

**BARBADOS**

**IN THE SUPREME COURT OF JUDICATURE**

**COURT OF APPEAL**

**Criminal Appeal No. 26 of 2010**

**BETWEEN:**

**MUNROE FITZPATRICK HAYWOOD           Appellant**

**AND**

**THE QUEEN                                   Respondent**

**BEFORE: The Hon. Sherman R. Moore, CHB, The Hon. Sandra P. Mason  
and The Hon. Andrew D. Burgess, Justices of Appeal.**

**2014: September 10, November 20**

**2015: April 1**

**2016: January 29**

**Mrs. Kristin C.A. Turton, Attorney-at-Law for the Appellant.**

**Mr. Charles Leacock, Q.C, Director of Public Prosecutions in association with  
Mr. Anthony Blackman and Mr. Lancelot Applewhaite, Attorneys-at-Law for  
the Respondent.**

**DECISION**

**BURGESS and MASON JJA:**

**BACKGROUND**

[1] The **Drug Abuse (Prevention and Control) Act, Cap. 131 (Cap. 131)** is at the heart of this appeal. That Act creates, among others and for purposes of this appeal, the following three offences. These are, by **section 4 (3)**, the

offence of unlawful importation of a controlled drug in contravention of **section 4 (1)** which sets out the elements of that offence (section 4 (3) offence); by **section 6 (2)**, the offence of unlawful possession of a controlled drug in contravention of **section 6 (1)** wherein the elements of that offence are set out (section 6 (2) offence); and, by **section 18 (4)**, trafficking in a controlled drug in contravention of **section 18 (2)** wherein the elements of that offence are set out (section 18 (4) offence). The **section 18 (4)** offence is defined by **section 18 (1)** to include, among other things, (a) the unlawful importation and (b) the unlawful possession of a trafficable quantity of a controlled drug. The Act further provides that cannabis, the drug involved in this case, is a controlled drug and that fifteen grammes or more of that drug is a trafficable quantity.

- [2] **Section 4 (3)** and **section 6 (2)** offences are punishable on conviction on indictment by a fine not exceeding \$500,000.00 or by imprisonment for a term not exceeding 20 years or both. Any **section 18 (4)** offence is punishable on conviction on indictment by imprisonment for up to life.
- [3] In the case before this Court, the appellant was charged under **section 4 (3)**, **section 18 (4)** and **section 6 (2)** respectively of **Cap. 131** on an indictment containing the three counts of importation of a controlled drug, drug

trafficking and possession of a controlled drug. The particulars of the respective offences as stated in the indictment were as follows:

(i) “[He] on the 16<sup>th</sup> day of March 2006 in the parish of Saint Peter, in this Island, did unlawfully import (sic) controlled drug, namely 370.01 kilograms of Cannabis, a narcotic drug listed in Part 1 of the First Schedule of the said Act.”

(ii) “[He] on 16<sup>th</sup> day of March 2006 in the parish of Saint Peter, in this Island, did traffic in a controlled drug, to wit, Cannabis, in that he had in his possession a trafficable quantity of such drug, namely 370.01 kilograms of Cannabis, a narcotic drug listed in Part 1 of the First Schedule of the said Act.”

(iii) “[He] on the 16<sup>th</sup> day of March 2006 in the parish of Saint Peter, in this Island, did unlawfully have a controlled drug in his possession, namely 370.01 kilograms of Cannabis, a narcotic drug listed in Part 1 of the First Schedule of the said Act.”

[4] On 27 July 2010, the appellant was arraigned before **Crane-Scott J.** At that time he was unrepresented and pleaded guilty to the offences as particularised in the indictment.

[5] The facts were then outlined to the Court by counsel for the Crown. Counsel recounted that on 16 March 2006, as a result of information received by the police, personnel of the Drug Squad went on duty to Six Men’s, St. Peter. A number of persons were seen on the beach and in the sea.

[6] A white pirogue was observed approaching the shore at a slow rate of speed and persons on the pirogue were throwing packages into the sea. The

persons on the beach started to retrieve the packages and carry them to shore.

[7] As the police approached the beach, the police encountered gunfire and a shootout ensued. The appellant was found later that night hiding under a dwelling house in Six Men's Village. He admitted to the police that he arrived on the boat which brought the cannabis to Barbados.

[8] The appellant did not make any written or oral statements to the police.

[9] **Crane-Scott J** ordered a pre-sentence report which was read into evidence by Miss Angela Dixon, Probation Officer, on 2 November 2012. After hearing oral submissions by attorney-at-law for the appellant, Miss Kristin Edwards (now Mrs. Kristin Turton) and by attorney-at-law for the Crown, Mr. Lancelot Applewhaite, in relation to the appropriate sentence, the appellant was sentenced by **Crane-Scott J** in the following order:

- (1) 6 years imprisonment for importation;
- (2) 6 years imprisonment for possession; and
- (3) 8 years imprisonment for trafficking.

The sentences were to run concurrently.

### **THE APPEAL**

[10] The appellant has appealed to this Court against the sentences imposed by **Crane-Scott J** on two grounds.

## GROUND 1

[11] The first ground of appeal reads that:

“The Learned Trial Judge erred in law by acting contrary to the established principle that a person should not be punished twice for the same act or omission when she imposed sentences of imprisonment on the Appellant for trafficking and for possession of a controlled drug having already imposed a sentence of imprisonment on the Appellant for importation of the said controlled drug on the same facts.”

[12] In our respectful view, this ground succeeds or fails depending upon the authority of this Court on its previous decision in **Mentor et al v R Crim App Nos. 31, 32 and 33 of 1992 (unreported) (Mentor)**. Apart from it being cited with approval and distinguished by this Court in **Coronell et al v R Crim App Nos. 6 & 7 of 1995 (unreported) (Coronell)**, **Mentor** has remained largely dormant. As a result of the commendable industry of counsel for the appellant, Mrs. Turton, in unearthing **Mentor**, it has become necessary to explore that decision with some particularity in this case.

### **This Court’s decision in Mentor**

[13] We begin by exploring the facts of and decision in **Mentor**.

[14] The facts of **Mentor** are that, on 7 January 1992, the Coast Guard received information that led to the despatch of one of their vessels to Batts Rock, the Black Rock area near Brandons, St. Michael. A small boat with three men on board was seen near the shore but, as the Coast Guard vessel drew near,

the engine of the small boat was heard to start and the boat unsuccessfully attempted to head for the open sea. It was rammed and boarded by the Coast Guard officers. Three men, the appellants Garcia, Mentor and Drayton, were arrested, and the boat, the men and the boat's contents were taken to Fort Willoughby. The contents were found to include the quantity of cannabis specified in the indictment.

