

23/10/98

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Summary Court Appeal # 55/97

Noel Anthony Grizzel v Regina  
2366/97 Importation of Cocaine

1. *Wise*  
2. *File:*  
*Subsisting*  
*Reference*

Summary Court Appeal #29/98

Susan Ann Robinson v Regina  
2367/97 Being Concerned in the Importation of Cocaine

Before Murphy J.

23 October, 1998

Appearances:

J. Rowley for Crown  
J. Furniss for appellant Grizzel  
L Sampson for appellant Robinson

REASONS FOR DECISION

These appeals are related in that the appellant Grizzel was convicted of importing cocaine and the appellant Robinson was convicted of being concerned in the same importation.

After the appeals were argued I delivered brief oral reasons in open court. I now amplify these somewhat in written form.



On 11 June, 1997 Customs officers at Owen Roberts International Airport were observing passengers arriving on a Cayman Airways flight from Jamaica. The officers selected and questioned a passenger, identified as Grizzel. During the questioning Grizzel admitted to swallowing about 80 pellets of a drug he believed to be cocaine. A search of Grizzel's person yielded a piece of paper with the name "Susan Robinson" and some additional information on it.

Grizzel was taken to the George Town Hospital where he gave a statement regarding Robinson. His stomach was x-rayed and he was admitted to hospital where over a period of three days he passed 90 pellets wrapped in a clear plastic. The substance was subsequently tested and proved to be 71 % cocaine. The total weight was 125.1 grams, or somewhat more than 4 ounces.

Grizzel was at the time a 21 - year old single Jamaican. He had been promised US currency in Jamaica to bring the cocaine to Grand Cayman. He had been working as an electrician and needed money to complete his training. When intercepted he made a full confession and a statement to police regarding Robinson (who subsequently pleaded guilty in any event). He himself pleaded guilty. The magistrate sentenced him to 7 years imprisonment, and from that sentence he appeals.

I have had regard to the circumstances surrounding the commission of

the offence, the amount of cocaine involved, the appellant's cooperation and guilty plea. I have reviewed the precedents - particularly the Cayman Islands authorities - pertaining to this and similar offences in similar circumstances. I have had particular regard to the judgment of Smellie, J. (as he then was) in Campbell v Regina (S.C.A. # 70/95), an authority relied on by both Crown and defence, and adopt his observations as to i) the dominant place of deterrence in sentencing where drug offences are committed for profit, ii) the desirability of giving credit for cooperation given to the authorities; and iii) the concerns over the scourge of drug dealing in this jurisdiction, especially the importation of drugs.

As a result of my review of all these matters, I can find no error in principle in the sentence of 7 years, and dismiss Grizzel's appeal.

My review of Robinson's sentence presented somewhat more difficulty.

Robinson is a 26 - year old resident of the Cayman Islands, with Caymanian status. She has no prior convictions. One of her brothers is alleged to be one of, if not the, prime mover in this crime. He is said to have fled the jurisdiction. Evidence of another family member given before the magistrate on sentencing portrays Robinson as a naive, vulnerable and simple-minded pawn in the hands of her brother, the alleged prime mover.

Upon arrival at the airport Grizzel indicated he was coming to see his

“girlfriend,” Robinson. The immigration officer asked Grizzel questions about his girlfriend which he couldn’t answer - not surprisingly, as he did not know her and never laid eyes on her at any material time. Robinson’s brother had given Grizzel Robinson’s work telephone number so that the immigration authorities could contact her. When the officers, already suspicious about Grizzel, called Robinson, she confirmed she knew Grizzel and would be responsible for him in the Cayman Islands. As a result Grizzel was granted permission to land for a week in the care of Robinson. He was then detained.

There is no doubt that Robinson knew that the purpose of this ruse was to facilitate the entry of Grizzel, the drug courier, into the jurisdiction. Beyond this, her only other function apparently would have been to advise others (presumably her brother) that Grizzel had arrived.

Shortly after Grizzel’s entry, Robinson was arrested. She made a full confession.

Robinson received no reward for her participation. She did not know Grizzel and never met him at the airport, or at any other time. There is no suggestion she was an organiser or distributor. She never came close to actually handling, or dealing with, the drugs. She can hardly be characterised as a prime mover.

Robinson ultimately pleaded guilty, though only on her trial date.

The magistrate sentenced her to 4 1/2 years imprisonment. Both the appellant and the Crown appeal that sentence.

Crown counsel portrayed Robinson as a participant virtually on a level with Grizzel and urged me to “hammer” Robinson as “the Caymanian connection”. I am unable to accept the Crown’s view of the extent of Robinson’s culpability.

I do not for a moment downplay the seriousness of the offence committed by Robinson. However, it is incumbent upon me to consider the extent of her participation and culpability and to ensure that her sentence is a proper reflection of that. It is not a mechanical matter of equating her with the importer, or applying some fixed ratio to the importer’s sentence.

Quite obviously this is a crime like many others for which an accused’s participation may be placed at different positions on a continuum of involvement or culpability. One who is “concerned,” by coordinating the travel, meeting the courier, facilitating his entry, accompanying him in Cayman and standing to gain from distribution, must be placed at a point so close to the extreme end of the continuum that his acts are virtually tantamount to the importation itself.

I regard Robinson as being much nearer the other end of the scale. I distinguish precedents where those “being concerned” have received higher

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sentences, by the greater amounts involved and/or the accused's more substantial participation. I regard the sentence imposed here as excessive in the circumstances.

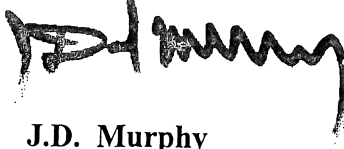
Though the appellant's involvement consisted of little more than a telephone conversation to facilitate the entry of the courier, the offence is a serious one and her involvement must still attract a significant period of incarceration.

I substitute, for the 4 1/2 years imposed by the magistrate, a sentence of 3 1/2 years - a sentence I regard as being at the low end of the sentencing scale for this offence.

Appeal of appellant Grizzel against sentence dismissed.

Appeal of appellant Robinson against sentence allowed, and 3 1/2 years substituted.

23 October, 1998

  
J.D. Murphy  
Judge of the Grand Court

