

IN THE CARIBBEAN COURT OF JUSTICE
APPELLATE JURISDICTION

ON APPEAL FROM THE COURT OF APPEAL OF BARBADOS

CCJ Appeal No BBCR2025/001
BB Magisterial Appeal No 7 of 2024

BETWEEN

DANNY LAMAR HUSBANDS

APPELLANT

AND

COMMISSIONER OF POLICE

RESPONDENT

Before:

Mme Justice Rajnauth-Lee
Mr Justice Jamadar
Mme Justice Ononaiwu
Mr Justice Eboe-Osuji
Mr Justice Bulkan

Date of Judgment: 28 July 2026

Appearances

Mr Andrew O G Pilgrim SC and Mr Martie R M Garnes for the Appellant

Ms Krystal C Delaney, Deputy Director of Public Prosecutions (Ag) and Mr Kevin Forde, Senior State Counsel (Ag) for the Respondent

Ms Anika Jackson SC, Solicitor General and Mr Rico Yearwood, State Counsel for the Attorney General as Amicus Curiae

Criminal law — Appeal — Sentence — Trafficking of cannabis — District Court — Whether sentences manifestly excessive — Seriousness of the offence — Statutory custodial threshold.

Criminal law — Appeal — Sentence — Statutory interpretation — Pre-sentence report — Penal Reform Act, Cap 139, ss 35, 36, 37 and 40.

SUMMARY

The appellant, Mr Danny Lamar Husbands, pleaded guilty before a magistrate to unlawful trafficking in a controlled drug after admitting that cannabis found by a police officer was in his possession for the purpose of supply. The cannabis comprised a relatively small quantity packaged in multiple smaller bags. The appellant had previous convictions, including convictions for cannabis-related offences. The magistrate regarded the appellant's criminal history as demonstrating an escalation in offending from possession to cultivation and ultimately to trafficking and concluded that previous non-custodial sanctions had failed to deter him. On that basis, the magistrate imposed a custodial sentence of three months' imprisonment.

The Court of Appeal dismissed the appellant's appeal and affirmed the sentence. It held that the magistrate had properly considered the aggravating and mitigating factors of both the offence and the offender, including the quantity of cannabis involved and the appellant's previous convictions. The Court of Appeal accepted the magistrate's view that the appellant's offending had escalated over time and agreed that deterrence should play a significant role in determining the sentence. It therefore found no basis for interfering with the custodial sentence imposed.

The appeal principally concerned whether the Court of Appeal erred in upholding the custodial sentence. In particular, the Court had to determine whether the sentence complied with s 35(2) of the Penal System Reform Act ('PSR Act'), which provides that a custodial sentence shall be imposed where the offence is so serious that only such a sentence can be justified. The Court also considered whether the lower courts improperly treated the appellant's previous convictions and failure to respond to earlier sentences as increasing the seriousness of the offence contrary to s 40 of the PSR Act; whether the Court of Appeal failed to have regard to established sentencing practices in Barbados relating to small-quantity cannabis offences; whether it contravened the established principles of horizontal *stare decisis*; and whether it erred in failing to obtain and consider a pre-sentence report.

The Court undertook a detailed examination of the statutory framework and directed the filing of additional materials, including Hansard extracts, sentencing statistics from the magistrates' courts, government reports and the appellant's pre-sentence report. It also invited the Attorney General to participate as *amicus curiae* because questions concerning changing legislative and governmental attitudes towards cannabis had been raised.

The Court considered the legislative purpose of the PSR Act and concluded that it was enacted as part of a broader penal reform initiative designed to expand non-custodial sentencing options. Reviewing both Barbadian and comparative jurisprudence, the Court emphasised that s 35(2) of the PSR Act establishes a high threshold for imprisonment and requires a court to determine whether a custodial sentence was absolutely necessary. The Court noted that for cannabis-related offences in Barbados, sentencing courts generally favour non-custodial sanctions for cannabis trafficking involving smaller quantities and that imprisonment in such cases has been comparatively rare. While recognising those trends, the Court stressed that sentencing must remain case-specific and declined to create any inflexible rule that small-scale cannabis trafficking should always attract a non-custodial penalty.

The Court concluded that both the magistrate and the Court of Appeal erred in their application of the PSR Act. It found that neither court undertook the analysis required by s 35(2), namely, whether the offence was so serious that only a custodial sentence could be justified. Instead, the lower courts focused principally on deterrence and the appellant's previous convictions.

In relation to the appellant's previous convictions, the Court held that s 40(1) expressly prohibits treating an offence as more serious merely because of an offender's previous convictions. The Court noted the jurisprudence in Barbados that the failure of the offender to respond to previous offences must not be regarded as rendering the instant offence more serious. However, under s 40(2), a sentencing court may take previous convictions into account where they reveal a relevant aggravating factor relating to the offence. Referring to the decisions in *Harewood v R* (BB 2009 CA 22) and *Griffith v R* (BB 2009 CA 13), the

Court highlighted the important distinction between these two approaches. It concluded that the magistrate and the Court of Appeal fell into error in accepting that the appellant's previous convictions were relevant in determining whether a custodial sentence alone was justified.

Further, under s 37(4) of the PSR Act, where no pre-sentence report was obtained at first instance for a hybrid offence, an appellate court hearing an appeal against a custodial sentence is required to obtain and consider such a report. The Court therefore held that the Court of Appeal erred by failing to obtain and consider a pre-sentence report.

Having considered the statutory framework, the circumstances of the offence, and the relatively small quantity of cannabis involved, the Court was not satisfied that the offence crossed the custody threshold. It therefore held that a custodial sentence was unjustified and allowed the appeal. The Court quashed the sentence of imprisonment and substituted a non-custodial sentence by ordering that the appellant be placed on a bond to be of good behaviour for a period of six months. In default of compliance with the bond, he shall pay a fine of BBD675 within 14 days.

Cases referred to:

Bank of Nova Scotia v Comptroller of Inland Revenue [2025] CCJ 13 (AJ) LC; *Barton v R* BB 2019 CA 5 (CARILAW), (20 February 2019); *Bend v R* BB 2002 CA 9 (CARILAW), (27 March 2002); *Enriquez v A-G of Belize* [2026] CCJ 8 (AJ) BZ; *Fields v The State* [2023] CCJ 13 (AJ) BB, (2023) 104 WIR 37; *Gittens v R* [2010] CCJ 1 (AJ) (BB), (2010) 75 WIR 126; *Greaves v The State* [2022] CCJ 9 (AJ) BB; *Griffith v R* BB 2009 CA 13 (CARILAW), (19 June 2009); *Harewood v R* BB 2009 CA 22 (CARILAW), (21 December 2009); *Husbands v Commissioner of Police* BB 2025 CA 3 (CARILAW), (6 March 2025); *OO v BK* [2023] CCJ 10 (AJ) BB, (2023) 103 WIR 36; *Persaud v R* [2018] CCJ 10 (AJ) BB, (2018) 93 WIR 132; *Pinder v R* [2016] CCJ 13 (AJ) (BB), (2016) 89 WIR 181; *Pope v R* BB 2010 CA 1 (CARILAW), (25 February 2010); *Prescod v R* BB 2006 CA 7 (CARILAW), (6 March 2006); *R v Bexley* (1993) 13 Cr App R (S) 462; *R v Bradbourn* (1985) 7 Cr App R (S) 180; *R v Cox* [1993] 2 All ER 19; *R v Haywood* (2016) 88 WIR 45 (BB CA); *R v Howells* [1999] 1 All ER 50; *R v Lorde* (2006) 73 WIR 28 (BB CA).

