

SAINT LUCIA

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

CASE NO. SLUCRD2013/1965, 1966, 1967, 1968

BETWEEN

THE QUEEN

-v-

1. ALLINGTON BARON
2. LUIS MARIN

Defendants

Appearances:

Mr. Leslie Mondesir Counsel for the Defendants
Mrs. Jenin Samuel-Kisna for the Crown

2016: May 13.

DECISION ON SENTENCING

- [1] **TAYLOR-ALEXANDER J (Ag)**,: This matter comes on for decision on Sentencing. I had delivered an oral decision on the 13th of May 2016 and had promised to reduce my decision to writing. This exercise fulfils that promise.
- [2] The defendants were each indicted on a two count indictment for the offences of Possession of Controlled Drugs (Cocaine), and for Possession with Intent to Supply, contrary to Section 8(2) and 8(3) respectively, of the Drug (prevention of misuse) Act Cap 3.02, of the Revised Laws of St. Lucia.
- [3] The defendants took advantage of the early guilty plea scheme and at arraignment entered pleas of guilty to both counts on the indictment. The defendants were sentenced on the 2nd of March 2016 and the court gave an oral decision.

- [4] The following documents were filed for the sentencing hearing:—
- (a) The summary of facts;
 - (b) The Crown's submissions on sentence;
 - (c) Addendum to Crown's submission on sentence;
 - (d) The defendants plea in mitigation;
 - (e) The Pre-sentence report.

The Relevant Facts

- [5] The facts were read into the evidence at arraignment and agreed and are that on Wednesday the 6th day of November 2013, as a result of information received, a crew of Police Officers attached to the Marine Unit including PC 312 Charles, and PC 548 Errol Leonce, left the Unit's base at Ganther's Bay for patrol on board the Police patrol boat named Papa Oscar 9 (PO9). PC Leonce was the coxswain.
- [6] He was headed in a northerly direction when he sighted a vessel fitting the description of one given in the information he received, headed in a northerly direction as well, towards Martinique. He increased the speed of the police vessel and got to within one hundred yards (100) of the vessel. He saw the name 'Mari Posa' written on the stern. He intercepted the vessel with two persons on board, about four (4) nautical miles into the territorial waters of St. Lucia. The captain identified himself as Allington Baron of Dominica and his crew as Luis Marin of Venezuela. The vessel 'Mari Posa' was escorted by the police vessel into the Rodney Bay Marina.
- [7] At the Marina, the police from the marine vessel were joined by PC 683 Charlemagne and PC 738 Antoine from the Drug Squad. PC Leonce handed over the two defendants to PC Charlemagne. PC Charlemagne identified himself to the two men and asked them whether they had any illegal substance aboard the yacht. They both responded by saying "no". PC Charlemagne informed them that he would be conducting a search of the vessel. During the search PC Charlemagne lifted a detachable floor of the vessel which led to the engine room. He came across a bolted metal covering in the flooring of the vessel. PC Charlemagne asked Allington Baron what was under the metal covering and Baron answered that it was water. PC Leonce unbolted the covering and lifted it. He saw three (3) white polythene sacks, tied with rope in a compartment under the metal

covering. The sacks contained blocks. He showed the polythene sacks to the two defendants and informed them that he suspected the packages contained controlled drugs. He secured the polythene sacks where they were found on the vessel. The defendants were transmitted to the Police Marine Unit in Castries by Papa Oscar 9.

- [8] Later that same day at the Police Marine Unit, the three polythene sacks were opened by Constable Charlemagne in the presence of the defendants. Each bag contained twenty five (25) rectangular blocks totaling seventy five (75) rectangular blocks. Constable Charlemagne made an incision in each block. A white powdery substance was seen. The Certificate of the drug analyst, upon examination, confirmed that the whitish substance of the rectangular blocks was cocaine of a total weight of **75 kg**.

