

IN THE HIGH COURT OF NEW ZEALAND
HAMILTON REGISTRY

M.258/84

845

BETWEEN: R TAKIARIAppellantA N D: THE POLICERespondent

Offence: (1) Supplying cannabis to a person under the age of 18 years.
(2) Theft.

Dealt With: 3 July 1984 At: Hamilton By: Millar DCJ
Sentence: Imprisonment 6 months

Appeal Hearing: 18 July 1984
Oral Judgment: 18 July 1984

Counsel: C J Tennet for appellant
R G Douch for respondent

Decision: APPEAL ALLOWED - imprisonment quashed.
Periodic Detention 6 months substituted.

(ORAL) JUDGMENT OF GALLEN, J.

This appellant was convicted on a charge of supplying cannabis to a person under the age of 18 years. He has no previous drug conviction. There is no question of a commercial transaction. He was not dealing, and the amount does not appear to be large. Under those circumstances, and if that were all that were involved, I should have thought that following the pattern set in penalties imposed in other cases the appellant could have expected a comparatively mild sentence. However, the supply was to a 13-year-old girl. This gave grave concern

to the learned District Court Judge. It gives grave concern to me. I think that it is very important to discourage, by every means possible, the making available of drugs to school children.

In this case there are two other factors which I should take into account. The first is that I am informed, and it appears to be uncontradicted, that the appellant is of limited intelligence, he is unable to read and needs to be regarded, in some respects at least, as being a person rather younger than his actual age. Secondly, the Probation Officer's report is slightly unusual in form. It refers to the kind of response which can be expected from the appellant - and almost goes so far as to recommend Periodic Detention. I think, too, that the learned District Court Judge, from comments which appear in his notes on sentencing, had a degree of concern for the appellant which reflected in the lack of penalty imposed in respect of the Theft charge. I note, from what counsel has told me today, that the learned District Court Judge was not aware of the limitations of the appellant.

I am not prepared to accept that Periodic Detention is to be regarded as some soft option and something which is regarded as an alternative for imprisonment which has much less effect. The purpose of Periodic Detention is to retain people in the community, and

it is not in any sense intended as some mild penalty which cannot be seriously regarded.

Having regard to all the circumstances, and with considerable reservations because of the fact that the person supplied was a school-girl, I am prepared to substitute a period of 6 months Periodic Detention for the sentence of imprisonment which was imposed, and the appeal will be allowed accordingly. The necessary information as to the serving of the Periodic Detention will be supplied to the appellant in the normal way.

R. G. G. G.

Solicitors:

McCaw Lewis & Chapman, Hamilton, for appellant

Crown Solicitor, Hamilton, for respondent