N2LR

IN THE COURT OF APPEAL OF NEW ZEALAND 18/9 C.A. 279/92

**THE QUEEN**

1781

**v.**

**DEAN CHARLES BROWN**

Coram: Casey J (presiding)
Holland J
Thorp J

Hearing: 11 September 1992

Counsel: K Raftery for Crown
Q St Leger Reeves for Appellant

Judgment: 11 September 1992

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**JUDGMENT OF THE COURT DELIVERED BY CASEY J**

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Dean Charles Brown pleaded guilty after depositions to a charge of being a party to a sale of cannabis to an undercover police constable and appeals against a sentence of 12 months' imprisonment imposed on him in the District Court at New Plymouth on 14 August 1992 on the grounds that it was manifestly excessive and disparate with other sentences for more serious offending by others caught in the same operation.

The constable said he met the appellant at a hotel and on several occasions afterwards when the buying and selling of cannabis was discussed in general terms. On

18 September 1991 he approached the appellant seeking to buy a pound of the drug urgently, telling him he would be in serious trouble if he could not get it. The appellant made a phone call as a result of which the constable was able to buy 4ozs from a man called Greenslade for $1,300, and he also purchased 1-lb 6ozs of cannabis and leaf from an associate Wohler for $1,430. All the appellant received for his assistance was $40 from the constable.

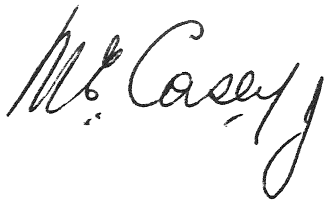
Greenslade and Wohler were sentenced on 29 April 1992 to prison terms of 6 months and 10 months respectively. Neither had previous drug convictions. Evidently the Judge who sentenced the appellant the following August was not aware of their sentences.

The appellant has four previous convictions relating to drug usage, the most recent (cultivation of cannabis) resulting in a sentence of two months' periodic detention imposed in October 1991. Although there is no previous history of dealing, this record points to a long-standing association with less serious drugs. Mr Reeves frankly conceded that were it not for the disparity point he would have difficulty in submitting that the sentence was excessive.

Certainly the fact that the supplier of the drug received only a six month sentence for his far more serious part can give rise to the feeling that something has gone wrong with the sentencing process, and the appellant is entitled to feel that he has been unfairly treated. The sentences imposed on Greenslade and Wohler cannot be regarded as inadequate, so as to disqualify them for consideration when looking at the question of disparity.

Mr Raftery asked us to take into account the appellant's previous convictions, the fact that he intended to arrange a sale of 1-lb as against the 4oz actually sold by Greenslade; and that he was manifestly an intelligent man who was fully capable of resisting the constable's plea for help had he wanted to.

We are satisfied that in the interests of parity the sentence should be reduced, and that a term of six months is appropriate in all the circumstances. According the appeal is allowed and the sentence is reduced to six months.



**Solicitors:** Crown Solicitor, New Plymouth