[15] The three appellants were jointly charged on an indictment containing four counts, namely, (i) being in unlawful possession of 96.147 kilograms of cannabis contrary to **section 6 (2) of Cap. 131**; (ii) trafficking in a controlled drug contrary to **section 18 (4) of Cap. 131** (related to unlawful possession); the unlawful importation of the said quantity of cannabis contrary to **section 4 (3) of Cap. 131**; and (iv) trafficking in a controlled drug contrary to **section 18 (4) of Cap. 131** (related to unlawful importation).

[16] When the appellants were arraigned, Garcia and Mentor pleaded guilty to all counts. Drayton pleaded guilty on the first, second and fourth counts but not guilty to the third. Proceedings against Drayton on the third count were discontinued.

[17] The appellants were each sentenced on the first count to 10 years imprisonment and fined \$250,000.00 to be paid forthwith with a concurrent 10 year term of imprisonment in default of payment. Garcia and Mentor

each received a like sentence on the third count. On the second and fourth counts, the appellants were each sentenced to 20 years imprisonment to run concurrently.

[18] The appellants' appeal against their sentences was heard by a panel of this Court with impeccable credentials in criminal practice and procedure in Barbados (Williams CJ, Husbands JA and Smith JA). In our judgment, the *ratio decidendi* of the case emerges unmistakably from the following passage in the Judgment of the Court:

“Interesting points arose in the course of the submissions by counsel for the applicants that the sentences were excessive: (i) whether it was in order for (sic) indictment to include charges for unlawful possession under section 6 (2) as well as for trafficking under section 18 (4) based on the same alleged unlawful possession or to include charges of unlawful importation under section 4 (3) as well as for trafficking under section 18 (4) based upon the same alleged unlawful importation and (ii) whether the sentences were in breach of the rule that no person should be punished twice for the same act or omission. See section 22 (1) of the Interpretation Act Cap. 1 where it is enacted:

“22 (1) where any act or omission constitutes an offence under two or more than two enactments or under an enactment and at common law, the offender should be liable to be prosecuted and punished under either or any of those enactments or at common law, but shall not be liable to be punished twice for the same offence.”

The prosecution is entitled to prefer and proceed on, all charges that can be supported by the credible evidence that it has. It

does not seem to us that any fault can be found with the way in which the indictment was pleaded and presented.

The second point is more difficult. The applicants by their pleas of guilty admitted the possession and importation of a trafficable quantity of the drug.

It does not seem to us that they could, consistently with the principles of the criminal law, be punished both for being in unlawful possession of a trafficable quantity of the drug [trafficking] as well as for being in unlawful possession of an amount that was less than a trafficable quantity; or for the unlawful importation of a trafficable quantity of the drug [trafficking] as well as for the unlawful importation of an amount less than a trafficable quantity; or indeed for the unlawful importation of a trafficable quantity as well as for the unlawful possession of a trafficable quantity.

The essence of the wrongdoing committed by the applicants was the unlawful importation into Barbados of this large quantity of cannabis and it was this offence that merited the substantial punishment. Although the punishments imposed by the judge in respect of the other offences would not have added to the punishment because (a) the prison sentences imposed for trafficking by possession were made to run concurrently and (b) the fines imposed for unlawful possession and unlawful importation were to be paid forthwith and the prison sentences ordered in default were to be concurrent, yet it seems to this Court that principle would require that no additional punishment should be attached to those other offences. The sentences for those other offences must therefore be, and accordingly are, discharged.”

[19] It is clear from the foregoing passage that, as Mrs. Turton contends, the following legal predicates flow from this Court's decision in **Mentor**:

(i) That the prosecution is entitled to prefer and proceed on, all charges that can be supported by the credible evidence that it has;

(ii) That, based on "the principles of criminal law" embedded in **section 22 (1) of Cap 1**, an offender is not to be punished twice for the same act or omission;

(iii) That that principle applies even when the offences with which the offender is charged are contained in provisions in the same Act;

(iv) More particularly, that that principle applies to the imposition of sentences for possession, importation and trafficking under **section 6 (2), section 4 (3), and section 18 (4)** respectively of **Cap 131** on the basis of the said possession and importation of a controlled drug arising from the same incident;

(v) That, when this Court reviews the imposition of multiple sentences for the same act or omission, this Court is empowered to determine the essence of the wrongdoing, impose a sentence for the offence that merit the substantial punishment and discharge the others;

(vi) That the fact that the sentences are concurrent does not remove the operation of the foregoing principle.

[20] These are clear principles that emanate from **Mentor**. The basis of these principles, as is explained in the judgment of the Court in **Mentor**, is "the principles of criminal law" expressed in the rule against punishing a person

twice for the same act or omission embedded in **section 22 (1)** of **Cap. 1**. We would add that the doctrines of *autrefois acquit* and *autrefois convict* are also based on the same rule: see **Connelly v DPP [1964] 2 All ER 401 (Connelly)** but that the rule in **Mentor** has nothing to do with these doctrines as such and were correctly not even mentioned by this Court in **Mentor**. The narrow *ratio* in **Mentor** relates to the imposition of sentences for possession, importation and trafficking under **section 6 (2)**, **section 4 (3)**, and **section 18 (4)** respectively of **Cap. 131** on the basis of the said possession and importation of a controlled drug arising from the same incident. The wider *ratio* in that case relates to the abiding aspiration of this Court to adhere to the highest ideals and values of the rule of law in developing our criminal justice system no matter how abhorrent the wrongdoing of the offender. That is the decision in, and the ideal of, **Mentor**.

### **Juridical importance of Mentor**

[21] We will now turn to the juridical importance of **Mentor** for this Court.

[22] The doctrine of *stare decisis* is a central plank and defining characteristic of our legal system. That doctrine mandates that the decision in **Mentor**, being a criminal decision of this Court, is binding on this Court save in four exceptional circumstances. This principle is elementary but if authority be

thought necessary see, e.g., **Vierra v Winchester (1966) 10 WIR 400** at **401** per McShine JA (Court of Appeal of Trinidad and Tobago); **Wigley v Bellot (1965) 9 WIR 193** at **195** per Field CJ (Court of Appeal of the Windward and Leeward Islands); **AG of St. Kitts and Nevis v Reynolds (1979) 43 WIR 108** at **123** (Privy Council); **Williams v R (1974) 26 WIR 541** at **548** per Rees JA (Court of Appeal of Trinidad and Tobago) (**Williams**).

