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NZLR

NOT RECOMMENDED

IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

AP 23/91

BETWEEN TONY MARTIN

APPELLANT

396

A N D POLICE

RESPONDENT

Hearing: 15 March 1991

Counsel: M.A. Edgar for Appellant
V.J. Shaw for Respondent

Judgment: 15 March 1991

(ORAL) JUDGMENT OF PENLINGTON J

This is an appeal against sentence. The appellant pleaded guilty to one charge of possession of a Class C drug.

The circumstances were the police executed a search warrant on an address at Mangere. That is where the appellant lived. They located in the bedroom at this address a cannabis cigarette and a bamboo cannabis pipe. The appellant admitted ownership of the pipe and the cannabis.

The appellant was sentenced to two months periodic detention. There are no sentencing notes of the learned

District Court Judge. The appellant was represented by the Duty Solicitor who did not make any submissions. I am therefore unassisted by the considerations which prompted the learned District Court Judge to impose the sentence of two months periodic detention.

Probably the matter which held the greatest sway with the sentencing Court was the appellant's past record. He has quite a long list of previous convictions but of these significantly there appear to be only four occasions in 1981, twice in 1984 and one in 1985 when he has had previous drug related convictions. It is significant that over the last five and a half years he has not offended in respect of drug related offences.

Mr Edgar for the appellant argues that the sentence imposed was manifestly excessive. He contends that the appropriate sentence in all the circumstances would be a fine.

Miss Shaw for the respondent accepts that the sentence was in the higher range, especially having regard to the subject matter of the offence. I think this is a proper view.

I am informed from the bar that the appellant is now working. This is the first time in the last three years. He is engaged on contract painting work and has a regular

income of $270 per week from which he is paying $125 for rent.

There are some outstanding fines. They amount to $420. The sentencing Court was not made aware of these fines. The appellant is paying these fines off at the rate of $10.00 per week by way of an automatic payment authority on his bank account. There is no suggestion that he has fallen into arrears.

He is aged 26 years and in spite of his list of previous convictions I am satisfied that there is a reasonable prospect that if a fine was substituted in lieu of the sentence imposed in the District Court it would be met. Indeed, on enquiry, his counsel advises me that he would be able to pay forthwith $160 out of savings.

Having regard to the nature of his list of previous convictions on drug related offences, the minimal subject matter of the present charge, and his record in relation to the payment of fines, I am persuaded that in all the circumstances two months periodic detention was excessive. The appeal is allowed, and in lieu the appellant will be fined the sum of $300. I impose the following terms for payment, namely:

1. that $160 be paid forthwith; and
2. that the balance be paid at the rate of $20 per week.

P.E.T. Penlington J.

Solicitors

M.A. Edgar, Barrister, Auckland for Appellant
Crown Solicitor, Auckland for Respondent