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BETWEEN

KILLY

Appellant

A N D

POLICE

Respondent

N2LR

Hearing : 6th June 1984

Counsel : Miss P.A.B. Mills for Appellant
C.Q.M. Almas for Respondent

Judgment : 6th June 1984

(ORAL) JUDGMENT OF BARKER, J.

The appellant pleaded guilty in the District Court at Hamilton to a charge of sale of cannabis plant. On 27th March 1984, he was sentenced to 3 months' imprisonment.

There was some argument before the District Court Judge and again before me, as to the total amount of cannabis involved. It seems that there were at least 4 and possibly up to 10 bullets. In any event, the total amount of illegal drug material weighed 4.4 grammes. The appellant sold these bullets of cannabis to an undercover constable for \$400.

The appellant has a list of previous convictions, none for drug offences. He was put on Periodic Detention in 1980 for a burglary offence. The probation report indicated

that he had had a number of jobs but at the time was unemployed. There is nothing of particular note concerning him in the probation report.

The learned District Court Judge, correctly in my view, stated that the normal punishment for persons selling drugs is one of imprisonment. He stated that unless there were unusual circumstances, people willing to take up the sale of drugs for profit can expect imprisonment. Mr Almaco correctly reminds me that, for drug offences, normally the personal circumstances of the offender are far less significant than they are when considering different sorts of offences.

I cannot fault the approach of the District Court Judge and normally would uphold his sentence. However, there is now available to me information of an additional circumstance which was not available to him, namely, the fact that the appellant has now obtained employment and is staying in a stable situation with some people in Hamilton.

The Court of Appeal has said in cases such as R v. Minto that Periodic Detention is to be regarded as a real alternative to imprisonment. I do not think that a sentence of Periodic Detention of 6 months or more is markedly less onerous than a short period of imprisonment from some points of view. A period of 3 months' imprisonment will probably, with remission, mean that only 2 months' imprisonment is served. I think the community is better served by this appellant, who is aged only 22, remaining in employment but being placed on Periodic Detention

I therefore vacate the sentence of imprisonment; in lieu I impose a sentence of 8 months' Periodic Detention. The appellant is to attend the Periodic Detention Centre at 10 Myrtle St, Hamilton, at 6 p.m. on Friday, 8th June 1984. He is to attend at such times as may be directed by the Registrar in a notice given to him before he leaves the Court today. He is to attend at such times as the Warden of the Periodic Detention Centre may direct. In addition, he is placed on probation for a period of one year and 8 months with the special term that he live and work as directed by the Probation Officer.

I emphasise that I do not disagree with the approach of the District Court Judge; I am not saying that his sentence was manifestly excessive. I am allowing the appeal purely on the basis of the fresh information which is available to me today. The District Court Judge was quite right to say that those who sell drugs can normally expect a stiff and harsh response from the Court. The appellant can regard himself as lucky that he is being treated in this way. I consider that, in the circumstances, it is the appropriate course to take.

R. J. Barkin J.

SOLICITORS:

Miss P.A.B. Mills, Hamilton, for Appellant.
Crown Solicitor, Hamilton, for Respondent.