

301

BETWEEN     JOHN VERNON TAYLOR  
Appellant

A N D     THE POLICE  
Respondent

Hearing:     28th March, 1984.

Counsel:     D. J. McNaughton for Appellant.  
                  C. O. M. Almao for Respondent.

Judgment:    23th March, 1984.

---

ORAL JUDGMENT OF TOMPKINS, J.

---

The Appellant has appealed against a sentence of 8 months' imprisonment imposed in the District Court at Hamilton on the 7th February, 1984, following his being found guilty of a charge under the Misuse of Drugs Act, 1975, that he sold cannabis plant to a person over the age of 18 years.

On the 18th August, 1983, the Appellant sold seven cannabis bullets to a special duties constable for \$100 cash. The Appellant was also charged with two drug related offences, but on those he was found not guilty.

The learned District Court Judge in his reasons for sentence emphasised the seriousness of any form of drug dealing and also with regard to the Appellant's claim that he was simply a link in a chain, the learned District Court Judge, in my view quite rightly, placed reliance on the refusal of the Appellant to disclose the name of the person from whom he claimed to have obtained the cannabis that in turn he sold.

In support of the appeal Mr. McNaughton made four

principal submissions. The first is that the quantity of cannabis sold was 7.28 grams, a relatively small amount and only about one-quarter of the amount at which the statutory presumption of dealing arises. The second was that the Appellant made, so he claimed, no profit from the transaction. The Appellant gave evidence in mitigation of penalty. I do not have a transcript of that evidence, but I am informed that it was the Appellant's evidence that, having been approached by a friend to obtain the cannabis for the constable, the Appellant approached another friend from whom he obtained the cannabis, which in turn he sold to the police constable for the same price that he purchased it from his friend. Although this story sounds a little improbable, the learned District Court Judge in his reasons for sentence made no specific finding on whether he believed the Appellant's evidence.

The third matter raised by Mr. McNaughton is that the Appellant had no drug related previous convictions. In fact he has three previous convictions, one for obstructing or hindering police, one of assault and one of dangerous driving, so I accept that this is his first conviction in any matter relating to drugs.

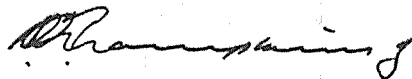
The fourth matter is that the Appellant had been unemployed for some considerable time, that he had only recently been able to obtain work in the State Coal Mines at Huntly, so that any term of imprisonment would result in his losing the employment that he had recently obtained.

Mr. Almas points out that it was alleged by the prosecution that the Appellant had in his possession more bullets than seven purchased by the constable, and also that there had been some discussion between the constable and the Appellant of a further drug transaction at a later date. These

two assertions by the prosecution were disputed by the Appellant.

The court must always regard any offence of dealing in drugs of any kind and to any scale as matters to be treated with considerable seriousness. It is common knowledge that, at least in this area if not generally, the level of business relating to cannabis is significantly increasing. That is a situation which in turn must be reflected by the severity of the penalties imposed on those who are found guilty, particularly of dealing in cannabis. However, it is my view that a sentence of 8 months' imprisonment, where the maximum provided under the Act on summary conviction is 12 months, is, in the circumstances of this case, not appropriate, and I say that having particular regard to the quantity involved and the Appellant's lack of previous drug related convictions. In my view an appropriate sentence would be one of five months' imprisonment.

The sentence imposed in the court below is therefore varied to one of five months' imprisonment.



Solicitors:

McCaw, Lewis, Jecks, Hamilton, for Appellant.

Crown Solicitor, Hamilton, for Respondent.