NZLR

IN THE HIGH COURT OF NEW ZEALAND
ROTORUA REGISTRY

AP. 124/87

NOT RECOMMENDED

FORD

v

THE POLICE

Hearing & Judgment: 19 February 1988

Counsel: Ms J. Walker for Appellant
Mr P. Savage for Respondent

ORAL JUDGMENT OF ANDERSON J.

On 17 November 1987 the appellant was sentenced in the District Court at Tokoroa to a term of 6 months imprisonment for cultivating cannabis contrary to s.9(1) of the Misuse of Drugs Act 1975. The cannabis in question was two seedlings about 2" in height located on the appellant's premises near a small homemade hothouse. The appellant admitted to the Police that the plants were cannabis and that they belonged to him. He said he was growing them for his own use and there is nothing to suggest otherwise. This is not his first appearance before the Courts as he has previously been convicted for cultivating cannabis and on that occasion some two to three years ago received a fairly light fine. In August last year he was convicted on a charge of burglary and sentenced to non-residential periodic detention for five months. That has now been completed.

In sentencing the appellant the learned District Court Judge referred to the fact that the instant offence occurred a short time after the appellant's having been sentenced to periodic detention for burglary and the learned District Court Judge noted that the burglary sentence had not dissuaded the appellant from criminal activity. The Judge also stated that the Courts and in particular the Court of Appeal have stipulated time and time again that drug offenders' personal circumstances, particularly in the field of cultivation and/or dealing, are of secondary consideration to matters of public policy. I think that reference may have been intended to relate to the principles indicated by the Court of Appeal in R. v. Dutch [1981] 1 NZLR 304 where at p.308 of the judgment it is stated that very little allowance can be made for the personal circumstances of the offender in cases of dealing and that similar considerations must apply to the cultivation of cannabis where the offence was committed for financial gain.

In the instant case there is no suggestion of financial gain and it may be that the learned District Court Judge gave less weight to personal circumstances than may have been appropriate having regard to the non-commercial and limited nature of the cultivation. The learned District Court Judge also expressed the view that the appellant had had every opportunity to do something about his undoubted drug problem

and the trial Judge was sceptical that expressions of committment to rehabilitation were the product of concern at a likely prison term on the particular offence.

It is plain from the information placed before me today that the appellant had in fact sought assistance for drug dependency before the date of the instant offence. He had sought assistance from NSAD in August 1987. Thus the trial Judge's scepticism may have been less appropriate than he considered. The Judge was, however, clearly conscious of the desirability of rehabilitation because he expressed the hope that if the appellant qualified for parole he would be placed on a programme which would assist him to break the drug habit. A report from NSAD submitted to me today indicates some degree of committment to rehabilitation and some type of programme albeit rather tentative at this stage.

This is a case where I think some term of imprisonment is inevitable. The appellant was given a chance in 1985 and did not learn from that opportunity. The offence with which we are concerned today must have been initiated both after the sentence on the burglary charge and after the approach to NSAD for rehabilitation assistance. These considerations together with the recognition in R v Dutch that there is scope for a range of sentences even in the lowest levels of culpability relating to cannabis leave me with no option but to affirm the necessity for a prison sentence but I

think, having regard to the appellant's personal committment to rehabilitation, a short sharp sentence will be appropriate both because it will be capable of indicating to him what he might be in for on a much longer basis if he offends in the future and because it will not unduly interfere with the prospects perceived by NSAD. I therefore allow the appeal and in lieu of the sentence of 6 months imprisonment I substitute a term of 6 weeks imprisonment.

N.C. ANDERSON J.