

IN THE COURT OF APPEAL OF THE CAYMAN ISLANDS
HOLDEN AT GEORGE TOWN, GRAND CAYMAN
CICA. 44 & 45 OF 1996

BEFORE: THE RT. HON. MR. JUSTICE ZACCA P.C., O.J. PRESIDENT
THE RT. HON. MR. JUSTICE TELFORD GEORGES P.C., J.A.
THE HON. MR. JUSTICE COLLETT J.A.

FRANCIS LANG & PETER TIMOTHY ACCETTA

V

REGINA

Mr. Hamilton Q.C. with Mr. Levy for the appellants
Mr. Bulgin for the Crown

GEORGES, J.A.

March 24th and April 3rd, 1997

REASONS FOR JUDGMENT

At the close of the arguments in this case we allowed this appeal against sentence. We quashed the sentences of 5 years imprisonment imposed on each of the appellants and substituted sentences of 2 years imprisonment. We affirmed the fines of \$15,000 imposed on each. We stated that written reasons for the decision would in due course be handed down.

The appellants had pleaded guilty to three charges - possession of ganja with intent to supply, smuggling and being engaged in smuggling.

The sentences of 5 years imprisonment and the fines had been imposed in respect of the charge of possession with intent to supply. Sentences of 3 years imprisonment concurrent had been imposed in respect of the charge of being engaged in smuggling and the vessel in which the ganja had been concealed was forfeited. The charge of smuggling was left on the file.

The facts were undisputed. On May 24, 1996 a yacht, Sir Winston, registered in the United States, arrived in George Town. It was crewed by the appellants. Customs Officers boarded the yacht with sniffer dogs. The appellants stated that they had come from Fort Lauderdale. The actions of the dogs led the officers to discover taped packages of ganja concealed behind wood panelling. They were removed and taken to the Central Police Station. The appellants were arrested..

They made full admissions. The enterprise had been planned in the United States. They had sailed to a point off the coast of Jamaica where they met a boat with the ganja on board. The ganja had been transferred to the "Sir Winston" and hidden in the prepared areas. They had then travelled to the Caymans. From there they planned to sail to New York where plans for its sale had been arranged. The total quantity was 2,249 lbs.

They cooperated from the start. They revealed the name of the person who had made the plans and who had also been present when the ganja had been loaded off the Jamaican coast. They behaved as though the enterprise was proceeding normally. Telephone contact was made with

the principal planner and a sham delivery arranged which resulted in his arrest as well as the arrest of two of his associates. The information they gave was stated by the prosecution to be "important intelligence regarding drugs shipment over several years."

In passing sentence the trial magistrate noted that this was clearly a commercial enterprise for gain which was an aggravating factor. She mentioned the pleas of guilty and the fact that the appellants had provided valuable information which had led to the arrest of others outside the jurisdiction of the Caymans. She imposed the sentences already set out. The maximum sentence for possession with intent to supply is 7 years.

The principal argument before us was that there had not been a sufficiently substantial discount given for the effective cooperation of the appellants which had led to excellent results. We accepted that argument.

The principle of granting substantial discounts to accused persons who had committed grave offences but who had disclosed to the police information of substantial value implicating others in the commission of the same offences was laid down in England in *R v. Lowe* (1977) 66 Cr. App. R. 122 Roskill L.J. stated -

"It must therefore be in the public interest that persons who have become involved in gang activities of this kind should be encouraged to give information to the police in order

that others may be brought to justice and that, when such information is given and can be acted upon and, as here, has already been in part successfully acted upon, substantial credit should be given upon pleas of guilty especially in cases where there is no other evidence against the accused than the accused's own confession. Unless credit is given in such cases there is no encouragement for others to come forward and give information of invaluable assistance to society and the police which enables these criminals..... to be brought to book. Those are the considerations this Court has to have in mind."

The offences in R v. Lowe (supra) were robberies. In this case they are concerned with the distribution of drugs. In that area the difficulties of penetrating behind the person actually caught to the persons planning the enterprise are even greater. It is well known that the reprisals which can follow passing on information to the police on arrest can be deadly. The knowledge that a substantial discount may be granted will be some inducement to run that risk and enable the authorities to disrupt the distribution rings. The information in this case assisted in doing this.

The appellants in this case cannot be said to have been given a substantial discount. The maximum for this offence is 7 years. The circumstances of this case, the large quantity of marijuana and the elaborate preparations for its concealment place it well within the

