

**BARBADOS**

**IN THE SUPREME COURT OF JUDICATURE  
COURT OF APPEAL**

**Criminal Appeal No. 8 of 2014**

**BETWEEN:**

**STUART ALEX SIMPSON**

**Appellant**

**AND**

**THE QUEEN**

**Respondent**

**Before: The Hon. Madam Justice Sandra P. Mason, The Hon. Mr. Justice Andrew D. Burgess and The Hon. Madam Justice Kaye C. Goodridge, Justices of Appeal**

**2015: June 10, 23**

**The Appellant in person**

**Mr. Lancelot Applewhaite for the Respondent**

**DECISION**

**MASON JA:**

**Introduction**

[1] This is an appeal against sentence. The appellant was charged with 3 offences:

- (i) possession of a controlled drug, contrary to **section 6(2)** of the **Drug Abuse (Prevention and Control) Act, Cap. 131;**
- (ii) drug trafficking, contrary to **section 18(4)** of the said **Act;** and

(iii) importation of a controlled drug, contrary to **section 4(1) (a)** of the **Act**.

These offences were committed on 12 May 2011.

- [2] At his arraignment on 27 March 2014, the appellant who was unrepresented pleaded guilty to all 3 counts. On 30 May 2014 he was sentenced by **Crane-Scott J** to a term of imprisonment of 12 years each for the offences of possession and importation and a term of 15 years for the offence of trafficking.
- [3] The appellant now contends that these sentences are excessive.

### **Facts**

- [4] The following facts were outlined by the Director of Public Prosecutions, agreed to by the appellant and accepted into the record by the judge.
- [5] On 12 May 2011 at around 8:20 p.m., officers of the Royal Barbados Police Force and the Barbados Coast Guard observed the appellant and two other men on a boat about half a mile off the Harrison's Point Lighthouse, St. Lucy.
- [6] The Coast Guard Officers ordered the boat to stop and requested the men on board to identify themselves. The Coast Guard Officers boarded the boat and found a total of 14 packages, 8 of which were in polyethylene bags and 6 were taped with brown tape. The packages were examined and found to

contain what was later identified as cannabis and which weighed 111.75 kilograms or just over 230 pounds.

- [7] The appellant when later interviewed by the police admitted the offences and gave a written statement detailing his involvement in the offences. He denied knowing the other men except to state that he had been approached by one of them because “somebody tell he that I is a good boat man and I know the sea good”.

### **The Sentence**

- [8] At the sentencing phase of the trial, the appellant mitigated on his own behalf, expressing regret for his behaviour and requesting that some consideration be given to this remorse. He also requested that four outstanding charges of a similar nature be taken into account. It should be noted that these outstanding offences had taken place on 21 July 2012, one year after the ones at bar and while the appellant was on bail and that they involved an even greater quantity of the controlled drug – 375 kilograms or just over 826 pounds.
- [9] Prior to sentencing the appellant, the judge as mandated by **section 37** and **38** of the **Penal System Reform Act, Cap. 139 (the Act)**, had ordered a pre-sentence report, the contents of which she dutifully considered.

[10] Also as required by **section 35(4)** of the **Act** and taking into account the manner in which the offences were committed, the judge was of the opinion that the offences were so serious that only a custodial sentence could suffice.

[11] The judge noted that the Court of Appeal had in previous cases observed that:

“the very heavy penalties which are legislated by Parliament in the Drug Abuse (Prevention and Control) Act are meant to send a message that the legislature, and by extension the people of Barbados, view drug offences very seriously. The courts in Barbados are acutely aware of the potential devastating effects of illegal drugs on human beings and that Parliament has reflected its intention by imposing heavy sentences, the objectives of which are deterrence and the protection of society”.

and that

“Barbados is a small society whose human resources ... are its most important asset. Given the capability of illicit narcotic substances to damage social capital, the courts as agencies of law enforcement, must do all in their power to assist in the protection of those resources”.

[12] The judge then considered the gravity of the offences while keeping in mind the general judicial guidelines set out in **section 41(2)** of the **Act** which require that the gravity of the punishment must be commensurate with the gravity of the offence. She next considered the issue of proportionality in accordance with **section 36** of the **Act** with a view to determining the length of sentence which would be appropriate to do justice in relation to each offence.

[13] As she was required to do by the **Act**, the judge took into account the mitigating factors i.e. the early guilty plea, cooperation with the police, the expression of remorse and the positive aspects of the pre-sentence report. The judge was of the view that the seriousness of the offences was aggravated by the following factors: the appellant was part of a joint enterprise to import the drugs into Barbados, the substantial quantity of drugs involved, the negative use of his fishing skills and his subsequent offending with respect to an even larger quantity of illegal drugs while on bail for the present offences.

### **Submissions**

[14] The appellant, as he did before the judge, sought before this Court to emphasise his remorse for having committed the offences. He also suggested that since in other and comparative cases, “lighter” sentences had been imposed on those perpetrators, his sentence ought to be reduced to at least 10 years.

### **Discussion**

[15] It is well established and has been reiterated on numerous occasions by this Court that the Court of Appeal will only interfere with a sentence where it is evident that the sentence was manifestly excessive or grossly disproportionate, that some statutory or procedural requirement has not been complied with or that the sentence is wrong in principle.

[16] We have fully considered the sentencing remarks made by the judge and are satisfied that all the relevant factors were adequately addressed and taken into account. We therefore do not intend to repeat those considerations. We are however of the view that what needs to be emphasised is our total agreement with the judge that Parliament in legislating the relevant punishment for such offences was cognisant of the havoc which the constant influx of illegal drugs into our country continues to cause especially to the lives of our young people.

[17] We are reminded that the statutory punishments prescribed for these offences as set out in the Fourth Schedule to the **Act** are: for possession and importation, a fine of \$500,000.00 or imprisonment for 20 years or both and for trafficking life imprisonment.

[18] This Court notes that the judge was requested to take into consideration four other offences of a similar nature which were committed by the appellant while on bail.

[19] The relevant law on this is enunciated in Archbold 2013 at para 5-160 where it is stated that “the practice of taking offences into consideration has no statutory foundation ...” It was described by Lord Goddard CJ in **R. v. Batchelor**, *36 Cr. App.R.64, CCA*, at 67 to 68 as:

“simply a convention under which if a court is informed that there are outstanding charges against a prisoner who is before it for a particular offence, the court can, if the prisoner admits the

offences and asks that they should be taken into account, take them into account, which means that the court can give a longer sentence than it would if it were dealing with him only on the charge mentioned in the indictment”.

[20] The applicability of this principle in this case is especially compelling given the penalties prescribed by Parliament for offences of this nature.

[21] We conclude by making the following observation. The appellant is a persistent offender bent on making a living from the illegal trade which is wrecking havoc in our society. He allowed himself to be tempted by an offer of \$50,000.00 for the exercise.

[22] For his crimes, the appellant must be appropriately punished.

[23] With this in mind we have found the sentences imposed by the judge were proportionate to the seriousness of the offences and ought not to be interfered with.

### **Disposal**

[24] Accordingly the appeal is dismissed and the sentences affirmed.

**Justice of Appeal**

**Justice of Appeal**

**Justice of Appeal**