

IN THE GRAND COURT OF THE CAYMAN ISLANDS

HOLDEN AT GEORGE TOWN, GRAND CAYMAN

CAUSE NO. 2521-2522/88

21-02-89

BETWEEN: MIGUEL WATLER & FELICIA C.K. HUSBANDSAND: REGINA

Mr. Hampson for Watler and Mr. Collins for Husbands.
Ms. Dilbert for the Crown.

JUDGMENT

These are consolidated appeals by Miguel Jesus Watler and Felicia Celina Katherine Husbands. Watler was convicted of possession of cocaine with intent to supply, contrary to section 3(i)(m) of the Misuse of Drugs Law (Revised) and Husbands of possession of cocaine, contrary to section 3 (i)(k) of the same Law. Both appellants pleaded "guilty" before the learned Senior Magistrate, and they appeal against their sentences only.

The first matter I have to determine in this appeal is what sentence was actually imposed on Watler. The certified copy of the record reads four and a half years imprisonment. Counsel maintained that the sentence handed down was four years imprisonment. The commitment warrant, signed by the learned Magistrate, reads four years imprisonment. The file cover, which in this case was also signed by the learned Magistrate, also showed four years imprisonment.

I therefore sought clarification of the matter from the learned Magistrate. He confirmed, in a memorandum, that Watler's sentence was four and a half years imprisonment, as in the certified record. Thereafter the appellant's counsel produced affidavits from five people who were present in Court when the sentence was announced, including two attorneys, to the effect that the learned Magistrate awarded a sentence of four years imprisonment. This is borne out by an affidavit of the Crown Counsel who presented the case to Court on that day, to the effect that her note is that the sentence was,

indeed, four years imprisonment.

I am satisfied, on the material before me, that although the learned Magistrate's record reads four and a half years he announced a sentence of four years imprisonment. I do not propose to go into academic arguments on whether the actual sentence was that announced or that intended to be announced and recorded in the official record of the Court. It would clearly be unjust for the appellant to be led into a genuine belief that the sentence was four years only to find, after he had brought the matter to the Court's attention by lodging an appeal, that the sentence was six months above that. I shall resolve the ambiguity in the appellant's favour and treat Watler's sentence as one of four years imprisonment.

Husbands was sentenced to two years imprisonment.

The facts are that in the early afternoon of the 22nd July 1988 a report was made to Central Police Station that Watler had pulled a gun on Woman Police Constable Anderson. A description of the vehicle driven by Watler was given and that vehicle, with both appellants inside, was stopped in Rodden Town. The car was searched and no firearm or other suspicious object was found. A search of the apartment of the appellants revealed nothing suspicious but on a personal search of Husbands 80 rocks of cocaine were found weighing, on examination 15.2 grams. Watler immediately accepted that the cocaine was his and that he had it with intent to supply.

Watler is 23 years old and Husbands is 21. They have a long-standing relationship and there is a four year old boy of the relationship. Both appellants were born in Trinidad but Watler's mother is Caymanian and he has spent two lengthy periods of time in Cayman and now has an electrical business here. Husbands followed Watler here and they have been living with his mother.

So far as the offences are concerned, Husbands maintained she did not know of what Watler was about on that day. She accompanied him on one of his electrical jobs and waited in the car when he spoke to someone at length in a Churchyard. As they were about to drive off they were approached by a Woman Police Constable and Watler threw the

packet to Husbands and told her to put in her bosom. Husbands panicked and realized that something illegal was happening, but did as Watler asked.

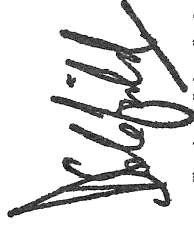
It is said on behalf of Watler that the sentence has crushed him. He has realized his own stupidity and attempted to take his own life after conviction and sentence. Watler's father showed no interest in his upbringing from very early on, yet he has made the best of his abilities.

The child is being looked after by Watler's mother.

In the circumstances of Watler's case, although perhaps four years imprisonment is in the upper range of sentence for possession with intent to supply 15.2 grams of cocaine I am unable to say that this sentence is wrong in principle or manifestly excessive. For the record I formally reduce Watler's sentence to 4 years imprisonment. I do this because I understand the commitment warrants have already been amended to show the higher sentence.

So far as Husbands is concerned I am aware that the sentence deprives her child of a mother for a considerable period of time. However I must balance the strong mitigating factors in her case with the Court's duty to discourage the drug trade in these Islands and to deter those who may get caught up in its poisonous tentacles. On the basis that Husbands knew what Watler was about, and I cannot accept that she did not, a two year sentence for simple possession, again albeit on the higher side, was not wrong in principle or manifestly excessive. Husband's appeal is dismissed.

21st February, 1989



D. Schofield

Judge