Legislation referred to:

Barbados – Drug Abuse (Prevention and Control) Act, Cap 131, Drug Abuse (Prevention and Control) (Amendment) Act 2021, Magistrate's Court Act, Cap 166A, Penal System Reform Act, Cap 139, Sacramental Cannabis Act 2019; **United Kingdom** – Criminal Justice Act 1991.

Other Sources referred to:

Banks R, *Banks on Sentence* (5th edn, 2010); Barbados, *Hansard*, House of Assembly, 1st Session 1994-99, (15 December 1998); Caribbean Court of Justice (Appellate Jurisdiction) Rules 2024; Criminal Justice Research and Planning Unit, 'An Examination of Cannabis-Related Offences in Barbados: Trends, Impacts, and Sentencing Considerations' (Ministry of Legal Affairs and Criminal Justice, April 2026); Mason S, 'Throne Speech' (Second Session of Parliament, Barbados, 15 September 2020); National Council on Substance Abuse 'Barbados Drug Information Network Report 2020' (Government of Barbados 2022); National Council on Substance Abuse 'Barbados Drug Information Network Report 2021' (Government of Barbados 2022); National Council on Substance Abuse 'Barbados Drug Information Network Report 2022' (Government of Barbados 2023); National Council on Substance Abuse 'Barbados Drug Information Network Report 2023' (Government of Barbados 2024); Roberts J and Harris L, 'Reconceptualising the Custody Threshold in England and Wales' (2017) 28 Criminal Law Reform 477; Roberts J V, 'The Role of Criminal Record in the Sentencing Process' (1997) 22 Crime and Justice 303; Seetahal D, *Commonwealth Caribbean Criminal Practice and Procedure* (4th edn, Routledge 2014); Wasik M, *Emmins on Sentencing* (4th edn, OUP 2001).

Treaties and International Materials referred to:

United Nations General Assembly (UNGA) 'United Nations Standard Minimum Rules for Non-custodial Measures' (The Tokyo Rules) Res 45 (14 December 1990) UN Doc A/RES/45/110.

JUDGMENT

Reasons for Judgment:

Rajnauth-Lee J (Jamadar, Ononaiwu, Eboe-Osuji and Bulkan JJ concurring) [1] - [74]

Disposition [75]

RAJNAUTH-LEE J:

Introduction

[1] This appeal raises an important issue concerning the imposition of custodial sentences in Barbados, particularly in cases involving the trafficking of relatively

small quantities of cannabis, such as the 90 grammes in the present case. The appellant, Danny Husbands, challenges the magistrate's imposition of the sentence of three months' imprisonment, affirmed by the Court of Appeal of Barbados. The appellant contends, among other things, that both the magistrate and the Court of Appeal failed to give proper effect to s 35(2) of the Penal System Reform Act¹ ('the PSR Act') and applied erroneous sentencing principles in arriving at the custodial sentence imposed. Having considered the facts, the applicable law, the pre-sentencing report, and the brief social context addressed in this judgment, the Court concludes that the imposition of a custodial sentence was erroneous and amounted to a miscarriage of justice. Accordingly, this Court allows the appeal. The Court exercises its discretion under s 260(2)(a) of the Magistrate's Courts Act² to quash the sentence that has been passed on the appellant and to place the appellant on a bond to be of good behaviour for a period of six months commencing on 28 July 2026. In default of compliance with the bond, he shall pay a fine of BBD675 within 14 days.

- [2] The facts which give rise to the appeal are generally uncontradicted. On 2 August 2024, the appellant was sitting on a bench at the food court of Bay Gardens, Oistins, when a police officer in plain clothes observed that he had a small scale and a green plastic bag in his possession, and a wrapped cigarette in his mouth. On seeing the officer, he fled the scene and, in doing so, he dropped the plastic bag. The officer retrieved the bag which contained a total of 49 smaller bags of cannabis.
- [3] On 6 August 2024, the appellant presented himself to the Oistins Police Station and admitted to possession of the cannabis and that it was for the purpose of supply. The cannabis weighed 90 grammes and had a street value of BBD450.³ The appellant was charged with the offence of unlawful trafficking in a controlled

¹ Cap 139.

² Cap 116A.

³ See *Husbands v Commissioner of Police* BB 2025 CA 3 (CARILAW), (6 March 2025) at [8] which confirmed the weight and street value of the cannabis.

substance, to wit, cannabis pursuant to s 18(1) of the Drug Abuse (Prevention and Control) Act⁴ ('the Drug Abuse Act').

- [4] The appellant appeared before a magistrate, unrepresented, and pleaded guilty to the offence. The magistrate sentenced the appellant to three months' imprisonment.

The Magistrate's Reasons

- [5] The magistrate formed the view that only a custodial sentence ought to have been imposed in order to deter the appellant from committing this type of offence and to further protect society from the damage caused by drug abuse and addiction. The magistrate also found that a custodial sentence was warranted and justified since the two most recent of the appellant's four previous convictions were in relation to drug possession and cultivation of cannabis, in 2017 and 2020 respectively. In the magistrate's view, the non-custodial sentences had failed to deter the appellant from the commission of offences of similar genus. Further, the magistrate was of the view that the appellant had 'graduated' from possession in 2017 to cultivation in 2020 and then to trafficking in 2024. This escalation was viewed as a disregard and therefore a mockery of the court's orders.
- [6] The magistrate considered the aggravating factors of the offence and the offender: that the appellant had four previous convictions (the two most recent under the Drug Abuse Act); that a fine was imposed for the previous offences; and that the appellant fled from the police and dropped the bag consisting of 49 small plastic zip locked bags all containing cannabis. The magistrate also considered the appellant's plea in mitigation where he stated that he had two children to support; and he personally used drugs and sold drugs to other persons. The magistrate also took into account that the appellant had subsequently surrendered to the police and had pleaded guilty.

⁴ Cap 131.

- [7] The magistrate therefore arrived at the three-month sentence. She employed a starting point of six months' imprisonment with a 1/3 discount for the guilty plea and a further one-month discount for the mitigating factors and for his surrender to the police.

The Court of Appeal Judgment

- [8] The appellant appealed his sentence to the Court of Appeal. On 6 March 2025, the Court of Appeal dismissed the appeal and affirmed the sentence of three months' imprisonment. The Court of Appeal noted that counsel for the appellant before them relied on *Persaud v R*⁵ and contended that the charges in the present case were not so serious as to warrant a custodial sentence. Counsel argued that the starting point of imprisonment was excessive, and that the starting point should have been a non-custodial sentence.
- [9] The Court of Appeal observed that in matters involving the illicit trafficking, importation and possession of illegal narcotics, the guideline cases of *Prescod v R*⁶ and *R v Haywood*⁷ continued to be relevant. In particular, in *Prescod*, that court had underscored that the plain and obvious intention of the Parliament of Barbados in enacting the Drug Abuse Act was that 'such offences should attract heavy monetary penalties or long terms of imprisonment to mark down this country's disapproval of the conduct of those who proliferate the scourge of illicit narcotic drugs.'⁸
- [10] The Court of Appeal was satisfied that the magistrate had given due consideration to the aggravating and mitigating factors of the offence and the offender, the quantity of the drugs and the previous convictions for drug offences. Further, the Court of Appeal found no fault with the magistrate's analysis that the appellant's offending had escalated and agreed that deterrence should play a large part in

⁵ [2018] CCJ 10 (AJ) BB, (2018) 93 WIR 132.

