

1973

CAYMAN ISLANDS

IN THE COURT OF APPEAL

CAYMAN ISLANDS CRIMINAL APPEAL NO. 2/73

BEFORE: The Hon. Mr. Justice Smith - presiding  
The Hon. Mr. Justice Edun  
The Hon. Mr. Justice Graham-Perkins

R. v. DOROTHY MAY GRIFFITHS

K.R. Brandon - for appellant  
Seymour Panton,  
Asst. Attorney General,  
- for Crown.

12th MARCH, 1973

SMITH, J.A.:

This appellant was convicted on her plea of guilty to a charge of being in possession of ganja. She was sentenced on the 24th of January this year to a term of imprisonment of eighteen months at hard labour. She has appealed against the sentence imposed and Mr. Brandon has asked on her behalf that the sentence be reduced.

The appellant is a Jamaican and on the 21st of January this year she arrived from Jamaica on an aeroplane; she was searched in the Customs area and on her person concealed in her brassiere and her girdle were two separate parcels each containing one pound of ganja. The appellant told the constable who accosted her that she was bringing it to some man named "Sonny." In mitigation before the learned judge of the Grand Court she was said to be of 25 years of age and it was submitted that she was not the real culprit but that she was the dupe of a rogue called "Sonny" who had met her in Jamaica and had told her that he could get her a job in the Cayman Islands

if she would take a parcel to him there. It was said that she was naive and she believed this man "Sonny" when he told her that he was friendly with the Customs and she would not get into trouble if she did as he asked. According to what was submitted to the learned judge of the Grand Court she said that "Sonny" was present when she arrived but he made off when he saw that she was accosted.

Before us, Mr. Brandon, who made the submission on her behalf before the Grand Court, repeated his submissions made there. He contended that the appellant was not a seller or a vendor and in all the circumstances he suggested that the sentence should be reduced. I do not know whether Mr. Brandon was serious, but he suggested that as an act to mark the opening of the court building today, she should be given some lesser punishment than was imposed. As much as we would like to accede to this latter request of Mr. Brandon, this would be an undesirable precedent as we have to decide this matter on the well settled principles and that is, that a Court of Appeal does not interfere with a sentence imposed by a lower court unless the sentence was wrong in principle or was manifestly excessive.

In passing sentence the learned judge of the Grand Court said that he bore in mind all that was urged on behalf of the appellant; he bore in mind the fact that the quantity of ganja was 2 lbs. He said that he had no doubt that the ganja which she had brought in could have been peddled to users in Grand Cayman; that there had been other attempts to bring this drug into Grand Cayman and also that the court regarded it as a serious offence, the seriousness of the offence depending on the amount of the drug which, as he said, is sold here at a substantial profit. The learned judge said that he appreciated that the appellant had changed her plea to one of guilty and

said that the sentence that he was about to pass was less than it otherwise would have been.

We see nothing in what he said to suggest that he erred in principle in the sentence that he passed and the only question that remains is whether it can be said in all the circumstances to have been manifestly excessive. This was a case of a foreigner, because one from Jamaica is a foreigner in Grand Cayman, introducing what the legislature in the Cayman Islands regard as a dangerous drug into the country. The legislature has shown by the penalty prescribed that this is to be regarded as a serious offence. The maximum penalty provided is one of three years for a first offence, and it also provides that in addition the Court may impose a fine not exceeding 2000. The appellant was not given any additional punishment. It was her first offence, but the law itself suggests that there may be circumstances where for a first offence a person may be given as much as three years' imprisonment for the offence of being in possession of ganja.

In spite of what has been said on behalf of the appellant the learned judge of the Grand Court would be justified in regarding this appellant as a willing trafficker in ganja and he was entitled to mark the seriousness of this type of offence in the sentence that he passed. In all the circumstances we do not see that a sentence of eighteen months imprisonment is manifestly excessive. The appeal is accordingly dismissed.

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1974

JAMAICA

IN THE COURT OF APPEAL

CAYMAN ISLAND CRIMINAL APPEAL (9/71)

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

RHETT H. BORDEN v. MCTAGGART, ROY E.

Declaration as to title of land

W. K. Chin-See, Esq., appeared for the defendant.  
R.N.A. Henriques, Esq., appeared for the appellant.

29th March, 1974

FOX, J.A.,

When this appeal was called on for hearing, Mr. R.N.A. Henriques who appeared for the appellant, with a frankness we find entirely commendable, conceded that there was no arguable point which he could usefully describe in support of his appeal. The appeal is, therefore, dismissed. We affirm the judgment of the court and in accordance with what has been agreed by both counsel in the course of exchanges between counsel and the bench, we make the following specific affirmations:

- (1) The Declaration asked for in relation to the land described in paragraph 4 of the statement of claim is affirmed. This land is described in a document received in evidence marked exhibit C dated 29th of October, 1963, which was registered on the 8th of August, 1966. It is identified as land on the landward side of the road.
- (2) As ancillary to the declaration in (1), we order that the land described in exhibit C, the subject of the declaration in this action be excised from the land described in exhibit 11 which is a document dated and registered on the 22nd of June, 1966. This

document described land on the seaward side of the road, as well as the land on the landward side of the road identified in exhibit C.

We order further that the register be rectified accordingly.

The respondent is to have the cost of this appeal to be agreed or taxed.

1974

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. Scharidschmidt, 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

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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.