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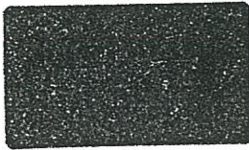
IN THE HIGH COURT OF NEW ZEALAND
HAMILTON REGISTRY

18/2

T 15/93

B/F 25H 2/3

R v Brough 4.2.94.



~~THE QUEEN~~ R

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v

ALAN THOMAS BROUGH

28 MAR 1994

Sentence: 4 February 1994

Counsel: P J Morgan for the Crown
P J Kaye for the Prisoner
D L Bates for Mrs Brough

SENTENCE AND JUDGMENT OF HAMMOND J

Mr Brough, you appear before me for sentence today on a number of drug related counts, dishonesty charges, and Arms Act offences. You were convicted on all these counts by a jury of your peers. The Crown has also made an application for confiscation orders under the Proceeds of Crime Act 1991 and I must also rule on those applications today. Counsel advise that, so far as their researches extend, this is the first application under that statute to be considered by this Court.

Your trial lasted almost two and a half weeks in this Court. I am familiar with the facts of the matter because I presided over that trial. In late 1989 you

purchased a farm property in Coromandel. The farm comprised several hundred acres: something over 200 acres was freehold, and situate thereon was a modern two-storey home overlooking the Thames-Coromandel highway; something over 400 acres toward the rear of the property was Crown leasehold land of a relatively rugged variety. There were bush-clad gullies and slopes.

Acting on information received, the Police had reason to suspect that you were conducting large scale growing of cannabis on this farm and that the farm was possibly also being used in some way as a depot for the supply of drugs. The Police accordingly sent three surveillance teams to this property. These teams camped out at three points on the property over a period of three days. One team was hidden in the hills overlooking your house; one overlooked an area which during the trial we come to know as the stockyards area; and the third overlooked an area at the rear of the property where a caravan was sited. This caravan was located very close to where the four cannabis plantations were ultimately found. Enough information was yielded up by this surveillance, in the opinion of the Police, to warrant a full scale search of the property and this was carried out by a Police operation on the 16th February 1993. In the result, following on this operation, you were charged and indicted in this Court and found guilty on all the counts laid against you.

As a matter of convenience, I will group the offending as follows:

A. You were found guilty of supplying the class A controlled drug LSD; and also having LSD in your possession for supply. The background to these counts is that there was a cache of LSD in the fork of a tree near the stockyards on the farm. You admitted using LSD occasionally yourself, but at your trial you denied that the 22 trips discovered by the Police in this

container were for supply in the normal sense of that term - by which I mean, for external commercial supply for value. You said this LSD was there as a "pool" for the joint use of yourself and two or three other drug users. Each would repair to this source, you said, to extract their "share" from time to time. And you suggested in evidence at your trial that in return for undertaking this operation you were also able to help yourself to some of the cannabis oil which you said belonged to your friends.

At the trial the Crown suggested that the LSD found in this source was part of a much larger parcel, or at least it invited the jury to draw that inference. I instructed the jury that the statute proscribes the supply of LSD and that supply includes "distributing, giving or selling". It was my view that this pooling arrangement, if such was found to have existed, could amount to a supply within the meaning of the statute. The jury clearly had to reach at least that view to return the verdicts it did.

On the evidence that was led at trial, I think that in fairness to you I should proceed in sentencing on the narrower footing that what was involved with respect to these two counts was not a technical breach - it *was* a supply through a pooling arrangement - but in my view the evidence on those two counts does not come up to satisfactory evidence of more extensive or commercial supply of LSD.

B. The second category of offences were those in Counts 3, 4A and 4B. In an area above the stockyard, concealed in the bush, the Police located a pail containing 38 capsules with 15.2 grams of cannabis oil. In another area quite close thereto they located 331 grams of cannabis oil. This would have yielded 830 capsules of cannabis. It would have taken six and a half kilos of

plant to produce this oil, and it has been suggested that the street value of this oil would have been in excess of the order of $25,000. Count 3 related to the supplying of cannabis oil from this general area; Count 4A was possession for supply of the 38 capsules; and Count 4B was possession for supply of the 830 capsules. I should note that at the end of the trial the indictment, with my leave, was amended. Count 4 was subdivided into Counts 4A and 4B for the purpose of clarification, and for sentencing purposes should such eventuate, by enabling better identification of precisely what the jury might find against you. As it transpires you were found guilty on all those counts.