- [23] The four exceptions to the binding authority of the Court of Appeal decision in **Mentor** on this Court of Appeal are these. First, if it were shown that there was another decision of this Court conflicting with **Mentor**, this Court would be free to consider itself not bound by **Mentor** and to choose to follow the other decision. Second, this Court would be bound to refuse to follow **Mentor**, if **Mentor** conflicts with a decision of the Caribbean Court of Justice (**CCJ**) or the Privy Council even though that decision has not expressly overruled **Mentor**. Third, we would not be bound to follow **Mentor** if that decision were reached *per incuriam*. Fourth, this Court would not be bound by **Mentor**, it being a criminal case, if to follow it would cause injustice to the appellant: see, e.g., **R v Gould [1968] 2 QB 65**; **Williams** at **548** per Rees JA.

[24] No serious argument was raised before this Court either that **Mentor** was in conflict with any decision of the **CCJ**, or for that matter, of its predecessor, the Privy Council. Nor has any argument been advanced that the decision in **Mentor**, if followed would cause injustice to the appellant. The arguments against this Court following **Mentor** can be categorised as (i) that **Mentor** conflicted with other decisions of this Court; and/or (ii) that the decision in that case was reached *per incuriam*.

[25] We will now examine these arguments in turn.

#### **Does Mentor conflict with any decisions of this Court**

[26] First, there is a somewhat veiled suggestion by the DPP, Mr. Charles Leacock QC, that there is some conflict between **Mentor** and this Court's decision in **Coronell**. He contends at paragraph 29 of his written submissions that:

“...no principle emanated from **Mentor** that separate sentences cannot be imposed for the separate offences of importation, possession and trafficking by possession or importation. In **Mentor** the Court discharged all sentences but the one for trafficking by importation, whereas in **Coronell** the Court discharged only the sentence for trafficking by possession leaving sentences for possession and importation. It is submitted that there is consistency in approach on this issue as sentences were imposed for separate offences.”

[27] A necessary corollary of Mr. Leacock QC's contention must be that, to the extent that **Mentor** decides "that separate sentences cannot be imposed for the separate offences of importation, possession and trafficking by possession or importation", it is in conflict with **Coronell** since in **Coronell** sentences were imposed for possession and importation. It is necessary to carefully explore this submission not only to adjudicate its correctness but also to clarify **Coronell**.

[28] The facts of **Coronell** are that the two appellants in that case were seen by the police standing together at the side of an open field of grass in Whitehall, St. Peter. Coronell had a cellular phone in his left hand and a motor car was parked near to them. A piece of red cloth was attached to each of three trees in the field. While the two appellants were still present together, a small aircraft approached from the north at a low altitude. As it approached the open field, it descended and four large packages were dropped from it on to the field. Both of the appellants ran towards the packages and each of them took one, returned to the spot where they were first standing and put it down. The aircraft repeated the manoeuvre and three more packages were dropped onto the field. The two appellants again ran into the field and Coronell took up one of them, returned with it and put it down near to the two packages from the first drop. Marquez returned to the spot without a package.

[29] The appellants, Coronell and Marquez, were charged and convicted of (1) importation of a controlled drug contrary to **section 4 (3)** of **Cap. 131**; (2) possession of a controlled drug contrary to **section 6 (2)** of that Act; and (3) drug trafficking contrary to **section 18 (4)** of the same Act. They were each fined \$500,000.00 payable in 60 days or in default 20 years imprisonment for each of the offences of importation and possession. Coronell was sentenced to imprisonment for life and Marquez to imprisonment for 30 years for the offence of drug trafficking.

[30] The appellants appealed against their convictions and sentences. Ground 4 which is the ground relevant to the issue at hand was as to conviction, not to sentence. That ground was that the trial judge erred in law in directing the jury that all three counts were cumulative because the offence of trafficking (count 3) as created by **section 18 (4)** of the Act was greater and included the offence of possession as created by **section 6 (2)** of the Act. In those circumstances, it was argued that it was only open to the jury to convict the appellant of the offences set out in the first and second counts if they acquitted him of the offence set out in the third count.

[31] In approaching this ground, **Williams CJ** in this Court began by citing **Mentor** and emphasising that the decision in that case was that “the applicants could not, consistently with the principles of the criminal law, be

punished both for being in possession of a trafficable quantity of the drug (trafficking) as well as for being in unlawful possession of an amount that was less than a trafficable quantity or for the unlawful importation of a trafficable quantity of the drug (trafficking) as well as for the unlawful importation of an amount less than a trafficable quantity”. Having stressed that the decision in **Mentor** was as to punishment for those separate offences, **Williams CJ** continued:

“In the present case the submission that must be addressed is that the trial judge was in error in leaving it open to the jury to convict the appellants on both the second and the third counts, each being based on the same incident of alleged possession of cocaine. Cited in support of the submission is *R v. Harris* (1969) Cr. App. 8.376 the headnote to which reads:- “Where two charges arising out of the same incident have been preferred, and one of them has merged (as it were) into the other, it is not proper that it should be left open to the jury to convict on both charges.”

Edmund-Davies, L.J. delivering the judgment of the English Court of Appeal, Criminal Division, said (at p. 379):-

“It is perfectly clear in reading the transcript that the two charges related to one and the same incident. There is no suggestion of any indecent assault upon this same boy Begley except that which formed the preliminary to and was followed very shortly hereafter by the commission of the full act of buggery. It does not seem to this Court right or desirable that one and the same incident should be made the subject matter of distinct charges, so that hereafter it may appear to those not

familiar with the circumstances that two entirely separate offences were committed. Were this permitted generally, a single offence could frequently give rise to a multiplicity of charges and great unfairness could ensue.”

In light of this authority the convictions of the appellants on both the second and third counts cannot stand.”

[32] It is tolerably clear from the foregoing that whereas the substantial focus of this Court in **Mentor** was the issue of multiple sentences and punishment for the same offence, the issue in **Coronell** was as to multiple convictions for the same offence. **Williams CJ** distinguished the two cases on this basis. Admittedly, the fundamental principle of criminal law underlying the two cases is the same, namely, the rule against punishing a person twice for the same act or omission. However, the cases represent two distinct examples of the operation of that same principle. There is therefore no conflict between the two cases. Nor does **Coronell** present any opportunity to argue, as the DPP has sought to, that “no principle emanated from **Mentor** that separate sentences cannot be imposed for the separate offences of importation, possession and trafficking by possession or importation”. No issue arose in **Coronell** as to whether or not separate sentences can “be imposed for the separate offences of importation, possession and trafficking by possession or importation”.

