

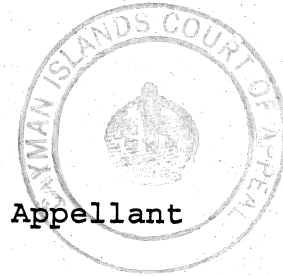
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IN THE COURT OF APPEAL OF THE CAYMAN ISLANDS

APPEAL NO. 5 OF 2009
SCA No. 8/08
C# 1699/07

BETWEEN:

SHEENA MINZETT



Appellant

and

HER MAJESTY THE QUEEN

Respondent

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

Reasons for Judgment delivered orally on 2 September 2009

APPEARANCES:

Mr. J. Furniss

for the Appellant

Mr. T. Ward

for the Respondent

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1 packages being thrown overboard by all the
2 persons on board the Mount Zion. The Protector
3 then intercepted the Mount Zion, disabling her,
4 before she capsized. The appellant and four
5 male suspects were taken to Central Police
6 Station.

7 At daybreak, on the eighth of
8 February 2007, the North Side beach was
9 searched and quantity of packages containing
10 marijuana was recovered. There was evidence
11 that the packages thrown overboard would have
12 drifted in that direction.

13 On the tenth of February 2007, the
14 appellant was interviewed and admitted going
15 out on the Mount Zion knowing that she was to
16 meet another boat to collect marijuana from
17 Jamaica. She identified a number of the
18 recovered packages as having been aboard the
19 Mount Zion. The appellant said that she had
20 only gone along because her friend, Roberto
21 Alden Jackson, was drunk. The Mount Zion had
22 been taken without the permission of her owner,
23 Rodney Jackson, who was Roberto Jackson's
24 brother.

25 The street value of the marijuana involved

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1 in these events would have been very high
2 indeed, although neither the Crown nor defence
3 counsel have been able to give us a precise
4 figure.

5 The appellant's trial took place before
6 Magistrate Grace Donalds. It spanned seven
7 days ending with a guilty verdict on the
8 thirty-first of January 2008. In reaching her
9 conclusion the Magistrate said this about the
10 defendant Minzett:

11 Defendant Minzett gave an
12 interview under caution in which
13 she admitted that whilst at
14 Morgan's Harbour she knew that
15 the purpose of the trip was to
16 collect drugs.

17 Mr. Furniss, on behalf of the
18 defendant Minzett, relied on an
19 interview in which the defendant
20 stated that she attempted to
21 call 911 while at sea but was
22 prevented from doing so by one
23 of her co-accused. Mr. Furniss
24 also submitted that defendant
25 Minzett was not specifically

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1 identified nor named as one of
2 the persons dumping items
3 overboard. He further submitted
4 that there was no evidence of
5 defendant Minzett being actually
6 involved in the navigation or
7 movement of the vessel Mount
8 Zion, however there was evidence
9 that defendant Minzett was one
10 of the persons attempting to
11 disguise her identity with
12 clothing. Having admitted to
13 knowing that the purpose of the
14 trip was to collect drugs and,
15 despite that knowledge,
16 defendant Minzett still chose to
17 go along to assist in this
18 illegal enterprise. This is
19 evidence from which the Court
20 can infer the defendant Minzett
21 participated in this enterprise
22 with full knowledge of the facts
23 and was accordingly a willing
24 participant in this illegal
25 enterprise. This Court finds

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1 that defendant Minzett was in
2 possession and control of the
3 drugs with the requisite
4 knowledge.

5 The appellant was sentenced on the
6 thirty-first of January 2008 to four years'
7 imprisonment, time spent in custody to be taken
8 into account.

9 The appellant's appeal against the
10 sentence to Mr. Justice Henderson was dismissed
11 on the sixth of March 2009. On the
12 twenty-first of August 2009, Mr. Justice
13 Henderson gave reasons for his decision
14 culminating in the observation that the
15 sentence imposed upon Ms. Minzett was not
16 excessive and, if anything, was somewhat on the
17 low side.