C. Counts 5 and 6 relate to the cannabis plots at the rear of the farm property. The Police found four camouflaged plots adjoining a stream. There were a total of approximately 380 plants, which were very well tended, in those plots. There was evidence before me - which I accept - that each plant could have produced, in street terms, a value of something between $4,000 and $5,000. Of course, if one multiplies 380 plants by $4,000 that would yield a street value of something in excess of $1.5 million. Mr Kaye argued this morning that it was dangerous to make that assumption. I have to say that I agree with him that it is quite unlikely that that full measure could have been extracted from these four plots. That said, however, realism suggests that these were substantial plots which were likely to yield a very substantial return at street level rates, probably running into several hundred thousands of dollars.

Your defence, Mr Brough, was that these plantations were not "yours" and that they had been placed there without your knowledge or consent by a Mr Ireland and a Mr McNamara and possibly other persons unknown.

There was a straight-out contest of evidence at the trial on this because you were seen visiting that general area by the Police, and there was a factual issue as to whether your visits to this area at the time of the Police surveillance were for the purpose of rounding up stock or tending these plantations. I need not detail the evidence. Plainly the jury rejected your version of events on this point. Its finding was a direct one that these plantations were yours, and whether alone or jointly does not matter for present purposes.

Moreover, it will be observed that Counts 5 and 6 cover two different time periods extending over a period of at least two years. Again there was a contest of evidence as to whether these plantations had covered more than one growing season, and the jury found against you on this. Indeed the Crown put it to the jury in closing that the oil referred to in category B above was in fact the leftover oil from the 1991/92 season and that the 1992/93 crop had not been harvested (except to some minimal extent, as by pulling out male plants). The significance of all of this is, of course, that the Crown alleged - and the jury has to have accepted - that this was an extensive commercial operation extending over (at least) two years.

D. Counts 7 and 8 are again related. They involve having in your possession for supply, and supplying, the class C controlled drug cannabis (plant or leaf) to persons of or over the age of 18 years. Those counts related to the selling of plant material from these plantations which was stored in various caches up above the stockyard area. There were significant quantities in those caches.

E. I turn now to the dishonesty offences. You were found to be in possession of a Kite night sight, an Akai stereo system, and certain firearms, and counts of receiving these items were all found to have been proved by the jury. Leaving aside the Akai stereo, the weapons and items of a military nature are significant. These were powerful military or high-powered weapons with very large quantities of ammunition. They were stored at strategic positions across your property, ranging from your house property, to the stockyards area, to the cache area for drugs, and there was one weapon in the caravan adjacent to the plantations. There was immediately available at all strategically important points on your farm a high-powered or military style weapon with quantities of ammunition. This was quite clearly to protect your drug related operations.

The night sight should be specifically mentioned. It is an extremely valuable and restricted military item. Sixteen were imported into New Zealand for the Army and the Police. There was evidence which suggested (by inference at least) that the sight found on your property is one which went missing from a Singapore Airlines consignment of these sights to the New Zealand military authorities. It has a very significant operation in that it is a piece of equipment which enables the user of it to view the movements of persons at night; it can also be mounted on weapons for night use against intruders.

F. Then the final category is what I will term the Arms Act offences. These were: being in possession of a pistol under the Arms Act when you were not authorised so to be; and also a high-powered .223 Norinco rifle without lawful and proper and sufficient purpose.

The overall import of all of this is that there was a large scale cannabis growing operation of significant commercial value, extending over a period of at least two years; protected by very considerable fire power; a substantial supply of cannabis plant was grown for supply; cannabis oil was also found in significant quantities. I cannot, on the evidence which was available at the trial, say that this was a significant centre of hard drugs (by which I mean Class A drugs) and, as I have indicated, for sentencing purposes I treat the LSD as being more in the nature of a common pool for quite restricted use.