[33] Mr. Leacock QC, in a similarly veiled submission, contended that **Mentor** was in conflict with two other decisions of this Court, namely, **Walter Prescod v R Crim App No. 32 of 2001 (unreported)** and **Samuel Davis v R Crim App No. 1 of 2010 (unreported) (Davis)**. Of these he wrote at paragraphs 31 and 32 of his written submissions as follows:

“31. The Court of Appeal by issuing guidelines on sentencing in **Walter Prescod v R Criminal Appeal No. 32 of 2001 unreported decision of 6<sup>th</sup> March 2006** recognised that sentencing is correct for separate offences of importation, possession and trafficking. In **Prescod** the Appellant was charged with importation, possession and trafficking and pleaded guilty to importation and possession and no evidence was offered on the count for trafficking. The Court of Appeal reduced the periods of imprisonment for possession and importation for reasons other than incorrect sentences being imposed. The Court upheld sentences for both possession and importation as properly imposed.

32. Further, in the very recent decision of **Samuel Davis v R Criminal Appeal No. 1 of 2010 unreported decision of 12<sup>th</sup> May 2014** the Court of Appeal affirmed sentences for importation, possession and trafficking.”

[34] In neither of these cases was the proposition of law argued for by Mr. Leacock QC expressly stated either in argument or in the judgment in those cases. In **Prescod**, **Sir David Simmons CJ**'s major concern was developing guidelines for sentencing in drug related cases. To this end, he looked at the sentences imposed in **Mentor** along with the sentences imposed in other drug related cases to gauge the range of those sentences. In

that context, and to emphasise that sentences in drug related cases should be severe, **Sir David** quoted from **Mentor** where **Sir Denys Williams CJ** said:

“[T]he trafficking in drugs on the scale and manner exhibited in this case must be punished severely. Individuals who take part in criminal enterprises of this nature must expect a long period of imprisonment if caught.”

That was the extent of **Sir David’s** interest in **Mentor**.

[35] In **Davis, Mentor** was neither mentioned in argument nor by this Court.

[36] Thus, **Prescod** and **Davis** can scarcely be regarded as any implicit authority for the proposition that no principle emanates from **Mentor** “that separate sentences cannot be imposed for the separate offences of importation, possession and trafficking by possession or importation” as claimed by Mr. Leacock QC. This must be so since from as long ago as 1661, in the case of **R v Warner, 1 Keb 66**, it was stated that “precedents *sub silentio* and without argument are of no moment”. This elementary principle of law finds modern application in the decision of the Privy Council in the Jamaican case of **Baker v The Queen [1975] AC 774**; the English Court of Appeal decision of **National Enterprises Ltd v Racal Communications Ltd [1975] Ch 397**; and the English High Court decision in **Barrs v Bethel [1982] 1 All ER 106**.

**Is Mentor per incuriam**

- [37] The second argument advanced by Mr. Leacock QC as to why this Court should not follow **Mentor** may be encapsulated in the legal categorisation that that decision is *per incuriam* for two reasons. We will deal with these reasons separately.
- [38] Mr. Leacock’s first reason at paragraph 16 of his written submissions is that **section 22 (1) of Cap. 1** “provides that a person should not be punished twice for the same offence”. However, he continues in that same paragraph, “the offences of importation, possession and trafficking are clearly each separate offences” and that **Mentor** was wrong for not so treating them.
- [39] In **Connelly**, Lord Devlin stated at p 432: “The word ‘offence’ embraces both the facts which constitute the crime and the legal characteristics which make it an offence”. In assessing the submission of Mr. Leacock QC, therefore, it is necessary to examine the legal elements or legal constituents of the offences in question having regard to the facts of **Mentor**.
- [40] The offences in issue in **Mentor** were established under **Cap. 131** and are as follows:
- “4.(1) Subject to subsection (2), it shall not be lawful for a person to
- (a) import a controlled drug, or

(b) export a controlled drug...

(3) Subject to section 39, it is an offence for a person to import or export a controlled drug in contravention of subsection (1).

6.(1) Subject to any regulations under section 12, it shall not be lawful for a person to have a controlled drug in his possession.

(2) Subject to section 39, it is an offence for a person to have a controlled drug in his possession in contravention of subsection (1).

18.(1) For the purposes of this Act, the expression “traffic”, “trafficking” or “drug trafficking” in relation to a controlled drug means doing or being concerned, whether in Barbados or elsewhere, in any of the following:

(a) importing or exporting a trafficable quantity of any controlled drug where importation or exportation contravenes section 4 (1) or a corresponding law...

(c) possessing a trafficable quantity of any controlled drug where possession of the drug contravenes section 6 (1) or corresponding law.”

The Second Schedule to the Act stipulates that a trafficable quantity of cannabis, the controlled drug involved, is “fifteen grammes”.

[41] It is clear from these provisions that the **section 4 (3)** offence is the importation or exportation of a controlled drug of any quantity contrary to **section 4 (1)**; in other words, of a quantity lesser or greater than a trafficable

quantity. It is similarly clear that the **section 18 (4)** offence of trafficking by importing or exporting is only committed, on the express words of **section 18 (1) (a)**, “where importation or exportation contravenes **section 4(1)**”. The irrefutable conclusion therefore is that the **section 18 (4)** offence contains the same elements as the **section 4 (3)** offence save only that the **section 18 (4)** offence is limited to importation offences where the quantity on the evidence is a trafficable quantity.

[42] Stated in the logic of set theory, the **section 18 (4)** offence is a subset of the **section 4 (3)** offence and the **section 4 (3)** offence is a superset of the **section 18 (4)** offence. This is the plain and unequivocal language of **Cap. 131**. Wherever, therefore, the particulars of a charge are that an accused imported a trafficable quantity of a controlled drug the elements of the offence of importation under **section 4 (3)** must of necessity be in issue. The upshot of this is that punishment for trafficking by importing contrary to **section 18 (1) (a)** is punishment for importation contrary to **section 4 (1)** so long as the particulars for both offences are that the importation was of the same trafficable quantity.

