

62/78

SUPREME COURT OF QUEENSLAND — COURT OF CRIMINAL APPEAL

R v SHANKLAND

Douglas, Hoare and Kelly JJ

20 July 1978

SENTENCING – DRUGS – DANGEROUS DRUGS – HEROIN (176MG), TETRAHYDROCANNABINOL (6.73G) PLUS 11 DEALS OF CANNABIS – POSSESSION FOR SALE – DEFENDANT NOT A DRUG ADDICT AND DID NOT NEED MEDICAL AND/OR PSYCHIATRIC EXAMINATION/TREATMENT – SENTENCE – PROBATION – NOT APPROPRIATE – IMPRISONMENT WITH HARD LABOUR IMPOSED.

HELD: Courts have taken a most serious view of sale of drugs of an addictive nature. The Magistrate should have imposed a severe punishment.

DOUGLAS J: This is an appeal by The Honourable the Attorney-General in respect of orders for probation made by the Stipendiary Magistrate in respect of five charges to which the respondent, Shankland, pleaded guilty. In the order of occurrence the charges were in respect of his having in his possession a pipe which he had used to smoke a dangerous drug, namely, tetrahydrocannabinol; next that he had in his possession a dangerous drug, namely, tetrahydrocannabinol for sale; that he had in his possession a dangerous drug namely diacetyl-morphine (heroin) for sale; that he had in his possession a prohibited plant, namely, Indian hemp (cannabis sativa) for sale. The respondent was admitted to probation in respect of each charge with special conditions in addition to the ordinary ones, that he should undergo such medical and/or psychiatric examination, and/or treatment as the probation officer on medical advice may direct.

I comment that the facts put before the Stipendiary Magistrate did not indicate that the respondent was an addict or that he needed medical or psychiatric treatment. The Crown argues that in the circumstances the probation order was most inappropriate and therefore the sentences imposed were inadequate.

Now, so far as the heroin was concerned, the analyst found there were 176 milligrams contained in a plastic bag, inside of which were four pieces of paper containing the heroin. There was also a brown substance, the total weight of which was 82.11 grams, and in that substance there was contained 6.73 grams of tetrahydrocannabinol. Also there were 11 deals of cannabis.

The maximum sentence the Stipendiary Magistrate could have imposed under the *Health Act* 1937-1976 on any one charge was a sentence of two years, imprisonment with hard labour, or a fine of \$2,000 or both.

The courts have taken a most serious view of persons who sell drugs of an addictive nature. It surprises me that so far as the heroin charge at least was concerned it was dealt with by the Stipendiary Magistrate. However, that is not a matter for the consideration of this court. This court in exercising its own discretion looks, in my view, only at the sentence which it was open to the magistrate to impose and must have regard to this appeal in this limited way. I say initially that so far as the first two charges I have mentioned were concerned a probation order may well have been adequate, but having regard to the fact that I think that probation orders in relation to the third, fourth and fifth charges cannot stand, it follows that the probation orders in respect of the first two charges cannot stand. I do not know what reason the magistrate had for granting a probation order in respect of the third, fourth and fifth charges but certainly he should have imposed a severe punishment. This court should substitute for the probation orders sentences which befit the offences.

In my opinion all the probation orders should be set aside, and that so far as the fourth charge, that involving heroin, is concerned, there should be imposed a sentence of two years' imprisonment

with hard labour; that so far as the third and fifth charges are concerned there should be imposed sentences of 18 months' imprisonment with hard labour in respect of each charge. In my opinion the sentence imposed in respect of the fourth charge should be cumulative with that imposed on the third charge, otherwise the sentences should be concurrent. That means the respondent effectively will serve three and one half years. I would allow the appeals and impose the sentences I have outlined.

HOARE J: I agree. **KELLY J:** I agree.

DOUGLAS J: The order of the court is as I have outlined. I order that a warrant issue for the apprehension of the respondent and that the sentences imposed take effect from the date of the execution of that warrant.