The Crown case against you, in my view, in this case was a strong one. It included some extraordinary notes which were intercepted by the authorities passed by you in the course of this trial to another prisoner, Ireland (who happened then to be in the Court cells). And of distinct significance to liability, sentencing, and the confiscation application, there was evidence from an Inland Revenue Department auditor of a large gap between sources of income and dispositions of income by you in the relevant periods. The jury must have rejected your explanations in that regard. The fact of the matter is that - even on what the Police and the Inland Revenue Department have been able to identify - your income far exceeded your expenditure in the period in question, even allowing for the assets in cash form you had originally and the other dealings which were suggested in evidence.

Against that background, I turn now to my rulings on what I will broadly term "the confiscation application". The Crown has made a formal application under the Proceeds of Crime Act 1991 for a forfeiture order against the following property: the farm property at Kereta described in Certificates of Title 44B/133, 44A/687, and 49D/813 (South Auckland Registry); and the proceeds of sale of such

property together with any interest accumulated upon such proceeds of sale settled on Wednesday 15 December 1993. The formal application also sought forfeiture of cash in the sum of $17,129.20 seized by the Police on the 16th February 1993, and a Suzuki motorcycle and a fairly new Harley Davidson motorcycle.

The Crown has also made application for a pecuniary penalty order in respect of benefits derived by you, Mr Brough, namely the receipt of income and the accumulation of assets from the sale of Class A, B and C controlled drugs. As part of their search the Police had seized this cash, the received weapons and other items, and the farm vehicles. The farm has now been sold. On the 13th December 1993 I made a restraining order preventing the sale proceeds, which I am advised amount to $309,287.50, from being dispersed without further order of this Court. Mrs Brough has made an application for relief under the Proceeds of Crime Act.

By way of background it is appropriate to note that in endeavouring to combat the social evil of drug creation and supply, Parliament has, with respect, rightly recognised that one of the most potent sanctions against such activities is to give the Courts power to intercept the tainted gains of offenders. And, it would be a ludicrous position if an offender could serve a period of incarceration, content at least in the knowledge that in due course he or she will emerge to the sunlight of a life of some comfort based on the illegal gains from drugs and the misery routinely inflicted on the lives of drug users. An offender should not, in short, profit from his or her crime, and this is particularly so in relation to drug offences. Some provisions were inserted in the Misuse of Drugs Act 1975. The 1991 Proceeds of Crime Act, though of more general application, extends the reach of that philosophy.

As to forfeiture orders, the Court must first be satisfied that the specified property is tainted property. As to what is meant by "tainted property", that is set out in s 2 of the statute, which I reproduce hereafter:

> "Tainted property", in relation to a serious offence, means -
>
> (a) Property used to commit, or to facilitate the commission of, the offence; or
>
> (b) Proceeds of the offence; -
>
> and when used without reference to a particular offence means tainted property in relation to any serious offence.

The word "proceeds" in the definition of tainted property is:

> "Proceeds", in relation to a serious offence, means any property that is derived or realised, directly or indirectly, by any person from the commission of the offence.

Secondly, the Court may have regard to the considerations set out in s 15(2) of the statute which include (but are not restricted to): the use that is ordinarily made or was intended to be made of the property; any undue hardship that is reasonably likely to be caused to any person by the operation of such an order; the nature and extent of the offender's interest in the property and any other person's interest in it; and any other matter relating to the whole circumstances, including the gravity of the offence.

Thirdly, under subsection (4) of s 15, if a forfeiture order is made the Court must specify the amount that it considers to be the value of the property at the time the order is made.

Fourthly, the interests of third parties are not to be ignored, and ss 17 and 18 of the statute contain specific provisions in this respect.

