



The Court of Appeal for Bermuda
CRIMINAL APPEAL No. 12 of 2017

B E T W E E N:

THE QUEEN

Appellant

-v-

MANAI ROBERTS

Respondent

Before: Baker, President
Kay, JA
Bernard, JA

Appearances: Larissa Burgess, Office of the Director for Public Prosecutions,
for the Appellant
Susan Mulligan, Christopher's, for the Respondent

Date of Judgment:

17 November 2017

EX TEMPORE RULING

*Plea of guilty – basis of plea no acceptable to prosecution – Newton hearing
when necessary.*

BAKER P:

INTRODUCTION

1. On the 4th April 2017 Manai Roberts aged 28 pleaded guilty to possession of cannabis with intent to supply, and the possession of proceeds of criminal

conduct. On the 7th July 2017, he was sentenced to nine and three months imprisonment concurrently on those two counts and his release date is the 5th Jan 2018 when he will have served two-thirds of that sentence.

2. There were before the Court cross appeals against sentence; an appeal by the Crown that the sentence was manifestly inadequate, and an appeal by the Defendant that the sentence was manifestly excessive. The Crown requires leave to appeal and we have refused leave to appeal in the circumstances for which we will come in a moment.

FACTS

3. The facts of the case are as follows; at about 10 mins to 1 on the Friday the 26th August, 2016, police officers attended at the Ice Queen take-out restaurant on Middle Road in Paget, where officers observed the defendant Roberts riding a motorcycle into the plaza, where the Ice Queen is situated. On seeing the officers Roberts dismounted from his motorcycle and fled from the scene on foot – returning briefly to recover a plastic bag from the motorcycle’s footrest. A short struggle with the police ensued before he escaped, and ran across the main thoroughfare of Middle Road, leaped over a wall and dropped 10 feet into the garden of a private property.
4. Roberts was seen to have property fall from his person, which was subsequently discovered to be two Apple I-phones and a number of plastic bags. The police continued the pursuit on foot, and eventually he was hit with a tazer and apprehended. When he was cautioned, he made no reply. When he was being handcuffed, a cereal box with fruit loops on it was noticed, which was partially torn open, and found to contain plant material packaged in individual heat sealed bags. In his backpack there were numerous bundles of cash which police then took possession of. The cash totalled BD\$23,855.00 in four bundles of \$5,000.00 each and smaller rolls.

5. He was interviewed under caution, but declined to comment. The plant material that was seized from the cereal box was subsequently discovered to be 902.7 grams of cannabis with a street value estimated \$42,350 and \$45,125.

THE PROCEEDINGS BELOW

6. The plea of guilty did not come initially. A plea was eventually tendered, and when the matter came before Greaves J, he indicated that he was not prepared to accept the basis of it. But in the result, the sentencing hearing took place, not before Greaves J, but before Wolffe AJ. The basis of the plea as tendered, was that the defendant was carrying the drugs on behalf of his father whose vehicle had broken down, and he was asked to do this at short notice, although he was very suspicious about the material that he was being asked to take, he was not a drug supplier in the ordinary sense of the word, but a mere courier.
7. The case took the following course: the prosecution apparently – according to Ms. Burgess – had throughout indicated their objection to this basis of plea. That is not surprising because it was *prima facie* one they might have well wished to challenge. Ms. Mulligan on the other hand says that she made it perfectly clear before the sentencing judge, the basis on which her client had pleaded guilty, and although he gave no indication one way or the other, the inference must be that he sentenced the defendant upon the basis of his plea of guilty. Indeed, Ms. Mulligan said that at some point the judge did refer during the submissions to the father's position and whether he was going to be charged, or words to that affect.
8. The first point that we would make is that it is highly desirable in cases where a plea is being advanced on a particular basis, that it should be put in writing so that that is clearly apparent to everybody. The next point that we make, is that when a plea is advanced upon a basis that is not acceptable to the prosecution, there are various courses open to the judge. On the one hand, he may say that the basis of plea is so preposterous that he simply is not prepared to accept it at

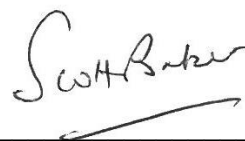
all. On the other, he may say that he accepts it without any further investigation. But there is a third option when there is a serious factual issue. He may say, and indeed he should say, that there has to be a – what is known as a *Newton* hearing – a hearing in accordance with the practice laid down in the case of *Newton* (1982) 77 Cr App R 13 which results in the judge hearing evidence and finding as a fact one way or the other whether he accepts the basis advanced by the defendant.

9. That did not happen in this case, and it is therefore necessary that the Court must approach the appeal upon the basis of the plea tendered by the defendant, and as far as we can see, apparently accepted by the judge.
10. It was in those circumstances that we did not conclude that it was arguable, that the sentence passed was manifestly excessive, and therefore leave was refused for the Crown's appeal. At that point, Ms. Mulligan said that she was abandoning the appeal of her client and so the case proceeds no further.

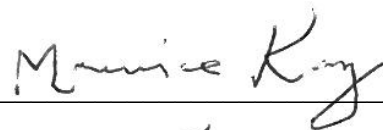
THE COURT'S FINDINGS

11. We think in the particular circumstances of this case, that the actual sentence passed in these very unusual circumstances should not be regarded as authority laid down for future cases, but it is unnecessary at this juncture to go into the matter any further. The defendant is due for release on the 5th January 2018 as we have mentioned.
12. There is one further matter that requires mention, and that is the time scale of these proceedings. The plea of guilty took place on the 4th April 2017 – the sentence not until three months later on the 17th July 2017; and this appeal is now before the Court on the 17th November 2017. That is the most unsatisfactory time scale in a case where in the event a relative short sentence was passed and was the subject of appeal.

13. There may be many reasons for the delay, but cumulatively the delay is not acceptable, and indeed the delay between the 7th July 2017 and the 17th November 2017, is I think, partly due to the fact that the file was missing in Court in transition between two different buildings. But, even in those circumstances, both sides should have pursued the matter with the Court office. We mention this because this is now the third case this week, in which there have been delays between conviction and sentence, and it's a problem that must be addressed.



Baker P



Kay JA



Bernard JA