Pre-Sentence report of Allington Baron

- [9] This defendant was born on the 8th March 1968 and at the date of sentence was 47 years old. He has no previous convictions. He stated that he is a seaman by profession, and that he has captained his own charter vessel. The defendant is originally from Dominica but has resided in St. Lucia for the past 18 years. He is remorseful about this incident which he says had brought shame upon his family and upon himself. The defendant offered an explanation to the probation officer that he was offered a trip to transport cocaine, to which he succumbed.
- [10] The pre-sentence report and his plea in mitigation reveals that Allington Baron has always been gainfully employed and has worked in St. Marten and Guadeloupe. In St. Marten the defendant earned about US\$1200.00 per month, doing boat maintenance. In Guadeloupe, in a similar position, the defendant earned about \$5,000.00 Francs per month and in Tortola as a boat captain about US\$3,000.00 monthly. Prior to his incarceration, the defendant had purchased his own sailboat and operated a charter service in the British Virgin Island, St. Vincent and the Grenadines. He earned about US \$7,000.00 monthly.
- [11] The defendant is spoken of highly by his community of Balata in Castries. He is not perceived as a threat to the community. He is in a common law relationship and has two children. His common law wife described him as having a good relationship with his family. The defendant has been

incarcerated from November 2013, a period of 2 years 4 months. He is described as a model inmate by the operators of the Bordelais Correctional Facility where he has been remanded.

Plea in Mitigation Luis Marin

[12] A pre-sentence report was not done for the accused Luis Marin as he is of Venezuelan nationality and is not known to the law. The defendant is 40 years old and was born on the 16th June 1975. He is a Venezuelan national. He states that he is a self-employed fisherman and a farmer. He is in a common law relationship which has borne 4 children. He came from a lower income family of 14 children. His own family situation has been difficult since this incident as his children have been forced to drop out of college as he has been unable to pay their tuition payments. This has caused the defendant to be filled with the deepest regret as he did not want his children to be like him and he was desperate to send them to school.

[13] The defendant admitted to having previous convictions in his home country which are not similar to the offences which are at present before the court for consideration. He has expressed remorse for this present offence. The operators of the Bordelais Correctional Facility describe him as a model inmate. His lawyer reminds the court that he does not speak English and his ability to benefit from the rehabilitation and other programs offered at the prison facility, is consequently compromised.

Judicial Approach to Sentencing

[14] In determining the appropriate sentence for an offender, I am required firstly to consider the nature of the offence and the statutory penalty imposed. I must also consider the statutory and judicial guidelines, and the character of the offender as provided for in the plea in mitigation and the probation report. This includes the subjective factors which may have influenced the offender's actions. I am also required to take into account the mitigating and aggravating factors.

[15] The defendants have been convicted of drug offences regulated under the under the Drug (Prevention of Misuse) Act Cap 3:02, Section 4 and Schedule 2 Part 1. Both Cocaine and Cannabis are Class A controlled drugs. Section 8 (1) and 8 (3) makes it an offence for such drugs to be in a person's possession and to have such drugs with intent to supply. Section 37 and

Schedule 3 of the Act imposes a maximum penalty on indictment for possession of a Class A drug of 7 years or 200,000.00 and for possession with intent to supply a Class A drug of 14 years **and/or** 200,000.00.

[16] I also had recourse to Section 1123 of the Criminal Code Cap.3.01, as a tool in sentencing, which gives the court the discretion to sentence any person to any less term of imprisonment than that prescribed by the Code or other enactment. This rule to my mind preserves the common law discretion of the judiciary.

Aggravating/Mitigating Factors

[17] The Crown and the defendants differed on the aggravating and the mitigating circumstances. The Crown submits that the aggravating factors outweighed the mitigating factors, while the defendants concluded that the mitigating factors prevailed. I have found the following to be the aggravating and mitigating factors:—

Aggravating

- The drugs are of significant quantity namely 75 Kilograms;
- The prevalence of drug offences and drug trafficking offences in St. Lucia;
- The seriousness of the offence;
- The offence was planned and premeditated.
- The defendants attempted to conceal the discovered drugs by lying to the officers.

Mitigating

- The defendants pleaded guilty at arraignment;
- The defendants have no previous convictions;
- The defendants have expressed remorse.

[18] I have concluded that the aggravating circumstances outweigh the mitigating circumstances. This must be reflected in the sentence imposed.

Statutory Guidelines on Sentencing

[19] Section 1102 of the Criminal Code provides general guidelines on the sentencing of offenders as follows:—

- (a) the rehabilitation of the offender is one of the aims of sentencing;*
- (b) the gravity of a punishment must be commensurate with the gravity of the offence;*

- (c) *an offender shall only not be sentenced for an offence of which the offender has been convicted or for another offence or other offences which the offender has asked the Court to take into consideration in passing sentence;*
- (d) *where a fine is imposed, the Court in fixing the amount of the fine must take into account, among other relevant considerations, the means of the offender so far as these are known to the Court, regardless of whether this will increase or reduce the amount of the fine."*

These guidelines are not exhaustive and are to be supplemented by the judicial principles on sentencing.

