IN THE COURT OF APPEAL OF NEW ZEALAND C.A. 68/83

THE QUEEN

v.

ERIC RAYMOND BLACK

Coram: Cooke J. (presiding)
Richardson J.
Sir Thaddeus McCarthy

Hearing: 17 June 1983

Counsel: L.I. Hinton for Appellant
J.R.F. Fardell for Crown

Judgment: 17 June 1983

JUDGMENT OF THE COURT DELIVERED BY COOKE J.

This is an application for leave to appeal against sentence by Eric Raymond Black who pleaded guilty to a charge of importing a Class A controlled drug, namely lysergide. He was sentenced in the High Court to nine months' imprisonment. Manifestly importing any Class A controlled drug is a serious offence and, on the face of it, it is not at all surprising that the Judge felt bound to impose a sentence of imprisonment.

However, when the facts of this particular case are considered it is clearly a minor case of its kind - so far as there can be any minor cases of importing class A drugs. The appellant was discovered on a customs search at Christchurch airport after returning from Sydney to have in

a cigarette packet some 23 trips of lysergide. We have been informed from the Bar that these were quarter trips but the significant point is that the total quantity of the drug equated, so counsel for the Crown has stated, 2.4 milligrams. That is well below the statutory presumption of possession for supply so far as quantity is concerned. But the number of tablets is only slightly below the presumption level applying to flakes, tablets, etc: Misuse of Drugs Act 1975, s.6(6)(c). The Judge did refer to the latter aspect in his remarks on sentencing. He also referred to the danger as he saw it that some of these trips might have been offered to others in New Zealand to try.

The police conceded in the High Court and counsel for the Crown has conceded here that the importation was not for the purposes of making any pecuniary gain in New Zealand. And there is no evidence nor any other material before the Court which would justify us in taking the view that there was any intention on the part of the appellant to supply others in New Zealand. His personal circumstances are such that he has received a favourable probation report and some good references have been put before the Court. There are family circumstances indicating that hardship will be suffered by others through his imprisonment. He has a completely clear record, with no previous offences. He is 23 years of age.

It has often enough been said in drug cases that personal circumstances can weigh little against the need for deterrent sentences. Nevertheless some regard can be had to them. Notwithstanding the comparatively minor nature of this particular offence we agree with the sentencing Judge that a term of imprisonment was necessary, if only as a deterrent to others. But we think there is force in the submission made by Mr Hinton for the appellant that after all this is not a case of supplying or importing for the purpose of supplying. Accepting that there was no such intention, and bearing in mind that this man was a first offender, we think that the object of deterrence can be achieved adequately by a sentence of less than nine months.

In the particular circumstances the application will accordingly be granted and the sentence altered to one of six months' imprisonment.

R B Cooke J.

Solicitors:

Hattaway Quigley MacLean & Partners, Christchurch, for Appellant

Crown Law Office, Wellington, for Crown