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Grounds of Appeal

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The appellant now seeks leave to appeal
again to this Court against her sentence on the
grounds that the sentence was "manifestly
excessive in particular co-accused in similar
circumstances received only two years against

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1 my four years." The co-accused to whom she is
2 referring was Roberto Alden Jackson. But Mr.
3 Furniss now accepts, in his oral submissions to
4 the Court, that the four-year sentence, as
5 imposed below, was not, based on the
6 authorities, manifestly excessive, bearing in
7 mind the quantity of ganja involved. Instead,
8 Mr. Furniss relies on a letter dated the
9 first of April 2009, and only now placed before
10 the Court, from Detective Superintendent K.
11 Walton addressed to the Cayman Islands Parole
12 Board and Mr. Furniss himself. The letter
13 includes the following:

14 Ms. Minzett was one of five
15 persons arrested, charged and
16 convicted for importation of
17 ganja during an operation
18 code-named Boomer in
19 February 2007. She was
20 apprehended whilst on board a
21 local canoe/vessel carrying
22 drugs. She plead not guilty but
23 was convicted after trial and
24 subsequently sentenced to four
25 years' imprisonment. She is

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1 currently an inmate in Her
2 Majesty's Fairbanks Prison.
3 During the initial stages of the
4 investigation new information
5 came to light that allowed the
6 investigators to take a fresh
7 path. This information was as a
8 direct result of Miss Minzett
9 providing same verbally, as well
10 as committing to a written
11 witness statement. This
12 ultimately led to a six [sic]
13 arrest of Jarred Daniels who was
14 subsequently convicted with
15 being concerned with the
16 importation of drugs offence.
17 Although Ms. Minzett did not
18 give evidence during the trial
19 on behalf of the prosecution, I
20 believe that it is only fitting
21 to acknowledge that she did
22 provide the information and
23 evidence that ultimately led to
24 the arrest of Jarred Daniels.
25 Had it not been for her initial

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1 evidence, the investigations may
2 not have discovered Daniels'
3 involvement.

4 So it appears that the information that
5 the appellant gave allowed the police to
6 identify Jarred Daniels which ultimately led to
7 the investigation against him, even though he
8 had not been on the boat at the relevant time.

9 We are told that this was not known to the
10 Magistrate or to Mr. Justice Henderson. What,
11 however, was known to the Magistrate and to Mr.
12 Justice Henderson was that Minzett had signed a
13 statement containing notes of an interview in
14 which she had answered questions concerning
15 Jarred Daniels and identified him to police.
16 Based on this letter alone, Mr. Furniss now
17 seeks to argue that the sentence was in fact
18 manifestly excessive.

19

20 The Appellant's Record

21

22 It appears that the appellant has been
23 convicted on several separate occasions of
24 various offences, mostly involving drugs. She
25 received nine months' imprisonment for dealing

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1 in ganja on the fifteenth of May 2003 and a
2 twelve-month probation order was made on the
3 ninth of June 2005 for further drug offences.
4

Discussion

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6
7 This was a serious offence of importing
8 drugs. The amount was huge and the exercise
9 was clearly carefully planned. The transcripts
10 of the summary trial do not support the
11 appellant's suggestion that she was only
12 peripherally involved. The Magistrate plainly
13 found that she was a willing and knowing
14 participant in the importation venture.

15 In *Hurlston v. R.* [1986] CILR 93, a
16 sentence of three years was approved by the
17 Court of Appeal on a guilty plea for
18 possession, where profit was intended, of
19 324 pounds of ganja. The Court emphasized the
20 relevance of the quantity of the ganja to the
21 sentence.

22 In *Hylton v. R.* [2000] CILR 257, Mr.
23 Justice Douglas said that a starting point of
24 four and a half years for the 'mover and
25 shaker' in the importation of 1600 pounds of

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1 ganja did not reflect the gravity of the
2 offence or the need for deterrence in
3 sentencing. In the result, the defendant's
4 three and a half years, taking into account his
5 guilty plea, was not disturbed, though his
6 sentence was ordered to run concurrently with
7 other sentences.

8 Though there is no sentencing guideline
9 for ganja importation, the maximum sentence on
10 a second or subsequent sentence for this
11 offence involving more than one pound of the
12 drug is fifteen years under section 16(3) of
13 the Misuse of Drugs Law (2000 Revision).
14 Plainly the quantities here were hugely in
15 excess of the minimum amount attracting this
16 maximum possible sentence. Whilst the
17 appellant's offending was not the most serious
18 imaginable of this kind, it was very serious
19 indeed and involved a large quantity. In these
20 circumstances, we entirely agree with Mr.
21 Justice Henderson that a sentence of four years
22 was on the low side, particularly as she
23 pleaded not guilty. This can be seen from a
24 comparison with the cases we have mentioned.

25 We do not believe that the letter referred

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1 to by Mr. Furniss on behalf of the appellant
2 would have made any difference to the
3 Magistrate. The Magistrate knew that Minzett
4 had said in her interview, honestly, that
5 Jarred Daniels had been involved. She had not,
6 however, deliberately or specifically
7 implicated him in order to assist police in
8 other ways with their inquiries.

