

BETWEEN

HAWE

Appellant

A N D POLICE

Respondent

Hearing: 29 October 1990
Counsel: Jane Farish for Appellant
J. Sandston for Respondent
Judgment: 29 October 1990

ORAL JUDGMENT OF HOLLAND, J.

The appellant pleaded guilty in the District Court at Greymouth to a charge of supplying cannabis, a Class C drug. He was sentenced to 50 weeks' imprisonment. The appellant was discovered as a result of the activities of an undercover constable operating out of Westland but who on occasion in the course of his duty spent some time on the West Coast. There is only evidence of one supply.

The Judge in imposing sentence made some brief remarks which might have been misunderstood. He said:- "Your personal circumstances are of little moment." With respect to the Judge, that overstated the position. What has been said by appellate Courts in relation to drug dealing offences is that sadly in many cases the needs to impose a deterrent sentence are such that not as much weight as usual will be given by a sentencing Court to personal circumstances. It

is, however, quite wrong to indicate that the personal circumstances of an offender are of little moment to any sentencing Court or to any appellate Court.

The next remark was that it was the view of the Court of Appeal that for this sort of offending deterrent sentences must be imposed. That is undoubtedly the position. It does not mean, however, that in a case of supplying or selling a Class C drug prison must be an inevitable sentence. It will be the usual one, and where, as here, a substantial quantity is involved, it will be the appropriate sentence even if only one supply is proved.

The Judge went on, however, to say:- "The fact that you are a first offender and that you were an intermediary in the sale is of little significance". He added:- "You willingly involved yourself in it". With respect to the District Court Judge again, that is overstating the position. There are some crimes where a first offender must face a prison term because the nature of the offending is such that a prison sentence is required, but it is not correct to say that a person being a first offender is a factor of little significance. The borderline between those who commit crime in their youth, or even as this man is at the age of 27, is a fine one. The temptation to offend occurs to many individuals at many times. The Courts usually are sympathetic to a man being given a second chance before a prison term is involved. I agree with the Judge here that the quantity of cannabis supplied meant that a prison term

was appropriate, notwithstanding that this appellant was a first offender, but it is wrong to say that the fact he was a first offender was of little significance and it was a matter that should have weighed with the Judge as to the length of sentence that was to be imposed.

Likewise, it is not correct to say that the fact that the appellant was an intermediary in the sale is of little significance. It is correct to say that the fact that a person is an intermediary is no excuse for the crime because this crime of selling drugs involves generally a number of participants up and down the scale. If, however, the original or major supplier is located it is appropriate that he or she be sentenced to a much heavier term than an intermediary who may simply be doing this to support a supply of drugs to themselves, or may be doing it merely by way of being drawn into a situation.

The Judge was sentencing on the same occasion another offender whose file is before me. That offender was before the Court for a similar offence, a supply of the same amount of cannabis as an intermediary to the undercover constable for the same price, but that offender had a number of previous convictions. In particular, four years ago he had been convicted for cultivating cannabis and possession of cannabis, and only a year previously had been convicted of possession of cannabis on another occasion. He had been dealt with, and leniently, on those charges. It is undoubtedly correct that there should be relativity for

offences that appear to be similar to each other, but it is often overlooked when standard sentences are imposed that the circumstances of the offender will often vary substantially. It is desirable that the appropriate sentence reflect not only the circumstances of the offence, which in this case were the same, but the circumstances of the offender, which in this case were substantially different.

The Judge was limited by his jurisdiction to a sentence of one year's imprisonment. He decided in the case of the other offender that he could exercise his jurisdiction and that effectively a sentence of one year's imprisonment was adequate. In those circumstances it appears to me that a sentence of considerably less than one year was the appropriate sentence for this appellant if the full matters were considered.

The appeal against sentence will be allowed. In lieu of the sentence of 50 weeks' imprisonment, which allowed for two weeks in custody awaiting sentence, the sentence that will be imposed will be one of 24 weeks' imprisonment.

AD Holland J.