[43] The foregoing logic is equally applicable to the **section 18 (4)** offence of possessing a trafficable quantity of any controlled drug contrary to **section 18 (1) (c)**. By the express language of that subsection, that offence is only

committed “where possession of the drug contravenes **section 6 (1)**”. **Section 6 (1)**, in turn, makes it unlawful “for a person to have a controlled drug in his possession”. On the plain language of that subsection, the offence relates to possession of any quantity, trafficable or non-trafficable, of a controlled drug. Save then for the evidence that the quantity in a person’s possession is a trafficable quantity, the elements of the **section 18 (4)** offence are the same as the elements of the **section 6 (2)** offence. Consequently, punishment for possession of a trafficable quantity contrary to **section 18 (1) (a)** is punishment for possession contrary to **section 6 (1)** so long as the particulars for both offences are that the possession was of the same trafficable quantity.

[44] Finally, it is plain from the relevant provisions of **Cap. 131** that unlawful possession contrary to **section 6 (1)** and/or possession of a trafficable quantity contrary to **section 18 (1) (c)** may intersect with unlawful importation contrary to **section 4 (1)** and or trafficking by importation contrary to **section 18 (1) (a)**. Such intersection occurs whenever the particulars of unlawful importation and/or trafficking by importation are the same as the particulars for unlawful possession and/or possession of a trafficable quantity.

[45] Given the foregoing analysis of the law and the particulars of the counts in the indictment, it is difficult to see how the decision in **Mentor** can be castigated as being arrived at *per incuriam*. Having regard to the facts which constituted the offences for which the appellants in that case were charged and the legal characteristics which make them offences, the Court in **Mentor** was compelled to the conclusion that the sentences imposed breached the rule embedded in **section 22 (1)** of **Cap. 1** that no person should be punished twice for the same act or omission.

[46] The second reason suggested by Mr. Leacock QC as to why **Mentor** was *per incuriam* was his submission in paragraph 22 of his written submissions that “the Court in **Mentor** failed to take into account the full definition of drug trafficking as contained in **section 18**”. The definition in **section 18** consists of two parts. The first part stipulates what drug trafficking “means” in relation to importation, supplying and possessing. The second part continues that in addition, drug trafficking “includes” a number of other activities bearing absolutely no relationship to importation, supplying and possessing. Mr. Leacock QC has not pointed to any rule of statutory interpretation that would require the Court in **Mentor** to embark on a futile excursion into the “and includes” part of the definition in **section 18 (1)**. Our researches have not revealed any.

[47] Before leaving this question of *per incuriam*, we wish to comment on a suggestion that **Mentor** was decided in ignorance of an English Court of Appeal decision in **R v Thomas [1949] 33 Cr App R 200 (Thomas)** and that **Mentor** would have been decided differently if this case had been cited to the Court in **Mentor**. In **Thomas**, the appellant was convicted of wounding his wife with intent to murder her. Within some ten weeks of the injuries inflicted on her, the wife died as a result of the injuries. The appellant was then indicted for, and convicted of, the murder of his wife. On appeal, it was held that the conviction for murder was good, and was not invalidated on the ground of *autrefois convict*, or by reason of section 33 of the Interpretation Act, 1889 (the equivalent of our **section 22(1) of Cap. 1**) that the offender “shall not be liable to be punished twice for the same offence”.

[48] In our view, there are six good reasons why **Thomas** would not have affected the decision in **Mentor**. First, **Thomas** is entirely consistent with the principle adumbrated in **Mentor** that the prosecution can prefer and proceed on all the charges that can be supported by the credible evidence it has. Second, **Mentor** was not concerned with any question of *autrefois convict* as was the case in **Thomas** and so this part of the decision in **Thomas** was irrelevant to **Mentor**. Third, the offences in **Thomas**, namely,

wounding with intent to murder and murder, were clearly not the same offence and so punishment for the one could not be said to be punishment for the other. As was seen above, the offences in **Mentor** were the same. Fourth, punishment for murder in **Thomas** was arguably punishment for the essence of the wrongdoing committed by the appellant and thus **Thomas** was in keeping with the ratio of **Mentor**. Fifth, the substantial issue in **Mentor** was appropriate sentencing for multiple charges on the same indictment; that in **Thomas** was prosecution for a more serious offence, murder, after conviction for a lesser offence, wounding with intent. The sixth was that **Thomas**, being a decision of the English Court of Appeal, Criminal Division, was not binding on this Court and if it had been cited to this Court in **Mentor**, this Court would have been free not to follow it.

### **Is Mentor binding on this Court**

[49] The upshot of the foregoing is that there is nothing that would justify this Court in considering itself not bound by its previous decision in **Mentor**. Indeed, even accepting *arguendo* that that decision was defective, it would be for the **CCJ**, not this Court, to correct it. As was said by Rees JA in the Trinidad and Tobago Court of Appeal in **Williams** at p 548:

“...the Court of Appeal should...leave it to the final tribunal to correct any error in law which may have crept into any previous

decisions of the Court of Appeal...it is for them [their Honours]...alone to correct the errors.”

We would only add parenthetically, that statements of law to the contrary in the Guyanese Court of Appeal in **Munisar v Bookers Demerara Sugar Estates Ltd (1979) 26 WIR 337 at 383** per Luckhoo JA, and **The State v Gobin and Griffith (1976) 23 WIR 256 at 304** per Bollers CJ, must be read in the context of that court being the final court of appeal in Guyana at the time.

#### **Application of Mentor to the present case**

- [50] The particulars of the offences as stated in the indictment and read to the appellant, to which he pleaded guilty and for which he was punished are recited at **para [3]** above. The particulars of the second count as stated were that he “did traffic in a controlled drug, to wit, Cannabis, in that he had in his possession a trafficable quantity of such drug, namely 370.01 kilograms of Cannabis”. The particulars of the third count were that he “did unlawfully have a controlled drug in his possession, namely 370.01 kilograms of Cannabis”. According to the particulars also, these offences occurred at the same time at the same place.
- [51] As has been seen above, **Mentor** decides that punishment for possession of a trafficable quantity of cannabis contrary to **section 18 (1) (a)** is punishment

for possession contrary to **section 6 (1)** so long as the particulars for both offences are that the possession was of the same trafficable quantity. We agree with Mrs. Turton that, applying **Mentor** to the present case then, possession of 370.01 kilogrammes of cannabis being the actual basis of the offence of trafficking as particularised in the indictment, the offences of trafficking and possession are one and the same offence in fact and in law.

