IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE: IND 56 OF 2008

REGINA

VS

RONNY DILBERT

IN OPEN COURT
THE 4TH – 6th FEBRUARY 2009
BEFORE THE HON. CHIEF JUSTICE ANTHONY SMELLIE

APPEARANCES: Mr. Trevor Ward, Senior Crown Counsel for the Crown
Mr. Philip McGhee of Walkers for the defendant

RULING: 5TH FEBRUARY 2009

Proceedings pursuant to R v Goodyear [2005] 2 Cr.App.R. 20.C.A.

1. I am asked to give an advance indication of the maximum sentence which would be imposed on this defendant in the circumstances of this case, including his proposed guilty plea.

2. It is a procedure which is recognised in the case law and most helpfully and authoritatively discussed in guidelines given in ***R v Goodyear [2005] 2 CR.App.R. 20, CA*** by the English Court of Appeal. That case is in turn helpfully discussed at *Archbold 2009 Ed*. Para. 5-79b in the following terms:

> ***"In R v Goodyear [2005] 2 Cr.App.R. 20, CA, it is said that any advance indication of sentence should normally be confined to the maximum sentence if a plea of guilty were tendered at the***

stage at which the indication was sought. As to the role of the judge, the court said that such an indication should only be given if sought by the defendant, but a judge was entitled to remind the defence advocate of the defendant's entitlement to seek such an indication; further, a judge had an unfettered discretion to refuse to give an indication or to reserve his position until he felt able to give such an indication. The court said that an indication should not be sought on the basis of hypothetical facts; where appropriate, there should be an agreed, written basis of plea, without which the judge should decline to give an indication; the judge might or might not give reasons, but once an indication was given, the court was bound by it, but the indication would cease to have effect, if, after a reasonable opportunity had been given to consider it, the defendant declined to plead guilty."

3. I am satisfied that all of these prerequisite considerations have been met in the present proceedings before me. And, I should add for the record, the further prerequisite that defence counsel obtains his client's instructions clearly in writing before engaging the Court in this procedure.

4. I proceed now therefore, with the following factors mainly in mind:

(i) The defendant, who has no previous convictions, would admit to the importation as alleged, of some 16.8 ounces of cocaine. This substance has been analysed as being of 61% purity. The case law advises that it is the weight of the pure substance that should be considered as distinct from

the potential street value calculated by reference to the total amount of the powder recovered. This is because "hard" drugs such as cocaine may well be "cut" with another substance, as was the case here, to increase its street value when ultimately sold in small amounts to consumers. When viewed in this way, the relevant amount is 10.2 ounces. See ***Aranguren and Others v R (1994) 99 Cr.App.R. 347*** and Archbold (op. cit.) para. 27-107. While this reduction in weight does not take the case out of the scale of sentences for the "most serious" category, it does reduce it to the lower end of that scale.

(ii) The defendant's guilty plea, albeit to come only as the trial is about to commence, would be a mitigating factor justifying a significant discount from the standard tariff.

A further mitigating factor to be considered here would be the level of his co-operation with the authorities which I am told is substantial but which, because of its sensitivity, does not call for detailed discussion here.

Suffice it to say, that when taken together, his guilty plea and co-operation (including willingness to testify against others) would require a discount of between one-half to two-thirds of the standard tariff sentence.

See ***R v King 7 Cr.App.R.(S) 227, C.A.*** and ***R v Z [2008] 1 Cr. App.R. (S)60 C.A.*** – both as discussed at *Archbold (op cit)* par 5-95.

See also ***R v A.B.*** written judgment on sentence delivered on 6th October 2008 (Indictment 45 and 46 of 2006).

The tariff for a first such offence, involving less than 2 ounces of cocaine or less than 4 grams of cocaine base without mitigating circumstances, will be 8 years.

For offences involving 2 ounces or more or 4 grams or more of cocaine base (that is, "pure" cocaine) without mitigating circumstances the tariff will be 10 to 12 years.

15 years or more will be imposed where such an offence involves substantial importation or dealing in anyway either in powder or crack cocaine. We would define 'substantial importation or dealing' as any transaction involving several ounces or kilo quantities.

The Courts recognise that many of the people caught are couriers or intermediaries and that the worse offenders in the chain of distribution often remain concealed. Therefore there will be a substantial discount on sentence for those offenders who admit guilt and are prepared to co-operate with the police in their enquiries."

5. With the foregoing factors in mind – in particular the discount to be afforded for the defendant's admission of guilt and substantial co-operation with the authorities – I am now prepared to give an advanced indication of a maximum sentence of eight (8) years imprisonment.

SENTENCING: 6TH FEBRUARY 2009

6. In giving the advanced indication of the maximum sentence of eight (8) years which would be imposed in the event of a plea of guilty; I was obliged to and did take account of three primary considerations:

   (i) the defendant's intended guilty plea involving an admission of importation of 16.8 ounces of cocaine powder of 61% purity; that is, 10.2 ounces of pure cocaine;

   (ii) the defendant's co-operation with the authorities resulting in a further arrest and prosecution as well as his stated willingness to testify for the prosecution;

   (iii) the starting point tariff of 15 years as prescribed by the Guidelines and case law, but as significantly reduced by the other two factors stated above.

7. While Mr. McGhee did, at that stage, mention the alleged threats to his client and his family members' lives as a reason for the defendant's actions and as a mitigating factor, he acknowledged that such threats, if they existed, could not amount to a defence of duress.

8. Having considered the defendant's accounts of these threats, given both in a witness statement which he gave and in his cautioned interview, I am not satisfied that his account should be taken in further mitigation of his sentence. This is not only because his account can be so easily contrived – and there are aspects which do seem contrived – but also because they are refuted by a most objective and independent factor. That is, the fact of the defendant's ticket having been bought

and sent for him in Honduras from someone – now it seems an accused person – here in Cayman.

9. This is simply not consistent with the defendant's narrative of having been abducted and forced at gun point by a gang in Honduras to bring the drugs here.

10. I therefore do not accept that account as a further consideration in mitigation of sentence.

11. In fact, I conclude that the only reasonable inference is that the defendant acted for gain.

12. I see no reason therefore, for any further reduction from the sentence which I had earlier indicated as a maximum (itself being a near 50% reduction from the starting tariff of 15 years) and arrived at after consideration of the genuinely mitigating factors mentioned above.

13. The sentence will be eight (8) years imprisonment with time already spent in custody since arrest on 9th June 2008 to be taken into account.

Hon. Anthony Smellie
Chief Justice

February 6 2009

GRAND COURT - CAYMAN ISLANDS