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

SAINT LUCIA

CRIMINAL CASES NOS. SLUCRD 2011/0284, 0292, 0322, 0333

BETWEEN:

THE QUEEN

Claimant

AND

1. **NOEL PERSAUD**
2. **CARLTON SAM**
3. **NARINE CHEECHARRAN**
4. **SELWYN FRANCE**

Defendants

Appearances:

Mr. Shawn Innocent Counsel for the Defendants
Mr. Stephen Brette Crown Counsel for the Crown

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2013: January 22

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JUDGMENT ON SENTENCING

[1]. **CUMBERBATCH, J. :** On Saturday 24th September, 2011, a party of policemen attached to the Marine Unit of the Royal Saint Lucia Police Force was on a maritime patrol when a vessel was observed with both its navigation and flood lights on. A pirogue was observed approaching the vessel which was dead in the water. The police observed the name of the vessel to be the "Vicky B". The vessel was hailed by the police and was then boarded. Because of the rough seas the vessel was taken to the Vieux Fort docks where a thorough search thereof was conducted.

[2]. The search revealed the following items in the forepeak of the bow and in a chain locker of the said vessel:

- A black suitcase bearing the word Bonjour,
- A brown box wrapped in masking tape
- A red and white box wrapped in masking tape,
- Two white polythene sacks,
- A blue and white box,
- A black plastic bag

In the suitcase, there were fifteen (15) packages and two (2) boxes. The packages and one (1) box contained plant material which appeared to be cannabis. The other box contained two (2) rectangular shaped blocks and two (2) clear bags; within which were items wrapped in masking tape. The two (2) rectangular shaped blocks contained a whitish substance which appeared to be cocaine. One clear bag contained four (4) oval shaped items wrapped with brown masking tape and newspaper.

[3]. When these four (4) items were unwrapped they revealed what appeared to be hand grenades. The other clear bags contained one (1) card board box, one (1) oval shaped item and five (5) other items wrapped in brown masking tape. The card board box contained what appeared to be thirty-five (35) live rounds of 9mm caliber ammunition. The oval shaped item appeared to be a grenade. Four (4) of the five (5) other items appeared to be detonators for grenades.

[4] The defendants were told by the police that it was suspected that the items found were illegal narcotic drugs, firearms and ammunition. The defendants having been cautioned were asked

whether they were licensed to possess arms and ammunition to which they all replied in the negative.

[5]. On April 4 2012, the defendants along with two other persons, not the subject of these proceedings, were indicted by the Director of Public Prosecutions for the following offences:

COUNT ONE (1)

Possession Certain Controlled Drugs To Wit: Cocaine.

Contrary to Section 8(2) of the Drug Prevention of Misuse Act Cap. 3.02 of the Revised Laws of Saint Lucia 2008.

COUNT TWO (2)

Possession Certain Controlled Drugs To Wit: Cocaine With Intent To Supply To Another

Contrary to section 8(3) of the Drug Prevention of Misuse Act Cap 3.02 of the Revised Laws of Saint Lucia 2008.

COUNT THREE (3)

Importation of A Certain Drug To Wit: Cocaine.

Contrary to Section 5(3) of the Drug Prevention of Misuse Act Cap. 3.02 of the Revised Laws of Saint Lucia 2008.

COUNT FOUR (4)

Possession of Thirty-five (35) Nine Millimeter Calibre Live Rounds Of Ammunition Without A Valid Licence.

Contrary to Section 22(3) of the Firearms Act Cap. 14.12 of the Revised Laws of Saint Lucia 2008.

COUNT FIVE (5)

Possession Of Fifteen (15) Twelve (12) Gauge Caliber Live Rounds Of Ammunition Without A Valid Licence.

Contrary to section 22 (3) of the Firearms Act Cap. 14.12 of the Revised Laws of Saint Lucia 2008.

