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IN THE HIGH COURT OF NEW ZEALAND
WELLINGTON REGISTRY

S. No. 73/94

R
THE QUEEN

v

CRAIG LINDSEY MENCE

(Possession of cannabis plant for supply)

Date of Sentence: 19 August 1994

Counsel: M.A. O'Donoghue for Crown
M.C. Smith for Prisoner

SENTENCE OF NEAZOR J

Mr Mence, you are charged with possession of Class C cannabis plant for supply and I just record the amounts: 1262 grams of loose material plus and there is some dispute, 21 or 32 cannabis bullets, but you accept 21 and you agree that you sold two of them and there is some oil in respect of which you are going to be dealt with on another occasion.

Now as I understand it it is said that the supply aspect of the leaf if one accepts your version of it was that you were going to cook the stuff up and give half of it back to the man or person from whom you got it. But the bullets were yours and you sold two of them. You have had, as I understand it, no appearance since 1988 which is quite significant and it is clear that you have got an addiction to cannabis which it seems that

significant and it is clear that you have got an addiction to cannabis which it seems that now that you have had the screws turned on you absolutely, you are starting to address.

From what I have seen of the papers relating to you and from what Mr Smith has said, the probation officer's assessment seems to be pretty accurate where he says that there is a paradox to the extent that on the one hand you are a mature person with a wife and family, you handle your affairs responsibly, and on the other hand you choose to continue using and now to some small degree supplying cannabis. That is a real paradox.

It is clear from the information I have that you risked losing your family by reason of your dependence and your involvement with the drug. Your period in custody has added to your wife's difficulties because of the accident she had, quite apart from your absence. I am informed that you are now fully aware of how great the loss will be if you lose your family and your wife has indicated to you that that is real if you offend again and that seems to be getting home.

I have found in this case the probation officer's assessment very helpful. He has assessed a number of factors, public expectation that deterrent sentences will be imposed, the fact that you are a mature man with responsibilities, but you have still carried on doing this, you have some previous cannabis offences but they are not in the same league as this.

The probation officer says given the matters raised in the report he does not consider rehabilitation to be an issue of significance. I am inclined to the view that that is perhaps a less optimistic view than I would take myself at the moment. He says you do not seem to have any financial difficulties and I understand that, although that may be different now that your wife has had an accident, and it was premeditated and he sums that up by saying when you look at all those factors a recommendation for imprisonment is appropriate and I agree. But he then goes on to refer to what Mr Smith and Mr O'Donoghue have both referred to, to factors that might be taken into account in deciding whether to suspend such a sentence and those are he says the amount of cannabis was relatively small, well relatively, but it was not small in absolute terms, that you are not in the business so far as he could tell of supplying, that you say you have learned a lesson from being in custody and you have pleaded guilty. I find those submissions and indeed what counsel have said helpful.

In relation to suspended sentence I accept that you are not young but you have not been in prison before and I think that is a factor to take into account and I also take into account the fact that you now seem to be responding in terms of trying to kick this habit.

In those circumstances I have come to the conclusion that this is a case which in terms of quantity or the type of drug is not one where there is a pre-eminent call for deterrence to others. The call is for deterrence to you and in those circumstances I am going to resort to the suspended sentence. You will understand that that is a last opportunity basis because you do not get, I would be very surprised if you got, a suspended sentence twice, so I am going to sentence you to 6 months' imprisonment suspended for 12 months and in addition to that you will serve 6 months' periodic detention. Now the appropriate warning to give you is that if you offend again in any matter where you are liable to imprisonment over the next 12 months then whatever the sentence imposed on you for the new offending the 6 months' imprisonment can come into play. So you have got that hanging over you. You have to do 6 months' periodic detention and if you get out of line on another imprisonable offence within 12 months you may have to serve the 6 months' imprisonment as well.

You will report to the Porirua Detention Centre tomorrow at 9.00 a.m. Thereafter at such times as the warden directs, for such hours as he directs but in no case more than the statutory maximum hours.

Mr O'Donoghue:

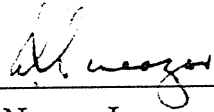
Just one last matter that I may have overlooked your Honour. You will have seen in the summary of facts a sum of \$250.00 cash was found. The Police believe it was as a result of the sale of drugs and I have been instructed to ask for forfeiture of that money under

s 32(3) of the Misuse of Drugs Act. I also note from the summary of facts that the prisoner claims that it is part of an ACC payment but I must represent my client's interests your Honour and make the application.

Court:

Yes I saw that and I saw that the summary said that the Police believe that. I think it gets as far as the Police suspect that and I do not think there is enough there to justify

my finding which I would have to make that it was the product of the offence so I do not make that order.



D.P. Neazor J

Solicitors: Crown Solicitor, Wellington
Craig Smith, Porirua for Prisoner