

Billingsley v R

20 May, 3 June 2004

Angel, Mildren & Riley JJ

[2004] NTCCA 4

The appellant was sentenced to an aggregate sentence of imprisonment of 2 years and 4 months and a non-parole period of 1 year and 2 months was fixed, following his pleas of guilty to the following offences:

- (i) unlawful possession of a commercial quantity of cannabis plant material, namely 4.5 kg (maximum penalty imprisonment for 14 years – s.9(2)(d) *Misuse of Drugs Act*),
- (ii) unlawfully supplying a commercial quantity of cannabis plant material, namely 887 grams (maximum penalty imprisonment for 14 years – s.5(2)(b)(iii) *Misuse of Drugs Act*), and
- (iii) unlawfully supplying cannabis plant material to others (maximum penalty imprisonment for 5 years or a fine of \$10,000 – s.5(2)(a)(iv) *Misuse of Drugs Act*).

Leave to appeal against sentence was granted on the papers on 2 December 2003.

At the conclusion of the hearing of the appeal on 20 May 2004, the court unanimously allowed the appeal and resented the appellant by confirming the head sentence of imprisonment for 2 years and 4 months but directing that the balance of the sentence (approximately 6 months) be suspended forthwith. The court indicated that it would publish its reasons at a later date. It did so on 3 June 2004.

In its judgment the court rejected all of the appellant's complaints [the sentencing judge failed to give adequate weight to (i) the appellant's antecedents, (ii) cooperation with the authorities and preparedness to assist in the prosecution of a co-offender, (iii) the appellant's plea of guilty, remorse and prospects of rehabilitation and that the sentence was manifestly excessive]. However the court was concerned by the setting of the non-parole period. In the court below, the submissions made by both counsel proceeded on the basis that it was appropriate to impose a suspended sentence. Both counsel addressed the sentencing judge in terms of the sentence being suspended either at the conclusion of the mandatory 28 day period [cf s.37(2) *Misuse of Drugs Act*] or within a month or so thereafter. There was no discussion regarding the appropriateness of a non-parole period nor did the sentencing judge raise with counsel the prospect that one might be imposed.

The court held that while it is not normally necessary for a sentencing judge to spell out why a non-parole period has been fixed rather than a suspended sentence being imposed, in some cases, of which this was one, such reasons are called for. The court went on to note that the circumstances of the appellant strongly suggested that he was a prime candidate for a suspended sentence and that it was not obvious why a non-parole period rather than a suspended sentence was imposed. In these circumstances the sentencing judge should have explained why he imposed a non-parole period, that being an unexpected result. In these circumstances the court felt that it was necessary to interfere and that it was appropriate to impose a suspended sentence. The court

noted that the appellant had served almost 8 months imprisonment and did not consider that the offending called for a lengthier term of actual imprisonment.