

1982

IN THE COURT OF APPEAL FOR THE CAYMAN ISLANDS

CRIMINAL APPEAL NO. 11 OF 1982

BEFORE: THE HON. MR. JUSTICE ZACCA - PRESIDENT  
THE HON. MR. JUSTICE CAREY, J.A.  
THE HON. MR. JUSTICE ROSS, J.A.

GREGORY THEGG v REGINA

MR. JOHN MARTIN - COUNSEL FOR THE CROWN

November 26, 1982

THE HON. PRESIDENT:

We have given due consideration to your submission, to the points you attempted to make with respect to your appeal and as we have pointed out, the Court of Appeal does not seek to re-try a case. The case was tried before the magistrate. He heard the witnesses, he saw the witnesses and as usual, he is in a better position than this court to assess the credibility of the witnesses. It is only where, on the record, it can be shown that the witness was so discredited by reason of contradiction or evidence that would suggest that he was obviously not speaking the truth and if his evidence was so discredited it would be unsafe to act on his evidence, the court would be willing to interfere.

Having regard to the evidence of Ebanks and the findings of the magistrate, there certainly was sufficient evidence on which the magistrate could have come to the conclusion he did. We have and we see no reason for interfering with his conclusion and decision and in the circumstances, the appeal as to conviction is dismissed.

As far as sentence is concerned, it is clear that the legislature of the Cayman Islands considers that the dealing in any way, not merely importation but also with possession, they consider it to be a very serious matter. Judges in the Cayman Islands have also, in keeping with the intentions of the legislature, been inflicting what might be termed fairly heavy sentences in respect of this offence. The penalty may differ in other countries as in Jamaica. There is no mandatory sentence for the possession or importation of ganja, but as I say, the

judges of the Cayman Islands have to look at the intentions of the legislature and, certainly, to administer justice with respect to the intentions of the legislature and see what the law says. It is, therefore, not for us to say that perhaps in another country the sentence might have been a little less or you might not have been sent to prison. The only way this court can interfere with the sentence is if you could have shown that the sentence was manifestly excessive.

We cannot, in the circumstances, having regard to the amount of ganja detected, come to the conclusion that the sentence was manifestly excessive. Therefore, the appeal is dismissed and the conviction and sentence affirmed.