IN THE GRAND COURT OF THE CAYMAN ISLANDS

5/6/03 Henderson

SCA NO: 36/2002

Cocaine

BETWEEN

VERNON DENVILLE GUNTER

Appellant

AND:

THE QUEEN

Respondent

BEFORE: THE HON. JUSTICE HENDERSON

APPEARANCE:
Mrs. M. Smith-Andalcio for the Crown
Mr. J. Furniss for the Appellant

Heard: May 16, 2003

GRAND COURT - CAYMAN ISLANDS

JUDGMENT

Henderson J.

On February 7, 2002, Vernon Denville Gunter was arrested at the International Airport on Grand Cayman Island after arriving from Jamaica. Sixty-four pellets of salt of cocaine weighing a total of 383.4 grams (13.56 ounces) were found in his possession. Mr. Gunter told the police that he purchase the cocaine in Jamaica and planned to sell it in the Cayman Islands for $500 per ounce U.S.

He pleaded guilty in the Summary Court. The Learned Magistrate imposed a sentence of imprisonment for 10 years and ordered that Mr. Gunter's time spent in custody on remand be taken into consideration.

The Learned Magistrate arrived at her sentence in this way. She began by noting that the starting point was a term of imprisonment for 12 years. She mentioned the guilty plea as a mitigating factor but said that the fact that Gunter purchased the cocaine himself and intended to distribute it in the Cayman Islands was an aggravating factor. After weighing these two factors against each other, she gave more weight to the guilty plea and arrived at a sentence of 10 years.

Mr. Gunter argues that the sentence was manifestly excessive.

By the time of this offence, the Sentencing Tariffs and Guidelines announced at the opening of the Grand Court in January, 2002, were public knowledge. The following passage from those Guidelines is pertinent:

> "For offences involving 2 ounces or more or 4 grams or more of cocaine base 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 any way 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 worst offenders in the chain of distribution often remain concealed. Therefore there will be a substantial discount on sentence for those offenders who are prepared to co-operate with the police in their enquiries."

Mr. Gunter was attempting to import a quantity of cocaine substantially in excess of 2 ounces. It was not, therefore, wrong in principle for the Learned Magistrate to take a sentence of 12 years as her starting point.

She was also correct to point to the fact that Gunter was not a mere courier or intermediary, but a trafficker, as an aggravating factor. It is correct, of course, that Mr. Gunter's guilty plea should be viewed as a mitigating factor. The Learned Magistrate chose to give greater weight to the mitigating factor than to the aggravating factor and arrived at a sentence of 10 years.

The principles of sentencing require this Court to set aside a sentence if, but only if, it is wrong in law or in principle, based upon an incorrect view of the facts, based upon matters improperly taken into account, or is "manifestly excessive": *Edwards and others v R*, 2001 CILR 334 (Grand Court).

The Appellant has failed to establish that the Learned Magistrate erred in any way, or that the sentence was manifestly excessive. The appeal is dismissed.

Dated this 5th day of June 2003

GRAND COURT - CAYMAN ISLANDS

per A. Henderson
Judge