IN THE SUPREME COURT OF
TURKS AND CAICOS ISLANDS
Appellate jurisdiction

Appeal No: CR-APM 23/09

NIKITA SKIPPINGS

Appellant

v

REGINA

Respondent

A Garland for appellant
A Brookes for respondent

Hearing: 24 August 2010
Judgment: 30 August 2010
Written reasons: 2 September 2010

Reasons for Decision

1. The appellant appeared before the learned Resident Magistrate, Providenciales and pleaded guilty to a single offence of possession of 939 gms of cannabis with intent to supply. He was sentenced to fourteen months imprisonment. He appeals against that sentence.

2. The facts were that the appellant gave a bag containing the drug and some other unrelated items to a passenger on a flight from Providenciales to Grand Turk with instructions to give it to another person on arrival. The passenger was stopped and the drugs were found. He told the police that he had been given the package by the appellant and knew nothing of the contents. He repeated that in the presence of the appellant but the defendant denied having given the package. He maintained his denial until his fingerprints were identified on the bag. At the Magistrates Court he pleaded guilty.

3. Following a lengthy mitigation, the Magistrate was asked for leniency and further requested to consider suspending any term of imprisonment. He concluded that the appropriate sentence was eighteen months imprisonment but reduced it by four months for the plea of guilty. He declined to suspend it.

4. The grounds of appeal which were pursued at this hearing are:
"(1) A sentence of fourteen months imprisonment for a single first time offence of possession of cannabis with intent to supply was manifestly excessive and therefore wrong in principle.
(3) In passing sentence, it cannot be said that the Learned Magistrate considered the following:
(i) The guidelines set out in the case of *R v Isaac Freites* CR-APM/05 in particular the Learned Magistrate refused or failed to consider guideline 3 at paragraph 28 of the said case which states that;
"a first offence involving possession of a significant amount, as in this case, should normally be dealt with be an immediate term of imprisonment of up to one year after trial".
(ii) The Learned Magistrate failed to, or inappropriately considered the defendant's guilty plea, which saved the Court considerable time and expanse and this failure resulted in the defendant not being granted an appropriate sentence in all the circumstances of the case. The Learned Magistrate's failure to consider the above matters, resulted in a sentence that was manifestly excessive, severe, harsh and therefore wrong in principle.

(4) In all the circumstances the sentence is too severe."

5. The Magistrate explained his sentence in his written reasons:

"The appellant pleaded guilty to possession of 933 grams of cannabis with intent to supply. His attorney Mr Garland made a most thorough plea in mitigation even requesting that the appellant be given a suspended sentence. He relied on the principles of sentencing laid down in *R v Freitas* particularly those that he thought favoured his client.

I did consider all that Mr Garland had to say but in the end I had to balance that against the principles which are also relevant to sentencing. In this case these are:

1. The sheer quantity of the drugs involved - 933 grams.
2. The seriousness of the charge – possession with intent to supply - As opposed to simple possession.
3. The method of committing the offence, including jeopardising innocent persons employed at the airport and the fact that the drugs are intended to be sent unaccompanied to Grand Turk where, of course, it could be widely distributed.
4. His previous conviction outside a drug offence. (Suspended sentence for firearm offence)
5. In *R v Freitas* seven months imprisonment for 225 grams was not considered excessive. I thought it unlikely therefore that 14 months imprisonment for 933 grams would be excessive bearing in mind the charge of possession with intent to supply.

I considered that the appellant should have been sentenced for not less than 18 months imprisonment. Four months discount in my view was more than enough."

6. At the appeal hearing, counsel repeated the mitigation previously raised and produced a number of references from respected members of the community.

