IN THE HIGH COURT OF NEW ZEALAND
INVERCARGILL REGISTRY

M.75/84

BETWEEN PAUL LESLIE TURNER

Appellant

A N D THE POLICE

Respondent

UNIVERSITY OF OTA
29 MAY 1985
LAW LIB

Hearing: 12 October 1984

Counsel: P. McMenamin for Appellant
G.K. Panckhurst for Respondent

Judgment: 15 NOV 1984

JUDGMENT OF HARDIE BOYS J

This is an appeal against a sentence of nine months' imprisonment imposed on a charge of possession of cannabis leaf for supply.

Executing a search warrant at the appellant's home address, the police found 1.7 grams of cannabis material and some cigarette remains in a plastic bag in the lounge; 10.2 grams of cannabis, 6.7 grams of cannabis seed and $260 in cash in his bedroom; more seeds weighing 2.4 grams in a brass vase in another room; five deal bags containing approximately 96.1 grams of cannabis leaf in the freezer; and 12 deal bags containing in all some 239.2 grams of cannabis in a tupperware container buried in the garden. The appellant claimed that the cannabis was all for his own use, and that claim was

repeated on the hearing of this appeal, but his plea of guilty to the charge of possession for supply negates that explanation, and I cannot have regard to it.

The police summary of facts upon which the District Court Judge relied, because its details were apparently not disputed before him, stated that the contents of seven of the deal bags in the buried tupperware container comprised a high potency cannabis and were accompanied by a slip of paper marked $190 whilst the other five bags were with a slip of paper marked $150; and that the street value of all the material found at the appellant's address was, according to its quality between $2,340 and $3,340, if sold in deal bags of 20-28 grams each. Some of these facts were disputed on appeal. I was told that the writings which the police interpreted as 190 and 150 were "area codes" to the locality where the cannabis was grown; that the material was all wet and would have to be dried out before it could be sold and that process would reduce its weight to 150 or 180 grams and its street value proportionately. Mr McMenamin questioned the ability of the police to determine that some of the cannabis was of a high potency and he also drew attention to a considerably prejudicial note in the police's statement of facts that amongst photographs found in the house was one of the appellant holding his small child who was holding a cannabis cigarette. The appellant denies that the child was holding a cannabis cigarette.

At the conclusion of argument I adjourned the appeal in order that Mr Panckhurst might obtain a copy of the certificate of analysis from the DSIR in case that dealt with the question

of potency, water content and weight. That certificate has now come to hand. It makes no reference to potency or water content but it appears to confirm the weight of the contents of the 17 deal bags.

The appellant's wife had been charged along with him and she had been sentenced to periodic detention. It was urged upon the District Court Judge that the same sentence ought to be imposed upon the appellant. However, noting that Mrs Turner's sentence took account of the fact that she was feeding a young baby, he considered that the husband had to be dealt with in accordance with the principles and within the range of sentences indicated as appropriate by the Court of Appeal in R v Smith [1980] NZLR 412. The disparity between the sentence thus imposed on the husband and that imposed on the wife was one of the grounds upon which the present appeal was argued.

It was also submitted that despite his extensive reference to R v Smith the Judge imposed on this appellant a greater sentence than comparable cases discussed in that judgment, in particular that in Reid (p416), which, the Judge commented, seemed to have some similarity with the present case, where for the possession for supply of 119 grams of cannabis found in various places in the house of the appellant who had a previous conviction for possession, a sentence of six months' imprisonment was upheld. Of course what the Court of Appeal had said in Reid was that a six months' sentence was not manifestly excessive. There was no suggestion that that was the maximum appropriate sentence. For there are no hard and fast rules. There is a range of penalties appropriate for the kind of offence in question and it is the function of the Judge

to pitch the level in a particular case according to his view of its seriousness within that range. That is essentially a matter of his discretion and this Court cannot interfere on appeal unless it can be shown that the particular sentence is out of the range or that there are particular circumstances which indicate that even though within it it is nonetheless excessive or inappropriate. And of course it is well known that the personal circumstances of a particular offender in a drug dealing charge cannot usually play any significant role in determining what is the appropriate sentence.

It may have been for this reason that the Judge said nothing about the personal circumstances of this appellant in imposing sentence upon him. The appellant is 26 years old, is married with two young children. Although currently unemployed that is only because his is a seasonal job. His general employment record is reasonable. He has been before the Court on five occasions on criminal charges but most of them some years ago and they do not appear to have been of great seriousness. However in May 1983 he was fined for the possession of cannabis and clearly he is now caught up in the drug scene, although it must be accepted that there is no evidence that he is a supplier on any large scale. He has virtually no assets. There is nothing in his background apart from his immediate family circumstances to militate against the imposition of a sentence appropriate to the offence itself. Those family circumstances have already been taken into account by the Court when it dealt with Mrs Turner and I do not think her husband can claim much advantage from them as well. In particular the disparity in the sentence is readily explicable

on this ground and thus does not provide a basis upon which this Court is entitled to intervene: see R v Rameka [1973] 2 NZLR 592; R v Lawson [1982] 2 NZLR 223.

What the appellant says about the child in the photograph must be accepted. But I am unable to accept the explanation regarding the markings on the slips of paper. This does not appear to have been put to the District Court Judge and it strikes me as entirely fanciful. On the basis that these markings do show prices then they demonstrate a difference in quality between the two sets of bags. Apart from that however I accept that there is no other apparent basis for asserting the greater potency of the more expensive material. I cannot be sure that the analyst's report of the weight of the material is reliable as a guide to its total value, and I therefore think that the proper approach is to proceed on the appellant's own figures. He clearly thought that seven bags were worth $190, and five, $150, this making a total of $2,080.00, whilst the material in the freezer would on these figures have been worth about $700. I assume therefore a total value of about $2,800 and a total weight for the 17 bags of 250 grams, i.e., 150 for those in the ground and 100 for the rest which I assume was dry.

As appears from R v Smith the range of penalty appropriate to a quantity of this order ranges up to 18 months' imprisonment - see Stewart (p414) and Woods (p415). In the cases of Reid and Brown (p415) the quantities were considerably less than in this case.

In these circumstances I am not persuaded that the sentence of 9 months imprisonment was out of the appropriate range and therefore manifestly excessive. The appeal is accordingly dismissed.

Solicitors:

McMenamin & Sons, CHRISTCHURCH, for Appellant
Crown Solicitor, CHRISTCHURCH, for Respondent

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