[52] As regards the first count, the facts outlined by counsel for the Crown demonstrate that the factual foundation of the offence of importation in this case is the same as that for the offence of possession. In both offences, the factual foundation was that the appellant “admitted arriving in Barbados on a boat laden with cannabis”. Clearly, then, to establish the guilt of the appellant for importation, the Crown was in effect relying on the fact that the appellant was in physical possession or control of 370.01 kilogrammes of cannabis when he entered Barbados. By the same token, to establish the guilt of the appellant for the charge of possession, the Crown was in effect relying on the fact that the appellant was in physical possession or control of the said cannabis whilst in Barbados. Thus, the offences of importation and possession intersect and are consequently one and the same offence in law and in fact.

[53] Given the foregoing, there can be no doubt that this is a case where multiple sentences were imposed on the appellant for the same act or omission. According to **Mentor**, which is binding on this Court, this constitutes a contravention of “the principles of criminal law” embedded in **section 22 (1)** of **Cap. 1** that an offender is not to be punished twice for the same act or omission. In these premises, this Court is empowered to determine the essence of the wrongdoing and impose a sentence for the offence that merit the substantial punishment and discharge the others.

[54] In our view, the essence of the wrongdoing committed by the appellant in this case is trafficking by importation of a trafficable quantity of cannabis. Following **Mentor**, it is this offence which would attract the substantial punishment and the sentences imposed by the judge for the other offences discharged.

## **GROUND 2**

[55] This brings us to ground 2 which is that the sentences imposed were excessive. It reads as follows:

“The sentences are excessive in so far as the Learned Trial Judge departed from the guidelines established in **Walter Prescod v The Queen** without identifying any special circumstances to justify the same.”

[56] For the reasons given by our brother **Moore JA**, we find no fault with the sentences imposed by the trial judge. We would therefore disallow this ground.

### **DISPOSAL**

[57] Given our conclusions at **para [49]**, we would uphold the period of 8 years imprisonment for trafficking by importation imposed by the trial judge and discharge the sentences of 6 years for importation and 6 years for possession. The sentence for trafficking by importation will commence from the date it was imposed.

Justice of Appeal

Justice of Appeal

### **MOORE JA**

[58] I have had the privilege of reading the decision of my learned brother and sister. I do not agree that the sentences imposed for importation and possession should be discharged for the reasons that follow.

[59] Among other submissions counsel for the appellant contended that:

- (a) the definition of “enactment” appearing in **section 2** of the **Interpretation Act, Cap. 1 (Cap. 1)**:
  - (i) makes each subsection a separate enactment; and

- (ii) the words “act” and “same offence” appearing in **section 22(1) of Cap. 1** are synonymous, and
- (b) therefore, the three offences are one act constituted under three separate enactments.

Consequently counsel submitted that the decision of this Court in **Mentor** supports her submission and therefore the sentences imposed for possession and trafficking should accordingly be discharged.

[60] Mr. Leacock, Q.C., contended that the appellant was not punished twice for the same offence. He submitted that the appellant was punished for each of three offences which arose out of a single act. He also submitted that the word “act” or “omission” appearing in **section 22 (1) of Cap. 1** bears a different meaning from the words “same offence” appearing at the end of that **subsection**. He further submitted that no rule of law was laid down by **Mentor**.

[61] In order to adequately assess this ground of appeal it is necessary to set out the provisions of **Cap. 1** relied on by counsel for the appellant. Enactment is defined in **section 2 of Cap. 1** as follows:

“enactment” means an Act or statutory instrument or any provision in an Act or statutory instrument”; and

**Section 22 (1) of Cap. 1** provides:

“Where any act or omission constitutes an offence under two or more than two enactments or under an enactment and at common law, the offender shall be liable to be prosecuted and punished under either or any of those enactments or at common law, but shall not be liable to be punished twice for the same offence”.

[62] The appellant was indicted for three distinct offences under three distinct provisions of **Cap. 131**. Those offences were committed in relation to a common subject matter. It might be advantageous to set out those provisions at this stage.

[63] The first count charged “Importation of a controlled Drug, contrary to **section 4 (3) of the Drug Abuse (Prevention and Control) Act, Cap. 131**”. That subsection provides:

“Subject to section 39, it is an offence for a person to import or export a controlled drug in contravention of subsection (1)”.

[64] The second count charged “Drug Trafficking, contrary to **section 18(4) of the Drug Abuse (Prevention and Control) Act, Cap. 131**”. That subsection provides:

“Any person who contravenes any of the provisions of subsection (2) is guilty of an offence under this Act”.

[65] The third count charged “Possession of a controlled drug, contrary to **section 6 (2) of the Drug Abuse (Prevention and Control) Act, Cap. 131**”. That subsection provides:

“Subject to section 39, it is an offence for a person to have a controlled drug in his possession in contravention of subsection (1)”.

[66] It is clear that the provisions cannot stand on their own and the sections of which they form part find succour from the statute. The rule that “a statute must be read as a whole” finds expression here. The view expressed by counsel for the appellant is further dispelled by the following extract from page 5 of **Bennion on Statutory Interpretation, Fifth Edition**:

“Every individual Act of Parliament, however comprehensive and detailed it may appear to be, is *incomplete law*. Its legal meaning cannot be arrived at without taking into account law texts that lie outside it. There may be other Acts of Parliament, texts such as court judgments or textbooks which embody desirable common law rules, treaties forming components of international law, or other relevant documents.”

[67] It follows that a paragraph of a subsection is “incomplete law” and that the statute must be read as a whole in order to comprehend its import, purpose and intendment. To hold otherwise would offend the rule against absurdity and do violence to the statute.

[68] Mrs. Turton’s contention that the words “act” and “same offence” in **section 22 (1) of Cap. 1** is synonymous was considered and decided in **Thomas**. In that case:

“The appellant was convicted of wounding his wife with intent to murder her. Within some ten weeks of the injuries inflicted on her the appellant’s wife died as the result of those injuries, and the appellant was then indicted for, and convicted of, the murder of his wife.

*Held*, that the conviction was good, and was not invalidated on the ground of *autrefois convict*, or by reason of the provision in s. 33 of the Interpretation Act, 1889, that an offender “shall not be liable to be punished twice for the same offence”.

[69] **Section 22 (1) of Cap. 1** is in the same terms as section 33 of the Interpretation Act 1889 (UK).

[70] The main plank of counsel’s argument was the decision in **Mentor**. In order to do credit to counsel’s argument it behoves me to set out in full the principal details of that decision. I have assigned numbers to the paragraphs of **Mentor** for purposes of this judgment.

