IN THE COURT OF APPEAL OF NEW ZEALAND 9/8 CA 54/91

NOT RECOMMENDED

THE QUEEN

v

1444

BRETT LIONEL ALLISON

Coram	Cooke P Hardie Boy J Gault J
Hearing	7 August 1991
Counsel	D S G Deacon for Applicant N McAteer for Crown
Judgment	7 August 1991

ORAL JUDGMENT OF THE COURT DELIVERED BY HARDIE BOYS J

This is an application for leave to appeal against a sentence of 3½ years imprisonment imposed following a District Court jury trial on a charge of cultivating cannabis.

The applicant lived in a remote part of a rural area in Northland in the midst of forestry land. In January 1989 a Police operation disclosed some 35-40 cannabis plantations in the neighbourbood. Five of them were within a 2 kilometre radius of the applicant's

house and the Police evidence was that these five had certain similarities in terms of construction and cultivation and the measures taken for the protection of the crop. The nearest of them was only some 200 metres from the applicant's home, the furthest about 2 kilometres away. From the nearest of the plots 133 cannabis plants were recovered; from the others another 700 or so. The charge of course did not specify the number of plants, but the prosecution was brought on the basis that the applicant was responsible for all five plots.

The Judge directed the jury that it was sufficient for a conviction if they were satisfied that the applicant had cultivated only one of the plots, but the applicant having denied knowledge of any of them, the jury's verdict may well be regarded as a finding that he was responsible for all five. In any event when the Judge came to impose sentence he said that he was satisfied beyond reasonable doubt that all the plants from the five plots were in fact grown by the applicant, and so he sentenced him on the basis of 833, and treated the case as therefore being within at least the second class of offending described by this Court in the case of R v Dutch [1981] 1 NZLR 304.

The appeal is brought on the basis that the Judge having made the comment to the jury that has been mentioned, ought not to have proceeded to sentence the applicant on the basis that he did. However a Judge in sentencing is

entitled to form his own view of the evidence, applying the criminal standard as the Judge here did, so long as his finding is not inconsistent with the verdict. In this case there was evidence from which the Judge could properly come to his conclusion.

The applicant now says that he was all along prepared to admit responsibility for one plot, but his evidence denying knowledge of any of them does not assist him in this respect. He also complains that the Police did not question him concerning, and the Judge did not have regard to, the fact that two other persons shared his house: he suggests that one or both of them may have been responsible. One of these persons was in fact called to give evidence for the defence and he denied any knowledge of cannabis at all. This particular complaint has has no substance.

We are satisfied that the Judge was entitled to take the view of the facts that he did, and to sentence the applicant on that basis.

Mr Deacon very properly did not suggest that in these circumstances the sentence could be regarded as being beyond the range of what was appropriate.

The application for leave to appeal is therefore dismissed.

Solicitors

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