⁶ BB 2006 CA 7 (CARILAW), (6 March 2006).

⁷ (2016) 88 WIR 45 (BB CA).

⁸ *Prescod* (n 6) at [11].

determination of his sentence. Accordingly, the Court of Appeal held that there was no error on the part of the magistrate and declined to interfere with the sentence.

Proceedings before the Caribbean Court of Justice

[11] The appellant filed an urgent application for special leave to appeal to the Caribbean Court of Justice ('the Court') on 9 March 2025. By order dated 14 March 2025, the appellant was granted special leave to appeal the decision of the Court of Appeal. He was also granted bail in the sum of BBD2,000 with one surety and was ordered to report to the Central Police Station, Bridgetown on or before 12 noon every Monday commencing on Monday, 17 March 2025 until the hearing and determination of the appeal or until further order.

[12] The appellant sought an order to quash the sentence and impose a fine that is proportionate to the circumstances. The grounds of appeal are as follows:

- i. The Court of Appeal contravened the established principles of horizontal *stare decisis* and erred in law when they failed to apply *Harewood v R*.⁹
- ii. The Court of Appeal erred in law when they regarded the offence as more serious and ultimately confirmed a custodial sentence on account of the appellant's failure to respond to previous sentences.
- iii. The Court of Appeal erred in law and/or in principle when they failed to properly consider if the offence was so serious that only a custodial sentence could be justified in light of the established sentencing culture and practices of the Barbadian judiciary.
- iv. The Court of Appeal erred in failing to consider the pre-sentencing report of the appellant pursuant to s 37 of the PSR Act.

⁹ BB 2009 CA 22 (CARILAW), (21 December 2009).

The Court's Case Management

The First Case Management Conference

- [13] At a Case Management Conference ('CMC') held on 13 May 2025, the Court ordered the parties to file a Supplemental Record of Appeal containing: (i) the Hansard relating to ss 35–37 and 40 of the PSR Act; and (ii) a compilation of comparable sentences imposed on summary conviction for trafficking in cannabis, following guilty pleas, in Districts A and B Magistrates' Courts during the three years preceding 7 August 2024. The order further directed that this information should also state, where available, whether the offender had previous convictions for cannabis-related offences.
- [14] At the CMC, the Court noted that ground iii of the Notice of Appeal raised the issue of changing legislative and executive attitudes toward cannabis in Barbados. In those circumstances, the Court considered it appropriate to invite the Attorney General to assist as *amicus curiae*, given that office's responsibility for drafting legislation, advising on it, and advancing the Government of Barbados' legislative agenda. Pursuant to r 12A.5(1) of the Caribbean Court of Justice (Appellate Jurisdiction) Rules 2024 ('the Rules'), the Court proposed this course to the parties, who raised no objection. Exercising its case management powers under r 8(2)(q) of the Rules, the Court dispensed with r 12A.5(2) and issued an invitation to the Attorney General of Barbados. The Attorney General accepted the Court's invitation. The appeal was initially fixed for hearing on 28 October 2025.

The Second Case Management Conference

- [15] In their written submissions, both the appellant and the respondent contended that s 40 of the PSR Act required an appellate court to obtain a pre-sentence report. The respondent in particular submitted that this Court should have the report before deciding whether to affirm or vary the sentence imposed by the magistrate. Accordingly, the Court convened a further CMC on 30 September 2025 and ordered

that a pre-sentence report be prepared for the appellant. The hearing date was vacated to allow time for its preparation. The Barbados Probation Service prepared and filed the report on 8 December 2025.

The Third Case Management Conference and Hearing of the Appeal

- [16] At a final CMC held on 15 December 2025, the Court gave further directions for written submissions and scheduled the hearing of the appeal on 17 March 2026. At the hearing of the appeal, the Court made a further order that the parties file, on or before 10 April 2026, any supplemental authorities focused on the interpretation of ss 35 and 40 of the PSR Act and the societal impact of the trafficking of cannabis in Barbados.

Issues for Determination

- [17] In this appeal, the following issues arise for determination:
- a. Whether the Court of Appeal erred in upholding the custodial sentence imposed on the appellant:
 - i. Having regard to s 35(2) of the PSR Act which provides that a custodial sentence shall not be imposed unless the sentencing court is of the opinion that the offence was so serious that only a custodial sentence can be justified for the offence;
 - ii. By regarding the offence as so serious as requiring the imposition of a custodial sentence on account of the appellant's previous convictions; and
 - iii. By failing to consider the established sentencing culture and practices of the Barbadian judiciary.

- b. Whether the Court of Appeal contravened established principles of horizontal *stare decisis* by failing to apply *Harewood v R*?
- c. Whether the Court of Appeal erred in failing to consider the pre-sentencing report of the appellant pursuant to s 37 of the PSR Act?

Statutory Framework

[18] Barbados enacted the PSR Act in 1998. Under Part IV of the PSR Act, certain principles of judicial sentencing are set out. Custodial sentences are dealt with in that Part. Section 35 is relevant to this appeal and provides as follows:

35. (1) This section applies where a person is convicted of an offence punishable with a custodial sentence other than one fixed by law.
- (2) Subject to subsection (3), the court shall not pass a custodial sentence on the offender unless it is of opinion
- (a) that the offence, or the combination of the offence and one other offence associated with the offence, was so serious that only such a sentence can be justified for the offence; or
 - (b) where the offence is a violent or sexual offence, that only such a sentence would be adequate to protect the public from serious harm from the offender.

[19] Section 37 of the PSR Act sets out procedural requirements for custodial sentences. Section 37(1) provides that subject to sub-s (2), a court shall obtain and consider a pre-sentence report before forming any such opinion as is mentioned in sub-s (2) of s 35 or 36. In addition, s 37(2) provides as follows:

- (2) Where the offence or any other offence associated with it is triable only on indictment, subsection (1) does not apply if, in the circumstances of the case, the court is of the opinion that it is unnecessary to obtain a pre-sentence report.

[20] Further, it is important to note that ss 37(4) and 37(5) provide:

- (4) A custodial sentence which is passed in a case to which subsection (1) applies is not invalidated by the failure of a court to comply with that subsection but any court on an appeal against such a sentence
 - (a) shall obtain a pre-sentence report if none was obtained by the court; and
 - (b) shall consider any such report obtained by it or by that court.
- (5) A “pre-sentence report” in this Act means a report in writing which is made by a probation officer with a view to assisting the court in determining the most suitable method of dealing with an offender.

[21] Further, s 40(1) of the PSR Act provides:

- 40. (1) An offence shall not be regarded as more serious for the purposes of any provision of this Act by reason of any previous convictions of the offender or any failure on the part of the offender to respond to previous sentences.
- (2) Where any aggravating factors of an offence are disclosed by the circumstances of other offences committed by the offender, nothing in this Act prevents the court from taking those factors into account for the purpose of forming an opinion as to the seriousness of the offence.

[22] In Barbados, as noted earlier, the offence of trafficking in cannabis falls under s 18 of the Drug Abuse Act, which was enacted in 1990.