*Mentor*

“[1] The Drug Abuse [Prevention and Control] Act, 1990 creates the following, among other, offences, namely: unlawful importation of a controlled drug [section 4 (3)], unlawful possession of a controlled drug [section 6 (2)] and trafficking in a controlled drug [section 18 (4)]. This last offence is defined by section 18 (1) to include (a) the unlawful importation or (b) the unlawful possession of a trafficable quantity of a controlled drug. The Act provides that cannabis is a controlled drug and that fifteen grammes or more of that drug is a trafficable quantity.

[2] Section 4 (3) and section 6 (2) offences are punishable on conviction on indictment by a fine not exceeding \$500,000 or by imprisonment for a term not exceeding 20 years or both and section 18 (4) offences are punishable on conviction on indictment by imprisonment for up to life.

[3] The three applicants Bennet Garcia, Herod Mentor and Jeremiah Drayton were jointly charged on a indictment containing the following four counts:-

- (1) being in unlawful possession of 96.147 kilograms of cannabis contrary to section 6 (2);
- (2) trafficking in a controlled drug contrary to section 18 (4) [related to unlawful possession];

- (3) the unlawful importation of the said quantity of cannabis contrary to section 4 (3); and
- (4) trafficking in a controlled drug contrary to section 18 (4) [related to unlawful importation].

[4] On May 27, 1992 when the applicants were arraigned Garcia and Mentor pleaded guilty on all the counts. Drayton pleaded guilty on the first, second and fourth counts but not guilty on the third count. Proceedings against Drayton on the third count were discontinued.

[5] On May 29 the applicants were each sentenced on the first count to 10 years' imprisonment and fined \$250,000.00 to be paid forthwith with a concurrent 10 year term of imprisonment in default of payment. Garcia and Mentor each received a like sentence on the third count. On the second and fourth counts the applicants were each sentenced to 20 years' imprisonment to run concurrently.

[6] Interesting points arose in the course of the submissions by counsel for the applicants that the sentences were excessive: (i) whether it was in order for the indictment to include charges for unlawful possession under section 6 (2) as well as for trafficking under section 18 (4) based upon the same alleged unlawful possession or to include charges of unlawful importation under section 4 (3) as well as for trafficking under section 18 (4) based on the same alleged unlawful importation and (ii) whether the sentences were in breach of the rule that no person should be punished twice for the same act or omission. See section 22 (1) of the Interpretation Act Cap. 1 where it is enacted:

“22 (1) where any act or omission constitutes an offence under two or more than two enactments or under an enactment and at common law, the offender should be liable to be prosecuted and punished under either or any of those enactments or at common law, but shall not be liable to be punished twice for the same offence.”

[7] The prosecution is entitled to prefer and proceed on, all the charges that can be supported by the credible evidence that it has. It does not seem to us that any fault can be found with the way in which the indictment was pleaded and presented.

[8] The second point is more difficult. The applicants by their pleas of guilty admitted the possession and importation of a trafficable quantity of the drug.

[9] It does not seem to us that they could, consistently with the principles of the criminal law, be punished both for being in unlawful possession of a trafficable quantity of the drug [trafficking] as well as for being in unlawful possession of an amount that was less than a trafficable quantity; or for the unlawful importation of a trafficable quantity of the drug [trafficking] as well as for the unlawful importation of an amount less than a trafficable quantity; or indeed for the unlawful importation of a trafficable quantity as well as for the unlawful possession of a trafficable quantity.

[10] The essence of the wrongdoing committed by the applicants was the unlawful importation into Barbados of this large quantity of cannabis and it was this offence that merited the substantial punishment. Although the punishments imposed by the judge in respect of the other offences would not have added to the punishment because (a) the prison sentences imposed for trafficking by possession were made to run concurrently and (b) the fines imposed for unlawful possession and unlawful importation were to be paid forthwith and the prison sentences ordered in default were to be concurrent, yet it seems to this court that principle would require that no additional punishment should be attached to those other offences. The sentences for those other offences must therefore be, and accordingly are, discharged.”

[71] This Court approved the indictments as drawn and preferred in **Mentor** and in **Coronell**, yet in **Coronell** their Lordships said:

“In the present case the submission that must be addressed is that the trial judge was in error in leaving it open to the jury to convict the appellants on both the second and the third counts, each being based on the same incident of alleged possession of cocaine. Cited in support of the submission is **R v. Harris (1969) 8 Cr. App. 376** the headnote to which reads:- “Where two charges arising out of the same incident have been preferred, and one of them has merged (as it were) into the other, it is not proper that it should be left open to the jury to convict on both charges.”

Edmund-Davies, LJ delivering the judgment of the English Court of Appeal, Criminal Division, said at p. 379:-

“It is perfectly clear in reading the transcript that the two charges related to one and the same incident. There is no suggestion of any indecent assault upon this same boy Begley except that which formed the preliminary to and was followed very shortly thereafter by the commission of the full act of buggery. It does not seem to this Court right or desirable that one and the same incident should be made the subject matter of distinct charges, so that hereafter it may appear to those not familiar with the circumstances that two entirely separate offences were committed. Were this permitted generally, a single offence could frequently give rise to a multiplicity of charges and great unfairness could ensue.”

In the light of this authority the convictions of the appellants on both the second and third counts cannot stand. This will be further addressed when the grounds that the sentences are excessive are considered.”

[72] In **Coronell** this Court followed **R v Harris (1969) 8 Cr. App. 376 (Harris)** and concluded that the charges in **Coronell** had merged into one charge. Considering the facts of the two cases it is difficult to reconcile that conclusion. **Harris** was a simple case of buggery in which only one charge was possible. **Mentor** and **Coronell** arose out of three separate acts committed in relation to a common subject matter giving rise to three charges, the ingredients of each charge being specifically and clearly set out in the relevant **section of Cap. 131**.

[73] This is one of those drug offences cases in which the appellant was charged with multiple offences committed in relation to the same subject matter and not, contrary to counsel’s submission, three charges arising out of the same

act. A controlled drug, in this case, cannabis, is not an act or omission. It is a tangible, visible substance that may be the subject of many acts. Each offence arose out of an act that is prohibited by the relevant provision of **Cap. 131**. Those acts are (i) it may be imported, (ii) it may be possessed and (iii) it may be trafficked. **Cap. 131** prohibits other acts that may be committed in relation to controlled drugs, each such act giving rise to at least one offence.

