Queen v Norris 19/4/88

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IN THE COURT OF APPEAL OF NEW ZEALAND C.A.42/87

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THE QUEEN

v.

CHRISTOPHER WILLIAM NORRIS

Coram: Casey J (presiding)
Bisson J
Gallen J

Hearing: 19 April 1988

Counsel: J C Pike for Crown
B J Hart for Appellant

Judgment: 19 April 1988

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JUDGMENT OF THE COURT DELIVERED BY CASEY J

After a jury trial in Auckland the applicant, Christopher William Norris was convicted on 17 February 1987 on a count of importing LSD over a period between February and April 1986. On 6 March 1987 he was sentenced to 6 years' imprisonment on that count and was also sentenced to 18 months concurrently for selling 6 tabs of LSD which had been given to him out of that importation. He applied for leave to appeal against conviction and the sentence of 6 years on the importing count. Mr Hart informs us that the application for leave to appeal against conviction is abandoned and that is dismissed.

The circumstances are that he arranged with an English associate by the name of Walters to receive letters at an

Auckland address posted by the latter in England. Three arrived and Norris kept them by arrangement and handed them over to Walters when he travelled later to Auckland. The envelopes were found to contain LSD and the applicant explained to the police that although he was suspicious and knew Walters was involved in cannabis dealing he did not know that these letters contained controlled drugs. In the event, after Walters had arrived and received them he received $500 for services which he described in the police statement as "oiling the wheels", together with 10 tabs of LSD, 6 of which he sold to another person, and a car worth about $1500. The Judge sentenced him on the basis that there were at least 1,000 trips involved in the importation, this being the quantity an associate subsequently sold to an undercover police officer. However, he suspected that considerably more had passed through Norris's hands in this way.

His involvement was discovered as a result of a surveillance operation which suggested that he played a significant part in a ring involved in the importation and distribution of drugs in New Zealand. He was a man of 40, an English resident who had arrived in New Zealand in February 1986, after spending a 3 months sojourn in Australia. He had no known convictions and indeed Mr Hart informs us that he has not been in any previous trouble. The Judge summed up to the jury at the trial by reference to s.29 of the Misuse of Drugs Act 1975 telling them they had to be

satisfied the substance in the envelopes was LSD and that the accused knew they contained a controlled drug. In his sentencing remarks he saw a difficulty in the question they asked, as to whether they had to be specific that the drug was LSD. The Judge took this to mean they were applying s.29 under which the accused would be guilty even though mistaken as to the nature of the controlled drug intended to be imported.

His association with Walters in England was said to be limited to the knowledge that he dealt in cannabis and pills and the Judge thought this must have led the jury to apply that section. He went on to say in his sentencing remarks :

> "Accordingly, in terms of proof beyond reasonable doubt, I will have to find that you thought the contents of each envelope that had arrived in your mailbox contained cannabis."

Mr Hart relies on that passage in his first point on appeal to suggest that the applicant should have been sentenced on the basis of a belief that he was assisting in the import of cannabis only. A moment's reflection demonstrates the improbability of such a belief. After the first letter arrived, Norris rang Walters to enquire whether it was one of the intended deliveries and accepted two more letters. He told the police he was 80-90 percent sure they contained drugs, but claims he was assured by Walters that they did not. It stretches incredulity to breaking point to suggest the latter, a known drug dealer, was going to all this trouble just to import a few grams of cannabis. It seems to

us that in the comment just quoted the Judge was turning his mind to the implications of the jury's verdict based on the view he had formed of the possible reasons for their question. However, they did not say and nor were they required to say whether Norris knew it was LSD.

In the recent judgment of Devery (CA 125/87) 18/3/88) we pointed out that in these circumstances a Judge is entitled to form his own view of the evidence when sentencing and does not have to reach a conclusion most favourable to the accused. We are satisfied the Judge did precisely that here. After referring to the applicant's conduct in relation to the envelopes and his discussions with Walters, he thought it was a clear case of deliberately shutting his eyes to their contents. He said :

> "A person involved in this dreadful traffic, who takes an uncaring attitude about the type of drug, in my judgment has only himself to blame if the Court regards him in the sentencing process as having knowledge of the prcise drug involved, in this case LSD. Accordingly I do propose to sentence you on the basis that you were a knowing party to the importation of 1,000 trips of LSD, worth about $15,000. One thousand trips means that if one thousand people in New Zesland had purchased a trip, one thousand people in New Zealand would have hallucinated. That is a very serious state of affairs."

We find nothing to criticise in this approach and turn to Mr Hart's next point based on sentences in other cases and the applicant's unblemished character and personal circumstances. There is no need for us to repeat that the

latter considerations must play a relatively minor part in this field of sentencing. The clear inference from the facts disclosed in the evidence is that this man came to New Zealand and involved himself in a relatively sophisticated operation for the importation of LSD. The Judge described him as a "minder" of the drug and we think there is force in Mr Pike's submission that, without a previous record, he was a safe intermediary between Walters and his distributors, with whom he was found to be associated in the Nelson area as a result of the surveillance which uncovered the ring.

He was a mature and intelligent man of 40 and went into this with his eyes open. Members of the group received varying sentences. The leader (Jarvis) received 9 years; others received various prison terms from 4 years to 18 months. In an exercise involving so many people involving different degrees of involvement and culpability, little is to be gained from a comparison of sentences. Mr Pike concedes that 6 years may be seen as severe. However, it is within the acceptable range of sentences for such involvement with a class A drug.

In spite of Mr Hart's strong submissions to the contrary we are satisfied that leave to appeal against sentence must be refused and the application is dismissed.

M.B. Casey J.

Solicitors: Crown Solicitor, Auckland