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IN THE HIGH COURT OF NEW ZEALAND
HAMILTON REGISTRY

N2LR

M.66/84

308

BETWEEN COPELAND

Appellant

A N D THE POLICE

Respondent

Hearing: 28th March, 1984.

Counsel: Miss Sharples for Appellant.
C. O. M. Almao for Respondent.

Judgment: 28th March, 1984.

ORAL JUDGMENT OF TOMPKINS, J.

The Appellant has appealed against a sentence of six months' imprisonment imposed by the District Court at Morrinsville on a charge that he cultivated a prohibited plant, namely, cannabis.

On the 12th December, 1983, the police went to the Appellant's address at Lewis Street, Waihou, and found eleven cannabis plants growing in the Appellant's vegetable garden. They were about 3 ft. tall. The Appellant admitted that these plants were cannabis and that he had planted them some three months' ago. In his statement to the police he said that he had planted some thirty seeds, but only ten or eleven came up. He anticipated that these would provide him with about a year's supply. He said that he had commenced growing the cannabis because it had become too expensive to buy.

The learned District Court Judge, I have no doubt, imposed the sentence conscious of the prevalence of this offence

in the Waikato area, and particularly at Morrinsville. Indeed, as the notes on sentencing show, he commented that that day's court list in that quite small country area shows that the cultivation of marijuana is all to prevalent. I believe that those minded to cultivate their own marijuana should be aware that custodial or partly custodial sentences are almost inevitably likely to result.

The learned District Court Judge also commented on the Appellant's conviction in 1978 of cultivating cannabis when he was given a particularly light sentence. This may have been for the reason given by his counsel, Miss Sharples, when she said that although some twenty cannabis plants were found in the flat occupied by the Appellant and two others, he had only arrived there a few days before. The learned District Court Judge also commented that the Appellant had been involved in cannabis ever since. This, I assume, is based on the statement made to the Probation Officer that he was only a week-end user, and also the statement in his statement to the police that he had previously been purchasing marijuana and that what he was growing was about a year's supply.

I treat with some concern the other comment in the Probation Officer's report where the Appellant apparently said that in view of this and his previous conviction he was seriously thinking of giving up marijuana altogether. I confess to some surprise that the experience of the previous conviction and facing a further conviction is not enough to convince him not to think of giving it up altogether but to decide unequivocally and with determination to cease using marijuana at all. Unless he does there is no doubt that this will be one of only several court appearances, and that his stays in prison will become more and more frequent.

Mr. Almao, for the Respondent, properly drew my attention to the review of sentences for cultivating cannabis as set out in the decision of the Court of Appeal in R. v. Dutch (1981) 1 N.Z.L.R. 304, and he was inclined to accept that this case came within the first of the three categories described in the judgment of the Court of Appeal delivered by Mahon, J. at p.307:-

> " At the lowest level of culpability are cases where the offender has cultivated a few plants on his own property exclusively for his own use. Sentences for cultivation to that extent have not been considered by this court, as obviously they will normally be dealt with by a fine or some other form of non-custodial penalty in the District Courts. But there will be offences of a more serious kind in relation to non-commercial cultivation where terms of imprisonment or heavy fines will be appropriate. "

I am inclined to agree that this comes within the first of those two categories, although I am concerned at the Appellant's initial attempt to grow thirty plants which, had it succeeded, would certainly have brought himself into the more serious category referred to by the Court of Appeal.

Counsel for the Appellant pointed out that a term of imprisonment could have an adverse effect on the Appellant's de facto wife and child, on whom it would result in hardship. I have no doubt that that is so. It is, of course, a very frequent consequence of criminal conduct that the court has to treat with some severity. Again persons who are minded to become involve in the cannabis business should appreciate that their acts have consequences not only to them but also to others.

However, I have decided to treat this case as being in the first category referred to by the Court of Appeal

and that it should be dealt with by a fine or some other form of non-custodial penalty. The Appellant should appreciate that this will undoubtedly be the last time that he is given such an opportunity, and that if he ever comes before the court again on any offence in any way relating to marijuana, a prison sentence will be inevitable.

The sentence imposed in the court below will be quashed, and in its place I impose a sentence of nine months non-custodial periodic detention, together with a fine of $500. The Appellant will report to the periodic detention centre at Hamilton at 6 p.m. on Friday, the 30th March, 1984, and thereafter on such number of occasions in each week as may from time to time be specified by the Warden.

Solicitors:

Allen Needham & Co., Morrinsville, for Appellant.

Crown Solicitor, Hamilton, for Respondent.