IN THE HIGH COURT OF NEW ZEALAND
ROTORUA REGISTRY

B/S

542

AP. 35/94

MEDIUM PRIORITY

BETWEEN MANIHERA

Appellant

AND POLICE

Hearing: 2 May 1994

Counsel: G. Morrison for appellant
J. McDonald for respondent

Judgment: 2 May 1994

(ORAL) JUDGMENT OF HILLYER J

This is an appeal against a sentence imposed in the District Court at Rotorua on 2 March 1994.

The appellant was sentenced to 9 months' imprisonment for possession of a pistol and 2 months' imprisonment for possession of a Class B controlled drug; namely cannabis oil. The pistol was a sawn-off shotgun which the summary of facts said was the subject of a burglary in February 1993 in Rotorua. The appellant admitted owning the sawn-off shotgun but said that he had been walking in the Ruatoki forest area about three weeks earlier and had come across a bag which contained the shotgun and 7 cartridges of 12 gauge ammunition. There is nothing

that ties him in, so far as I am aware, with the burglary in February 1993.

The learned District Court Judge in his sentencing notes referred to an amount of $2,890 in outstanding fines which he said "... indicating a criminal history outside the convictions which you have recorded against you in the summary". He further said the High Court had already indicated that "in matters relating to possession of firearms, particularly those of a non-hunting nature, that terms of imprisonment will follow inevitably."

Neither counsel has been able to find any authority for that last proposition. Mr McDonald for the Crown says that he has looked carefully but has not been able to find anything, other than two matters which have been referred to by Mr Morrison, in which the possession of a firearm was related to cultivating cannabis. In Wellington, two High Court Judges imposed terms of imprisonment on charges of cultivating cannabis and convicted and discharged on the charge of possession of a pistol.

Certainly if a firearm is used in the course of a crime a term of imprisonment may well follow inevitably. But simple possession of a sawn-off shotgun of itself, in my view, is not sufficient to require the imposition of a term of imprisonment. Undoubtedly it was a dangerous weapon but there is nothing to indicate that the story

told by the appellant of finding it in the forest is untrue. One might raise an eyebrow at the story that he was going to use it for hunting. Such a weapon, from the picture of it I have seen, would be of little value other than for a close-up confrontation with another human being. One might equally suspect that it had something to do with his gang associations but there is no proof of either of those matters sufficient to require the imposition of a term of imprisonment.

As to the possession of cannabis oil, the amount involved was .5 of a gram. As Mr Morrison said, the appellant said he thought it was hardly worth smoking. The comment made by the learned District Court Judge as to the criminal history indicated by the fines does not appear to be an accurate one. The amount outstanding appears to have arisen through amounts that have been ordered to be paid by way of reparation.

I am therefore of the view that the matter would be adequately dealt with by a term of periodic detention. The appeal will be allowed. On the possession of the firearm charge he will be sentenced to a term of six months' periodic detention. On the possession of the cannabis oil charge he will be sentenced to one months' periodic detention. Terms to be concurrent.

Solicitors: Crown Solicitor, Rotorua, for respondent

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