COUNT SIX (6)

Possession of One (1) Twelve (12) Gauge Caliber Shot Gun (model-90D Make Savage – Serial Number A4340A) Without A Valid Licence

Contrary to section 22 (3) of the Firearms Act Cap. 14.12 of the Revised Laws of Saint Lucia 2008

COUNT SEVEN (7)

Possession of Five (5) Live Grenades

Contrary to section 3 (1) (e) of the Firearms Act Cap. 14.12 of the Revised Laws of Saint Lucia 2008.

[6]. **THE ARRAIGNMENT**

The defendants and the other two persons were first arraigned on the 16th April, 2012, at which time the defendants Narine Cheecharran and Carlton Sam pleaded guilty to counts 1, 4, 5, 6, and 7 of the indictment aforesaid whilst the other defendants pleaded not guilty to all counts therein. The court set a date for a sentencing hearing of the defendants Narine Cheecharran and Carlton Sam whilst a date was fixed for a case management hearing for the remaining defendants. On the 15th May, 2012, at the request of defence counsel, Mr. Shawn Innocent, the defendants were again

arraigned and on this occasion the four (4) defendants herein pleaded guilty to counts 1, 2, 4, 5, 6 and 7 of the indictment. The crown withdrew count 3 and discontinued proceedings against the other two persons. The court thereupon ordered a pre-sentence report be produced for each defendant and fixed a date for a sentencing hearing.

[7]. **THE HEARING**

At the sentencing hearing the court was provided with the pre-sentence reports for the defendants as ordered. Both crown counsel and defence counsel declined an opportunity to cross examine the probation officers and accepted the contents of the pre-sentence reports unchallenged. Counsels sought and were granted leave to file and serve written submissions together with authorities relied on.

[8]. The pre-sentence reports of Noel Persaud and Selwyn France made startling revelations which called into question the issue of whether or not their guilty pleas were unequivocal. Noel Persaud's pre-sentence report at pages three (3) and four (4) stated thus:

> ***"The defendant informed that he and his crew sailed from Guyana, destined for Monsterrat and St. Martin. He said that the vessel of which he had captaincy, encountered some engine trouble about ten (10) miles off St. Lucia. He informed that whilst the machine was being repaired by the engineer, the boat was adrift, when they were accosted by the police. According to him the police came aboard and carried out a search, and retrieved certain illicit items, and he and his crew were arrested as a result." Mr. Persaud stated that he was hired by the owner of that particular boat for the first time and was not familiar with the rest of the crew onboard. He said that he was not working at the time and when he was contacted***

to do the job he retained his engineer, who usually works alongside him. He informed that he was not aware of any illegal items being carried on the vessel, and his only interest was to get the sand carry/mining task done in the Northern islands. The defendant affirmed that he knew nothing concerning the items for which he is jointly charged, and posited that the other crew were aware and have admitted to the possession." (underscoring mine)

[9]. Selwyn France in similar vein stated to the probation officer as recounted by him in the pre-sentence report the following story:

"***The defendant stated that his sole role onboard the vessel was a technical man for the engine and that he was unaware of any contraband being transported there in. He added that it was customary for him to traverse the seas as an engineer, in order to maintain the vessels that would be engaged in transporting sand between the islands. However he noted that this was the first he had mounted this vessel in question. He further informed that the other persons in the matter have taken ownership of the illegal items and hitherto his incarcerated. He stated that he was advised to change his plea by the representing attorney and noted that if fined he would not be in a position to pay any amount. His sole request is to be sent to his homeland." (underscoring mine)***

[10]. **THE CASE AGAINST NOEL PERSAUD AND SELWYN FRANCE**

The court will examine the circumstances around the purported guilty pleas of the defendants Noel Persaud and Selwyn France. It is trite law that the offences to which these defendants pleaded guilty all possess an element of knowledge. Thus it is expected that in the usual course of events

inherent in a plea of guilty to the offences in the indictment herein is an admission that the defendant was well aware that he had in his possession the illegal or impugned articles set out and described in the particulars of the offence. These defendants in their interviews with the police maintained their innocence and ignorance of the presence of the items constituting the subject matter of the counts in the indictment. Not surprisingly at the initial arraignment these defendants entered pleas of not guilty. Approximately one month later however these two defendants changed their pleas to guilty.

