

**THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
(CRIMINAL)**

SAINT LUCIA

CRIMINAL CASE NO. SLUCRD 2011/0050

BETWEEN:

THE QUEEN

Claimant

AND

HERMAN BELASSE

Defendant

Appearances:

**The Defendant in person
Mr. Giovanni James Crown Counsel for the Crown**

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2012: June 05
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JUDGMENT ON SENTENCING

[1]. **CUMBERBATCH, J. :** On Saturday 3rd November 2007 at about 3.10 am the defendant was on board a pirogue about 3 ½ nautical miles from Castries when it was intercepted and boarded by members of the Marine Unit of the Royal Saint Lucia Police Force. The police discovered four (4) polythene bags containing a quantity of illegal drugs to wit, 167.5 kilograms marijuana and 2.17 kilograms cocaine. On the 11th January 2012 the defendant was indicted by the Director of Public Prosecutions for one (1) count of possession of a controlled drug to wit cannabis, one (1) count of possession of a controlled drug to wit cocaine and one (1) count of possession of a controlled drug

with intent to supply to another to wit cannabis. On the 16th March 2012 at his arraignment the defendant pleaded guilty to all counts on the indictment.

- [2] The court was informed at the sentencing hearing that the drugs were analyzed and were certified by the analyst to be cannabis and cocaine respectively. The estimated value of the cannabis found in the defendant's possession was \$184637.00, whilst the estimated value of the cocaine found was \$43400.00 making it a total value of \$228037.00. This estimated value was not disputed by the defendant.
- [3] The court ordered a pre-sentence report which provided valuable information of the defendant's past history and his interaction with members of his family and his community. The defendant at age seventeen (17) left his parents' home and started living on his own. His close relatives state that he is not an inherently bad person but keeps the wrong company.
- [4] The defendant's stated occupation is that of a fisherman but persons on the Banan community where he resides are of the view that he is not a bona fide fisherman but would only engage in fishing when things were difficult. He's described as being aggressive and shady and allegedly hides drugs in the area. I shall return to other parts of this report later in this judgment.
- [5] The defendant at the sentencing hearing denied that he is aggressive as stated in the pre-sentencing report. He told the court that he's the father of two (2) children whom he has not seen for some time as he has been in custody awaiting his trial for some five (5) years, a fact which was confirmed by crown counsel. He has asked the court for leniency and took full responsibility for the whole incident. He expressed regret for the fact that the persons who were with him in his boat at the time it was intercepted and boarded by the police are completely unaware that he was involved

in a drug transaction and that they are merely innocent bystanders who were in the wrong place at the wrong time.

[6] Crown counsel submitted the following to be the aggravating and mitigating factors herein;

AGGRAVATING FACTORS

- a.) The quantity of drugs was significant;
- b.) Drug offences as well as offences stemming from drug trafficking is quite prevalent in St. Lucia and the Caribbean;
- c.) Defendant admits to consuming cannabis;
- d.) Defendant also admits to previously trafficking drugs for a male individual;
- e.) Defendant admits to selling cannabis.

MITIGATING FACTORS

- (a) Defendant pleaded guilty as the first opportunity and so did not waste the court's time
- (b) Defendant accepts full responsibility for the drugs and is sorry about getting his friends into trouble.
- (c) Defendant has positive reports about his behaviour from Bordelais.

[7] Mr. James went on to contend that having regard to the quantity and value of the drugs found in the defendant's possession and his previous criminal record a custodial penalty would be appropriate. He referred the court to several authorities in support of his contentions.

[8] **THE LAW**

A convenient starting point on the law is the consideration of the classical principles of sentencing as set out by Lawton L.J. in the celebrated decision of Regina v Sergeant. These are retribution, deterrence, prevention and rehabilitation. In that decision Lawson LJ stated that '**any judge who comes to sentence ought always to have those four classical principles in mind and to apply them to the facts of the case to see which of them has the greatest importance in the case with which he is dealing**' These principles were approved and adopted by Sir Dennis Byron C.J. in Desmond Baptiste v Regina. I will now apply these principles to the case at bar.

[9] **RETRIBUTION**

The defendant in the pre-sentence report admitted to the probation officer that the people in his community do not like him because he smokes and sells weed. Before this court the defendant readily admitted that the illegal drugs found on his boat concerned him alone. This court cannot ignore or marginalize the scourge of illegal narcotic drugs and the devastating effects it has had on the young people of this country. Thus the court must by the sentence it imposes show its abhorrence for this fast developing unlawful parallel commercial activity in this country.

