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SUPREME COURT OF SOUTH AUSTRALIA

DIMITRIOU v SAMUELS

Bray CJ

24 January 1975 — (1975) 10 SASR 331; (1975) Aust Current Law Digest p39

CRIMINAL LAW – SENTENCING – DRUG OFFENCES – REHABILITATION – MATTERS TO BE TAKEN INTO ACCOUNT WHEN SENTENCING DRUG OFFENDERS: *NARCOTIC AND PSYCHOTROPIC DRUGS ACT* 1934, SS5, 14.

D., an unemployed artist aged 25 with one previous offence of a different nature, was convicted on four charges: One of having in his possession diacetylmorphine (heroin), on which charge he was fined $1000; one of administering to himself heroin, on which charge he was fined $250 and put on a bond; and one of having in his possession, and one of smoking, Indian hemp; each contrary to s5. The penalty for each offence, is by virtue of s14(1), a fine not exceeding $2000 or imprisonment for two years, or both. Police had found on premises which he occupied a plastic bag containing a hypodermic needle, some hypodermic syringes, two small capsules containing heroin and two small packages of marijuana. The appellant gave evidence that he had bought three heroin capsules, and a quantity of marijuana in Sydney, and that he had smoked some of the marijuana and sniffed some of the heroin. Upon appeal—

HELD: Appeal in relation to the charge of Indian Hemp allowed. Amount of financial penalty reduced.
1. The courts would not take judicial notice of the scientific name of Indian hemp. There being no evidence linking the substances found with the botanical description of Indian hemp given in the definition clause, the appeals in respect of the charges relating to indian hemp should be allowed.

2. There was sufficient evidence that the capsules found were a prohibited drug within the meaning of the Act.

3. The fact that Parliament has lumped several different matters in one penal section with the same maximum penalty cannot afford a ground for thinking that it intended that all those matters should be regarded as of equal seriousness.

4. Rehabilitation should play a prominent part in the sentencing of a youthful person, particularly for his first offence as an adult.

5. Where a sentence of imprisonment is not justified, the amount of the fine should not be so great as to amount in practice to a sentence of imprisonment.

6. Where a man has a drug in his possession only for the purpose of administering it to himself substantial penalties should not be imposed both on a charge of possession and on the charge of administration.

7. The learned special magistrate had failed adequately to take into account (a) that the appellant had the drug in his possession only for use by himself, (b) that there was no evidence he was an addict (and the absence of syringe marks on his body strongly suggested that he was not), (c) that the sniffing indicted an amateur approach to the taking of heroin, (d) the appellant's ability to pay the fines.

8. The fine on the possession count was manifestly excessive and a fine of $250 should be substituted on that count.
***R v Beresford* (1972) 2 SASR 446; and**
***R v Weaver* (1973) 6 SASR 265, followed.**