[23] In addition, as pointed out by the Court of Appeal, the penalties for the commission of offences under the Drug Abuse Act are set out in the Fourth Schedule. Under the Fourth Schedule, trafficking in a controlled drug, such as cannabis, is a hybrid

offence punishable on summary conviction with a fine of BBD250,000; or where there is evidence of the street value of the controlled drug, a fine three times the street value, whichever is greater; and imprisonment for seven years. On indictment for the same offence, the penalty can be imprisonment for life.

Cannabis and the Law – Brief Social Context in Barbados

[24] Mr Pilgrim SC for the appellant argued before us that the quantity of cannabis involved, that is to say, 90 grammes, was no more than a handful or a little more than 3 ounces in weight. He emphasised that in Barbados, such small quantities of cannabis, even where the charge is for trafficking, did not generally attract a custodial sentence. Mr Pilgrim relied on statistics for Magisterial Districts A and B (filed by the respondent at the request of the Court) arguing that these showed a consistent pattern: even in cases involving individuals with prior convictions or an apparent ‘failure to respond to sentences’, the norm remains the imposition of non-custodial sentences, such as fines, suspended sentences or other rehabilitative options. He therefore submitted that the Court of Appeal failed to take into account the established sentencing history and culture of the lower courts as regards sentencing for small quantities of cannabis.

[25] Mr Pilgrim further submitted that cases such as *Prescod*,¹⁰ which reflected a more punitive approach, were now distinguishable in light of what he described as ‘a well-recognised cultural and legal shift regarding cannabis’.¹¹ Further, he argued, the Government of Barbados had taken clear and progressive steps to reflect this evolving stance. Notably, Mr Pilgrim submitted, s 6A(1) of the Drug Abuse (Prevention and Control) (Amendment) Act¹² introduced a fixed penalty ticket of BBD200 for individuals found in possession of cannabis without the appropriate licence.

¹⁰ *Prescod* (n 6).

¹¹ Danny Husbands, ‘Submission on behalf of the Appellant’, Submission in *Husbands v COP*, 22 September 2025, para 3.4.

¹² 6 of 2021.

[26] At para 3.6 of his written submissions filed on 22 September 2025, Mr Pilgrim relied on what he termed further evidence of that shift: (i) the establishment of the Barbados Medicinal Cannabis Licensing Authority ('BMCLA'), a regulatory body aimed at enabling the country to benefit from the medicinal cannabis industry; (ii) cannabis has been formally recognised as a sacrament under s 3 of the Sacramental Cannabis Act 2019;¹³ and (iii) similar developments noted in the 2020 Throne Speech.¹⁴ We note that in the Throne Speech it was underscored that a significant amount of the time of law enforcement officers and of the magistrates' courts were taken up with dealing with individuals with small quantities of cannabis. In fact, in 2019, 4,285 drug and drug related criminal charges were laid, representing 30% of criminal charges laid in that year. Accordingly, Mr Pilgrim submitted that had the Court of Appeal properly considered Parliament's intention to move toward alternative approaches for possession of small quantities of cannabis, they could not have reasonably concluded that a custodial sentence was the only appropriate punishment or that the appellant had 'gotten off lightly'.¹⁵

[27] On the other hand, the respondent contended that the legislative changes referred to by the appellant were of no relevance to the present case nor did they reflect the 'evolving stance' of the Legislature of Barbados regarding the offence of trafficking in cannabis. The respondent emphasised that none of these statutes legalised the trafficking of cannabis or amended the penalties provided for trafficking in the Fourth Schedule of the Drug Abuse Act; and that 'the proper role of the courts is to give effect to the legislative purpose of an enactment...' Accordingly, the respondent submitted, 'the judiciary must reflect the legislative intention by the imposition of appropriate penalties for illegal narcotic offences (*Prescod v R*).¹⁶ The respondent therefore contended that the 'plain and obvious intention of Parliament' was that such offences should attract heavy monetary penalties or long terms of imprisonment, evidenced by the fact that Parliament has declined to make

¹³ 45 of 2019.

¹⁴ Dame Sandra Mason, President of Barbados, 'Throne Speech' (Second Session of Parliament, Barbados, 15 September 2020).

¹⁵ Danny Husbands, 'Written Submission on behalf of the Appellant', Submission in *Husbands v COP*, 8 September 2025, para 3.7.

¹⁶ *Prescod* (n 6) at [17].

any changes to the offence of trafficking, despite recent amendments to the Drug Abuse Act.

- [28] We are grateful for the useful submissions provided by the Attorney General, and, in particular, for the supplemental submissions and important research submitted by the Attorney General. The following research papers were received by the Court, as discussed below.
- [29] First, an Examination of Cannabis-Related Offences in Barbados: Trends, Impacts, and Sentencing Considerations (April 2026) was filed with the Court.¹⁷
- [30] The Report reveals that cannabis remains the central driver of drug offending in Barbados in both volume and systemic impact. Enforcement activity is sustained and high, but judicial responses overwhelmingly favour non-custodial outcomes. Offending patterns mirror deeper social realities, including early exposure to cannabis, community-level disadvantage and economic vulnerability. The justice system's rehabilitative orientation reduces punitive consequences but does not substantially alter the underlying conditions sustaining cannabis use and related offending.
- [31] The Report acknowledges that, between 2018 and 2024, sentencing for trafficking in cannabis followed a consistent pattern, marked by a judicial preference for non-custodial penalties. These included reprimand and discharge, conviction with reprimand and discharge, fines, bonds, probation, community service, and counselling. It further notes that imprisonment for cannabis trafficking has been relatively rare.
- [32] Further, the Report identifies two principal concerns in relation to sentencing for cannabis offences: first, that current sentencing trends have had limited impact on reducing cannabis-related offending; and second, that the financial cost of

¹⁷ Prepared by the Ministry of Legal Affairs and Criminal Justice and the Barbados Drug Information Network, both sanctioned by the Government of Barbados.

incarcerating offenders remains high, notwithstanding the small number of cases that result in imprisonment. It also underscores significant variations in sentencing at the district level.

- [33] Additionally, the Report observes that cannabis is culturally embedded and is widely perceived as relatively harmless. It highlights that economic pressures in low-income communities may render drug selling an attractive alternative to unstable employment. The Report also emphasises the association between cannabis use and broader social concerns, including youth behavioural challenges, disruption in schools, community instability, and involvement in criminal peer networks.
- [34] Importantly, the Report notes a long-term national shift away from custodial sentences, even for trafficking, indicating a system-wide orientation toward rehabilitation over incarceration. The Report calls for clearer sentencing guidelines to address ongoing inconsistencies, with sentencing practices remaining uneven across districts.
- [35] Second, the National Council on Substance Abuse: Barbados Drug Information Network published reports for the period 2020 to 2023 were filed with the Court. The National Council on Substance Abuse ('NCSA') is the lead agency responsible for drug education across Barbados. Four reports prepared by the NCSA were provided to the Court from the years 2020 – 2023. The reports inform on the prevalence of cannabis use by those who utilise the drug treatment programme under the NCSA. The Attorney General noted the findings in the 2023 Report¹⁸ that (i) the majority of drug offences for that year were cannabis-related, with the most common being possession, trafficking, and intent to supply; and (ii) despite the popularity of non-custodial sentences for cannabis-related offences, some persons were still incarcerated for drug offences, including drug trafficking, during that year.

