

CAYMAN ISLANDS
CRIMINAL FORM 18
RULE 50(1) & 51(1)
IN THE COURT OF APPEAL OF THE CAYMAN ISLANDS
Criminal Appeal No. 20 of 2009
(Summary Court Appeal No. 32/08)
C#4201/005

Respondent

HER MAJESTY THE QUEEN

- and -

IAN JEFFREY BODDEN

Appellant

NOTIFICATION TO AUTHORITIES OF RESULT OF APPEAL

To: The Attorney General

This is to give you notice that IAN JEFFREY BODDEN having appealed against the decision of the Grand Court dated 7th August 2009 which dismissed his appeal against *sentence*:

The rulings of the Summary Court on 3rd September, 2008 were as set out below:

C#4201/05(1) Selling Controlled Drugs
4 years imprisonment.

C#4201/05(4) Possession of Cocaine
No separate penalty.

The Court of Appeal has this 25th day of November 2009 given judgment therein to the effect following:

1. Application for leave to appeal refused.
2. Sentence affirmed
3. Transcript of Oral Judgment to be released.

Dated this 22nd day of January, 2010.

Registrar



22/1/10

JUDGMENT RELEASED JANUARY 2010

Reasons for Judgment delivered orally on 25 November 2009



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

Respondent

HER MAJESTY THE QUEEN

and

Appellant

IAN JEFFREY BODDEN

BETWEEN:

Appeal No. 20/2009
SCA 32/2008
C# 4201/2005

IN THE COURT OF APPEAL OF THE CAYMAN ISLANDS

JUDGMENT

FORTE J.A. (Orally):

This is a judgment in the case of Ian

Bodden and the Queen heard today, 25th of

November 2009.

The appellant was charged jointly with

another for the offence of selling cocaine to

an undercover policeman on the 3rd of November

2005, and of being in possession of another

quantity of cocaine that was recovered by the

police during a search of his premises.

On the 18th of February 2008, the

appellant pleaded guilty in the Magistrate's

court to both charges. On the 3rd of September

2008, on the charge of selling cocaine he was

sentenced to four years' imprisonment. No

sentence was imposed in respect of the charge

relating to the possession of cocaine.

From the Magistrate's court the appellant

appealed to the Grand Court against his

sentences, but Mr. Justice Henderson, in a

detailed judgment, dismissed his appeal. He

now appeals to this Court. The only ground

Reasons for Judgment (Forte J.A.)

1 filed, apparently in person by the applicant,
 2 reads as follows:
 3 "Although I feel that I should
 4 be punished for my actions, I am
 5 asking this honourable Court's
 6 leniency. This offence occurred
 7 in 2005 and I was not sentenced
 8 until September 2008. During
 9 this time I realised the road I
 10 was going down, was not a very
 11 good and productive one.
 12 "I have obtained employment, got
 13 married and is a father of
 14 twins. My employers were so
 15 impressed with my performance
 16 that they have offered to rehire
 17 me when I am released.
 18 "For the above reasons I am
 19 asking for the Court's
 20 consideration in reducing my
 21 sentence."
 22 Indeed the applicant came before us this
 23 morning and advanced that ground, without
 24 adding too much to it. However, in the Court
 25 below, before Mr. Justice Henderson in the

Reasons for Judgment (Forte J.A.)

1 Grand Court, the applicant apparently had the
2 services of counsel. In his ruling dismissing
3 the appeal against sentence, Henderson J points
4 out:

5 "Mr. Furniss concedes that the
6 guideline tariff for the
7 commercial supply of small
8 amounts of cocaine is a term of
9 imprisonment for eight years
10 and, when the guilty pleas of
11 the... defendant is taken into
12 account, the sentence of... four
13 years is appropriate."
14 However, the issue in the appeal before
15 the Grand Court had its foundation in a
16 judgment of this Court, in which three men were
17 convicted of supplying cocaine at the Matrix
18 nightclub. The reasons in that case were never
19 reduced to writing.

20 This case highlights a deficiency in the
21 system at that time when oral judgments,
22 particularly in sentencing appeals, were never
23 recorded or in any way reduced into writing.
24 That deficiency has now been corrected.
25 Nevertheless, a report on the case

Reasons for Judgment (Forte J.A.)

