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IN THE GRAND COURT OF THE CAYMAN ISLANDS (Criminal)
HOLDEN AT GEORGE TOWN, GRAND CAYMAN
BEFORE THE HON. MR. JUSTICE HULL

CASE NO. 1006/84
APP. NO. 4/85

FRANCIS EROLDO POWELL V. REGINA

C 1006/84 POSSESSION OF COCAINE

DECISION

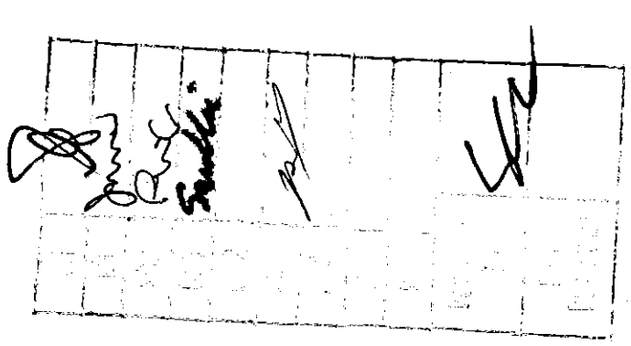
The appellant pleaded guilty on 3 January, 1985 to having in his possession at the Holiday Inn, without lawful excuse, less than 2 ounces of cocaine hydrocloride. He was sentenced by the learned Magistrate to 3 years imprisonment, and to pay a fine of$5,000 or to serve 12 months in default of payment.

The facts briefly are that the appellant and a man called Banker were interviewed by the police officers at the Holiday Inn. They were found there together. Banker was found to be in possession of 5.1 grammes of cocaine in a single bag. I should say here that there was nothing before me to show that it was found on his person. Subsequently 2.3 grammes of cocaine hydrocloride were recovered from the appellant's car at the hotel. It was contained in 4 small packets. The reserve after analysis was 1.3 grammes which was the subject of the charge to which this appeal relates.

The two men were charged separately. Banker who also pleaded guilty was sentenced by the Magistrate to one year's imprisonment, and a fine of $5,000 or 12 months in default.

For reasons which do not militate against him, the appellant at first pleaded not guilty but after some time had elapsed, changed his plea to guilty. He also identified his source to the police.

The appellant has on 4 previous occasions had convictions. None of them were for drug offences and the most recent was in November 1977. One was for a serious offence, namely rape, for which he was sentenced to 5 years imprisonment in 1971. The others appear to have been relatively petty offences. He is 40 years of age. In the lower court two witnesses gave evidence as to his character. One was a former Superintendant of Police here. The other was a current business colleague. Both expressed a belief in the possibility of his rehabilitation.



The appellant appeals against his sentence on several grounds which are addressed towards the propositions that it is unduly harsh and excessive, that due account was not taken of the character evidence or of his co-operation with the police and plea of guilty, and that he is aggrieved by the evident and unfair disparity between his sentence and that awarded to Barker.

The starting point in this matter is that the offence is a serious one. The minimum penalty for possession of cocaine, even where the amount is less than 2 grammes, is one year's imprisonment and a $1,000 fine, unless in limited circumstances there are special reasons for imposing a lesser sentence.

The concern that is felt about the illegal possession of cocaine is so well known that I scarcely need to dwell on it; the provision of at least a minimum penalty as the norm, even for a first offender, reflects this. Anyone who through design or folly comes into possession of this drug should know that he faces a charge of very considerable gravity.

Mr. McField went so far as to argue, against the background of the other factors to which I will refer below, that there were special reasons why the Magistrate should have considered a lower sentence under section 12 (8) of the Misuse of Drug Law, but that submission is clearly untenable, and I understood him in his reply to confine himself to saying that there were in this case "special reasons", not in the sense of section 12 (8), why the actual sentence was too severe.

It was also said that the Magistrate was wrong to say that he did not believe the appellant's account that the cocaine was for his own use. But as long as the sentence was, and can be seen to be properly, a sentence for the offence charged, namely possession, I think a court may consider the sentence in the context of the evidence before it. In this case I think that the location and the manner of the packaging of the cocaine are not irrelevant factors to consider.

It was said that the Magistrate did not give proper weight to the character evidence or to the clean recent record of the appellant and the absence of previous convictions for drug offences, and that he did not make due allowance for the guilty plea and the assistance given to the Police.

These last two elements are factors for which the court will make some allowance in mitigation. In the context of unlawful possession of cocaine, lack of previous similar convictions and evidence of good character are of limited purpose, and in any event it cannot be said that the appellant is a person of demonstrably good previous character.

So looked at by itself, and taking into account those matters that I have so far mentioned, it may be said that this sentence was stern, but it cannot be held to be excessive. The defendant has long reached the age of discretion. People who have cocaine illegally must expect severe consequences.

That leaves the matter of the disparity of the sentence in contrast to Banker's. Strictly speaking, I do not think they can be said to be co-defendants although it appeared to me that the Crown did not disagree with Mr. McField's position that the two men were in association and that if the prosecution had been able to obtain more evidence, there may have been a joint trial.

It was clear that the Magistrate was aware of the Banker sentence when he dealt with the appellant because Crown Counsel brought it to his attention. That there is a substantial disparity is evident. Whereas the appellant obtained a "mid-range" sentence for less than 2 grammes, Banker received a sentence barely above the minimum apparently for more than twice the amount.

I have no doubt that if there had been some special features of Banker's case or circumstances that were relevant to the matter, Mr. Ground would have brought them to my attention; and on the face of it Banker's sentence looks to be too light.

If one puts the question, is the appellant's sentence too long, the answer in my view is that it is not.

I find the further question "Given the clear disparity, would right-thinking members of the public think that something has gone wrong with the administration of justice?" and the alternative "Would the defendant be under a justified sense of real grievance?" more difficult.

But I think the reaction of the public to the sentence in the present situation would be to say that Banker got off lightly and luckily rather than that the defendant has been in any way hard done by. By the same token, I do not think the defendant himself can with justification harbour any real sense of grievance. It would be wrong to reduce the sentence to anything approaching 1 year's imprisonment, and I am not persuaded that the interests of substantive justice in the circumstances require that some lesser reduction should be granted as a gesture.

This appeal against sentence is therefore dismissed.

D. Hunt.

Judge

5th March, 1985.