in mitigation of
25 sentence. He concluded, therefore, that the

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1 only reasonable inference was that the
2 defendant acted for gain; and he went on to say
3 that he saw no reason in those circumstances
4 for any further reduction from the sentence
5 which he had earlier indicated as a maximum,
6 arrived at after consideration of the genuinely
7 mitigating factors to which he had referred.

8 It is important to have in mind that the
9 *Goodyear* process leads to an advanced
10 indication of a maximum sentence on a guilty
11 plea: so (absent some change in circumstances)
12 it would not be open to the court, or to this
13 court, to go above that sentence of eight
14 years. But the fact that it is indication of a
15 maximum sentence does not suggest - and should
16 not be taken to suggest - that there is scope
17 for negotiating the sentence down by reference
18 to factors which have already been taken into
19 account in reaching the *Goodyear* indication.
20 If that were so, it would become the practice
21 that defendants who were minded to plead guilty
22 would, as a matter of course, seek a *Goodyear*
23 direction with the hope, encouraged by
24 experience, that they would get, as it were,
25 some automatic reduction below that figure.

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1 The indication that it is a maximum sentence
2 allows for the possibility that, when the court
3 comes to sentence, there are some further
4 factors which it may properly take into account
5 in the sentencing exercise; and which, if taken
6 into account, will then lead to a lesser
7 sentence because they were factors which had
8 not already been taken into account in
9 indicating the maximum. That is the exercise
10 which the Chief Justice carried out; and, if we
11 may say so, carried out correctly.

12 The additional factor which was being
13 urged upon the Chief Justice was the alleged
14 threats to the appellant and his family
15 members, who were in Honduras, from an
16 unidentified Honduran gangs. The judge, for
17 the reasons which he gave, took the view that
18 those alleged threats were not supported by the
19 defendant's account and that he could give no
20 credence to them.

21 When this matter came before the court in
22 November of last year, it was suggested by
23 counsel on the appellant's behalf that, if he
24 were given an opportunity, he could obtain and
25 provide to the court material which would

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1 support his account of threats to his family
2 members. The court felt it right, for that and
3 other reasons, to adjourn the hearing of this
4 appeal until the current session. In the
5 meantime, the appellant has, it seems, been
6 unable to obtain from Honduras, for reasons
7 which he explained to us this morning, anything
8 that would support his account. We are left,
9 therefore, with the position as it was before
10 the Chief Justice.

11 On that basis - it being impossible to
12 fault the Chief Justice's indication of the
13 maximum sentence of eight years on a guilty
14 plea - there is simply nothing which would
15 enable this court to interfere. We cannot say
16 that the Chief Justice ought to have reduced
17 the actual sentence below the maximum advance
18 indicated.

19 I say that there is nothing to fault the
20 Chief Justice's advance indication because,
21 from a starting point of some 15 years as
22 indicated by the Guidelines, a sentence of
23 eight years gives a substantial discount - a
24 discount of almost fifty percent - in respect
25 of the guilty plea and the cooperation. It

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1 may, perhaps, be observed that the guilty plea
2 on its own would not have been expected to
3 attract a discount approaching fifty percent;
4 given that the appellant was found at the
5 airport with the drugs on his person. A guilty
6 plea was really no more than a realistic
7 recognition of that fact. And the cooperation
8 has turned out to be rather less than promised:
9 in that, as is common ground, the appellant did
10 not give a witness statement which could have
11 been used in evidence against the person who
12 was apprehended as a result of the cooperation
13 which he undoubtedly did provide following his
14 arrest at the airport.

15 So it cannot be said - and indeed it is
16 not really said by the appellant - that the
17 discount which lead to eight years as a
18 indication under the *Goodyear* principle was not
19 a sufficient discount for the factors which the
20 Chief Justice then had in mind. All that can
21 be said is that the Chief Justice ought to have
22 given credence to the appellant's assertion
23 that what he did was in response to pressure on
24 his family. As I have said, the Chief Justice
25 rejected that suggestion; and there is no

Judgment (Chadwick, P.)

1 further evidence which could lead us to take a
2 view that he was wrong to do so.

3 In those circumstances, this appeal
4 against sentence must be dismissed.

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REPORTER'S CERTIFICATE

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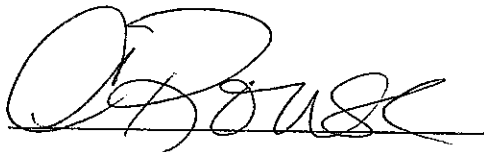
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9 Certified correct to the best of my skill and ability,

10 dated the 3rd day of March 2010.

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13 CAROL ROUSE

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