

**Regina v R**

**25 October, 12 November 2004  
(BR) Martin CJ, Mildren & Bailey JJ  
[2004] NTCCA 9, 149 A Crim R 583**

The appellant pleaded guilty in the Alice Springs Supreme Court to one count of unlawfully cultivating a commercial quantity of cannabis plants (1,837 plants) and was sentenced to 5 years imprisonment. The court declined to fix a non parole period.

Between November 1996 and 1997 the appellant established a camouflaged campsite and cannabis plantation approximately 150 km southeast of Tennant Creek. The sentencing judge described the offending as an “organised commercial cultivation designedly conducted in a remote part of the Territory to avoid detection”.

The appellant had a very lengthy criminal record in the Northern Territory and NSW including a sentence of 9 years imprisonment for the crime of armed robbery. In April 1985 the appellant was sentenced to 18 months imprisonment for possession of cannabis and in 1992 he was sentenced to a total of 5 years imprisonment for cultivating and supplying prohibited drugs and two offences of breaking, entering and stealing. Whilst serving this latter sentence of imprisonment, the appellant escaped from a NSW prison and travelled to the Northern Territory where, in June 1994, he committed a further offence of cultivating a commercial quantity of cannabis for which he was sentenced to 2 years imprisonment in 1994. No non-parole period was fixed. Following service of the 1994 sentence, the appellant was not extradited to NSW notwithstanding the existence of a warrant in NSW for his arrest. He was next arrested in Queensland for minor offences in January 1999 and was then extradited to NSW where ultimately he was sentenced for the escape charge and was required to serve the balance of the 1992 sentence. The combined effect of the NSW and NT sentences was that the appellant had been in custody since January 1999 and would remain so for a period of 9 years and 3 months.

Leave to appeal against severity of sentence was granted on 8 July 2004 on the grounds that the sentencing judge had (i) failed to take into account the totality of the period during which the appellant will be imprisoned and (ii) erred in failing to set a non-parole period.

The Court of Criminal Appeal unanimously dismissed the appeal holding that:-

1. The totality principle as discussed by the High Court in *Mill v The Queen* (1988) 166 CLR 59 and *Postiglione v The Queen* (1997) 189 CLR 295 had to be applied to the appellant notwithstanding the fact that some of the offending had been committed interstate, and had been committed while he was at large and was not contemporaneous with the offending for which the appellant was now being sentenced. However, in the circumstances, although the total period to be served by the appellant was “undoubtedly severe” having regard to the appellant’s total criminal conduct and hardened criminal ways, it could not be said that the total period was too severe or that a different sentence should have been passed.
2. The past history of the appellant and the circumstances of the present case provided ample basis justifying not fixing a non-parole period. Previous goal

terms had not deterred the appellant from his criminal ways and he was completely without remorse.