In this particular case, as matters now stand before me, the Crown does not pursue an argument that the farm property or the proceeds thereof are themselves tainted property within the meaning of the statute. Mr Morgan, in my view quite properly, elected not to pursue that point although it is a question which may need to be resolved in some other case. The proceeds of sale of the farm were clearly not property used to commit or to facilitate the commission of the offence, and they may not be proceeds of the offence. In any event the Crown took the view, as it was entitled to take in this particular case, that it preferred to proceed by way of consideration of a pecuniary penalty order, restraining orders and enforcement. I therefore do not need to deal any further with the sale proceeds.

As to the motorcycles, the evidence as to the present ownership of those motorcycles is not clear. And there may be third party interests involved. In any event, even if the motorcycles were to be forfeited, credit would have to be given therefor in dealing with the question of a pecuniary penalty. Quite sensibly therefore, in my view, the Crown has likewise not pursued forfeiture orders with respect to those items.

Under the forfeiture head that leaves the issue of the sum of $17,129.20 seized by the Police on the 16th February 1993. In my view that sum is tainted property. In the end I did not understand Mr Kaye to strenuously contend otherwise. The Crown's case against the defendant - which, on the basis of the verdicts, was accepted by the jury - was that this was money acquired by the defendant as the proceeds of drug sales, directly or indirectly. That money could in any event have been forfeited pursuant to s 32 of the Misuse of Drugs Act 1975; or alternatively I could impose a fine under s 38 of the Misuse of Drugs Amendment 1978 relying on s 4(1) of the same Act. In the result, I am clear that there should be a forfeiture of this sum of $17,129.20 to the Crown, and I so order.

As to the pecuniary penalty order, under s 25 of the Proceeds of Crime Act 1991, if this Court is satisfied that the offender derived benefits from the commission of an offence, this Court can then assess the value of those benefits and order the person concerned to pay to the Crown a pecuniary penalty, which is essentially the assessed benefits less forfeited amounts.

There was some argument before me as to the proper or formula approach to be adopted if a pecuniary penalty is to be ordered. Mr Morgan argued that the correct approach to the statute is that I should first decide whether a benefit has been derived; then calculate the amount of same; then deduct the amount of any forfeiture order, to arrive at the appropriate penalty. Given that the Crown contends for a pecuniary benefit in this case of $101,918.78, and forfeiture has already been ordered by me in an amount of $17,129.20, this would produce a pecuniary penalty of $84,789.58.

Mr Kaye did not disagree that a court has to first assess the benefit, if any; but he suggested that I should:

- firstly, note that the sum held in the solicitor's trust account is $309,287.50;
- secondly, allow for the solicitor's conveyancing fees of $2,669.50 and deduct same;
- thirdly, note Mrs Brough's half interest under the matrimonial property regime which, on the balance arising, would amount to $155,143.50, and deduct that sum;
- fourthly, as to Mr Brough's half interest in the same amount, take account of taxation liability.

As to this fourth point, a letter from the Inland Revenue Department was produced showing that Mr Brough owes the following sums to the Inland Revenue Department: Child support - $72.40; Tax - $64,082.39; ACC payments -

$1,571.25, for a total sum of $65,726.04. If that sum were also to be deducted, the balance arising and "available" for a pecuniary penalty would be $89,417.46 from Mr Brough's half share.

As to the tax liability, in my view it is irrelevant to the present Crown application. Mr Kaye very properly drew my attention to a leading decision in Australia, that of the Supreme Court of Victoria under the comparable Australian statute, *Commissioner of Taxation v Kunz* (1990) 21 ATR 949. He suggested that decision has been followed by other Australian courts. I do not have the precise terms of the Australian legislation in front of me. It may or may not be *in pari materia* with the New Zealand statute. But in principle it seems to me that, absent some specific legislative provision, the Proceeds of Crime Act does override, or take priority over, or at the very least is unaffected by, the Inland Revenue Department liability. The result in this case of course is that if a penalty is ordered, Mr Brough will still have what I will term a "normal debt" to the Crown for his considerable taxation liability. That would be enforceable by the Crown in the usual way. Mr Kaye, in the end, felt bound to concede this to be so. But he did contend that the existence of this debt was something I can and should recognise in sentencing. The practical position arising is that the entire amount of Mr Brough's half share in the farm proceeds would be absorbed firstly by any substantial penalty, and thereafter by tax liability.

