

IN THE COURT OF APPEAL OF NEW ZEALAND

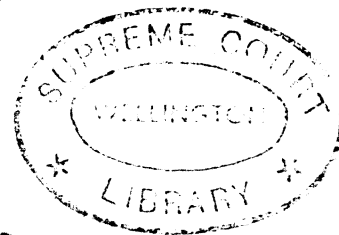
THE QUEEN, v. LEWIS RONNIE YIP, 98/75
v. LAURENCE JOHN BARTUP 99/75
v. ADRIAN EDWARD HOPE 100/75
v. VALERIE ANN PHILLIPS 101/75

Corem: McCarthy P.
Richmond J.
Cooke J.

Hearing: 7 November 1975

Counsel: Bungay for Yip and Phillips
Castle for Bartup and Hope
Stone for Crown

Judgment: 7 November 1975



(ORAL) JUDGMENT OF THE COURT
DELIVERED BY RICHMOND J.

In this case the Court has heard four appeals against sentence in relation to a cannabis offence. Three of the appellants are men and they are aged respectively 28, 23 and 31. They have all had previous minor convictions in relation to cannabis. The three male offenders just referred to were all sentenced to four years imprisonment. The fourth appellant is a married woman and she was sentenced to nine months imprisonment.

Put very briefly the facts were these. There was a man who was working in an undercover capacity for the police in Dunedin. He was not a policeman. He became friendly with the female appellant Mrs Phillips and after a period of time, when he seems to have had her confidence, he brought up the question whether or not she could help him to acquire cannabis. In the end she agreed and she

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then took a considerable personal part in bringing about an introduction to the appellant Hope. We are satisfied that she played a more active part in that than was suggested to us by her counsel. The result was that the undercover agent went to the Wellington Railway station at an arranged time. He was there approached by Hope who apparently wanted him to go elsewhere to pick up this cannabis - which incidentally had a value of some \$10,000. That was the price to be paid for it. Phillips was to get \$500 for her part. Just how the other three men involved were to split up any profit does not appear from the evidence. At any event Hope went away and later returned with the appellant Bartup and we think that the jury obviously must have taken the view, as they could have done on the evidence of the undercover agent, that Bartup was very much mixed up in this matter.

As to the third appellant, Yip, we were urged by his counsel to say that he had only a minor role. But the fact remains that his fingerprint was found on one of the bags containing the cannabis. All in all, and after listening carefully to counsels' submissions, we have come to the conclusion that the learned trial Judge was right when he decided that he had to treat all the three men as equally involved in a joint enterprise.

Having reached that point we accept Mr Stone's submission that there is nothing personal to any of these three men, in the way of their background, which would justify any differentiation being made between them.

It is not suggested that they did not have to go to prison. But it is said that even if they were all equally involved the sentences of four years were

manifestly excessive. Certainly the sentences cannot be described as light sentences but in our view they were within the range of sentences for this type of offence when the value of the drug involved was as great as was the case here.

We turn to the appellant Phillips. One must feel a good deal of sympathy for her in some ways. She has suffered from a degree of mental instability manifesting itself in deep depression, she has attempted suicide, she has had domestic difficulties and there is the point that she was subjected to a certain amount of persuasion by the undercover agent. But the fact remains that she played an important part in arranging this transaction and did so for the purpose of a substantial financial reward which, as we have mentioned, was \$500. Her case has given us the most concern but in the end we think that Mr Stone put the position in proper perspective when he suggested that had it not been for the mitigating circumstances to which we have just referred her sentence must necessarily have been a considerably more severe one.

In those circumstances we think it would be wrong for this Court to interfere in any way with the sentence of nine months imposed on her. That sentence made a very marked differentiation indeed between her case and that of the other appellants.

For the reasons which we have given leave to appeal against sentence in all four cases is refused.

G. Richmond

Solicitors for appellants (Yip and Phillips): Gungay, Greig & Co. Wellington.
 Solicitors for appellants (Cartup and Hope): Castle & Castle, Wellington.
 Solicitor for Crown: Crown Solicitor, Wellington.