7. I have no hesitation in saying that I accept the learned Magistrate's reasoning and his approach to the sentence. This court will only interfere if it is manifestly excessive or wrong in law or principle. I see no reason to interfere with the length of sentence passed and I endorse the Magistrate's reasoning. I also acknowledge that his rejection of an order suspending that sentence was correct. On the facts of the present case, the possession of such a quantity of cannabis with intent to supply leaves no room for such an order. As was pointed out by Gardner CJ in the *Freites case*:

"[The] prevalence of this type of offence in Providenciales was mentioned by the Chief Magistrate, who has drug possession cases before him on a regular basis. My own impression, from cases that I have tried, is that drugs are freely available in these Islands and sold openly in certain establishments, which suggests that the police have difficulty in containing the problem here, and that because of that young people are vulnerable to drug exposure ... Accordingly I consider that the courts have an important role to play in demonstrating that such unlawful activity will not be tolerated and that those caught will be punished."

8. The learned Chief Justice went on to provide, in guideline 6:
"Any offence of importing, producing or supplying drugs, whether class A or B, should normally be sentenced to an immediate sentence of imprisonment of not less than a year. Larger amounts should normally be dealt with in the Supreme Court."

9. I accept the guidelines suggested in that case which have been followed now for five years and still properly reflect the position here. However, this appeal is by way of a rehearing and I must reconsider the whole matter in the light of the circumstances which now face the Court. The sentence was ordered on 23 September 2009 and an appeal immediately filed with the result that the appellant was released on bail pending appeal. Had he not appealed, he would by now have served his sentence and been released more than a month ago.

10. In the eleven months he has been awaiting this appeal he has worked and, as has been mentioned, has produced to the Court a number of references all of which refer to his contrition and change of attitude. He works as a chef in a restaurant owned by his father and has, it appears from the references, applied himself consistently since his conviction in the present case. He had one conviction prior to this offence for possession of an imitation firearm for which he received a suspended sentence. The present offence was not in breach of the terms of that suspension and he has not committed any further offences during the time he has been awaiting this appeal.

11. By section 3 (3)(b) of the Suspended Sentencing Ordinance, 2004, the court is not entitled to deal with an offender by means of a suspended sentence unless it is of the opinion that the exercise of that power can be justified by the exceptional circumstances of the case. In addition, subsection (4) provides that the court which passes a suspended sentence must consider whether the circumstances in the case are such as to warrant, in addition, the imposition of a fine or the making of a compensation order.

12. The delay in the hearing of this appeal has been far too long. Such delay adds to the anxiety experienced by the appellant. I accept that has been the case here but it has also, in fact, assisted him by allowing him the opportunity, usually unavailable to an appellant, to demonstrate by his actions since his conviction that he is trying to keep out of further trouble.

13. These factors, which were not, of course, matters the learned Magistrate could know at the time he passed sentence, allow me now to suspend the sentence. The appellant must realise that he has been given a chance which is unusual but which has been possible because of the evidence he has produced to support his claim that he has genuinely attempted to correct his ways. I believe there is a real possibility that he will maintain that position.

14. The appeal is allowed to the extent that the sentence of fourteen months imprisonment is suspended from today for two years. In addition he will pay a fine of $2000 with two months to pay and two months imprisonment in default of payment.

15. The suspension of a sentence for a drug offence should only be used in the most exceptional circumstances. Had it not been for the way the appellant has conducted himself in the time since he filed this appeal, it would not have been appropriate but that fact, coupled with his plea of guilty and the confidence placed in him by so many people, allows the Court to consider the circumstances of this case are exceptional. The decision arises because of the particular facts of this case and should not be regarded as diluting in any way the principle stated by Gardner CJ in his sixth guideline.

16. The appellant must understand that if he commits any offence punishable with imprisonment in the next two years he will go to prison for this offence for fourteen months on top of any sentence he receives for the subsequent offence. If he fails, he can be sure he will receive no further consideration from this Court. I hope he will realise that the price of failure is too high for him and far too high for his family. I direct that he be served personally with a copy of this judgment to ensure he clearly understands his position.

Gordon Ward
Chief Justice