In summary, on the appropriate formula, in my view the general approach of the Crown is correct, and I should ignore the conveyancing expenses and taxation liability in these calculations. I will deal with Mrs Brough's fees in defending her position later in this judgment.

That brings me back to the question of whether there was in this case a benefit, and if so, in what amount. I remind myself first of the provisions of s 28(4) which, in my view, are of direct relevance on this application and which I set out hereafter in full:

> Where an application for a pecuniary penalty order is made in relation to 1 or more drug-dealing offences, -
>
> (a) All the property of the defendant at the time the application is made; and
>
> (b) All the property of the defendant at any time -
>   (i) Within the period between the day the offence, or the earliest offence, was committed and the day on which the application is made; or
>   (ii) Within the period of 2 years immediately before the day on which the application is made, -
>
> whichever is the shorter -
>
> shall be presumed, unless the contrary is proved, to be property that came into the possession or under the control of the defendant by reason of the commission of the offence or offences.

The Crown submitted that the evidence of Deborah Macartney at trial demonstrated the acquisition of property by Mr Brough during the relevant period in the sum of $143,647.68. (I refer to p 278 of the transcript, and Exhibit 107 at the trial). The same witness and the same exhibit suggested the acquisition of funds by the defendant from legitimate sources over that period of $44,784.72. These figures were based on cash expenditure which the Police could prove that Mr Brough and his family made. Any other cash which the prisoner acknowledged would have been expended had not been taken into account. In the result, the sum of $143,647.68 is a minimum figure. There was therefore evidence before the Court that the defendant and his family spent a sum of $101,918.78 in excess of that which was received from legitimate sources. On that basis the Crown contended that the value of the benefits derived by Mr Brough, as a minimum, was $101,918.78.

Mr Kaye contended that it was dangerous to assume that that is the correct figure. He said the amount derived from drug dealing could well have been, and very likely was, somewhat less. But no evidence was called today to rebut the Crown figures. They were challenged at the trial, but I have to proceed on the footing that the jury rejected Mr Brough's version of events. Further, I accept the Crown submission that the amount of $101,918.78 is a conservative estimate.

There may be room for argument as to whether the word "satisfied" in s 25 of the Proceeds of Crime Act imports a civil standard of proof or some other standard. It does not seem to me to carry the criminal onus of proof. I construe the term "satisfied" as being the civil standard - more probable than not; but I also bear in mind the serious consequences of a penalty of this kind.

In my view such a standard is met in this case, and that there was a pecuniary benefit of at least $101,918.78 derived from the commission of a serious offence. I therefore order that there be a pecuniary penalty in the sum of $84,789.58. This is, of course, derived by deducting the forfeiture order from the amount of the pecuniary benefit assessed.

It is convenient to deal now with the position of Mrs Brough. In the result, her half interest is not affected by the orders I have made. In my view it was appropriate and within the scheme of the statute for her to apply, as she did, for relief. As the papers stood when filed and served, the Crown was seeking more extensive forfeiture orders. In my view the three conjunctive requirements of s 88 of the Proceeds of Crime Act are met in her case. She sought to have her share excluded; she was successful in seeing that her share was not forfeited; and there was no evidence of her involvement or complicity in the offences.

There has however been some argument before me as to the quantum of costs which should properly be awarded to her. Mr Bates suggested to me that she should receive, firstly, a sum of $4,500.00 (including GST), being $2,812.50 for solicitor's conveyancing costs and $1,687.50 for counsel's fees on this application; and secondly, a sum of $4,111.25, essentially representing penalty interest on the late completion of the purchase of a home she has contracted to purchase for herself and the children of the marriage.

Mr Morgan, on the other hand, suggested that the costs awarded should be restricted entirely to counsel's fees. The basis of that argument was essentially that a proposal had been made by the Crown in December which would have enabled the conveyancing transaction to be settled; and secondly, that in essence Mrs Brough had taken the risk of entering into this house transaction in face of the continuance of these proceedings in this Court.