¹⁸ National Council on Substance Abuse 'Barbados Drug Information Network Report 2023' (Government of Barbados 2024).

Did the Court of Appeal Fall into Error in Upholding the Custodial Sentence Imposed on the Appellant?

What is the Purpose of the Parliament of Barbados in Enacting s 35 of the PSR Act?

- [36] This Court has affirmed that when a question of statutory interpretation arises, the object of the Court is to give effect to the intention of Parliament.¹⁹ In *Bank of Nova Scotia v Comptroller of Inland Revenue*²⁰ this Court emphasised that ‘the correct approach to statutory interpretation is always to keep an eye on the purpose and the context of the statute in trying to make appropriate sense of its composite words and phrases.’
- [37] It is clear from the Official Hansard Report of Parliamentary Debates dated Tuesday, 15 December 1998 that it was intended that the passage of the PSR Act was to usher in the reformation of the penal system in Barbados by, among other things, augmenting the sentencing options available to judicial officers, and thereby expanding judicial discretion in imposing sentences. Of special note is the wide range of non-custodial sentences that the PSR Act incorporated into Barbados’ criminal justice system, which include (i) absolute and conditional discharges; (ii) suspended sentences; (iii) community sentences (comprising one or more community orders such as attendance centre orders, community services orders, curfew orders, probation orders and combination orders); and (iv) mediation orders. Hon DAC Simmons, leading the debate, noted that countries have to seek more humane methods, that is, sensitive strategies to punish those who transgress. He quoted from Professor Andrew Ashworth’s publication, *Sentencing and Criminal Justice*, at page 78, emphasising that imprisonment was a severe deprivation for most of those incarcerated, and that there had to be widespread formal acceptance that it should be used with restraint.²¹

¹⁹ See *OO v BK* [2023] CCJ 10 (AJ) BB, (2023) 103 WIR 36 at [49]; *Enriquez v A-G f Belize* [2026] CCJ 8 (AJ) BZ at [27].

²⁰ [2025] CCJ 13 (AJ) LC at [73].

²¹ See also United Nations General Assembly (UNGA) ‘United Nations Standard Minimum Rules for Non-custodial Measures’ (The Tokyo Rules) Res 45 (14 December 1990) UN Doc A/RES/45/110; the primary UN instrument addressing the reduction of custodial sentences.

[38] In the supplemental submissions of the Attorney General, it is submitted that there appeared to be a dearth of jurisprudence in Barbados surrounding the meaning of s 35 of the PSR Act, let alone as it related to sentencing for trafficking of cannabis and drug offences generally. Nonetheless, it was pointed out that Simmons CJ in *Pope v R*²² (albeit a case dealing with firearm possession) briefly remarked that s 35 of the PSR Act dictates that a custodial sentence should not be imposed on a person unless ‘the circumstances make it absolutely necessary’. It was contended by the Attorney General that this reinforced the oral submission made by his counsel during the hearing, that the circumstances of the offence can be factored into a determination of the seriousness of the offence under s 35(2)(a) of the PSR Act.

[39] In the English case of *R v Cox*,²³ the Court of Appeal considered how to determine the seriousness of the offence. The court observed that in *R v Bradbourn*²⁴ the Court of Appeal considered the meaning of the words ‘the offence was so serious that a non-custodial sentence cannot be justified’. In *Bradbourn*, Lawton LJ, delivering the judgment of the court, said at 183:

In our judgment the phrase “so serious that a non-custodial sentence cannot be justified” comes to this: the kind of offence which when committed by a young person would make right-thinking members of the public, knowing all the facts, feel that justice had not been done by the passing of any sentence other than a custodial one. We think that is as good guidance as we can give to courts and that any attempt to be more specific would only add to the difficulties of courts and not help them.

[40] It is important to observe that the Attorney General noted that the English position on this issue has seemingly shifted, quite fundamentally, from the test laid down in *Cox* to that later set out in *R v Howells*.²⁵ In *Howells*, Lord Bingham CJ characterised the task of construing the English equivalent to s 35(2) of the PSR

²² BB 2010 CA 1 (CARILAW), (25 February 2010) at [14].

²³ [1993] 2 All ER 19 at 21.

²⁴ (1985) 7 Cr App R (S) 180.

²⁵ [1999] 1 All ER 50.

Act as ‘one of the most elusive problems of criminal sentencing’²⁶ before proceeding to reject the “‘right-thinking members of the public’ test’ employed in *Bradbourne* and *Cox*. Particularly, at 53, Lord Bingham CJ observed:

There is no bright line which separates offences which are so serious that only a custodial sentence can be justified from offences which are not so serious as to require the passing of a custodial sentence. But it cannot be said that the ‘right-thinking members of the public’ test is very helpful, since the sentencing court has no means of ascertaining the views of right-thinking members of the public and inevitably attributes to such right-thinking members its own views.

[41] It was further submitted in the Supplemental Submissions of the Attorney General that Lord Bingham CJ in *Howells*²⁷ acknowledged that it would be dangerous and wrong for the court to lay down prescriptive rules governing the exercise of that judgment, that is, what justice requires on the peculiar facts of the case before it. Any guidance the court gave, however general, would be subject to exceptions and qualifications in some cases. Lord Bingham CJ went on to provide guidance on how to approach cases that are on or near the custody threshold. Courts should take into consideration the following: (i) the nature and extent of the defendant’s criminal intention; (ii) the nature and extent of any injury or damage caused to the victim; (iii) other things being equal, whether the offence is deliberate and premeditated which would usually be more serious than one which is spontaneous and unpremeditated; (iv) whether the offence inflicts personal injury or mental trauma, particularly if permanent, as against an offence which inflicts financial loss only. In addition, the Attorney General pointed out that although the English equivalent only speaks to the seriousness of the *offence*, Lord Bingham CJ opined that the sentencing court will ordinarily take account of matters relating to the *offender* in deciding whether to impose a custodial sentence in borderline cases.

[42] Moreover, the Attorney General referred to Julian Roberts, Lyndon Harris, ‘Reconceptualising the Custody Threshold in England and Wales’ (2017). The

²⁶ *ibid* at 51.

²⁷ *ibid* at 53.

authors stated that since the decision in *Howells*, the Court of Appeal has been consistent in its view that the custody threshold test is enigmatic, and the courts have been fairly silent on this issue. Further, the authors proceeded to propose a four-stage principled methodology to determine whether to pass a custodial sentence on an offender, which, the Attorney General submitted, may be of interest to this Court. For example, the first stage of the process involves the court considering all factors relevant to the seriousness of the offence and the offender's culpability. If all sanctions other than a custodial sentence would fail to adequately reflect the total harm and culpability, the custodial threshold has been passed.²⁸

Barbados Jurisprudence on Custodial Sentences

- [43] In *Pinder v R*²⁹ this Court observed that in all sentencing cases, the trial judge should advert to the principles set out in ss 35, 36 and 37 of the PSR Act before imposing a custodial sentence. Moreover, the Court was of the view that the effect of these sections is that before imposing a custodial sentence, the sentencing judge should consider whether the seriousness of the offence justified such a sentence.
- [44] In *Greaves v The State*³⁰ this Court made the following important observations: (i) the PSR Act is necessarily the starting point in the process of sentencing in Barbados; (ii) on approaching the imposition of a custodial sentence, a court should have recourse and regard to ss 35-37 of the Act; (iii) as was explained in *Bend*³¹ and repeated in *Lorde*³² the penological philosophy of 'just deserts' underpins ss 35 and 36 and the key concepts are offence-seriousness and proportionality; (iv) an essential principle of s 35 is that the sentencing court should consider whether the seriousness of the offence justifies a custodial sentence, and, if so convinced, to explain to the offender the reasons for passing the custodial sentence; (v) s 36 provides guidance on the length of the sentence and s 37 requires the court to obtain

²⁸ Julian Roberts, Lyndon Harris, 'Reconceptualising the Custody Threshold in England and Wales' (2017) 28 Criminal Law Forum 477, 497.

