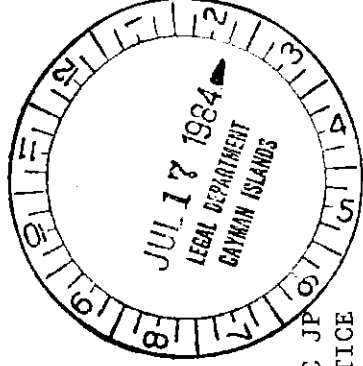


16.7.84



IN THE GRAND COURT OF THE CAYMAN ISLANDS  
 HOLDEN AT GEORGE TOWN  
 BEFORE THE HON. SIR JOHN SUMMERFIELD CBE QC JP  
 CHIEF JUSTICE

CASE NO. 1733 - 1734 of 1982  
 CRIMINAL APPEAL NO. 226 of 1982

AG	Jhw
LU	RUCS
Sub	Smellie
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RICHARD JERNIGAN 111 VS. REGINA  
 POSSESSION OF GANJA  
 IMPORTATION OF GANJA

Mr. Voaden for appellant  
 Mr. Smellie for respondent

JUDGMENT

The appellant was convicted on his own plea of unlawful possession of ganja and unlawful importation of the same ganja. For each offence he was sentenced to six years imprisonment together with a fine of \$10,000 or six months imprisonment in default. The amount of ganja involved was 725<sup>3</sup>/<sub>4</sub> lbs. It had been cleverly concealed in a motor yacht under his control and ownership. The motor yacht was ordered forfeit.

There is no merit in the ground of appeal averring that the appellant was unrepresented at the hearing. Representation was a matter for the appellant and there is nothing on the record to indicate that he applied for an adjournment to obtain counsel.

As to the appeal against sentence, it is not a mitigating factor that the ganja was not intended for these Islands but was intended for another destination. The Courts must be as concerned for the welfare of inhabitants of other countries as it is for the inhabitants of these Islands. It may, however, be a factor in treating the importation as incidental or ancillary to the offence of possession as stated in by the Court of Appeal in the Sally Mae case (Samuel Blackman & Ors v R, Criminal

Appeal No. 5/84). Accordingly, it can have a bearing on the fine imposed for that offence in such a case. Further, it is of no consequence that the prisoner, as a foreigner, will be a burden on local resources while kept in prison here. Punishment must be meted out equally to a foreigner or local inhabitant although it might be appropriate to take into account the extra hardship to <sup>a</sup>foreigner who has no relatives to visit him.

As to the fines, it is well settled that when both offences arise out of the same facts the fine on one, because a fine is mandatory, should be nominal. Furthermore, the fine should not be so large that it automatically results in an additional term served. As was stated in R v Squires v R (No.28/82), where a long custodial sentence is passed the mandatory additional fine should appear to be within the means of the offender and not merely an obvious means of extending the prison sentence. If a longer prison sentence is appropriate then it should be imposed as part of the substantive sentence and not obliquely through a fine the prisoner cannot conceivably pay. However, it is a matter of notoriety that in cases of heavy trafficking the larger fish behind the enterprise will usually meet the fine. And certainly the fine should be such as to absorb the fruits of unlawful trafficking.

In this case, the importation offence is the incidental one on the authority of the Sally Mae case. Accordingly the fine for that offence is reduced to \$25 or seven days imprisonment in default.

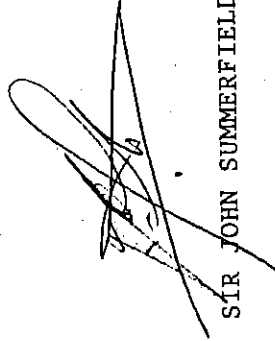
The views of the Court of Appeal in the Sally Mae case are a valuable guide to sentencing in cases such as this one. Here the appellant pleaded guilty and was fully co-operative with the authorities. Certainly his sentence should not be longer than that imposed by the Court of Appeal on the main culprit in the Sally Mae case which involved 16000 lbs of ganja.

Although the amount of ganja in this case was very much less than that in the Sally Mae case it nevertheless was a very substantial quantity and merits no less a prison sentence than that on the main culprit

in the Sally Mae case. The distinction between the two can be reflected in the fine.

Bearing in mind the foregoing I reduce the sentence of imprisonment to five years for each offence, the sentences to run concurrently. The fine for the offence of unlawful possession is reduced to \$5000 or six months imprisonment in default. The prison sentences in default of payment of the fines are to run consecutively to each other and to the substantive terms of imprisonment imposed. The substantive terms of imprisonment are to take effect from the date of conviction.

The appeal succeeds to the extent specified above but is otherwise dismissed.



SIR JOHN SUMMERFIELD

16th July 1984