It seems to me that I have to deal with the matter in terms of the statute itself. That is to say, s 88 of the statute specifically refers to "all or part of the costs incurred by the person in connection with the proceedings". I do not think that it can be said that the solicitor's conveyancing costs can be so regarded; neither do I think that the penalty interest comes within those words.

I propose to deal with the matter in a somewhat more rounded manner by awarding Mrs Brough a sum of $2,500.00 against the Crown as a rounded off sum for her costs in connection with these proceedings.

That brings me next to the question of the restraining order. The present position is that there is in existence an *ex parte* restraining order granted by this Court pursuant to s 41 of the Act. Normally this would have expired by virtue of

s 41(2), but it continues in force because of the *inter partes* application made by the Crown pursuant to s 40 and by reason of the application of s 41(3).

Pursuant to s 42 the Crown now seeks an order directing that the proceeds of sale of the defendant's farm property not be disposed of or otherwise dealt with. I should note here, for completeness, that by virtue of the operation of s 55 of the Act, upon the making of a pecuniary penalty order and a restraining order there is created a charge on the property to secure the payment to the Crown of the amount payable under the pecuniary penalty order. This charge then ceases to have effect upon payment to the Crown of the amount payable under the pecuniary penalty order.

In this case I make a final restraining order under s 42 of the statute. I direct that the pecuniary penalty assessed by me be paid to the Crown; that Mrs Brough's costs be paid to her; and that when such payments have been made, the balance proceeds then arising may be released to the persons lawfully entitled thereto. In case there should be any other questions arising with respect to that fund, or which I have overlooked, I reserve leave to any parties to these proceedings to apply to me (if necessary, by telephone conference) for further directions.

Having dealt with the confiscation provisions and orders, I turn now to the sentencing considerations in this case.

There is an important matter of principle I must deal with at the outset. It is this: How far, if at all, should the fact that forfeiture or pecuniary penalty orders have been made affect the sentencing considerations in this case? This question can

be approached in one of three ways: first, by reference to prior authority; secondly, by reference to general principles; and thirdly, as a matter of statutory construction.

As to prior authority, counsel have not been able to locate such in this particular area of the law.

As to general principle, generally monetary penalties - by which I mean fines and reparation of property - are important matters to be taken into account in considering any possible periods of incarceration. And our Courts have long insisted that it is the totality of (particularly) a complex sentence which is paramount.

In the case of the Proceeds of Crime Act however, in my view, as to pecuniary penalty orders, such are not in general relevant to the sentence as such. These are benefits derived from the offence. A prisoner cannot be heard to plead that pecuniary penalty in mitigation of an appropriate sentence.

The same position, in my view, pertains with respect to forfeiture orders. The property has become tainted. The interests of innocent third persons are of course protected. But the prisoner cannot plead in his or her own aid the confiscation of what is now effectively treated by the law as unlawful property in his or her hands.

All of that said, I suppose that in a very general way the destruction of a person's career path or dislocation of their life venture by confiscation or penalty might be seen to be relevant in some cases to term, but only in the most general way. It seems to me that our Parliament intended that this particular legislation should have real teeth, and the penalties under this statute should not be confused or

conflated with fines or reparation. What is being taken from the prisoner is something that person was not entitled to (in law), and therefore this cannot count in his or her favour on sentencing. Neither are penalties of this kind reparation. What the penalties amount to is a statutory stripping of unlawful gains.

As to the question of statutory construction, some indication of the individuated nature of this statute may also be derived from s 14(1)(b) of the statute, which I set out hereafter in full:

> (1) Where an application for a confiscation order is made in respect of a person's conviction of a serious offence, the Court may, in determining the application, take into account -
>
> (a) Any evidence given in the proceedings taken against that person for the offence, including (but without limiting the generality of the foregoing) -
>
> (i) Any documents, exhibits, or other things connected with the proceedings that the Court considers relevant:
>
> (ii) Any note or transcript of the evidence admitted in the proceedings:
>
> (b) Any sanction imposed pursuant to the person's conviction (whether imposed on sentence or prescribed by law), being a sanction in the nature of a pecuniary penalty or forfeiture of property.