9 This brings us to consider the comparison
10 with Roberto Jackson's sentence. Jackson had a
11 significantly less serious record than the
12 appellant. He had no previous convictions for
13 dealing in drugs. Where a co-defendant's
14 sentence is reduced because he has better
15 mitigation, there is no reason to allow the
16 defendant with less mitigation to take
17 advantage of the co-defendant's better
18 position. See the Attorney-General's Reference
19 Number 62, 63 and 64 of 1995. *R. v. O'Halloran*
20 [1996] 2 Cr.App.R. 223 at 227.

21 In our judgment, a higher starting point
22 ought to have been adopted for the appellant's
23 offence bearing in mind the large quantities,
24 the planning that must have been involved in
25 the offence (even if not by her), and the

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1 maximum sentence of fifteen years. We note
2 that under section 9(3) of the Court of Appeal
3 Law (2006 Revision) we have the power, if we
4 consider that a different sentence ought to
5 have been passed, to quash the sentence imposed
6 below and impose that other sentence. We may,
7 therefore, in an appropriate case, increase a
8 sentence on a defendant's appeal. In our view,
9 a sentence of five to six years was justified
10 on a not guilty plea in the circumstances of
11 this case.

12 The appellant has been imprisoned since
13 she was sentenced by the Magistrate on the
14 15th of March 2008. In that time she has
15 prosecuted two appeals, both of which we
16 consider to have been hopeless.

17 We are concerned that convicted defendants
18 in these islands seem to be making a practice
19 of pursuing not one, but two, appeals against
20 sentence, seemingly on the basis that there is
21 nothing to lose by so doing. This practice is
22 inappropriate in all but the most exceptional
23 circumstances and should be discouraged.

24 Having been told once by Mr. Justice Henderson
25 that her sentence was on the low side, as it

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1 undoubtedly was, she ought not to have
2 considered making this application for leave to
3 mount another appeal. Before this appeal came
4 on, we warned the appellant through her counsel
5 that the Court had the power under section 9(3)
6 to increase as well as to reduce a sentence,
7 but she decided after receiving advice to
8 proceed.

9 In these circumstances, we would normally
10 have been minded to impose the sentence that we
11 regard as a proper one for the offence that the
12 appellant committed. As I have said, that
13 sentence would have been a term of imprisonment
14 of between five and six years. We have,
15 however, considered whether, in the special
16 circumstances of the case, that is an
17 appropriate course on this occasion. We have
18 formed the view that, because of two very
19 specific matters, it would not be appropriate
20 to increase the sentence from what was passed
21 by the Magistrate. The special circumstances
22 that have affected our decision are first, that
23 other co-defendants have received sentences of
24 four years in similar circumstances to those of
25 the appellant, and, secondly, the Crown has not

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1 seen fit to appeal that sentence,
2 notwithstanding the submissions made by Mr.
3 Ward as to its inadequacy.

4 In these circumstances, if we were,
5 notwithstanding the inadequacy of the four-year
6 term, to increase that term now, the appellant
7 might be left with a justifiable sense of
8 grievance about her having had a significantly
9 heavier sentence than her equally culpable
10 co-accuseds.

11 We would like to make it clear, however,
12 that future appellants should be aware of the
13 real possibility of sentences being increased
14 on appeal if this Court forms the view that the
15 sentences passed below were too light.

16 For all those reasons, therefore, we take
17 the view that the appeal should be disposed of
18 in this way. The appellant should be granted
19 leave to appeal and the appeal should be
20 dismissed and we should affirm the term of
21 imprisonment of four years, time in custody to
22 count against the sentence.

23 In conclusion, we would only want to make
24 this clear, that the appellant has been
25 fortunate on this occasion not to have her

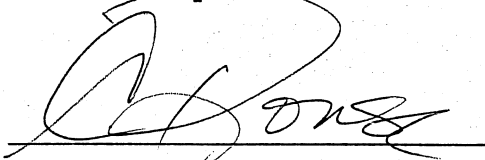
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1 sentence increased. Indeed, she was fortunate
2 before the Magistrate and before Mr. Justice
3 Henderson that she did not receive a longer
4 sentence. This was a serious offence involving
5 very large quantities of ganja and something
6 which this Court believes should be understood
7 to be something that will be visited with
8 longer terms of imprisonment in future cases.

9 MR. JUSTICE CHADWICK: So the appeal is
10 dismissed. The sentence of four years is
11 confirmed. Time spent in custody to be taken
12 into account.

13
14 REPORTER'S CERTIFICATE

15
16 Certified correct to the best of my skill and
17 ability, dated the 4th day of September 2009.

18
19 

20 CAROL ROUSE

