

92

JAMAICA

IN THE COURT OF APPEAL

CAYMAN ISLAND CRIMINAL APPEAL NO. 4/73

Before: The Hon. Mr. Justice Fox, Presiding
The Hon. Mr. Justice Hercules, J.A.
The Hon. Mr. Justice Swaby, J.A.

W I L L I A M P O W E L L

Possession of Ganja

K.R. Brandon, Esq., appeared for the appellant
D. Scharfschmidt, Esq., appeared for the Crown.

29th March, 1974.

FOX, J.A.,

This is an appeal from a summary conviction on information by His Hon. Mr. G. J. Horsfall, judge of the Grand Court of Cayman, in which he found the appellant guilty of the offence of possession of ganja. The judgment and sentence were pronounced on April 13, 1973. Verbal notice of appeal was given on that same date. Grounds of Appeal were filed on the 5th of October, 1973.

We have been unable to find any express provisions concerning the time within which the grounds of appeal in summary trials in the Cayman Islands should be filed. It appears to us, however, admittedly not with the clarity desirable, that by virtue of the provisions of Section 220 of the Judicature (Administration of Justice) Law, Chapter 74 (Cayman Islands) matters of this sort may have to be ascertained by reference to the Judicature (Resident Magistrates) Law, Chapter 179 (Jamaica). On this assumption, grounds of appeal must be drawn up and filed with the Clerk of the Courts within 21 days after the date of the Judgment, "and on his failure to do so he shall be deemed to have abandoned his appeal." (S.296(1)).

It is obvious that the grounds of appeal in this case are grossly out of time. This delay is sufficient to indicate that there was no

continuing intention on the part of the appellant to prosecute his appeal. As this court has said in several cases, delay of this order is a critical consideration which the court allows to guide its discretion in refusing leave to file grounds of appeal as it is empowered to do by the proviso to S. 296(1), Cap. 179. No attempt has been made to explain or justify this lapse.

We take the view, therefore, that in accordance with the provisions of S. 296 (1), the appellant must be deemed to have abandoned his appeal.

There is another ground upon which this appeal fails which must be noticed. The jurisdiction of this court to entertain appeals from the Cayman Islands is contained in a Proclamation made by virtue of the provisions of Section 37 of the Judicature (Appellate Jurisdiction) Law, 1962, Law 15 of 1962 (Jamaica). This proclamation is published in the Jamaica Gazette Extraordinary of Friday, August 3rd, 1962. Under that proclamation, the Judicature (Appellate Jurisdiction) Law, 1962 was made to apply to the Cayman Islands with the modifications specified in the Schedule to the Proclamation. In this Schedule, part V (Appellate Criminal Jurisdiction)(Resident Magistrate's Courts) (Appellate Jurisdiction) Law, was deleted, and a new Section 21 was inserted, whereby any person convicted on indictment in the Grand Court of the Cayman Islands may appeal to this Court. The proclamation was silent with respect to appeals from conviction other than a conviction on indictment. This unsatisfactory situation was amended by the Judicature (Appellate Jurisdiction) Law, 1964, Law 2 of 1965 (Cayman Islands). The effect of this legislation was to add to part V of the Judicature (Appellate Jurisdiction) Law 1962 (Jamaica) in so far as the Cayman Islands are concerned, Section 22 (1) and Section 22 (2), the provisions of which enable an appeal to this court from a conviction for a summary offence. This court, therefore, has the jurisdiction to entertain appeals on conviction from the Grand Court for summary offences. Nevertheless, by virtue of Section 233 of the Judicature (Administration of Justice) Law, appeals from the Grand Court "shall be for matter of law only, and not for matters of fact." The complaint in this appeal is

94
3.

entirely one of fact and not law. For this reason also, the appeal is bound to fail. The appeal is dismissed. The conviction and sentence are affirmed.