REPUBLIC OF TRINIDAD AND TOBAGO

IN THE COURT OF APPEAL

PORT OF SPAIN

Crim. App. No. 4 of 2011

BETWEEN

OTTO LANCASTER

Appellant

AND

THE STATE

Respondent

PANEL:

A. Yorke – Soo Hon J.A.

N. Bereaux J.A.

R. Narine J.A.

Appearances: Mr. K. Scotland for the Appellant

Mrs. K. Waterman Latchoo for the Respondent

Date Delivered: 22nd May 2014.

JUDGMENT

Delivered by A. Yorke – Soo Hon JA

Facts

1. On November 10, 2004, around 12.05 am, police officers were in a marked police vehicle on mobile patrol proceeding east on Argyle Street, Belmont, when they noticed the appellant with a black bag on his shoulder. The appellant was walking in an easterly direction.

2. The appellant looked in the direction of the police vehicle and began to run along Argyle Street. He ran through a gate and into a yard on the northern side of the street.

3. The Police pursued the appellant and he was apprehended with the bag still in his possession. PC Roberts searched the bag and discovered twelve packets of marijuana. PC Roberts cautioned the appellant, who made no reply.

4. He was taken to the Belmont Police Station. The packets seized were weighed and marked. The marijuana weighed 10.47kg.

5. The appellant was convicted on March 1, 2011 on a charge of possession of a dangerous drug for the purpose of trafficking contrary to section 5(9) of the Dangerous Drugs Act. The Trial Judge imposed a sentence of 25 years imprisonment with hard labour and a fine of $100,000; in default of payment of the fine, a term of imprisonment of 15 years. This was the mandatory penalty imposed by section 5(5) of the Act.

6. He appealed his conviction and sentence. On the September 27, 2012, the Court of Appeal dismissed his appeal against conviction after his attorney had indicated that there were no viable grounds upon which the decision could be challenged. The Court then adjourned the hearing of the appeal against sentence pending the decision of the Court in the case of **Barry Francis and Roger Hinds v The State**.

7. The appellant had two previous convictions: Possession simpliciter in 2000 for which he was fined $25,000 or 6 months hard labour and possession for the purposes of trafficking in 2002 for which he was sentenced to 28 months hard labour.

Principles of Sentencing

8. In **Barry Francis and Roger Hinds, Crim. App. Nos. 5 & 6 of 2010** this Court held that the mandatory minimum imposed by the conjoint effect of **Sections 5(5) and 61** of the Act was unconstitutional. In passing sentence the court said:

> "The effect of our decision is that the sentence for the offence of possession of a dangerous drug for the purpose of trafficking may vary from a maximum sentence of life imprisonment to such minimum sentence as the court sees fit, and in determining the appropriate sentence in any case the court must have regard to all of the factors set out in **Smith**, many of which are encompassed and repeated in **Mano Benjamin**. In addition, the court must have regard to the significant factor of Parliament's clear intention."

9. The principal objectives of sentencing set out by Wooding C.J. in the case of **Benjamin v R (1964) 7 W.I.R 459** are:
   (1) the retributive or denunciatory, which is the same as the punitive;
   (2) the deterrent vis-a-vis potential offenders;
   (3) the deterrent vis-a-vis the particular offender then being sentenced;
   (4) the preventive, which aims at preventing the particular offender from again offending by incarcerating him for a long period; and
   (5) the rehabilitative, which contemplates the rehabilitation of the particular offender so that he might resume his place as a law-abiding member of society.

10. In **Francis and Hinds** the Court of Appeal imposed sentences of 15 years and 12 years respectively for possession of 1.16 kg of marijuana for the purpose of trafficking. Francis received a more severe sentence for the sole reason that he had a previous conviction in 2002 for the same offence. Both appellants received discounted sentences taking into account time spent in custody awaiting trial.

11. In **Jerome Jobe Cr. App. No. 11 of 2011** the appellant received a sentence of 20 years. A deduction was allowed taking into account the time he had spent in custody awaiting

trial. The quantity of marijuana seized was 45.75kg. The appellant had a previous conviction for possession simpliciter. In passing sentence the court considered the following matters relevant:

1) The seriousness and prevalence of the offence and its deleterious effects on the society;
2) The quantity of the drug;
3) The previous conviction of the appellant;
4) The clear legislative intent of Parliament as reflected by Section 5(5) of the Act; and
5) The particular circumstances of the case.

12. The authorities on which counsel for the appellant relied, unfortunately, predate the recent decision of **Francis and Hinds** which has impacted the law of sentencing in drug possession cases. In that case, the Court was careful to point out that Parliament's clear intention to introduce severe penalties for trafficking offences could not be ignored:

> "On the question of approach by the sentencing judge, we are of the view that all the pertinent factors including, of course, the minimum sentence should be "put into the pot" and a balance struck where there are competing factors. This is as opposed to using the minimum sentence as a starting point and adjusting as circumstances warrant. The approach adopted will in no way ignore or diminish the intended purpose of Parliament."

13. In this appeal, we have been asked to take note of the following mitigating factors:
    1) The drug in question was marijuana as oppose to "harder" drugs;
    2) The appellant has spent approximately eight and a half years in prison;
    3) The appellant has a good prospect of being reintegrated into society.
    4) The appellant's last conviction is now 12 years old.

14. In the balancing exercise, we must also consider those factors which weigh against the appellant, to wit:

    1) The gravity and prevalence of offences involving dangerous drugs;
    2) The offence was possession of a dangerous drug for the purpose of trafficking as opposed to simple possession;
    3) The quantity of drugs seized is substantial (10.45kg) and is almost ten times the amount seized in **Francis and Hinds**;
    4) The appellant is a repeat offender. He has been convicted and incarcerated for this offence previously;
    5) The appellant was 30 years old at the time of the offence; he was a mature person;
    6) The appellant was fully culpable;
    7) The inference to be drawn as to the nature of the enterprise;
    8) With respect to paragraph 13(4) above, the twelve year hiatus in the appellant's criminal convictions is explained by the fact that he was incarcerated for almost all of the period.

15. These facts are distinguishable from those in **Jerome Jobe**. The quantity of the narcotics involved, while a factor to be taken into account, is by no means the only factor nor is it the deciding factor. In this case we see a pattern of escalation not present in **Jobe**. Two years after this appellant was convicted for simple possession, he committed another criminal offence, this time the more serious offence of possession of a dangerous drug for purposes of trafficking. He received a 28 month term of imprisonment. Almost immediately after he had completed that sentence he was caught again and charged with the current trafficking offence. The appellant appears determined to ignore the law, the penalties and the consequences of crime.

16. Parliament's intended purpose through the introduction of a mandatory minimum sentence must not be ignored. The Court in **Francis and Hinds** said:

> "As has been said repeatedly and correctly, dangerous drugs are a scourge in our society leading to many spin-off incidences of criminal behaviour. Additionally, one could hardly deny that the drug trafficker is a threat to our society from which we must be protected sometimes by means of a significant custodial sentence."

17. Taking all these matters into consideration, we consider that the appropriate sentence in this case is a term of imprisonment of 20 years. From this figure, a deduction must be made for time spent in pre – trial custody.

ORDER:

The appeal against sentence is allowed. The sentence of the trial Judge is varied, and a term of 20 years hard labour is substituted to run from the date of conviction. Time spent in custody from the date of arrest to the date of conviction is to be taken into consideration and deducted accordingly in the computation of sentence.

Dated the 22nd day of May, 2014.

A. Yorke – Soo Hon
Justice of Appeal

N. Bereaux
Justice of Appeal

R. Narine
Justice of Appeal