

IN THE HIGH COURT OF NEW ZEALAND
HAMILTON REGISTRY

M.13/84

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NB:

(NAME SUPPRESSED)

BETWEEN:

of Tauranga, Investment
Manager

Appellant

UNIVERSITY OF OTAGO
26 MAR 1984

A N D:

THE POLICE

Respondent

Offence: Cultivating Cannabis (1); Possessing Cannabis (2)
Dealt With: 20 December 1984 At: Hamilton BY: Latham DCJ
Sentence: Fined a total of \$800.00
Suppression of name refused.

Appeal Hearing: 15 February 1984

Oral Judgment: 16 February 1984

Counsel: R H K Jerram for appellant
C Q M Almao for respondent

Decision: APPEAL ALLOWED - Name suppressed

(ORAL) JUDGMENT OF BISSON, J.

This appellant was convicted in respect of three offences under the Misuse of Drugs Act 1975: (1) that he had in his possession cannabis seed; (2) that he had in his possession cannabis plant material; and (3) that he cultivated cannabis plants. In respect of these offences he was fined a total of \$800.00 and his application for suppression of name was refused. Interim suppression was, however, granted to allow him to bring an appeal to this Court in respect of this one question as to whether his name should be suppressed or not.

Before the learned District Court Judge there were three basic grounds advanced. The first related to a psychiatric report by Dr G S Cliff; the second was the unusual surname of the appellant, which would give some prominence to any report of his conviction; and thirdly, the effect on his former wife who is herself in business. The learned District Court Judge had a discretion in this matter, and he carefully considered the submissions which had been made and refused suppression of the appellant's name.

Mr Jerram, in support of the appeal, has produced an up-to-date report from Dr Cliff, a consultant psychiatrist of Hamilton, in which appears the following opinion:

"It is my opinion that it would be disastrous for this man if his name were to be made public in connection with his conviction for charges relating to the cultivation and possession of cannabis. Indeed under such circumstances I would consider the chance of his attempting suicide to be very high. His wife should take care of him."

A previous report which was before the learned District Court Judge was by no means as strong as that, because Dr Cliff had not seen the appellant recently enough to give an up-to-date opinion. What he did say was that he had first seen the appellant in May of 1983 at the request of his family practitioner, that he had seen him subsequently, and spoken to him on the telephone but had not seen him since about June 1983, so he said:

"I am obviously not in a position to evaluate (the appellant's) current mental state, nor the likely effect of conviction in respect of the current charges should this happen


"I can say, however, that for over a year after his reluctant separation he was certainly a disturbed, unhappy man, whose sense of values must, to a degree, have become distorted as his life threatened to disintegrate around him."

As the learned District Court Judge said, suppression of name in respect of a person convicted of an offence under the Misuse of Drugs Act is very rare indeed - so rare that it would be exceptional. Mr Jerram accepts that, but submits that this is just an exceptional case, and after taking time to consider the psychiatric reports in detail, I have reached the conclusion that this is an exceptional case. I also have regard to the following circumstances - first, that the appellant is a man aged 47 years of age who had not previously appeared before the court; that there was a small number of plants seized, and a small quantity of cannabis involved; and that he was using the drug for his own purposes only, not that that aspect alone would influence me to suppress his name but I take it into account with the other features of the case. Furthermore, he has left the district where the offences were committed and where he has been convicted, so that the publication of name would serve no useful purpose locally but would, indeed, have the reverse effect, of damaging the position of his wife and children who are still resident here in Hamilton. But the overriding consideration is really the psychiatric report. This is not a case where the appellant has brought about his own state of depression, nor is it a case where it seems the public would be at risk from him introducing drugs to them. For these reasons it does seem to be an exceptional case, and the Court must always

be receptive to the exceptional situation, otherwise the judicial discretion would never be exercised in favour of any offender.

The allowing of the appeal is no reflection on the learned District Court Judge's decision, because he did not have the benefit of an up-to-date psychiatric report in respect of this appellant. If the appellant had brought about his own unhappy state the Court would have no sympathy for him. But, in all the circumstances, it does seem to be a case where the Court should in its discretion show mercy to this appellant and accordingly the appeal is allowed and there will be an order that his name, and any information relating to the charges which would identify him, be suppressed.

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Solicitors:

McKinnon Garbett & Co., Hamilton, for appellant
Crown Solicitor, Hamilton, for respondent