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## FEDERAL COURT OF AUSTRALIA — GENERAL DIVISION

***R v TAIT and BARTLEY***

Brennan, Deane and Gallop JJ

1 May 1979

(1979) 24 ALR 473; (1979) 46 FLR 386 (Noted 3 Crim LJ 245; 4 Crim LJ 28)

**SENTENCING – IMPORTING CANNABIS – PROOF OF DISPUTED FACTS ON PLEA – COURT SITTING *IN CAMERA* – RECEPTION OF INFORMATION IN CHAMBERS – SHOULD NOT BE PERMITTED UNLESS STATUTORY AUTHORITY EXISTS – RANGE OF PENALTY IN SERIOUS CASES.**

The defendants had flown a substantial quantity of cannabis into Australia in a private aeroplane. On an appeal by the Crown against the inadequacy of the sentences imposed on the defendants, the Federal Court made a number of findings. The following are relevant.

1. When a plea of guilty avoids the necessity of a trial and facts relevant to sentence are stated by counsel any fact or circumstance not common ground between the Crown and the defendant should be proved by the calling of evidence by the party on whom the evidentiary onus rests. The strict rules of evidence can be waived if the proof tendered is sufficiently cogent.

2. There is a common law rule which requires a court to administer justice in public. Statutory authority is required for a court to sit *in camera*. The only exception to the rule is where the exercise of the court's jurisdiction would be otherwise defeated or frustrated (e.g. disturbance by rioters). The exception does not extend to cases where a party or witness would suffer collateral disadvantage as a result of publicity. Other procedures are available to ensure confidentiality, viz a direction to conceal the names of witnesses, or handing up a document not to be read in public. Where a court has authority to sit *in camera* lesser procedures should be used unless they are clearly inadequate to preserve confidentiality. The receiving of information relevant to sentencing in chambers, even with the consent of both parties, is irregular.

*Russell v Russell* [1976] HCA 23; (1976) 134 CLR 495; [1976] FLC 90-022; (1976) 9 ALR 22; (1976) 24 FLR 399; (1976) 1 Fam LR 11; (1976) 1 Fam LN N4; (1976) 50 ALJR 594, followed.

*Scott v Scott* (1913) AC 417; [1911-1913] All ER 1; 29 TLR 520, applied.

*R v Turner* [1970] 2 QB 321; (1970) 2 All ER 281; (1970) 54 Cr App R 352, not followed.

3. A maximum penalty prescribes what the penalty should be in the worst type of case. This is not to say the case must be the worst imaginable. Both the nature of the crime and the circumstances of the criminal must be considered.

4. It is not necessary on a charge of importing cannabis for the Court to form a view as to the effects of cannabis: its task is to evaluate the seriousness of the conduct by which the law has been broken.

5. Particularly in cases of large scale drug trafficking the deterrent aspect of punishment is of primary importance. Further, a non-parole period must be set so as to provide for condign punishment.