[11]. Counsel sought to address this issue in their written submissions. Crown counsel, Mr. Brette, spoke of the toing and froing in negotiations between the parties to arrive at a suitable plea deal, a not unusual exercise in these matters. In his written submissions he stated:

> ***"The prosecution accepted the guilty pleas tendered by Sam and Cheecharran and requested a date for case management of all the pleas of not guilty, including those of Sam and Cheecharran. A sentencing hearing date was set for the guilty pleas. Prior to that date defence counsel renewed his plea offer. It was then communicated to defence counsel that on the authority of Ortiz & Ors v the Police (1993) 45 WIR 118, [as well as a previous conviction in Barbados for the offence of Possession of Controlled Drugs against Captain Noel Persaud] the crown would not entertain dropping the charges against Persaud. Apropos the dropping of charges against Selwyn France who is the vessel's engineer the Crown would also not entertain this on the basis that the location of the contraband was exactly a place frequented by the engineer prior to setting off. The manner of packaging bound to have attracted his attention especially being the second most senior person in rank aboard the vessel."***

[12]. According to crown counsel however, the crown agreed to drop the charges against the other two persons not the subject matter of this hearing provided that the four defendants herein agree to plead guilty to all charges except the one in count 3 of the indictment. He urged the court not to exercise its discretion to allow these defendants to withdraw their pleas of guilty which he terms as unequivocal.

[13]. Mr. Innocent on the other hand and rather surprisingly submits that the guilty pleas by these two defendants might well be equivocal. He finds support for this contention by the submissions of Mr. Brette aforesaid and goes on to submit that the insufficiency of evidence to secure a conviction of these defendants would be ground for considering the guilty pleas of his clients to be dubious.

[14]. **LEGAL ANALYSIS**

In the leading case of S (an infant) v The Recorder of Manchester (1971) AC 481 at 501 Lord Morris of Borth-y-Gest said:

> ***"Guilt might be proved by evidence but also it may be confessed. The court will however, have great concern if any doubt exists as to whether a confession was intended or as to whether it ought really ever to have been made"***

[15]. The defendant Selwyn France stated aforesaid to the probation officer in the pre-sentence report that he was advised to change his plea by his attorney. This was said against the background of his disclaimer of knowledge of the presence of the illegal items listed in the indictment. The defendant Noel Persaud who also denies knowledge of the said illegal items found on the vessel gave no reason for pleading guilty. In respect of both defendants it is common ground that they maintained their innocence up to the time when they changed their pleas unlike the defendants Narine Cheecharran and Carlton Sam who in their statements under caution to the police readily

admitted knowledge of the illegal items and their involvement in receiving them together with the promise of a large sum of money upon their successful delivery.

[16]. While it is well known that many defendants though knowing they are guilty of the offence alleged against them plead not guilty in the hope of an acquittal, it is incumbent on counsel to advise a client of the advantages and disadvantages of the plea of guilty or not guilty as the case may be. However a defendant should be told to plead guilty **only if he admits to being guilty**.

[17]. There is no formal application by these defendants to vacate their pleas of guilty. However, as stated aforesaid the defendants have consistently maintained their innocence of these offences to which they have pleaded guilty. An analysis of the circumstances leading up to the change of plea by these defendants discloses the likelihood of them being pressured to enter pleas of guilty to facilitate the position of their co-defendants who were discharged.

[18]. The defendant, Selwyn France, in his pre-sentence report spoke of his inability to pay a fine which indicates that at some stage of discussions he was either made to believe or concluded on his own bereft of legal advice that the penalty to be imposed would be a monetary one.