²⁹ [2016] CCJ 13 (AJ) (BB), (2016) 89 WIR 181.

³⁰ [2022] CCJ 9 (AJ) BB at [23].

³¹ *Bend v R* BB 2002 CA 9 (CARILAW), (27 March 2002).

³² *R v Lorde* (2006) 73 WIR 28 (BB CA) at [35].

and consider a pre-sentence report as a procedural requirement for the imposition of a custodial sentence; and (vi) ss 40 and 41 are also important to this appeal; s 40 provides for the effect of previous convictions and s 41 contains general guidelines to be observed by the court before sentencing the offender.

[45] In *Prescod*,³³ the Court of Appeal of Barbados considered an appeal by the appellant who had been sentenced to concurrent sentences of 12 years' imprisonment for the importation and possession of 127.18 kilograms or approximately 280 pounds of cannabis. The appellant pleaded guilty to the charges of importation and possession; accordingly, the prosecution offered no evidence on the charge of trafficking. As noted earlier, Simmons CJ emphasised that the proper role of the courts is to give effect to the legislative purpose of an enactment, and the judiciary must reflect that legislative intention by the imposition of appropriate penalties for illegal narcotic offences. The Court of Appeal also provided sentencing guidelines for use in criminal trials in the High Court in relation to offences of importation, possession and trafficking. It is important to note that these guidelines were formulated with substantial quantities of cannabis in mind; the court was not concerned with offences involving small quantities.

[46] The Barbados case of *Haywood*³⁴ was along the same lines, involving a substantial quantity of cannabis. The Court of Appeal upheld the sentence imposed on the appellant by Crane-Scott J, noting that this case was significantly marred by the quantity of cannabis (being almost twice the amount as in *Prescod*) and by the most serious aggravating factor, that is, that the appellant was among a group who shot at the police. In those circumstances, the sentences imposed were affirmed.

[47] The case of *Pope*³⁵ (already cited in this judgment) involved offences relating to the Firearms Act and a young offender, but it is instructive as to the views of the Court of Appeal of Barbados as it relates to custodial sentences. Turning to the PSR

³³ *Prescod* (n 6).

³⁴ *Haywood* (n 7).

³⁵ *Pope* (n 22).

Act, the Court of Appeal (Simmons CJ) noted that ss 35 and 36 embodied the principles of offence-seriousness and proportionality. In short, no person (including a young person) should be given a custodial sentence unless the circumstances make it absolutely necessary, and then for no longer than is necessary.³⁶

[48] Section 35(2) of the PSR Act employs notably striking language, to wit, that a custodial sentence shall not be imposed unless the sentencing court is of the opinion that the offence was so serious that only a custodial sentence can be justified for the offence. The statutory language reflects a deliberate intention on the part of the Parliament of Barbados to impose strict requirements on the sentencing court before a custodial sentence may be imposed, consistent with its broader commitment to a restorative approach to sentencing. Properly understood, such an approach rejects rigidity in sentencing, recognising that if such rigidity is applied without careful restraint, it has the potential to work injustice.

[49] In the present case, it is significant that the magistrate formed the view that only a custodial sentence ought to have been imposed because of the issues of (i) deterrence, and (ii) the protection of society from the damage caused by drug abuse and addiction. On appeal, the Court of Appeal emphasised that the sentencing magistrate was of the view that the offence warranted a custodial sentence, explaining as required by s 35(2) that the conviction and non-custodial sentence in 2017 had failed to deter the appellant from the commission of similar offences. Indeed, the Court of Appeal found no fault with the magistrate's analysis that the appellant had graduated from possession to cultivation to trafficking which rightly informed her observation that deterrence should play a large part in the determination of his sentence.

[50] It is unfortunate that nowhere in the judgment of the Court of Appeal nor in the reasons of the magistrate, is there the type of examination mandated by s 35(2), that

³⁶ *ibid* at [14].

is to say, an assessment of whether the offence was so serious that a custodial sentence alone was justified in the circumstances of this case, or in other words, whether a custodial sentence was absolutely necessary. This omission raises a real concern as to whether the high statutory threshold, carefully set by the Parliament of Barbados, was properly met.

The Impact of Previous Convictions on the Determination of the Sentencing Judge that the Custodial Threshold has been met.

[51] Returning to s 40(1) of the PSR Act, it is to be noted that the section provides that an offence shall not be regarded as more serious for the purposes of any provision of that Act by reason of any previous convictions of the offender or any failure on the part of the offender to respond to previous sentences. In forming an opinion as to the seriousness of an offence, s 40(2) allows the sentencing court to take into account any aggravating factors of an offence disclosed by the circumstances of other offences committed by the offender. Section 40(1) of the PSR Act therefore comes into play when the sentencing judge has to determine whether the previous convictions of the offender takes the offence over the statutory threshold that only a custodial sentence is justified in the circumstances of the case.

[52] Mr Pilgrim submitted that courts of appeal in both the United Kingdom and Barbados have made it clear that a sentencing judge ‘...cannot regard the mere existence of previous convictions as relevant to the seriousness of the instant offence A, or its combination with one other offence B, but [the sentencing judge] can take into account on that issue the circumstances of the previous offences or of other offences presently before the court’: see *R v Bexley* ³⁷ and *Harewood v R*.³⁸

[53] Mr Pilgrim therefore submitted that s 40(1) of the PSR Act only permits reliance on prior convictions at sentencing where those convictions disclose aggravating

³⁷ (1993) 13 Cr App R (S) 462, 465.

³⁸ *Harewood* (n 9) at [16].

features of the present offence or offences. For example, where the offender previously committed a similar offence in a particularly serious or targeted manner.

[54] Furthermore, citing *Harewood*, Mr Pilgrim submitted that an offender's failure to respond to previous sentences cannot, by itself, be used to elevate the seriousness of the current offence. In *Harewood* Simmons CJ writing for the court, observed that the purpose and intention of s 40(1) was plain. A judge must not use the previous convictions of an offender in order to make a determination of the seriousness of the offence. Simmons CJ noted that even before the passing of the PSR Act, the common law had affirmed a similar principle.³⁹

[55] In *Harewood*, Simmons CJ further observed that s 40 was identical with s 29 of the English Criminal Justice Act 1991, upon which the PSR Act was modelled. Citing *Bexley*, Simmons CJ endorsed the observations of Lord Taylor CJ of the English Court of Appeal, that in light of s 29(1), the approach commonly adopted before the passing of the English Act whereby the offence was treated as more serious and thus deserving of custody, because it repeated previous offending that had been dealt with more leniently, was no longer permissible. In particular, the second limit of s 29(1) (reflected in s 40(1) of the PSR Act) expressly provided that failure of the offender to respond to previous sentences must not be regarded as rendering the offence more serious. It followed that familiar sentencing remarks such as, 'you have a long history of committing offences of this kind', or 'you have been given every chance, fines, probation, community service, and here you are again,' were now inappropriate. Those were statutorily irrelevant indicators of seriousness of the offence; in other words, such considerations were, by statute, irrelevant in assessing the seriousness of the offence for which the offender was to be sentenced.