Judicial Principles on Sentencing

[20] The courts have consistently relied on the principles applied in **Regina v James Henry Sargeant**, 60 Cr App R 74 at 77 where Lawton LJ submitted that it necessary not only to analyse the facts, but to apply to those facts to the classical principles of sentencing. Byron CJ as he then was in **Desmond Baptiste et al v The Queen** Criminal Appeal No.8 of 2003, restated these principles to be Retribution, Deterrence, Prevention and Rehabilitation and explained their application thus:—

- a) **Retribution-** The court must, by the sentence imposed, reflect its abhorrence and by extension society's, for the persistency and the prevalence of this offence in this society.
- b) **Deterrence-** This principle serves to deter potential offenders and the offender himself from recidivism.
- c) **Prevention-** The goal here is to protect society from those who persist in high rates of criminality through incarceration.
- d) **Rehabilitation-** The objective is to engage the prisoner in activities that would assist him with reintegration into society after prison.

[21] All of these principles are applicable, some to a greater or lesser degree. In my view the protection of the public from the scourge of these drug offences is of paramount importance in this case. I have therefore prioritized Prevention, Deterrence and Retribution.

Custodial or Non-Custodial Sentence

[22] I use as a starting point the question of whether this is a case fitting for the imposition of a custodial sentence or a non-custodial sentence.

- [23] Lord Lane C.J. in **R v Bibi [1980] 1 WLR 1193** explained a Judge's role on sentencing as follows:-
"...We are not aiming at uniformity of sentence; that would be impossible. We are aiming at uniformity of approach."

Our Court of Appeal in **Desmond Baptiste v R** directed the approach to sentencing as follows:-

"a judicial officer should first approach the matter from the standpoint of determining whether a custodial or non-custodial sentence is appropriate."

- [24] The quantity of drugs recovered was significant. 75 kg. of Cocaine. The evidence reveals that the defendants had the drugs in a hidden compartment of the vessel and that when confronted by the police they did not readily admit to the possession of the drug but mislead the officers as to what was contained in the hidden compartment. The defendants it appears, were at the time importing these drugs into the island. The legislature has increasingly raised the penalty for drug offences in an attempt to target distributors and users and it therefore advocates stiffer penalties, where the operation is on the more serious and commercial scale. There was nothing in the evidence to suggest that the defendants were users themselves nor did they give the court that impression. From the quantity of drugs recovered, it is clear that their objective was distribution and financial gain. I have also considered the sophisticated nature of concealment to avoid detection, and the defendants denial of the presence of the drugs when questioned by Police. Both the defendants are equally culpable, and based on my assessment only a custodial sentence is appropriate.

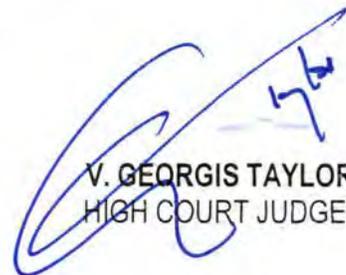
- [25] The defendants both pleaded guilty at the first available opportunity. The Practice Direction on early guilty plea advocates for an automatic 1/3 discount of a sentence. In **Desmond Baptiste v The Queen** Byron CJ approved the UK practice that a discount for early guilty plea should be applied not to the maximum sentence possible under the statute but rather to a notional sentence the sentencer might have given save for the guilty plea.

Comparable Cases

- [26] In the St. Lucia Court case of **The Queen v Albert Robin** for drug offences, Cumberbatch J found aggravating and mitigating factors similar to the case at bar. Using a bench mark of four (4) years for Possession and ten (10) years for Intent to Supply; the defendant was sentenced to two (2)

years imprisonment for the offence of Possession of Cocaine and seven (7) years imprisonment for the offence of Possession of Cocaine with Intent to Supply; sentences to run concurrently. The quantity of drugs in Robin was a total weight of 22.38 kilograms. In the St. Lucia case of **The Queen v Narine Cheecharran and Carlton Sam**, using the same bench mark as in **Robin**, the defendants were visited with similar sentences for Possession and Possession with Intent to Supply 29.46 kilograms of Cocaine, by the same Court as in Robin.

- [27] Having reasoned all of the above and using a benchmark of 4 years for Possession and 10 years for Possession with intent to supply, I sentence both defendants to 1 year for Possession of a Controlled Drug, and 7 years for Possession with Intent to Supply. The defendants are to be credited with time spent on remand.



V. GEORGIS TAYLOR-ALEXANDER
HIGH COURT JUDGE