[19] In the circumstances herein I find the position taken by defence counsel to be unhelpful in the determination of the question of whether the pleas of these two defendants are unequivocal. Defence counsel has been critical of Mr. Brette's disclosure of details of the discussions between the parties which resulted in the change of plea by these defendants alleging a breach of lawyer/client confidentiality. I find however, that when the defendant Selwyn France informed the probation officer that he pleaded guilty at the advice of counsel, though he knew nothing of the illegal articles, he relinquished his right to and reliance on professional privilege. Moreover, it was at the behest of defence counsel that the indictment was re-read to these two defendants at which

time they entered pleas of guilty. As such there is nothing before the court to support the contention that when these defendants entered guilty pleas they were doing so as an act of confession or admission of their guilty involvement in these offences.

[20]. In Regina v Hafeez Sheikh et al (2004) EWCA (Crim) 492 at paragraph 16 Mantell LJ said:

> ***"It is well accepted that apart from where the plea of guilty is equivocal or ambiguous, the court retains a residual discretion to allow the withdrawal of a guilty plea where not to do so might work an injustice. Examples might be where a defendant might be misinformed about the nature of the charge or availability of the defence or where he has been put under pressure to plead guilty in circumstances where he is not truly admitting guilt. It is not possible to attempt a comprehensive catalogue of the circumstances in which the discretion might be exercised. Commonly however, it is reserved for cases where there is doubt that the plea represents a genuine acknowledgement of guilt." (emphasis added)***

[21]. I find from the denials by these defendants of knowledge of and/or involvement in the illegal articles found on the vessel, that their guilty pleas do not amount to a true admission of guilt. I further find that their convictions are flawed in that they rest on pleas of guilt which were vitiated by the absence of admissions or confessions of guilt, possibly brought about by them being pressured to do so as part of a clumsily brokered plea deal. Accordingly, the guilty pleas of the defendants Noel Persaud and Selwyn France are vacated and pleas of Not Guilty will be entered against them. A date for case management will be fixed in due course.

[22]. **THE CASE AGAINST NARINE CHEECHARRAN AND CARLTON SAM**

These defendants have both taken responsibility for their actions and stated in their pre-sentence reports that they were promised substantial sums of money to transport the illegal articles on the vessel. Mr. Innocent regards the following to be the mitigating factors herein:

EARLY PLEA OF GUILTY

1. The defendants all pleaded guilty at the first available opportunity. In addition the defendant did not attempt to avoid apprehension and cooperated fully with the authorities;
2. The defendants will all contend that they are entitled to a full discount of one-third (1/3) from the national sentence that the court intended to impose

ABSENCE OF PREVIOUS CONVICTIONS

3. None of the defendants have previous convictions for any or any similar offence and have hitherto been persons of good character. Further, if one accepts what has been narrated in the pre-sentence report it is evident that the defendants are not known drug traffickers and there is nothing in the evidence to indicate otherwise. It cannot be said that any of the defendants have engaged in this criminal enterprise as part of a trade or profit. From all indications the commission of the present offence was an aberration.

PROSPECTS FOR REHABILITTION AND REFORM

4. It appears from the pre-sentence reports submitted to the court that the defendants are good candidates for rehabilitation and reform. For all intents and purposes they appear to be model prisoners and it is unlikely that a term more than commensurate with the seriousness of the offence is required to be imposed on the defendants for the purpose of

the protection of society from harm from the defendants. Also, the court ought to take this aspect of the case into consideration when determining sentence from the point of view that very little if any length of imprisonment beyond the commensurate period will be required to achieve the objects of rehabilitation or reform.