[56] In *Bexley*, Lord Taylor CJ held that a sentencing judge may not treat the mere existence of previous convictions as relevant to the seriousness of the offence. However, the sentencing judge may take into account on that issue the

³⁹ *ibid* at [14].

circumstances of previous offences or other offences present before the court. Addressing what circumstances may properly be considered, Lord Taylor CJ, concluded that only those circumstances that disclose some aggravating factor in the offence or offences are relevant.

- [57] In *Harewood*, Simmons CJ noted that an example given by Lord Taylor CJ illustrated the subtle nuances of s 40(1). The example concerned the offence of house burglary by night. The mere fact that the offender had six previous convictions for house burglary by night would not render that offence more serious, though it might rebut any mitigation on behalf of the offender that the offence was a one-off piece of opportunism. However, if the burglary were committed at the home of an 80-year-old widow, and the offender's previous offences likewise involved burglaries of elderly widows, that pattern would be a circumstance disclosing an aggravating factor in the offence, that is, that the offender had deliberately targeted or selected an elderly victim. In that case, therefore, the sentencing court could properly have regard to the offender's previous offences as a circumstance disclosing an aggravating factor in the offence pursuant to s 40(2).
- [58] In the Barbadian case of *Griffith v R*,⁴⁰ the appellant was charged with murder of a woman, but pleaded guilty to manslaughter, a plea which the prosecution accepted. The appellant was sentenced to 18 years' imprisonment. The Court of Appeal found that an aggravating factor of the offence was disclosed by the circumstances of the appellant's previous convictions. In *Griffith*, the appellant had abused the trust of a woman with whom he had a relationship. A similar situation seems to have occurred with regard to the previous convictions. The Court of Appeal was of the view that the sentencing judge therefore properly took into account this aggravating factor disclosed by the previous convictions in forming an opinion as to the seriousness of the offence and therefore determining the sentence that would adequately protect women from serious harm from the appellant. The sentence was confirmed by the Court of Appeal.

⁴⁰ BB 2009 CA 13 (CARILAW), (19 June 2009) at [22].

- [59] It was in this regard that the appellant argued that the Court of Appeal in the instant case failed to adhere to the principle of horizontal *stare decisis*⁴¹ disregarding the jurisprudence set out by the Barbados Court of Appeal in *Harewood* and *Griffith*.
- [60] On the other hand, the respondent relied on this Court's judgment in *Greaves* arguing that (i) *Greaves* was in direct conflict with *Harewood* and *Griffith*, and (ii) the Court of Appeal in the present case was not bound to apply *Harewood*, as one of the exceptions to the principle of horizontal *stare decisis* applied, that is, that there was a conflicting decision of this Court.
- [61] At [29] of *Greaves*, this Court observed that the appellant in *Greaves* employed s 40(1) of the PSR Act to argue that by increasing the starting point of his sentence by four years because of his previous convictions, the sentencing court breached the PSR Act. This Court noted that previous convictions may be considered aggravating factors relating to the offender. However, to serve as personal aggravating factors, the previous convictions must be germane to the current sentencing process. This Court noted that in the words of one Caribbean author, Dana Seetahal, where an offender has previous convictions for like or other serious offences, 'this could lead the court to decide that the offender should be kept away from society as long as possible.'⁴² On the other hand, this Court observed, where the previous convictions are not similar to the present offence and are of some antiquity, those convictions should not be considered as personal aggravating factors of the offender. In fact, it has been suggested that where there was only minor offending many years previously, the defendant will normally receive a discount for his good character.⁴³ In the words of one author, 'As the interval between episodes of offending increases the probative value of criminal history as a predictor of future behaviour declines.'⁴⁴

⁴¹ See the minority judgment in *Fields v The State* [2023] CCJ 13 (AJ) BB, (2023) 104 WIR 37 (Burgess J).

⁴² Dana Seetahal, *Commonwealth Caribbean Criminal Practice and Procedure* (4th edn, Routledge 2014) 349.

⁴³ Robert Banks, *Banks on Sentence* (5th edn, 2010) [1.11]; Martin Wasik, *Emmins on Sentencing* (4th edn, OUP 2001).

⁴⁴ Julian V Roberts, 'The Role of Criminal Record in the Sentencing Process' (1997) 22 *Crime & Just* 303, 335.

[62] We regard *Greaves* as addressing a materially different situation from the present case. In *Greaves*, this Court was concerned with determining whether the sentence of 16 years' imprisonment for manslaughter was excessive, particularly in the light of the sentencing judge's reliance on the appellant's previous convictions. The Court was not concerned to consider whether the offence was so serious that only a custodial sentence was warranted or whether the appellant's previous convictions justified the imposition of such a sentence. We are therefore satisfied that the Court in *Greaves* was not called upon to decide whether the statutory threshold in s 35(2) had been met. It follows that, on the issues arising in the present case, the Court of Appeal was not bound by *Greaves*.

[63] We are of the view that the decisions of *Harewood* and *Griffith* do not fall within any of the recognised exceptions to the principle of horizontal *stare decisis*. Those decisions properly reflect the legislative intent of the Parliament of Barbados in enacting s 40(1) and (2) of the PSR Act. Accordingly, in the present case, both the magistrate and the Court of Appeal fell into error in accepting that the appellant's previous convictions were relevant in determining whether a custodial sentence alone was justified.

Did the Court of Appeal Err in Failing to Consider the Established Sentencing Culture and Practices of the Barbadian Judiciary as it Relates to Non-custodial Sentences for Small Quantities of Cannabis?

[64] The appellant relies on the statistics placed before this Court (and previously referenced) to argue that the courts below failed to consider the established sentencing culture and practices of the Barbadian judiciary as it relates to cannabis-related offences. A preliminary review of those statistics suggests that custodial sentences are indeed uncommon. As noted earlier, the April 2026 report of the Criminal Justice Research and Planning Unit of Barbados in April 2026 titled 'Examination of Cannabis-Related Offences in Barbados: Trends, Impacts, and Sentencing Considerations' acknowledges that, between 2018 and 2024, sentencing

for cannabis trafficking followed a consistent pattern reflecting a judicial preference for non-custodial penalties. These penalties included reprimand and discharge, conviction with reprimand and discharge, fines, bonds, probation, community service, and counselling. The report further observes that imprisonment for cannabis trafficking has been relatively rare.

- [65] It is, however, a well-established principle that sentencing is inherently case-specific. In that context, this Court considers it neither appropriate nor desirable to formulate any rigid or inflexible rule that prescribes, for instance, that trafficking in small quantities of cannabis, such as the 90 grammes at issue here, should invariably attract a non-custodial sentence. The determination of the appropriate penalty is properly a matter for the sentencing court, which must assess the seriousness of the offence in the particular circumstances of each case, in accordance with s 35(2) of the PSR Act.

Pre-Sentence Reports at the Appellate Level – Directory or Mandatory in the Present Case?

