5/6/03
Henderson
Cocaine

IN THE GRAND COURT OF THE CAYMAN ISLANDS

SCA NO: 13/2002

BETWEEN

HERON ELTON FRANCIS

Appellant

AND:

THE QUEEN

Respondent

BEFORE: THE HON. JUSTICE HENDERSON

APPEARANCE:
Mrs. Marlene Smith-Andalcio for the Crown
Mr. Francis in person

Heard: May 16, 2003

JUDGMENT

Henderson J.

Heron Elton Francis was arrested on November 7, 2000, at the International Airport on Grand Cayman Island. One hundred and ninety-three grams (6.81 ounces) of cocaine salt contained in 39 pellets was found in his possession. He had just arrived by air from Jamaica.

After Mr. Francis pleaded guilty, the Learned Magistrate sentenced him to imprisonment for 9 years and ordered that time spent in custody on remand be taken into consideration. He argues that his sentence is excessive.

The Learned Magistrate said that the appropriate starting point for imposing sentence was in the range of imprisonment for 12 years. She then took into account the plea of guilty at an early date and imposed a sentence of 9 years imprisonment.

At the opening of the Grand Court in May, 1998, Harre, CJ, announced Sentencing Guidelines for certain offences. With respect to the importation of hard drugs, the Learned Chief Justice said this:

> "The tariff for a first offence is 12 years, with 15 for any substantial importing or for dealing in any way with 20 rocks of crack cocaine or more. It is a fact of life that many of the people caught are couriers or intermediaries and the worst offender in the chain of distribution remains concealed. There will therefore be a substantial discount on sentence for those who are prepared to co-operate with the police in continuing their enquiries."

The quantity here was well over 2 ounces, and therefore within the type of case the Chief Justice was addressing when he set the tariff for a first offence at 12 years. (The information given to me does not suggest that the 39 pellets carried by Francis were rocks of crack cocaine.) The Learned Magistrate did not err in law or in principle by adopting 12 years as her starting point.

It is clear, of course, that an early guilty plea is a substantial mitigating factor. In this case, it served to convince the Learned Magistrate that a "credit" of 3 years would be appropriate.

The sentence should only be set aside if it is wrong in law or in principle, based upon a wrong factual basis, based upon matters improperly taken into account, or "manifestly excessive": *Edwards v R,* 2001 CILR 334 (Grand Court).

No error on the part of the sentencing judge has been established. It cannot be said that the sentence under review is manifestly excessive. The appeal is dismissed.

Dated this 5th day of June 2003

GRAND COURT CAYMAN ISLANDS

per A. Henderson
Judge