IN THE HIGH COURT OF NEW ZEALAND
CHRISTCHURCH REGISTRY

M 77/84

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BETWEEN WILLIAM DOUGLAS OLDHAM

Appellant

A N D CHRISTCHURCH POLICE

Respondent

Hearing: 4 April 1984

Counsel: C.G. Barker for appellant
G.K. Panckhurst for respondent

Judgment: 5 April 1984

(ORAL) JUDGMENT OF SAVAGE J.

WILLIAM DOUGLAS OLDHAM has appealed against the sentence imposed on him in the District Court at Christchurch on the 9th of December last year. He had been convicted after a defended hearing on one charge of being unlawfully in possession of a pistol and there were four charges relating to cannabis use. He was sentenced to nine months imprisonment on the unlawful possession of a pistol charge and four months imprisonment cumulative on the cannabis charges. The cannabis charges related to two separate occasions, one in May last year and one in August. The sentences were made up of one month on one of the May charges and two months on the other May charge, and they were concurrent; and two months on each of the two August charges. They, too, were concurrent but cumulative on the other sentences so that the total for the cannabis sentences was four months imprisonment. The total of all the sentences was thus 13 months imprisonment.

Now the general circumstances are set out in the notes of evidence and in the learned District Court judge's remarks on sentence and I do not intend to recapitulate them now. I do, however, emphasise that anyone who commits an offence which is for the purpose of assisting in a scheme to get a firearm into a prison to aid a prisoner to escape from that prison must expect a severe punishment.

The principles applicable to appeals against sentence are quite clear. The Summary Proceedings Act provides that such appeals should only be allowed where the sentence is clearly excessive or clearly inappropriate. Mr Barker, as I understood his submissions, did not argue that imprisonment was as a sentence inappropriate. The question therefore is was it clearly excessive?

Mr Barker in his careful submissions, which, I might add, were practical and lost none of their strength from that practicality, first reminded me that the sentence was imposed on the 9th of December and that the appellant had been serving it since that time, so that he had in fact been in prison for some four months, which, if one were to regard it as a sentence first imposed and making allowance for the remission that is normally given, would be the equivalent to his having served a six months sentence. He then went on to refer to various matters which he submitted supported his submission that the sentence was clearly excessive. In relation to the unlawful possession charge there were various matters which Mr Barker canvassed and, in particular, he referred to the role of the appellant in the scheme to get a pistol from a man named Morgan in Auckland to Invercargill, where it was to be introduced into the prison there by

somebody else. Now I think that particular aspect was clearly in Judge Fraser's mind when he imposed the sentence, because he expressly refers to it and made allowance for it. Indeed, I think apart from one matter which I shall mention in a moment the various points that Mr Barker so clearly urged were adequately covered in Judge Fraser's remarks on sentence. The matter which does appear to lead to some uncertainty is in relation to Mr Barker's submission that the appellant did not open the package when it arrived in Christchurch and was then forwarded on by him to Invercargill, though the appellant admitted that he knew what it was and he knew the purpose for which it was to be sent on. However, Judge Fraser had said when he imposed the sentence that the seriousness of the offence was aggravated by the fact that it was not merely a pistol but it was a pistol accompanied by ammunition, a silencer and other accessories. I think I must accept the version of the facts that is most favourable to the appellant, notwithstanding the passage that Mr Panckhurst drew to my attention at page 26 in the notes of evidence, which would suggest that the appellant probably did know what was in the parcel rather more clearly. It does seem clear from the judge's remarks that he put some weight on the aggravating factor of the pistol being accompanied by ammunition, yet I must conclude, in view of the fact that the version most favourable to the appellant would suggest that he did not know it, that I should regard it as being a mistake on the judge's part in treating the matter as more serious, so far as this appellant was concerned, because the pistol was accompanied by ammunition. Ordinarily the fact that there was ammunition being sent with the pistol would make it more serious but on reflection I think that it is only marginally so here because I accept Mr Panckhurst's

submission that the appellant was passing the pistol on to someone else who he knew was going to arrange for it to be introduced into the prison for the purpose of assisting the particular prisoner to escape. In those circumstances he must have realised that whether he had sent it with ammunition or not it was intended to be used in a way that was a very serious matter indeed. I think the judge was right in treating the offence, in the light of the purpose for which the pistol was being sent on by the appellant, as a very serious matter and, though he perhaps was mistaken in regarding it as aggravated by the presence of the ammunition, I do not think that that is a sufficient justification for saying that a sentence of nine months imprisonment is clearly excessive. In my view it is not. Indeed, I think that the appellant could well have been given a heavier sentence for that particular offence.

Mr Barker had also submitted that when looked at in total the sentence of 13 months imprisonment was clearly excessive for all the offences. In my view, in the light of the appellant's stated attitude to the use of cannabis, for which he has been punished on several previous occasions, a term of imprisonment was appropriate and inevitable and in the particular circumstances of the offences, the August ones being committed at a time when he had already been charged in respect of the May ones, I do not think that the sentence of four months can be regarded as excessive. The unlawful possession of a pistol charge and the cannabis charges are quite separate kinds of offences and so clearly the sentences should properly be cumulative rather than

concurrent. I am satisfied that neither of the sentences individually was excessive and I do not think that when treated as a whole they can be regarded as excessive either. In result the appeal must be dismissed.