

SAINT LUCIA

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

CASE NO. SLUCRD2017/0697, 0697A

BETWEEN

THE CROWN

VS

SHAWN GITTENS

Defendant

Appearances:

Stacey-Anne St. Ville for the Crown

Lorne Theophilus for the Defendant

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2019: April 30;  
May 3.  
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DECISION

- [1] TAYLOR-ALEXANDER, J.: The Defendant requested a sentenced indication hearing for the offences of possession of a controlled drug, possession with intent to supply and attempt to export a controlled drug. These are all offences under the Drug (Prevention of Misuse) Act Cap 3.02 of St. Lucia.
- [2] Sentence Indication Practice Direction No. 2 of 2015, establishes the procedure following R V Goodyear [2005] EWCA Crim 888, for an indication of a likely sentence a Defendant would receive were he to plead guilty at that point in time.
- [3] The Defendant requests an indication of a sentence of a particular type and within a particular range or a combination thereof. It was agreed that the hearing would proceed on the evidence advanced by the Crown at the sufficiency hearing but that this **was to include the Defendant's statement under caution.**

The Agreed Facts:-

[4] The Defendant is a Barbadian National who was exiting St. Lucia on route to Canada.

(1) While at the Hewanorra International Airport he was approached by a Security Officer, who wished to pat him down. By his own admission, he **told the security officer “No, not right here” which the officer concluded as** being an outright refusal to be searched. The security officer, Mr. Marquis informed his supervisor that the Defendant had refused the pat down and he, Mr. Marquis requested that he leave the area. While complying with the directive, the Defendant was stopped by Mr. Bideau, a Customs Officer, to whom he admitted having items strapped to his person. Although he claimed not to know what it was, he believed that it was illegal.

(4) The police were notified. The Defendant was subsequently arrested and he gave a detailed seven (7) page statement under caution to the police outlining that while he may have had physical custody of the items, he was not in control of the same and was acting under duress, with threats of violence being made against his family. The packages recovered from the Defendant were subsequently determined to be cocaine of a total quantity of 3.85 kilograms.

(5) The Defendant was charged and brought before the Magistrate of the Second District Court on the 14<sup>th</sup> day of November, 2017. The Defendant who was at that time unrepresented continued to allege that he was acting under duress and under threat of gun violence and that he was in fact trying to turn the cocaine over to law enforcement, whilst attempting to play along with the persons who were forcing him to carry the cocaine against his will.

(6) The allegations were neither proven nor dispelled.

- [5] The Crown and the Defendant here agreed the total net weight of the cocaine to have been 3.85 kilograms with a value of XCD \$69,300.00. The Defendant has been remanded now for one (1) year and four (4) months.

#### Relevant Considerations

- [6] The parties referred me to five (5) decided cases from our jurisdiction, as guidance on the relevant considerations when considering for drug offences.

- (1) Queen v Albert Robin also known as Bridgewater SLUCRD2011/1549, 1549A.
- (2) Queen v Ignacio O Esteva SLUCRD2015/485, 0486
- (3) Queen v Cuthbert Felix SLUHCR2007/2639, 2640, 2641
- (4) Queen v Herman Belasse SLUCRD2011/0050
- (5) Queen v Courtney Anthony Samuel SLUCRD2015/0207, 0207A, 0207B, 0207C

- [7] Cocaine is class A drug under schedule of the Act and the offences of possession with intent to supply and exporting of controlled drug are offences that carry a maximum of fourteen (14) years imprisonment and fines of \$200,000.00, while possession carries a maximum of seven (7) and a fine of \$200,000.00.

- [8] The Criminal Code of St. Lucia provides that a sentence of imprisonment should be imposed where the offence is so serious to so justify a custodial sentence and that where a Court is to impose a custodial sentence, such sentence must be commensurate with the seriousness of the offence.

- [9] All of the authorities to which I earlier referred dispel the perception that drug crimes are always amendable to the payment of fines as an appropriate sentence. The accepted position is that adopted in the Queen v Cuthbert Felix per Benjamin J when he said:-

*“Such a trend has the potential of escalating the illicit trade for the purpose of generating money for the payment of fines. For this reason it is clear that in the case of larger quantities of the drugs confiscated a custodial sentence is inevitable.”*

[10] That case involved charges for quantities of both cocaine and cannabis. The quantity of cocaine was stipulated to be 15.628 kilograms and 4.385 kilograms of cannabis. The Defendant had been charged with two counts of possession and two counts possession with intent to supply. He was sentenced to 4 and 3 years respectively on the possession with intent to supply convictions, and 4 years and \$1,500.00 on the possession convictions with the sentences to run concurrently. He therefore served a total of four 4 years.

[11] I endorse the sentiments of Benjamin J in Cuthbert Felix. It is my considered view that the charges and circumstances of this case warrant only to a custodial sentence.

[12] I have accepted the aggravating factor of the offence to be:-

(i) The seriousness of the offence. Drug offences are a scourge with visible implication all around us. Parliament continues to advocate for stiffer penalties for its abuse and misuse, and has attempted to curtail the discretion of the judiciary, in its efforts to ensure the imposition of the stiff penalties for violations.

(ii) Quantity and Value

Although the Defence argues that the quantity found on the Defendant was small compared to other cases before the Court and referenced earlier, a street value of \$69,300.00 is not insignificant.

(iii) Attempted Exportation: The Defendant attempted to export this illegal activity out of the jurisdiction into Canada, and in so doing he threatened the jurisdiction into which he was importing the illegal drugs and the

reputation of the territory out of which he was exporting it. It does not help that the Defendant is a foreign national to St. Lucia.

[13] There were no mitigating factors of the offence.

[14] Mitigating Factors of the Offender:-

- (i) His early guilty plea for which he benefits from a full 1/3 discount.
- (ii) His compliance with the authorities from the outset.
- (iii) His hitherto clean criminal record.

[15] I have considered the sentencing trend of the cases referenced above. I have also considered the circumstances peculiar to this case, the value of the drugs and the explanation given by the Defendant for his action on that day. I accept that the quantity of drugs found on the Defendant was much smaller than the quantities recovered in the referenced cases, and I also accept that the sentence imposed in the referenced cases was influenced in part by the quantity and value of the drugs recovered. My starting point sentence should account for the quantity and value in this case. I have used a starting point sentence of 6 years for the offences of possession with intent to supply and exportation and 4 years for possession.

[16] The Defendant can benefit from a discount of 2 years for an early guilty plea for the possession with intent to supply and the exporting of controlled drug and 1 year and 3 months for possession charge. He can benefit from a further 1 year for his cooperation with police, and 1 year for his prior to clean criminal record. An appropriate sentence in this case is therefore 2 years imprisonment for the offences of possession with intent to supply and attempting to export a controlled drug, and 9 months for the offence of possession of a controlled drug.

[17] And the Defendant having accepted the indication, the indictment was read to the Defendant whereupon he entered a plea of guilty to each of the three (3) offences.

[18] The Defendant is sentenced per the indication. All sentences are to be served concurrently. The Defendant is to be credited with time spent on remand.

V. GEORGIS TAYLOR-ALEXANDER  
HIGH COURT JUDGE

BY THE COURT

REGISTRAR