5. In addition to the matters stated above it is submitted that any sentence imposed should not have as its object the need for personal deterrence. This is clearly evident in view of the observations made.
6. It is also submitted that the object of general deterrence serves no basis in formulating an appropriate sentence for the commission of these kinds of offences.
7. In any event the defendants will seek to rely on the approach espoused by Byron CJ at paragraphs [35], [42] in Baptiste

[23]. Mr. Innocent also urged the court to consider the following to be the aggravating factors herein:

1. The court may rely on the following aggravating features of the present case in determining the seriousness of the offence and the amount of penalty required to reflect punishment for the offences.
2. The value and quantity of the prohibited substance confiscated.
3. The fact that the third and fourth named defendants have admitted that they engaged in the prohibited enterprise for financial gain. However, it is submitted that the court ought to counter balance this against the prevailing harsh economic realities of the times. In addition the defendants have not received any compensation for their efforts. Furthermore, governmental policy has lately recognized the need to adopt a more lenient approach towards sentencing offenders of this kind while focusing more attention on persons who have a propriety and monetary interest in engaging in illicit trafficking for

financial gain while preying on the economically disadvantaged to perpetrate such offences on their behalf.

4. Apart from the seriousness of the offence with respect to the matters stated at 9. 1 – 9.2 above there appear to be no other aggravating features to the present case. The prevalence of these kinds of offences in recent times is clearly a factor to consider and this can be reflected in the retributive aspect of the case and ought not to be considered separately as pointing to the need for general deterrence.

[24]. Crown Counsel, Mr. Brette, contends the following to be the aggravating and mitigating factors herein:

AGGRAVATING FACTORS

1. The quality and value of drugs are significant
   a. 29.46 kiligrams of cocaine - $870,000.00
   b. 46.37 kilograms of cannabis - $82,720.00
2. The wide assortment of contraband that was being trafficked; firearms and ammunition two different calibers, grenades, controlled drugs of two different types.
3. The caliber of firearms and ammunition – nine millimeter 12 gauge shot gun and grenades. Such calibers are designed for use by the military and law enforcement.
4. The prevalence of drug offences, firearm offences and drug trafficking in St. Lucia and the Caribbean;
5. The seriousness of the offence of drugs and arms trafficking;
6. Previous conviction for a similar offence in the case of Persaud [contrary to the misleading assertion that all defendants had no previous conviction]

MITIGATING FACTORS

1. A late plea of guilty – [contrary to the assertion by the defence that it was early] serves to lessen any reduction
2. No previous conviction for Sam, Cheecharran and France

[25]. **THE LAW**

The court will apply the classical principles of sentencing namely retribution, deterrence, prevention and rehabilitation as laid down by Lawton LJ in Regina v James Henry Sargeant 1974 60 Cr. App. R. 74 and approved and applied by Sir Dennis Byron in Desmond Baptiste et al v Regina.

RETRIBUTION

The defendants for filthy lucre were involved in a serious criminal activity that is unlawful possession of cocaine, firearms and ammunition. It is a notorious fact that the possession and use of firearms is a prerequisite for sustained and high level narcotic operations. Indeed rival drug factions are known to settle their differences or turf wars with the use of firearms. What is more disturbing however is that illegal firearms are used by drug dealers to attack police officers in the conduct of their duties. The debilitating and devastating effect of cocaine particularly on the youth of this nation is the well-known.

The fact that these defendants were willing participants in the transportation of these dangerous weapons and unlawful drugs are not matters to be lightly treated. It is imperative in these circumstances that the court must by the sentence it imposes, show it abhorrence for this kind of criminal activity aptly described as an evil trade.

DETERRENCE

I have in a previous judgment described the drug trade as a fast growing unlawful commercial activity. What is more egregious in this matter is that the defendants succumbed to the lure of easy money to transport and distribute not just cocaine but firearms commonly used by those involved in the narcotic trade to avoid apprehension by law enforcement officials. The court must impose a suitable sentence to deter others from following suit.

PREVENTION

The defendants are first offenders but by their involvement in these types of criminal activity is indicative of their willingness to be part of a criminal activity of international proportions. Clearly they were not satisfied by their incomes from the respectable and legitimate trade of mariners.

