IN THE COURT OF APPEAL OF NEW ZEALAND

C.A.76/80

THE QUEEN

v.

ADRIAN PHILIP MORGAN

Coram - Richmond P.
Woodhouse J.
O'Regan J.

Hearing - June 5, 1980

Counsel - J.H.C. Larsen for Crown
C.C. Lawrence for Appellant

Judgment - June 5, 1980

ORAL JUDGMENT OF THE COURT DELIVERED BY RICHMOND P.

This is an application for leave to appeal against sentence brought by Adrian Philip Morgan. He was sentenced to imprisonment for two years after having pleaded guilty to a charge under s.6 (1) (a) of the Misuse of Drugs Act 1975 of importing heroin into New Zealand. He arrived in New Zealand by air on 29 December 1979. There was a fairly thorough search made by Customs officials but nothing was found. However, a few days later the Police searched a flat where appellant was then living in Wellington and found a small quantity of heroin wrapped in a paper sachet. The total weight of the powder which was found was about 290 mg of which 197 mg were pure heroin. That of course was a substantially smaller quantity than the 500 mg at which a statutory presumption of possession for supply to others arises. When the heroin which had been found was

discussed with appellant by the Police officer, appellant eventually admitted that he had brought it with him into the country having obtained it somewhere in South East Asia. As we have said, he pleaded guilty to the charge of importing this heroin after depositions had been taken.

The sentencing Judge very properly pointed out when he was speaking to appellant at the time of sentence that he would have to approach the task of fixing an appropriate sentence on the basis that this was not an offence of simple possession but was one of importing. He had regard to certain mitigating circumstances such as the very small quantity of heroin that was found and the fact that appellant had admitted the importation and had entered a plea of guilty. He referred to certain false statements made to the Customs but as to those matters we do not know quite what importance the Judge attached to them.

At the conclusion of his remarks the Judge said that "The entirety of the evidence does indicate that you were more deeply involved in these matters than simply as a user". Those remarks are really the basis upon which Mr Lawrence argued the present appeal. We may say that we were impressed with the obvious care to which Mr Lawrence had gone in preparing his argument and the thorough way in which he covered all matters which he thought might help this appellant. We are not quite sure just what the Judge meant by the remarks to which we have just referred. Mr Lawrence has interpreted them as meaning that the Judge took the view that this appellant was involved in an import-ation not just for his own use but as a trafficker in heroin.

If that is what the Judge meant, and we are not sure that it was, then we agree with Mr Lawrence that there is nothing in the evidence which was available to the sentencing Judge which would justify for the purpose of criminal proceedings an inference that the present appellant was a trafficker in heroin. We therefore approach the case on the basis urged upon us by Mr Lawrence, namely that we should treat the evidence as disclosing no more than an importation of a very small quantity of heroin for the personal use of the appellant.

Mr Larsen has reminded us of our decision in the case of The Queen v. Norman John Bryan C.A.180/77, judgment 2 March 1978. That was before the maximum penalty for heroin offences under s.6 of the Act was increased by Parliament from 14 years' imprisonment to life imprisonment. The case has much in common with the present case. Bryan had imported for his own use a total quantity of 36 mg of pure heroin. That figure may be compared with the 197 mg in the present case. It had been obtained by Bryan during a short journey he had made to Singapore. The sentence had been imposed by the sentencing Judge on the basis that there was no evidence that Bryan had been intending to supply others; nevertheless a sentence of 3 1/2 years had been imposed. Bryan applied for leave to appeal to this Court and in our judgment we emphasised two important matters; first, that there was a very important difference between importing heroin, even for one's own use, and merely being found in possession of it in New Zealand. As to that we said -

> There can be no doubt that whether or not the element of trafficking is involved, those who deliberately embark upon the importation of an addictive drug like heroin have taken themselves right away from the area of mere possession. Any act of importation of such a drug must be regarded as serious.

The other matter which was adverted to in the judgment was the comment made by the sentencing Judge of the danger that, even though heroin is not in possession for trafficking purposes, nevertheless others might prevail upon the possessor of the heroin to let them try some of it and thus one might find the beginnning of yet another person becoming addicted to this drug.

Those two matters to which we have referred are of great importance in the present case just as they were in the case of Bryan. In the present case the appellant was in custody for 3 1/2 months before he was sentenced. The amount of heroin found in his possession was somewhat greater than that found in possession of Bryan. All in all we think the two cases are remarkably similar and approaching the matter as one of our own judgment (on the assumption that the Judge may have taken the view that the appellant was a trafficker) we are nevertheless of the view that the actual sentence of two years' imprisonment which was imposed in this case was entirely appropriate in the circumstances.

For the reasons which we have given leave to appeal against that sentence is accordingly refused.

C J Richmond P