A

BARRY JENNIONS

v.

B

REGINAM

[SUPREME COURT, 1972 (Grant J.), 20th June]

Appellate Jurisdiction

Criminal law—sentence—unlawful possession of drugs—improper to take into consider-
C *ation in assessing a fine a breach of a bail recognizance—it is wrong in principle to allow time for payment of a fine and then order that the person concerned be held in custody during that time—practice as to plea of guilty—Dangerous Drugs Ordinance (Cap. 95) ss.8(b), 39(2) (b)—Criminal Procedure Code (Cap. 14) ss.117, 197(2):*

Criminal law—plea—on a plea of guilty court should record actual words used by accused—undesirable to accept as established by plea facts of which the accused may have no personal knowledge—analyst's and medical reports should be tendered and accused informed of contents—Dangerous Drugs Ordinance (Cap. 95) ss.8(b), 39(2) (b).

D

In the Magistrate's Court the appellant was fined $500 (in default six months' imprisonment) in assessing which the court took into consideration the fact that the appellant was in breach of his bail recognizance; the appellant was given fourteen days to pay the fine but an order was made that he be held in custody during that period in view of an earlier attempt to leave Fiji.

E

In allowing the appeal on the ground that the sentence was too severe in the circumstances of the case the learned judge in the Supreme Court said —

(i) The breach of the recognizance should not have been taken into account but dealt with as a separate issue under section 117 of
F the Criminal Procedure Code.

(ii) It is a contradiction in terms and wrong in principle to allow a person a period of time to pay a fine and then order that he be held in custody during that period.

(iii) When a plea of "guilty" is entered there is an obligation on the
G court to record, as nearly as possible, the words used by the accused in admitting the truth of the charge.

(iv) It is an undesirable practice to accept as established by a plea of "guilty", facts of which the accused may have no personal knowledge; in appropriate cases where an analyst's report or a medical report is called for, magistrates should ensure that the
H report is tendered and the accused informed of its contents.

Cases referred to:

Wachira v. R. (1954) 21 E.A.C.A.396.

Appeal to the Supreme Court from a sentence imposed in the Magistrate's Court for unlawful possession of drugs.

Appellant in person.

D. I. Jones for the respondent.

The facts sufficiently appear from the judgment.

20th June 1972

GRANT J. :

This is an appeal against severity of sentence.

On the 9th day of May 1972 the appellant was convicted on his own plea of unlawful possession of drugs contrary to Section 8(b) and Section 39(2) (b) of the Dangerous Drugs Ordinance Cap. 95. The facts of the case as admitited by the appellant were that he had come from England by yacht which was moored in Fiji waters and on board which were found, among other items, 23.30 grains of Indian hemp. The appellant informed the presiding Magistrate that he had been smoking hemp for five years, did not introduce it to others, had never taken it ashore or done any harm to anyone else and had made no attempt to indoctrinate people in Fiji.

On the 10th day of May 1972 upon passing sentence the presiding Magistrate commented on the evils attendant on the use of illegal drugs and I fully endorse his view. However he also commented on the fact that the appellant had previously absconded from Fiji to avoid sentence and he proceeded to impose a fine of $500 or in default of payment six months imprisonment and purported to take into consideration, in assessing the fine, the fact that the appellant was in breach of his bail recognisance. The appellant was then given fourteen days in which to pay the fine but the presiding Magistrate ordered that he be held in custody during that period in view of his previous attempt to leave Fiji.

If an accused fails to comply with the terms of a recognisance under which he has been released on bail, the breach must be dealt with under Section 117 (as amended) of the Criminal Procedure Code as a separate issue, distinct from sentence. Consequently it should not have been taken into account in the fine imposed.

A fine of $500 is the maximum permissible under the Dangerous Drugs Ordinance upon conviction by a Magistrate's Court, and in my view was not warranted in the particular circumstances of the case. It must be borne in mind that the penalty section applicable to the drug offence with which the appellant was charged is a general one which covers not only Indian hemp but very much more dangerous drugs such as heroin and cocaine. It also applies whatever be the quantity of dangerous drugs involved and not only to possession but also to more grave offences such as manufacturing and selling. Accordingly, in assessing sentence, the Court must take into account the nature of the drug, the quantity of the drug and any other circumstances which have a bearing on whether possession was for personal use only, or whether peddling, commercial profit and corruption of others was involved.

On this basis and disregarding any breach of bail recognisance the sentence imposed was too severe and it is quashed.

Having had the opportunity of considering sentences imposed in Fiji since 1967 in other cases involving the possession of dangerous drugs, bearing in mind that the appellant nformed the lower Court that he was a destitute, and taking into account the term of imprisonment which he has already served, I substitute a sentence of two months imprisonment effective from the 10th May 1972, which, if he has earned the maximum remission to which he is entitled, should permit of his immediate release.

There are three further points which require comment.

Firstly, it is a contradiction in terms and wrong in principle to allow a person a period of time in which to pay a fine and then order that he be held in custody during that period.

Secondly, the appellant's plea to the charge has been recorded simply as "plea of guilty". Certainly where a plea of not guilty is entered the better course is to simply record "plea of not guilty" and not to record the actual words used by an accused *(Wachira s/o Wambago v R.* (1954) 21 E.A.C.A. 396), but when a plea of guilty is entered there is, by virtue of Section 197(2) of the Criminal Procedure Code, an obligation on the Court to record, as nearly as possible, the words used by the accused when admitting the truth of the charge.

Finally, it is an undesirable practice to accept as established by a plea of guilty facts of which an accused may have no personal knowledge. In this case the accused pleaded guilty to possession of Indian hemp, but the question of whether or not the substance in question was Indian hemp turns on expert evidence. It is for this reason that in cases of this nature the substance is sent for examination by a properly qualified analyst and, while it is clear from the record that this was done in this case and that the facts put before the Court were based on an analysis, the analyst's report was not produced to the Court. In any future cases of this nature Magistrates should ensure that analysts' reports are tendered and that accused persons are informed of their contents. The same procedure should be followed in analogous cases, such as those which turn on medical evidence (e.g. assaults occasioning actual bodily harm or grievous harm) requiring medical reports to be tendered and communicated to the accused.

Appeal allowed.