

IN THE HIGH COURT OF NEW ZEALAND
TIMARU REGISTRY

GR 112/84

47

BETWEEN PATRICK ROBERT O'CONNELL

Appellant

A N D POLICE, OAMARU

Respondent

Hearing: 23 November 1984

Counsel: S.R. Crush for Appellant
I.H. Main for Respondent

ORAL JUDGMENT OF HARDIE BOYS J.

This is an appeal against a sentence of three months' imprisonment imposed on each of three charges two of which on their own would not have warranted the sentence under any circumstances. They were charges of possession of cannabis seed and cannabis plant, but the third charge, which is the most serious and which really attracted the penalty, was one of cultivation of cannabis. This is one of those cases where a young man embarks on a course of action and only thinks of the consequences when he is caught and then comes to this Court and asks this Court to absolve him from those consequences. The appellant was found to have planted 93 cannabis seeds of which 35 had grown quite well and had been potted out into individual bags whilst the further 58 which apparently were not of such good quality had not been thrown away but had been kept growing in the plastic punnets in which I imagine they had been planted initially. The average height of these plants was between 3 and 5 centimetres, so they were still in the early stages of their growth, but there is no reason to imagine cannabis plants are any less likely to grow if carefully looked after than anything else. It follows that this young man had the potential to grow a

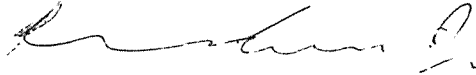
considerable number of mature plants had he wished to do so. He maintains he was growing them for his own use; that he did not know how well they would grow and that he would have thrown away the balance he did not need for his own use. The District Court Judge found that explanation hard to accept and so do I. On the other hand one must not deal with people on the basis of suspicion but only on the basis of fact. Nonetheless the fact is that there were 93 cannabis plants.

This 21 year old has had a reasonably good record in the past. He has been before the Courts on three occasions on charges that were alcohol related and that were more charges of lawlessness than anything else. He has quite a good sporting record and he comes from a good family. He has a good job. It is now put to me really that because of his job he ought not to suffer the consequences the District Court Judge thought appropriate. It seems quite clear that he will lose his employment if he goes to prison and the Court is extraordinarily reluctant to see that happen to any young man in these days of high unemployment. On the other hand it has been stated time and time again that in the area of drugs and dealing in drugs, and the cultivation of drugs, the personal circumstances of offenders must take second place to the interests of the community. According to the probation report this young man has been using cannabis for three or four years and it is inconceivable that he would not have known the consequences of cultivating on this scale. If he chooses to run risks I do not see why the Court should be asked to relieve him from their consequences.

Having put the matter as baldly as that, nonetheless I am somewhat troubled by the appeal because I am concerned about the prospect of the appellant losing his job, but there are greater interests than his to be considered in matters of this kind. The Courts have a great duty to make it clear on every possible occasion that the cultivation of cannabis on this kind of scale is to be visited by a prison sentence and that is the attitude as far as I know taken all over the country. I cannot accept that the Judge was wrong to take

that attitude in this case.

For those reasons - although Mr Crush has said everything that could possibly be said on behalf of this appellant - the appeal will have to be dismissed.

A handwritten signature in dark ink, appearing to be 'R. A. ...', is written across the page.

Solicitors:

Fitch, Mackay, Walker & Crush, OAMARU, for Appellant
Crown Solicitor, OAMARU, for Respondent.