Special Consideration

IN THE COURT OF APPEAL OF NEW ZEALAND

THE QUEEN v. ERIC HERBERT STRETCH	
THE QUEEN v. BRUCE GARY BELL	C.A. 120/72
THE QUEEN v. KENNETH ERNEST VIRTUE	C.A. 121/72

Coram: Turner P.
McCarthy J.
Richmond J.

Hearing: February 12th 1973

Counsel: Buckton for Stretch
Bungay for Bell and Virtue
Larsen for Crown

Judgment: February 15th 1973

JUDGMENT OF THE COURT DELIVERED BY TURNER P.

These three appeals, heard last Monday afternoon, were stood over for judgment until this morning to enable the members of the Court to confer on the merits of the arguments submitted. In each case the appellant was sentenced by the Chief Justice, on a charge or charges of selling a narcotic, to imprisonment for three years. Two of the appellants are young men aged 24 and 22 years respectively; the third (Virtue) is aged 40. All have some history of drug addiction. The charges relate to the supply of drugs, in relatively small quantities, to police informers, who in each case persuaded the particular appellant to supply him under the pretence that he was himself a drug addict. It is not suggested that any of the appellants made any great profit out of any of the transactions, and indeed it seems that the motive in each case, or at least the principal motive, was furnished by the fact that by aiding in a modest way in the distribution of the drugs the offenders were able to secure for themselves a personal supply of the

drugs which they needed. None of the appellants has a serious police record, and it was submitted confidently by Counsel that there was nothing in their characters or histories, and little in the circumstances of the crimes, which made these charges fit for exemplary punishment.

We reminded Counsel, however, of two things. First, that the statute prescribes imprisonment as mandatory on charges such as these, except in special circumstances which cannot be found in the facts of the cases before us. Imprisonment, then, must be taken for granted. The question is only how long the term should be. Second, it must be emphasised that the prevalence of this type of offence makes it necessary not only that a term of imprisonment, but that a deterrent term of imprisonment, should be inflicted in all but the most exceptional cases, for it must be made perfectly plain to the community that those who lend themselves to the peddling of dangerous drugs incur the risk of a substantial penalty. "Peddling" drugs may be thought a severe description of what was done here; but though these offenders were perhaps to some extent persuaded by the agent provocateur to sell him a supply, and though the amounts received were not great as these offences go, yet it must be remembered that someone, known to the accused in each case - and it may be that it was the same person or persons in all three cases - stands in the shadows behind them as a supplier of these drugs. They chose to lend their aid to his plan to distribute his drugs into the community. The plight of the drug addict is indeed a pitiable one; but those who, for this or any other reason, choose to lend themselves to any kind of organised drug disposal must expect to be held responsible as a part of the machine. It must be made plain to all that the consequences of lending oneself to this kind of thing must be a substantial term of imprisonment.

To these observations we add one more, as to a factor which adds substantially to the gravity of these particular cases. In each case the drugs supplied was a hard drug - opium or morphine. Where the drugs supplied are "hard", it is impossible to regard the case as other than serious.

We regret the necessity to send these three [redacted] men to gaol for three years in this case; but we cannot see our way to revise the sentences imposed by the Chief Justice. The appeals are dismissed accordingly.

A.C. Jumel.