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IN THE COURT OF APPEAL OF NEW ZEALAND CA272/92

THE QUEEN

1780

v

DONNA MARIE BAYLEY

Coram: Casey J
Holland J
Thorp J

Hearing: 11 September 1992

Counsel: K. Raftery for Crown
Q. Reeves for Appellant

JUDGMENT OF THE COURT DELIVERED BY THORP J

This is an appeal against a sentence of 18 months imprisonment imposed on 14 August 1992 after the appellant entered a plea of guilty to one charge of selling cannabis oil. The sale was one of 10 caps of oil for the sum of $225 and was made to an undercover constable.

The appellant is 29 years of age and a solo parent with a 2½ year old daughter. She had one previous conviction in 1986 for possession of cannabis plant when she was fined $125 and one traffic conviction. For the purpose of sentencing for an offence such as dealing in class B drugs she was effectively a first offender.

The sentencer referred to her generally good character and to the Probation Service's recommendation of periodic detention. However he

described that recommendation as "quite unrealistic" and plainly believed that the nature of the offence made a custodial sentence inevitable.

To assist his assessment of an appropriate sentence he was referred to a decision of this Court in *R v Traber* (CA73/92, judgment 13 May 1992) and the decision at first instance in *R v Miller,* in which a sentence of 12 months had been imposed for the sale to an undercover constable of 3.6 grams of cannabis resin for $200. *Miller's* sentence had, unbeknownst to the prosecution, been reduced on appeal to this Court on 12 August 1992 (CA231/92) to 6 months imprisonment.

In the reasons given for that decision the Court said at p2 that:

> "for offences involving the sale of class 'B' drugs prison will be indicated unless there are exceptional circumstances".

It also noted the considerable range of sentences referred to it for dealing in class B drugs, a circumstance which was again apparent in the details of the decisions referred to us today. It may be that because of the increasing number of cases which the Court is being asked to consider and the very broad range of sentences presently being imposed for them the time is approaching when this Court could consider endeavouring to set some guidelines for sentences. However this is not the case nor is the information before us sufficient to warrant any attempt at such a determination.

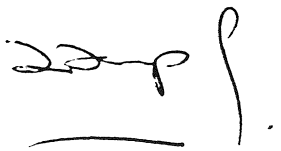
What does appear to us is that the sentence of 18 months imposed for this case on a first offender, following a plea of guilty, for the quantity involved here, was on any basis stern and out of line with the two decisions of this Court already referred to and to its further decision in *R v Chamberlain, Chant & Sinclair* (CA372, 373 & 407/91,

judgment 12 December 1991). Mr Raftery properly conceded that had the Court been referred to the final result of *Miller* and known that in the circumstances of that case, which seem no less serious than this, a 12 months sentence was considered manifestly excessive, it is likely that would have affected that assessment of penalty.

Mr Reeves sought to persuade us that the proper course at this time would be to replace the custodial sentence, of which just one month has now been served, by a sentence of periodic detention.

While we accept that the sentence must be reduced we believe a sentence of 6 months imprisonment would in all the circumstances more properly mark the nature of the offence and the circumstances of the offender.

The appeal is allowed. The sentence is reduced from 18 months to 6 months imprisonment.



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