

9-8-2001

**IN THE CAYMAN ISLANDS COURT OF APPEAL**

Criminal Appeal No. 9 of 2001  
(Summary Court Appeal No. 55 of 2000)

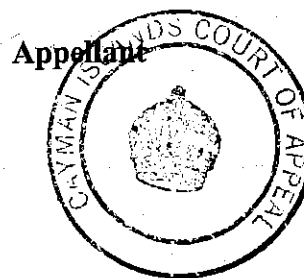
**BETWEEN:**

**HER MAJESTY THE QUEEN**

**Respondent**

**- and -**

**DENISE M. MCKAY**



**BEFORE:** The Rt. Honourable Mr. Justice E. Zacca, President  
The Honourable Mr. Justice I. Rowe, Justice of Appeal  
The Honourable Mr. Justice M. Taylor, Justice of Appeal

Marcus Thompson instructed by Walkers for the Appellant.  
Miss Cheryl Richards for the Respondent Crown.

Heard: April 3<sup>rd</sup> 2001

Reasons released: August 9<sup>th</sup> 2001

**REASONS FOR JUDGMENT**

**ZACCA, P.**

The appellant Denise McKay on June 29<sup>th</sup> 2000 pleaded guilty to a charge of importation of cocaine. She was sentenced to a term of imprisonment for seven years. On January 25<sup>th</sup> 2001 her appeal against sentence was dismissed by the Grand Court. She then filed an appeal against sentence to this Court on February 13<sup>th</sup> 2001.

On April 3<sup>rd</sup> 2001, an application was made to this Court for leave to appeal against conviction.

The appeal against sentence was also before the Court.

The application for leave to appeal against conviction was founded upon a recent judgment of this Court in the case of R. v. Carlyle Roberts handed down on February 23<sup>rd</sup> 2001. In that case Roberts had been charged with possession of cocaine with intent to supply. He was convicted after a trial and sentenced to eleven years imprisonment.

At the trial a certificate of analysis was tendered in evidence. This certificate stated that the result of the analysis was cocaine hydrochloride. The Court held that the certificate was not admissible as there was no evidence that a notice along with a copy of the certificate was served on Roberts (section 7(3) of the Misuse of Drugs Law (2000 Revision)). The appeal was allowed on this ground.

The Court also held that "cocaine hydrochloride" did not fall within the statutorily forbidden class of controlled drugs. There was no evidence that cocaine hydrochloride was either cocaine or a salt of cocaine. The appeal was also allowed on this ground.

It would have been permissible for the prosecution to call evidence at the trial to prove that "cocaine hydrochloride" was cocaine or a salt of cocaine.

In the case before us, the certificate of analysis stated that the result of the analysis was "cocaine hydrochloride". Relying on the case of R. v. Roberts, counsel for the applicant submitted that the application for leave to appeal against conviction should be granted.

The appellant was charged with the offence of importation of cocaine. She pleaded guilty and a conviction was entered on her guilty plea. It is not being suggested that the appellant was not aware that the substance found with her was not cocaine or that it was not her intention to plead guilty.

Section 165 of the Criminal Procedure Code states:

“No appeal shall be allowed in a case in which the accused person has pleaded guilty and has been convicted by the Summary Court on such plea, except as to the extent or legality of the sentence.”

This section may appear to be an absolute bar, but it is our opinion that in certain circumstances, this Court may allow a guilty plea to be vacated and a not guilty plea entered. Regina v. Lee [1984] 1 W.L.R. 578 (C.A.)

This, however, is not such a case. If the appellant had pleaded not guilty, it would have been open to the prosecution to call evidence that “cocaine hydrochloride” was cocaine or a salt of cocaine. It has not been submitted that “cocaine hydrochloride” could not be described as cocaine or a salt of cocaine if the evidence had been called. Nor has it been submitted that the appellant was under the mistaken belief that the substance was not cocaine.

By her plea of guilty she accepted that she had knowingly imported cocaine into these Islands.

If the Court was minded to vacate the plea of guilty the result would be that a plea of not guilty would be entered. At the trial it would be open to the prosecution to call the necessary evidence.

In the circumstances of this case, no reliance could be placed on the case of R. v. Roberts. Where a guilty plea has been entered the fact that the certificate of analysis stated "cocaine hydrochloride" would not of itself entitle the appellant to have her plea vacated.

The application for leave to appeal against conviction was refused. However the appeal against sentence was allowed and a sentence of 5 ½ years substituted.