REHABILITATION

The defendants have expressed regret and remorse for what they did. There have been no complaints from the Bordelais Correctional Facility about their conduct. As such there is nothing before this court which indicates that the defendants are not amenable to rehabilitation. They are both possessed of employable skills from which they could take advantage upon their release from the Bordelais Correctional Facility.

[26]. I find the following to be the aggravating and mitigating factors herein

AGGRAVATING FACTORS

1. The substantial amount of cocaine found in the possession of the defendants;
2. The fact that the defendants were prepared to transport cocaine, firearms, grenades and ammunition internationally;

3. The fact that the firearms may be used against law enforcement officers of this nation;
4. The seriousness of these offences.

MITIGATING FACTORS

1. The defendants early guilty plea,
2. The remorse expressed by the defendants who have taken responsibility for their actions
3. The hitherto clean criminal records of the defendants.

[27]. I have considered and balanced the aggravating and mitigating factors in light of all the circumstances of this case and find that the aggravating factors significantly 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 are liable to imprisonment of seven (7) years or a fine not exceeding two hundred thousand ($200,000.00) dollars. 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 two hundred thousand ($200,000.00) dollars. The offence of importation of a class A drug to wit: cocaine carries a penalty of fourteen (14) years imprisonment.

[28]. The court has considered the written submissions by counsel on both sides together with authorities in support of their submissions. The court has also benefitted from authorities on the approach taken by courts in the region on sentencing in offences of a similar nature.

[29]. Both defendants have expressed regret and remorse for what they did and clearly yearn to be allowed to return to their homeland. The defendant Carlton Sam has alluded to the financial difficulties being currently experienced by his family whilst he is incarcerated in a foreign country. I find in the circumstances the dictum of the court in Attuh-Benson (2005) 2 Cr.App. R. (s) 11 is most instructive:

> ***"This Court is acutely conscious of the effect of long sentences upon the families of offenders, be they mothers or fathers. We need no reminding that it is very often the innocent who suffer from crime. As the Court observed in Whitehead [1996] 1 Cr. App. R. (S) 111 'the courts are always reluctant to send the mother of young children to prison. Sometimes they have no alternative'".***
>
> ***When a parent, be it mother or father, commits an offence as serious as this, there is, quite simply, no alternative. Drug addiction is a blight on society and causes untold misery throughout the world. The courts of this country and elsewhere have no choice, in our judgment, but to impose substantial sentences upon those who willingly involve themselves in what has rightly been referred to as an evil trade.***

[30]. The estimated street value of the cocaine found in the possession of the defendants is eight hundred and seventy thousand ($870,000.00) Eastern Caribbean dollars. However, the matter does not end there as the defendants by their own admission willingly prepared to facilitate the transportation of illegal firearms, ammunition and grenades. Illegal firearms by themselves are usually acquired for an unlawful purpose. Here however, the combination of illegal firearms, ammunition, grenades and cocaine makes this situation that much more egregious for the reasons stated aforesaid. The court has a duty to the public interest, hence it is incumbent on the court to

impose a suitable sentence to deter others and send an unequivocal message to those bent on promoting what has been described as the evil trade of narcotics and the undesirability of trafficking in firearms, ammunition and explosive devices.

[31]. Section 3(1) (e) of the Firearms Act expressly prohibits the possession by any person of live grenades. Section 3(3) provides a mandatory minimum sentence of fifteen (15) years imprisonment for anyone who contravenes section. Section 22 (4) (a) (ii) of the said act provides for a mandatory minimum of ten (10) years imprisonment for the unlawful possession of firearms and ammunition.

[32]. I have taken into consideration the seriousness of the offences for which the defendants are convicted. I have also taken into consideration the mitigating factors in respect of the defendants herein. I have also considered the fact that the defendants are amenable to rehabilitation.

