IN THE COURT OF APPEAL OF NEW ZEALAND

C.A.154/80

THE QUEEN

v.

GORDON WALLACE BELL

Coram - Richmond P.
McMullin J.
Chilwell J.

Hearing - September 3, 1980

Counsel - L.H. Moore for Crown
G.D. McKay for Appellant

Judgment - September 3, 1980

ORAL JUDGMENT OF THE COURT DELIVERED BY RICHMOND P.

This is an application for leave to appeal against sentence by Gordon Wallace Bell, who is a man of 25 years of age. He pleaded guilty in the District Court on one charge which had been laid indictably and two charges which were laid summarily. The first was a charge under s.6 of the Misuse of Drugs Act 1975 of having cannabis plant in his possession for the purpose of supply to others. The second charge was one of simple possession of cannabis seed and the third of simple possession of a small quantity of cannabis resin.

The District Court Judge committed Bell for sentence to the High Court in respect of all three charges. He purported to decline jurisdiction in respect of the two summary charges under s.44 of the Summary Proceedings Act

1957. However, that section only applies where the charge is one which could have been prosecuted indictably and neither of these two charges in the present case were of that kind. Therefore it appears, and this is common ground between counsel, that there was no power to commit for sentence in respect of the two simple possession charges and it follows that when the Judge imposed sentences of one month's imprisonment and two months' imprisonment respectively on those charges he was acting without jurisdiction. The matter having been brought to our attention we have no choice but to quash those two particular sentences. In order however that those two prosecutions can be disposed of in some appropriate manner, there will be an order remitting them to the District Court with a direction that that Court proceed to hear and determine them in accordance with law.

The main point however in the present application for leave to appeal relates to the sentence of 18 months' imprisonment which was imposed in the High Court in respect of the indictable offence of having cannabis plant in possession for supply. The amount involved was comparatively small compared with most of the cases that have come to the attention of this Court from time to time. In all 36 bullets of cannabis plant material were found by the Police in the possession of the appellant. The total weight was 49.8 grams and the total value was in the vicinity of $350. This, as we have said, is a small quantity compared with many other cases and we refer in particular to the judgment of this Court in the case of R. v. Smith, judgment being on 23 July 1980. We took the opportunity in that case of

referring to a number of cannabis dealing cases in order to demonstrate, as far as we conveniently could, the pattern of sentencing which had emerged. Mr McKay relies on that judgment and points out that if one relates the sentence in the present case to the quantity of cannabis involved, then the present sentence is definitely out of line with sentences in other cases.

Mr Moore has pointed out that the appellant Bell has confessed to an association in the past with drugs although he denies being an addict. There are no established previous convictions against him relating to drugs. He told the Probation Officer that he did not regard himself as a dealer in drugs, that being a somewhat ambiguous expressio consistent with his having dealt with drugs to some extent, but there is no evidence that he has in fact done that and it seems proper to deal with him as a first offender so far as any trafficking in drugs is concerned. He has led an aimless kind of life with a very irregular employment record. At the time of these offences he had been unemployed for some months and he told the Probation Officer that he was relying on this transaction in cannabis bullets to meet certain expenses with which he was faced. So he is certainly not a man deserving any particular sympathy from the Court. Indeed we agree with Mr Moore that it is more likely in the particular case of this appellant that his life style will be altered to the good by reasonably firm treatment from the Court than as a result of leniency. Even so, having considered all these matters, we are left in the end satisfied that this sentence was manifestly out of

line with the current patterns of sentencing. As we indicated during the course of argument, we have no doubt that a term of imprisonment was required but we think that a sentence of one year would be much more in line with other sentences and also would achieve every useful purpose that an 18-month sentence would achieve, while at the same time having the advantage of getting this man back into the community as soon as reasonably possible.

For those reasons leave to appeal is granted and the appeal is allowed to the extent that the sentence of 18 months' imprisonment imposed on the charge of having cannabis in possession for supply is reduced to one of 12 months' imprisonment. As we have already said, the two sentences relating to the charges of simple possession are quashed with the consequences earlier stated.

Without intending to fetter the District Court in any way, it may be of assistance if we add that had we found it possible to leave the sentences of two months and one month standing we would still have regarded the sentence of 12 months as appropriate to the overall offending involved in all three charges.