

IN THE CAYMAN ISLANDS COURT OF APPEAL
CRIMINAL APPEALS 16/87 and 17/87

ROBERT WARREN RITTER
FREDERICK PAUL FALTZ

V

REGINA

BEFORE: THE HON. PRESIDENT MR. E. ZACCA
THE HON. MR. JUSTICE T. GEORGES J.A.
THE HON. MR. JUSTICE K.C.HENRY J.A.

Appellants in person
Mr. Sharman for the Crown

Heard August 21st and 25th, 1987

REASONS FOR JUDGMENT

The Appellants pleaded guilty in the Magistrate's Court to five informations numbered 324/87, 325/87, 326/87, 327/87 and 328/87 charging them with importation of ammunition without a permit, possession of ganja with intent to supply, importation of ganja, unlawful possession of ammunition, and possession of ganja respectively. They were each sentenced on information 324/87 to 3 months imprisonment, on information 326/87 to 6 months imprisonment and a fine of \$500.00 or 3 months imprisonment, on information 327/87 to 6 months imprisonment and a fine of \$500.00 or 3 months imprisonment and on information 328/87 to 2 years imprisonment and a fine of \$4,000.00 or 9 months imprisonment. The sentences on informations 324/87, 326/87 and 327/87 were ordered to run concurrently and the sentence on information 328/87 was ordered to be consecutive to the other sentences. Information 325/87 was left on the file.

The Appellants appealed to the judge of the Grand Court who varied the sentences as follows:
Information 324/87 3 months imprisonment, information 326/87 2 1/2 years imprisonment and a fine of \$4,000.00 or 9 months imprisonment, information 327/87 6 months imprisonment and information 328/87 6 months imprisonment and a fine of \$500.00 or 3 months imprisonment,

10-12-87

reported

all the sentences (except those in default) to run concurrently. In so doing the learned judge of the Grand Court was no doubt reflecting the view that ordinarily the offence/importing ganja is more serious than that of mere possession of ganja, and should attract a higher penalty. However, in our view, the law as it stands does not empower the Grand Court in an appeal against sentence to increase the sentence imposed by the Magistrate's Court. Such a power can only be exercised if it is clearly and specifically conferred. Section 172 of the Criminal Procedure Code in relation to the powers of the Grand Court on hearing appeals provides:

"172. The court may adjourn the hearing of the appeal, and may upon the hearing thereof confirm, reverse, vary or modify the decision of the Summary Court or remit the matter with the opinion of the court thereon to the Summary Court, or may make such other order in the matter as it may think just, and may by such order exercise any power which the Summary Court might have exercised, and such order shall have the same effect and may be enforced in the same manner as if it had been made by the Summary Court."

The section does not in our view empower the Grand Court to increase sentences. Section 156 of the Criminal Procedure Code which gives the right to a convicted person to appeal to the Grand Court against inter alia a sentence imposed by the Magistrate's Court would by implication confer on the Grand Court the power to reduce the sentence, but we do not consider that a power to increase the sentence ought to be inferred on such an appeal, although it could perhaps be inferred if the appeal were by the Attorney General.

Section 156 is as follows:

"156. (1) Save as hereafter in this Code provided, any person who is dissatisfied with any judgment, sentence or order of the Summary Court in any criminal cause or matter to which he is a party may appeal to the Grand Court against such judgment, sentence or order either by motion on matters of law or fact (or both) or by way of case stated on a point of law only as hereafter provided:

Provided that in no case shall the complainant appeal from a decision dismissing a complaint except by way of a stated case on a point of law.

(2) For the purpose of any appeal the Attorney-General shall be deemed to be a party to any criminal cause or matter other than those in which the proceedings were instituted and carried on as a private prosecution and in which the conduct of such proceedings has not been taken over by the Attorney-General under the provisions of subsection (5) of section 11."

Similarly on a further appeal by a convicted person to the Court of Appeal under section 25 of the Court of Appeal Law, which is set out below, we do not consider that this court is empowered to increase the sentence imposed by the Grand Court, although such a power could perhaps be inferred if the appeal were by the prosecutor.

"25. (1) Any person (including the prosecutor) aggrieved by the judgment given or made by the Grand Court in the exercise of its appellate or

revisional jurisdiction, whether such judgment has been given or made upon appeal or revision from a court of summary jurisdiction or any other court, board, committee or authority exercising judicial powers, and whether or not the proceedings are civil or criminal in nature, may appeal subject to the provisions of this Law, to the Court on any ground of appeal which involved a point of law alone, or against sentence but not upon any question of fact."

It is to be observed that section 6 (3) of the Court of Appeal Law as regards appeals in relation to convictions by the Grand Court specifically provides as follows:

"6 (3) On an appeal against sentence the Court shall, if it allows an appeal against conviction, quash the sentence passed at the trial, and pass such other sentence warranted in law by the verdict (whether more or less severe) in substitution therefor as the Court considers ought to have been passed, and in any other case shall dismiss the appeal."

For these reasons we were of the view that the increased sentences imposed by the learned judge of the Grand Court in information 326/87 ought to be set aside and the sentences originally imposed by the Magistrate reimposed. Accordingly we allowed the appeal of each Appellant to this extent.

Delivered 10th of December, 1987