[34]. I have considered counsel's submissions on the mandatory minimum sentences provided by parliament in the Firearms Act and the dictum of Gordon JA in Thelbert Edwards. In that decision Gordon JA, whose decision represented the decision of the majority of the court, considered the provisions of section 73 (2) (a) of the Motor Vehicles and Road Traffic Act and found that section to be in breach of section 5 of the constitution, in that the mandatory minimum sentence of five (5) years imprisonment for the offence of causing death by dangerous driving to be inhuman and degrading punishment. However, at paragraph 45 of his decision Gordon JA opined thus:

> "***Although I have found the minimum sentence of five (5) years imprisonment on conviction to be grossly disproportionate and hence unconstitutional, nevertheless, I cannot ignore that Parliament has sent a strong signal of its view of the increasing seriousness of the offence of causing death by dangerous driving. The maximum sentence has been increased from ten (10) years under the 1994 Motor Vehicles and***

Road Traffic Act to its present maximum of fifteen (15) years. In the circumstances, the courts must give efficacy to the mood of Parliament as expressed through legislation. I would opine that unless good reason or special circumstances exist, an offender convicted of causing death by dangerous driving must expect a custodial sentence on conviction."

[33]. I have taken into consideration the mitigating factors in all the circumstances of this case and find that they do not reach the threshold required to justify a non-custodial sentence herein in respect of the offences committed contrary to the provisions of the Firearms Act. I have also considered the socio-economic factors urged by Mr. Innocent for the court's consideration as a mitigating factor. I find that at the time when they agreed for a substantial sum of money to be involved in these heinous offences the defendants were legitimately employed as seamen and merely for filthy lucre allowed themselves to be lured in to the evil trades of drug and firearms trafficking.

[34]. The maximum sentence for possession of cocaine is seven (7) years imprisonment. I find that a benchmark of four (4) years imprisonment to be appropriate here. I will deduct two (2) years for the early guilty pleas and hitherto clean criminal records of the defendants. I also find a benchmark of ten (10) years imprisonment to be appropriate for the offence of possession of cocaine with intent to supply from which I will deduct three (3) years for the reasons aforesaid.

[35]. I have applied the principles enunciated by Gordon JA in the Thelbert Edwards decision to the provisions of the Firearms case. I find that notwithstanding the mandatory minimum provisions stated therein, the court is still seised of discretion to impose a suitable sentence having regard to the circumstances of each case. The court must however give efficacy to the mood of Parliament and treat these offences with the seriousness which they deserve. I find the concept of trafficking

in firearms, ammunition and live grenades internationally to be alarming and as such the court must impose a suitable sentence to show its abhorrence therefor. However, though heinous, this case does not classify as the worse of the worst. So I find that a benchmark of twelve (12) years imprisonment to be appropriate for the possession of grenades from which I will deduct four (4) years. I find a benchmark of seven (7) years imprisonment appropriate for the offences of possession of firearms and ammunition from which I will deduct three (3) years.

[36]. Accordingly, the defendants are sentenced as follows:

1. Possession of cocaine contrary to the Drugs (Prevention and Misuse) Act two (2) years imprisonment:
2. Possession of cocaine with intent to supply seven (7) years imprisonment,
3. Possession of unlicensed firearms four (4) years imprisonment
4. Possession of ammunition four (4) years imprisonment,
5. Possession of grenades eight (8) years imprisonment.

[37]. The sentences shall all run concurrently and the defendants shall be credited for all time spent on remand whilst awaiting trial.

[38]. I have considered the discrete point raised by Mr. Innocent on the constitutionality of section 8 of the Drugs Act but the court was not afforded the benefit of full arguments on this issue. Hence I make no ruling on it. Similarly, apart from a side wind in Crown Counsel's written submission, there is no formal application before the court for forfeiture of the vessel hence again no ruling is made thereon.

[39]. The defendants shall not be released upon the termination of their sentences but shall be kept in custody pending deportation proceedings before the District Court.

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FRANCIS M.CUMBERBATCH
HIGH COURT JUDGE