[10] **DETERRENCE**

An examination of the defendant's criminal history reveals a previous conviction in the year 2007 for possession of cannabis for which he was given a non-custodial penalty, to wit a fine of \$98671.35 or 35 months imprisonment. The court's benevolence was lost on the defendant in that in the same year he was involved in these offences for which he has pleaded guilty. Hence it is not difficult to conclude that the only means of deterring the defendant from re-offending is a suitable term of imprisonment.

[11] **PREVENTION**

As previously stated this court is not unaware of the devastating effects illegal narcotic drugs have had on the young people of this country. The court is aware from its own knowledge of cases of persons committing serious offences which include the capital offence of murder whilst under the influence of illegal narcotic drugs particularly cannabis and cocaine. The court must take into consideration during the sentencing process, the public interest. This defendant is a repeat offender for drug offences and is a self-confessed trafficker in illegal narcotic drugs. Thus the court is under a duty to protect the society from persons such as the defendant by the imposition of suitable periods of imprisonment.

[12] **REHABILITATION**

The defendant in his address to the court has claimed that there are no programs for the rehabilitation of offenders at Bordelais Correctional Facility hence he cannot be rehabilitated whilst an inmate there. The court has however received several reports to the contrary and dismisses that assertion. The pre-sentence report states that the defendant is well behaved at the Bordelais Correctional Facility and is a server at that institution. Whilst this augers well for the defendant as an indication of his intention to turn his life around the court cannot ignore the reality of the situation that the defendant whilst an inmate at Bordelais Correctional Facility resides in a controlled environment where his opportunities to plan and direct his daily activities are severely limited.

[13] I have considered the circumstances of this case and the addresses by the defendant and crown counsel. I find the following to be the aggravating and mitigating factors herein:

AGGRAVATING FACTORS

1. The seriousness of the offence of drug trafficking;
2. The criminal history of the defendant;
3. The defendant's admissions that he smokes and sells cannabis;
4. The prevalence of drug offences in this country;
5. The large quantity and value of the illegal drugs found in the defendant's possession.

MITIGATING FACTORS

1. The defendant's ready plea of guilty at the first available opportunity
2. The defendant has taken full responsibility for his actions.

[14] I have considered the aggravating and mitigating factors in light of the circumstances of this case and find that the aggravating factors clearly outweigh the mitigating ones.

SENTENCE

The governing legislation herein is the Drug (Prevention of Misuse) Act CAP. 3:02 of the Revised Laws of St. Lucia ('the Act'). The Act provides inter alia that persons tried and convicted on indictment for offences of possession of class A drugs, to wit cocaine and cannabis are liable to imprisonment of seven (7) years or a fine not exceeding \$200000.00. The Act further provides that a person convicted of possession with intent to supply a Class A drug is liable to imprisonment of fourteen (14) years and /or a fine not exceeding \$200,000.00.

[16] The court notes that the amount and value of drugs found in the possession of the defendant is quite substantial. The court has also considered the fact that the defendant is a self-confessed trafficker in cannabis. Thus the defendant is part of that rapidly developing illegal parallel economy

which for substantial compensation peddles its products of death and destruction to the youth of this nation. In the circumstances I find that this case reaches the threshold for nothing less than the imposition of a custodial sentence.

[17] The defendant must be credited for his early guilty plea and must be given the due discounts therefore. I must also take into account the inordinate delay for bringing this matter to a stage of finality. The defendant was arrested and charged by the police for the offences herein on or around the 3rd November 2007. His Preliminary inquiry commenced on the 2nd June 2008 and his committal was on the 25th January 2010. He was indicted on the 11th January 2012 and at his arraignment on the 16th March 2012 he immediately pleaded guilty. All this time he was in custody.

[18] The court is not unaware of the inadequacies and administrative difficulties inherent in the criminal justice system in this jurisdiction. However no explanation has been offered to the court for the delay, nor is it clearly apparent that the delays were at the instance of the defendant. In the circumstances the court finds that the defendant's constitutional right to a trial within a reasonable time has been breached for which he is entitled to a reduction in sentence.

[19] Accordingly the defendant is sentenced to three (3) years imprisonment on each count of possession of a controlled drug. He is sentenced to five (5) years imprisonment for the offence of possession of cannabis with intent to supply. The defendant shall be credited for all time spent on remand awaiting his trial. The sentences shall run concurrently.


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FRANCIS M. CUMBERBATCH
HIGH COURT JUDGE