By implication, the reverse of that provision cannot be the position in law here, or Parliament would have said so.

I therefore proceed on the footing that I should endeavour to apply the normal sentencing standards, unaffected (except in the very general sense I have mentioned) by the provisions of the Proceeds of Crime Act.

As to matters of sentencing policy, I begin with these observations.

Firstly, in *R v Waling* (CA 182/88, 26 July 1988) the Court of Appeal said: "In light of the prevalence of this kind of offending [and the Court was there referring to drugs] and the need to stamp it out by sentences of imprisonment, personal circumstances cannot loom very large in the consideration of the Court."

Secondly, Mr Morgan reminded me of the decision of the Court of Appeal in *R v Williams* [1988] 1 NZLR 748, of the need for a sentencing Court to specify the individual components so far as it can reasonably be done in a complex series of counts, both so that the prisoner and the public can know the gravity with which such matters are regarded, and so that same may more readily be reviewed by a higher Court. *Williams* also, however, emphasises the importance of looking to the totality of the sentence.

Thirdly, the *Williams* case also offers guidance on receiving in relation to drug offences. In that particular case the Court of Appeal indicated that it preferred to approach such a situation by treating the receiving conviction as a separate and distinct class of offence which called for a sentence cumulative on the drug related sentence.

Fourthly, and finally under this general head, in *R v Watson* (CA 360, 361, 362/90, 19 April 1991) the Court of Appeal indicated that it is entirely appropriate for the sentencer to emphasise, as was done in that case, that persons who carry firearms for the purpose of supporting drug cultivation will receive substantial penalties if apprehended.

Against the background of facts which I set out at the commencement of this judgment, the aggravating factors in this case, in my view, are these. Firstly, the variety and quantity of drugs involved. Secondly, this was clearly a large scale

commercial enterprise in respect of the cannabis and cannabis oil. Thirdly, no source of supply for the LSD is revealed. Fourthly, the total value of the received goods was $13,700: $10,000 for the night sight; $1,000 for the Miroku rifle; $1,200 for the Sportco rifle; and $1,500 for the stereo. Fifthly, there was the possession of firearms to aid cultivation. And sixthly, the previous conviction for supply of a Class A drug, LSD.

As to mitigating factors it was said, and evidence was certainly given by Mr Brough, that he himself suffers from drug addiction, and that that had a substantial impact on this offending. I note that he has no previous convictions for cultivation of cannabis; and Mr Kaye put before me the difficult personal circumstances in which the family of the offender have been placed as a result of this offending.

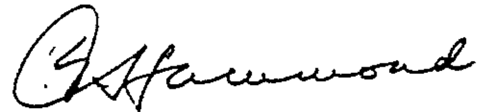
Against all of that, in my view the totality of the drug offences requires an effective sentence of six years imprisonment. That will be achieved by entering periods of imprisonment of four years each on Counts 1 and 2 (that is the Class A drugs); and six years imprisonment on all the other drug counts. In case I should be wrong in not taking into account the pecuniary penalty which I have assessed under the Proceeds of Crime Act, if I am wrong, I would have deducted approximately one third from that effective sentence of six years for an effective sentence of four years.

Secondly, as to the dishonesty offences (the receiving counts, numbers 9, 10 and 11), I impose a period of imprisonment of one year, to be cumulative upon the six years for the drug offences.

As to the two firearms offences, the prisoner will be fined $2,500.00 on each count and there will be an order for the forfeiture of those pistols under s 69 of the Arms Act.

By way of summary therefore, the orders that I have made in this matter are:

1. Forfeiture of the sum of $17,129.20 to the Crown;
2. A pecuniary penalty to the Crown of $84,789.58;
3. Total fines of $5,000.00 with respect to the firearms offences;
4. An effective sentence of imprisonment of seven years; and
5. Mrs Brough to have costs of $2,500.00 against the Crown.



R G Hammond J

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