

29.3.89

Criminal

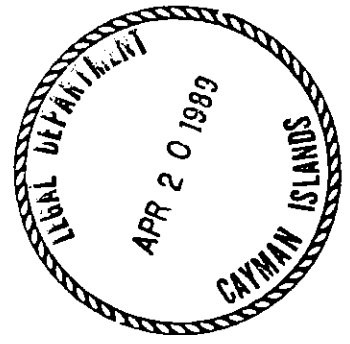
S/R

IN THE GRAND COURT OF THE CAYMAN ISLANDS
HOLDEN AT GEORGE TOWN, GRAND CAYMAN
CAUSE NO. 869-871/88

BETWEEN: ALLEN RONALD McLEAN

AND: REGINA

Appellant in person
For the Crown: Ms. J. Conolly



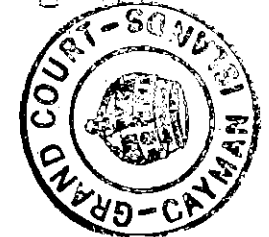
JUDGMENT

On 30th November, 1988 Allen Ronald Mclean received sentences on two charges of possession of cocaine with intent to supply. On the first he received four years imprisonment with a fine of \$2,000 or six months imprisonment in default. On the second he received 5 1/2 years imprisonment, the sentence to be concurrent. Cash found upon his person at the time of each of his arrests was forfeited to the Drug Squad.

The two offences took place on 4th March and 26th August 1988 respectively. On both occasions the defendant threw away items which were found to contain cocaine. In the first incident 45 separate wrapped packets totalling 5.307 grams were recovered. In the second incident 29 packets totalling 2.360 grams were found. The accused pleaded guilty to both the charges.

The accused is only 20 years old. The amounts involved are relatively small - less than 8 grams. At the time of his trial he had already been in custody for a short period and by his plea of guilty he did not waste the Court's time. All these matters were put to the Magistrate in mitigation and he has recorded that he took them into consideration in sentencing him. He also took into account the fact that the accused had four previous convictions, two of which were, respectively, for possession and consumption of cocaine.

In inviting me not to interfere with the sentence counsel for the Crown referred me to the recent case of Watler and Husbands v. Regina. In that case Watler, a man of 23, was sentenced to four years



imprisonment for a single offence of possession with intent to supply 15.2 grams of cocaine. In the appeal the judge found himself unable to say that the sentence was wrong in principle or manifestly excessive. I am of the same opinion in this case. The appellant was caught twice in a matter of months in possession of cocaine and in circumstances which indicated in the clearest possible way that he intended to supply. To be sure his age is a mitigating factor, but the Magistrate passed a prison sentence of proper severity in the exercise of the wide powers which the law has given him to deal with this wicked trade, and I shall not interfere with it.

However, there is one technical matter in relation to another aspect of the sentence which needs to be addressed. Section 13 (4) of the Misuse of Drugs Law, as amended by the Misuse of Drugs (Amendment) Law 1986 provides that where a person is convicted of any offence which is contrary to that Law, is specified in part (B) of the second schedule to the Law and is in relation to a controlled drug that is hard drug, the sentence shall on summary conviction include a term of imprisonment and a fine in accordance with the provisions of part (B) of the second schedule. Part (B) sets out maximum sentences for the relevant offences (among which undoubtedly fall the offences which are the subject of this appeal) which in each case include the term of imprisonment plus a fine.

The Magistrate imposed a fine of \$2000 or 6 months imprisonment on one charge and no fine on the other. The trial record shows that when apprehended the accused had a quantity of jewelry upon him. The learned Magistrate took the view that this could be disposed of and go towards payment of any fine. There is no record of any other enquiry as to the appellant's means. The cash found on him was forfeited to the Drugs Squad. A fine of \$2000 represents, in my view, an incentive to a young man of twenty to return to the drug trade in order to pay it. Some fine is mandatory, but it must be tailored to the offender's means so as to strike a proper balance between the imprisonment and the fine. I referred in a judgment which I delivered today in Phillip Dudley Bodden v. Regina to the judgment of Sir John Summerfield CJ in Rush v. R which is reported in the 1986 volume of CLR at page 62. He there affirmed that the principle of tailoring the fine to the

offender's means applies as much to cases involving hard drugs in which the Misuse of Drugs Law (Revised) requires mandatory sentences of imprisonment and fines to be imposed as to other offences.

Accordingly, I vary the present sentences to include a fine of \$500 in each case, with 1 month imprisonment in default, and set aside the fine of \$2000 imposed in respect of charge No. 869 of 1988.

G. E. Harre

G. E. Harre

Judge

16th march 1989.