1 published in the Cayman Compass, dated the 31st
2 of August 2008, reported President Zacca, as he
3 then was, as having said that sentences imposed
4 on these three young men should have been
5 imprisonment for two years. However, as
6 pointed out by Mr. Justice Henderson in his
7 ruling, that was said in the context of an
8 appeal by the Crown in respect of sentences of
9 three months and six months. Mr. Justice
10 Henderson quite correctly distinguished that
11 case from the present appeal. Here is what he
12 said:

13 "Moreover, the case which was
14 before that court a year ago was
15 very different. It involved
16 three men who were supplying
17 very small amounts of cocaine,
18 without profit to themselves, to
19 two attractive female undercover
20 officers who were flirting with
21 them at the nightclub. That is
22 what is meant by the phrase
23 "social supply". It was never
24 suggested that any of these men
25 were making any profit out of

1 the selling of cocaine or
2 intended to do so."
3 He went on to dismiss the suggestion of
4 counsel that the case referred to was an
5 indication that the Court changed the
6 sentencing policy in respect to cocaine
7 traffickers. He was absolutely correct. The
8 guidelines set down by the Learned Chief
9 Justice are as applicable today as they were in
10 January 2002 when they were published.
11 In respect to trafficking, those
12 guidelines, as is relevant to this appeal,
13 state:
14 "The tariff for a first such
15 offence, involving less than 2
16 ounces of cocaine or less than 4
17 grams of cocaine base without
18 mitigating circumstances, will
19 be eight years."
20 In the instant case the amount of cocaine
21 involved was less than two ounces and,
22 consequently, the above mentioned provision of
23 the guidelines would apply. As the sentence
24 imposed on the appellant was four years, and
25 not eight years as suggested by the guidelines,

Reasons for Judgment (Forte J.A.)

1 it is appropriate to look at the mitigating
2 circumstances that the Magistrate applied in
3 sentencing the appellant. In giving her
4 reasons, this is what she said:

5 "This defendant is not a man of
6 good character. He has a long
7 record of drug use and
8 possession. It is true that a
9 significant time has elapsed
10 since the matter first came to
11 Court but that should not enure
12 to his benefit where the delay
13 was occasioned by the defendant
14 himself who maintained a not
15 guilty plea until the 18th
16 February. I do not disregard,
17 however, the evidence of his
18 growing maturity in the period
19 between the date of the offence
20 and today's date, including his
21 maintaining employment for the
22 last two years and being able to
23 improve his family's personal
24 circumstances as a result. I
25 impose a sentence of 4 years, a

Reasons for Judgment (Forte J.A.)

1 year less than the normal
 2 minimum, to take the delay and
 3 the changes in the defendant's
 4 personal circumstances into
 5 account. The second charge of
 6 being in possession of cocaine
 7 simpliciter warrants the
 8 imposition of a consecutive
 9 sentence as it is a second,
 10 subsequent offence. The tariff
 11 for such possession is 12 months
 12 (see the Chief Justice's
 13 sentence guidelines) but given
 14 the circumstances to which I
 15 have already referred, I will
 16 not impose a separate penalty
 17 for the offence."

18 Although the learned Magistrate seemingly
 19 exercised a greater degree of leniency than was
 20 warranted, we cannot fault her reason in coming
 21 to her conclusion, nor can we find any reason
 22 for interfering with the decision of Mr.
 23 Justice Henderson in dismissing the appeal from
 24 the decision of the learned Magistrate.
 25 The only ground offered by the applicant



Kerri Francella

Certified correct to the best of my skill and ability, dated the 7th day of December 2009.

COURT REPORTER'S CERTIFICATE

THE APPELLANT: Thank you.

dismissed.

CHADWICK, P.: The application is

consequently affirmed.

therefore refused, and the sentence is

The application for leave to appeal is

tariff set out in the guidelines.

account in imposing a sentence less than the

matters which the Learned Magistrate took into

that can be considered a ground relates to

Reasons for Judgment (Forte J.A.)

25
24
23
22
21
20
19
18
17
16
15
14
13
12
11
10
9
8
7
6
5
4
3
2
1