[74] The thrust of the argument in this case, as it was in **Mentor and Coronell**, was that the charges contravened **section 22 (1)** of **Cap. 1**. However, it seems that in **Mentor and Coronell**, the defence contained in that section was not pleaded at the trial. In the instant case there was no contention that the appellant had pleaded **section 22 (1)** at his trial. The defence afforded an offender by **section 22 (1)** of **Cap. 1** is only triggered where there was a prior conviction or acquittal of the offender for the like offence and then **section 22 (1)** must be pleaded on arraignment. Mrs. Turton was not retained for the arraignment of the appellant but she appeared thereafter, led by Mr. Andrew Pilgrim, QC, and mitigated on the appellant's behalf at the sentencing process. There is no evidence on record that even at that stage she took the precaution of informing the trial judge that the appellant had

been punished previously on these offences or any of them and was therefore entitled to claim the defence provided by **section 22 (1) of Cap. 1**.

[75] These offences, unlike those in **Thomas** and that in **Harris**, did not arise out of a single act. They arose out of the various ways in which the appellant dealt with the common subject matter - the controlled drug, cannabis. The ingredients of each offence are clearly set out in the relevant provision of **Cap. 131**. Each set of ingredients is specific in every respect to the manner in which an offender deals with the common subject matter. These offences cannot merge and become one. The offence of importation is sustained by its own facts, so is the offence of possession and the offence of trafficking. Each offence is also subject to a specific penalty prescribed by **Cap. 131**.

[76] Of the numerous cases in this area of the criminal law that have engaged the attention of this Court, **Mentor** and **Coronell** are the only cases in which the application of **section 22 (1) of Cap. 1** has been raised on appeal. Notably, in neither case was there a complaint by counsel for the appellant that that subsection was pleaded in the appellant's defence at his trial and denied by the court. Similarly counsel in this case did not contend that that subsection was pleaded in the appellant's defence and denied by the Court. That is not surprising since the appellant had not previously been charged with these offences or any of them, so that the defence of *autrefois acquit, autrefois*

*convict* or their first cousin double jeopardy would have availed him naught.

If I am correct then that argument cannot succeed on appeal.

[77] In **Mentor** this Court approved the prosecution's right to prefer and to proceed with such charges as credible evidence can support and that is what was done in this case. Having regard to the ingredients of the offences that are the subject of this appeal, it seems to me impossible for a jury properly directed and alert to their duty to convict an offender on only one of these offences and not on the others because the moment the boat carrying the offender and the controlled drug arrives in the territorial waters of Barbados the three offences crystallise. In the circumstances of the commission of these offences it is all or nothing. The offender is guilty or not guilty of all offences charged. Consequently, the offender having been convicted on all counts, the trial judge, in compliance with **section 11 (2) of the Criminal Procedure Act, Cap. 127**, punished the offender in the manner prescribed by **Cap. 131**.

[78] Courts of Appeal exist to remedy mistakes in the first instance process. The Court of Appeal is not intended to be a forum in which issues unsupported by evidence may be raised for the first time. The Court of Appeal is a creature of statute and has no jurisdiction other than that accorded by statute. It was therefore open to this Court, if it was of the opinion that different

sentences should have been passed in **Mentor** and in **Coronell**, to apply **section 14 of the Criminal Appeal Act, Cap. 113A**. That **section** provides:

“On an appeal against conviction or sentence, the Court shall, if it thinks that a different sentence should have been passed, quash the sentence passed at the trial and pass such other sentence authorised by law, whether more or less severe, in substitution therefor as it thinks ought to have been passed; but in no case shall any sentence be increased by reason or in consideration of any evidence that was not given at the trial.”

[79] In my opinion **Mentor** did not lay down any rule of law. Prior to and after **Mentor**, except for **Coronell**, numerous decisions of this Court affirmed the cumulative nature of those offences. In **Mentor** and **Coronell** this Court did not set aside the convictions; it merely discharged the sentences imposed in respect of two of those convictions thereby affirming the accumulative nature of the offences. A rule of law can only be changed by clear and specific language setting out the rule to be changed, the new rule that replaces it and the effective date of the new rule. The typical method by which such a change is effective is exemplified in the decision in **Connelly** the main plank from which counsel’s argument is sourced and also a decision upon which this aspect of the law of Barbados rests.

[80] In my opinion this Court is not bound by **Mentor** for the following reasons:

- (i) even though the offences arose in relation to the same subject matter they are separate offences;

- (ii) there is no evidence that the appellant had previously been punished under **Cap. 131**, or any other enactment or at common law for any of the offences; and
- (iii) under **section 14 of Cap. 113A** this Court is empowered only to substitute a different sentence from that imposed by the trial judge.

### **Sentence Excessive**

[81] On ground 2, counsel contended that:

“The sentences are excessive insofar as the Learned Trial Judge departed from the guidelines established in **Walter Prescod v the Queen** without identifying any special circumstances to justify the same.”

[82] The thrust of counsel’s complaint is that the judge took into consideration an irrelevant matter - the appellant’s prior conviction for an immigration offence - as an aggravating factor and did not apply a sufficient discount for the mitigating factors identified.

[83] The sentencing judge took all relevant matters into consideration. In particular, she gave credit for the early guilty plea, his relatively young age, his cooperation with the police and his expression of remorse. She also considered the relevant provisions of the **Penal System Reform Act, Cap. 139**, relevant decisions and the significant quantity of cannabis involved. She also took into account that the appellant had been on remand for 4 years and 7 months and gave him full credit for that period. In **Mentor** this Court

in relation to 94.7 kilogrammes of cannabis said: “trafficking in drugs on the scale and in the manner exhibited in this Court must be punished severely”.

In that case a sentence of 20 years imprisonment was reduced to 15 years.

- [84] In **Walter Prescod v The Queen Criminal Appeal No. 32 of 2001 (unreported)** a sentence of 12 years imprisonment was upheld for the amount of 127.18 kilogrammes of cannabis. This case is significantly marred by the quantity of cannabis and by the most serious aggravating factor, that is, that the appellant was among a group who shot at the police. In the circumstances I find the sentences of 6 years for importation, 6 years for possession and 8 years for trafficking most generous to the appellant. I can find no fault with the sentences notwithstanding counsel’s complaint that the judge referred to an immigration offence for which the appellant had previously been convicted.

### **Disposal**

- [85] I would dismiss this appeal and affirm the sentences.

**Justice of Appeal**