- [66] As noted earlier, s 37 of the PSR Act sets out procedural requirements for custodial sentences. Section 37(1) provides that subject to sub-s (2), a court shall obtain and consider a pre-sentence report before forming any such opinion as is mentioned in sub-s (2) of s 35 or 36. In addition, s 37(2) provides as follows:

- (2) Where the offence or any other offence associated with it is triable only on indictment, subsection (1) does not apply if, in the circumstances of the case, the court is of the opinion that it is unnecessary to obtain a pre-sentence report.

- [67] It is important to note that s 37(4) provides as follows:

- (4) A custodial sentence which is passed in a case to which subsection (1) applies is not invalidated by the failure of a court to comply with that subsection but any court on an appeal against such a sentence

- (a) shall obtain a pre-sentence report if none was obtained by the court; and
- (b) shall consider any such report obtained by it or by that court.

[68] The respondent has accepted that s 37(4) of the PSR Act required the Court of Appeal to obtain and consider a pre-sentence report in the absence of a report obtained by the court below. This Court has obtained a pre-sentence report regarding the appellant from the Barbados Probation Service. In this regard, Mr Pilgrim has invited the Court to provide specific guidance on the correct application of s 37. The appellant submits that the statutory language in s 37(1) and (4) of the PSR Act is mandatory and not discretionary at the appellate level.

[69] The parties have cited this Court's decision of *Gittens v R*⁴⁵ where the appellant had been convicted of murder. The Court of Appeal of Barbados quashed the conviction and substituted a conviction of manslaughter. Both the High Court and the Court of Appeal failed to obtain a pre-sentence report. It is important to note the observations of this Court at [17] and [18] of *Gittens*:

[17] Section 37 of the Act required in this case that the Court of Appeal should have obtained and considered a pre-sentence report before imposing a custodial sentence unless the Court of Appeal was of the opinion that such a report was "in the circumstances of the case" unnecessary. There is nothing in the Court of Appeal's judgment (and no indication from any other source) to suggest that the Court of Appeal considered the question whether a pre-sentence report was necessary and concluded that it was not. In any event, such a conclusion would in our view have been irrational as a pre-sentence report would be expected to provide information that would be helpful, for example, in assessing whether the appellant presented a potential threat to members of the public. We also draw attention to the fact that there was a dearth of information about the appellant available to the Court of Appeal.

[18] We have already referred to section 37(4) which provides that failure to obtain and consider a pre-sentence report in breach of

⁴⁵ [2010] CCJ 1 (AJ) (BB), (2010) 75 WIR 126.

section 37(1) shall not invalidate a custodial sentence. We do not consider that this provision deprives an appellate court of the right to quash a custodial sentence passed in those circumstances; indeed, sub-section (4) goes on to provide that on an appeal from such a sentence the appellate court must itself remedy the omission of the sentencing court by obtaining and considering a pre-sentence report....

[70] Accordingly, this Court in *Gittens* draws an important distinction. Where s 37(2) applies, that is, in respect of an offence triable on indictment only, the Court of Appeal, in the absence of a pre-sentence report obtained by the sentencing court, must consider whether a such a report is necessary. This Court was unequivocal in stating that it would be ‘irrational’ for the Court of Appeal to conclude that a pre-sentence report was unnecessary, since such a report would ordinarily provide the assistance required for the proper exercise of the sentencing discretion. By contrast, where the sentencing court failed to obtain a pre-sentence report as required by s 37(1) for the purpose of determining whether the seriousness of the offence warranted only a custodial sentence, two consequences follow. First, that failure does not invalidate the custodial sentence. Second, the appellate court is obliged to remedy the omission by obtaining and considering a pre-sentence report in accordance with s 37(4).

[71] Both the appellant and the Attorney General have pointed out that *Gittens* was relied upon by the Barbados Court of Appeal in *Barton v R*.⁴⁶ In *Barton*, the appellant was charged with possession of and trafficking in 205 kilograms (451 pounds) of cannabis. He was found guilty of both offences. Counsel for the appellant in *Barton* submitted that, in the absence of a pre-sentence report obtained by the sentencing court, the Court of Appeal ought to obtain such a report in compliance with s 37(4). However, no pre-sentence report was obtained by the Court of Appeal. The court reasoned that although the offences of importation, possession and trafficking (as set out in the Fourth Schedule of the Drug Abuse Act) were triable either summarily or on indictment, the failure to obtain a pre-sentence report did not invalidate the

⁴⁶ BB 2019 CA 5 (CARILAW), (20 February 2019).

custodial sentence pursuant to s 37(4). In their view, therefore s 37(4) was not mandatory, but directory.⁴⁷

[72] The appellant contends that the reasoning of the Court of Appeal in *Barton* is inconsistent with s 37(4). This Court agrees. It is likewise inconsistent with the reasoning of the Court in *Gittens*. In the present case, therefore, where the offence of drug trafficking was triable either summarily or on indictment, and the sentencing court had not obtained a pre-sentence report, the Court of Appeal was required to obtain and consider such a report in accordance with s 37(4). Its failure to do so constituted an error.

Closing Remarks

[73] The Court was heartened to learn that the Rules Committee of Barbados is in the process of finalising Sentencing Guidelines for the Barbados Supreme Court. Indeed, Draft Sentencing Guidelines were filed with the Court by the Attorney General. The Court has been informed that these Guidelines remain in draft and have not yet been formalised. It is anticipated, however, that once finalised, they will provide clear and appropriate guidance to sentencing courts, particularly in relation to the proper application of s 35(2) of the PSR Act with respect to the offence of trafficking in cannabis.

Conclusion

[74] For the reasons previously outlined, the Court is satisfied that the proper application of the PSR Act in the circumstances of this case warrants the imposition of a non-custodial sentence. To be clear, the Court is not of the opinion that the offence was so serious that only a custodial sentence could be justified. We have noted Mr Pilgrim's submission that the appellant would benefit from being placed on a bond

⁴⁷ *ibid* at [25].

to keep the peace. Having taken the pre-sentence report⁴⁸ into account and bearing in mind the relatively small quantity of cannabis involved, the Court accordingly allows the appeal and exercises its discretion under s 260(2)(a) of the Magistrate's Courts Act to quash the sentence and to place the appellant on a bond to be of good behaviour, pursuant to s 139 of the Magistrate's Courts Act, for a period of six months commencing on 28 July 2026. In default of compliance with the bond, the appellant shall pay a fine of BBD675 within 14 days.

Disposition

[75] The Court orders as follows:

- (a) The appeal is allowed.
- (b) The sentence of three months' imprisonment imposed on the appellant is quashed.
- (c) The appellant is placed on a bond to be of good behaviour for a period of six months commencing on 28 July 2026, and in default of compliance with the bond, he shall pay a fine of BBD675 within 14 days.

⁴⁸ The pre-sentence report indicates that the appellant had no significant adverse childhood experiences. He has vocational training in carpentry and joinery, and prior work experience in hospitality and construction. He has two children, and earns income through fishing, selling plastic bags, and gambling, preferring flexible, self-directed work. He also views imprisonment for cannabis offences as outdated and unnecessarily harsh. The report concludes that the appellant is at moderate risk of re-offending.

/s/ M Rajnauth-Lee

Mme Justice Rajnauth-Lee

/s/ P Jamadar

Mr Justice Jamadar

/s/ C Ononaiwu

Mme Justice Ononaiwu

/s/ C Eboe-Osuji

Mr Justice Eboe-Osuji

/s/ A Bulkan

Mr Justice Bulkan