IN THE HIGH COURT OF NEW ZEALAND
CHRISTCHURCH REGISTRY

No. AP14/86

BETWEEN MICHAEL DESMOND HAYES

Appellant

LOW PRIORITY

2007

A N D POLICE

Respondent

Hearing: 27 November 1986

Counsel: Miss McCook for Appellant
R.E. Neave for Respondent

Judgment: 27 November 1986

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ORAL JUDGMENT OF HOLLAND, J.

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The appellant in this case was convicted and sentenced to six months' imprisonment on a charge of being in possession of cannabis for supply. He was travelling in a motor vehicle in the West Coast of the South Island with another when that vehicle was stopped and searched. The appellant was one of the occupants of the vehicle both of whom were charged. The Informations were heard together but I accept the submissions of counsel for the appellant that the obligation on the District Court and on this Court was to consider the allegations separately. In so far as this accused was concerned he was a passenger in the vehicle and there was found by the searching constable underneath or behind the passenger seat a backpack. The constable said:-

> "I asked the defendant Hayes who it belonged to, he said it was his and it contained ski-ing gear."

On opening the pack the constable found that it contained 1054 grammes of cannabis plant.

The appellant gave evidence that shortly before coming to the South Island for an extended ski-ing holiday he had attended a party at Taumaranui. At that party he alleged that "someone" came up to him and gave him his backpack which he had lent to "a certain person" a few weeks beforehand. "Someone" said it contained ski gear and had asked if he minded dropping it off to "somecne in Dunedin". That explanation not surprisingly was completely rejected by the District Court Judge. I accept the submissions of counsel for the appellant that the explanation was consistent with his explanation given to the police constable at the time but it is an explanation which was incredible on the first occasion and remained incredible when repeated.

It is the submission of counsel for the appellant that the District Court Judge has taken into account the untrue explanation given by the appellant when considering the innocence or guilt of the appellant. The District Court Judge in the course of giving reasons for his decision correctly set out the elements required to be proved in relation to possession. He said:-

> "Possession in the legal sense used in this charge comprises both physical custody or control and a mental element of knowing what the article was and where it was. It is for the prosecution to prove both matters beyond reasonable doubt before the Court can be satisfied that the cannabis was in this man's possession."

The effect of rejecting the appellant's explanation both to the police and given on oath was that the Court was left with no more evidence than that this pack containing cannabis was found under the

front seat of a car in which the appellant was a passenger. When it was found the appellant acknowledged that the pack was his. Undoubtedly the constable did not challenge by way of questioning the appellant as to who "someone" was or who "someone in Dunedin" was or who "a certain person" was to whom to whom the appellant alleged he had lent his pack previously. Counsel for the appellant says that no steps at all were taken to check the truth of the appellant's explanation. That may be so but the evidence available to the police was that the appellant admitted having in his possession a pack which in fact was found in his possession. In the absence of any persuasive explanation to the contrary the fact that that pack contained a very large quantity of cannabis plant and the circumstances of its finding led the District Court inevitably to the conclusion that the appellant knew what was in his pack. A reading of the evidence, even allowing for the persuasive submissions made by counsel for the appellant, leads me inevitably to the same conclusion.

There has been a suggestion advanced in the course of argument that the District Court Judge may have not considered the onus of proof correctly. He clearly did in the passage referred to earlier. There is, however, another passage where he refers to the presumption that arises as to the cannabis being for supply. In this case the quantity was such that a presumption as to the purpose of possession applied against the appellant in the absence of a satisfactory explanation. I am quite satisfied that the District Court Judge did not consider that there was any onus on the appellant in relation to the proof of possession in respect of which he was absolutely satisfied.

Prior to the hearing of this appeal counsel sought an adjournment because counsel representing the appellant was before some tribunal in the North Island. This man was convicted on 4 November. An urgent date of hearing was given for the appellant because he was serving a sentence of imprisonment which he maintained was wrongly imposed. He gave notice of appeal immediately and a fixture was allotted last week for the hearing of the appeal today. Counsel apparently thought until yesterday he would be available today. I refused the adjournment. In matters of this kind it is the obligation of counsel either to attend an urgent fixture made or to ensure that counsel is available who has been fully instructed. I had the advantage of two foolscap pages of written submissions to be advanced on behalf of the appellant. I allowed counsel who sought the adjournment a period of three quarters of an hour. I am absolutely satisfied that everything has been advanced on behalf of the appellant which could possibly have been advanced. No ground has been advanced which establishes that the decision by way of entering a conviction was wrong in any respect.

The appeal against conviction is dismissed. On the instructions of the appellant the appeal against sentence was not advanced. That appeal is also dismissed.