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THE SUPREME COURT OF
THE NORTHERN TERRITORY

SCC 20719253

THE QUEEN

and

CRISENCIO MANALO CATADA

(Sentence)

MILDREN J

TRANSCRIPT OF PROCEEDINGS
AT DARWIN ON MONDAY 26 OCTOBER 2009

Transcribed by:
Merrill Legal Solutions

MR JONES: Your Honour, Jones for the prosecution.

MR ABAYASEKARA: Your Honour, Abayasekara for Mr Catada.

HIS HONOUR: Yes.

Crisencio Manalo Catada, you have pleaded guilty to one count that between 1 January and 13 July 2007 at Adelaide River, you unlawfully cultivated a commercial quantity, namely 88 plants, of a prohibited plant, namely cannabis, contrary to section 7(1) and s 7(2)(a) of the *Misuse of Drugs Act*.

You further pleaded guilty to one count that on 13 July 2007 at Adelaide River, you unlawfully possessed a document entitled *Indoor Marijuana Horticulture*, purporting to set out how to produce a dangerous drug and, at the time, you also had in your possession articles, namely seed raising cubes, 23 black plastic pots and Rhiztonic fertiliser that may be used for the production of a dangerous drug, namely cannabis.

The maximum penalty in relation to count 1 is imprisonment for 25 years and in relation to count 2 is seven years.

The facts, which are not in dispute, are that at the time you were residing on a block at 6 Milton Road, Stapleton, near Adelaide River township, the block was 119 acres in size. The block does not belong to you. You were staying there as a caretaker for a friend, Peter Mulhall.

Some time between 1 January and 13 July 2007, you obtained items required for the raising of cannabis seedlings. You claim in your evidence to have obtained the seeds from an unknown person who you met in a bar at the Batchelor pub. This to me is an unlikely story.

You placed the seeds into the seed raising cubes. You watered these cubes on numerous occasions until the seedlings had germinated and then sprouted into juvenile plants. You then planted the juvenile plants in the black plastic pots that had been prepared to receive the juvenile plants for the purposes of further propagation and growing.

You then continued to maintain and nurture the plants on the property until they reached an estimated average height of 26 centimetres. You then repeated the process by inserting further seeds into the 30 raising cubes kept in an aluminium tray at the rear of the residence. At the time when you were spoken to by police on 13 July 2007, these seeds had begun to germinate.

At about 6 pm that day you were spoken to by police at the premises in relation to another matter, during which you gave the police consent to search the property. The police were not looking for cannabis, but were looking for weapons. As a result of the search, the police located the plants and 23 black plastic pots at the rear of the

residence. One plant was located inside the residence, drying with leaves, stem and roots attached.

The police also located an aluminium tray containing 30 seed raising cubes with an unknown number of germinating cannabis seeds. These were located on the southeast corner of the residence. The police also located the fertiliser, Rhiztonic, with other equipment for the purpose of growing cannabis, along with a book entitled *Indoor Marijuana Horticulture* and a quantity of clip seal bags.

At about 6:07 pm on that day you were arrested for cultivating a commercial quantity of cannabis and conveyed to the Adelaide River Police Station. At the police station you took part in an electronic record of interview. You told the police that your reason for the possession of the 88 cannabis plants was for personal use. Asked what you did with any excess cannabis, you replied, "There is no excess." When asked who was caring for or watering the cannabis plants, you replied, "I do." When asked if you had watered the cannabis plants that day, you had replied, "A little bit earlier in the afternoon." When asked who owned the book entitled *Indoor Marijuana Horticulture*, you said, "Yeah, I think so." The plants found at the residence were at varying degrees of maturity.

The matter proceeded by way of a hand-up committal on 21 August 2009. At that time it was indicated this matter would proceed by way of a plea of guilty. You have a number of prior convictions but none for drug offences. You have no serious convictions since 1987. You do have some prior convictions in 2004 relating to possession of an unlicensed firearm and an unregistered firearm and a failure to meet storage requirements, as well as a conviction for driving a motor vehicle whilst unlicensed in 2004.

You are now 47 years of age, having been born in Manila in the Philippines. You arrived in Australia in 1981. At that stage you were 17 years of age. You had a limited education, having achieved about second year high school. After you arrived in Australia you worked as trade's assistant and doing labouring jobs in Queensland. In 1985 you came to Darwin. It was during the period between 1985 and 1986 that you committed some serious offences which resulted in a short term of imprisonment and some community service orders.

Since then you have been in regular employment until about the years 2002 to 2003 when you developed depression which has troubled you ever since. In your evidence you said that you had been diagnosed as suffering from psychosis by Dr Mews in Batchelor, who prescribed ligactil and straline for depression. You gave evidence that you have been taking those drugs since 2003, but at the time of the offending these drugs were not doing anything for you.

Your evidence is that you met a stranger in the Batchelor pub and, whilst having a few beers with him, you told him about your mental problems and the medication that you were taking. The stranger told you that smoking marijuana would be better for you and gave you some seeds. The exact circumstances in which he gave you the seeds are not in evidence.

According to your evidence, you have been smoking cannabis since your days in high school and you normally smoked a joint about every second day or so. Your evidence is that the marijuana made you feel better than the medication and you decided to grow the marijuana yourself in order to save the cost of having to purchase it. At that time you were unemployed and receiving unemployment benefits. At that stage your income was \$400 a fortnight and you were spending \$60 a fortnight on cannabis.

Whilst on the property, you were also growing cherry tomatoes, tomatoes, pumpkins, string beans and sweet potatoes, which you said you planted from seeds directly into the soil. Your evidence was that you used the fertiliser around the garden and also for the purposes of growing the cannabis. Your evidence is that you planned to use the marijuana solely for your personal use. You said you were not sure how high the plants might grow and you expected to lose a number of them from grasshoppers and the effect of the wind. You knew that half the plants at least would be male plants and you expected only to keep a few of the female plants, maybe two or three, for harvesting purposes.

As to the book, you denied using the book for the purpose of cultivating the cannabis. Your evidence was that you bought the book from the local news agency three or four months before you were given the seeds. You said that you started to read the book, found it to be of no interest and just left the book lying around. I do not accept that you purchased the book from the news agency.

However, in general, I accept the thrust of your evidence that you intended to use the cannabis for your own use and you had no plans to sell the cannabis or supply it to others. You appear to be a solitary individual.

There are a number of factors which tend to support your evidence: there was no hydroponic equipment found on the property; the whole operation was very unsophisticated; the plants were grown in the open; there were no large sums of money; scales for weighing; or other indicia found on the property. There were some large clip seal bags found, however, these bags were of the type commonly found in many kitchens. Your evidence is that you only used them for legitimate purposes.

The evidence is that you permitted the police to search the premises without a warrant. You said that you did not expect that you would be charged as a result of this offending. It is apparent to me that you are obviously a person of little sophistication. You say through your counsel that you did not appreciate the seriousness of the offending.

The question which I have to ask myself is whether or not there are particular circumstances of the offence or of the offender which would warrant my not imposing an actual sentence of imprisonment of at least 28 days.

First, I accept that you have rebutted the presumption that the cannabis was not intended to be sold or supplied to other. Secondly, I take into account that you have no prior convictions for drug offences and that your only serious convictions are very

old. Thirdly, I take into account your plea of guilty, your cooperation with the authorities and your contrition which you've expressed through your counsel. Fourthly, I take into account that your reason for growing the cannabis was poverty and the fact that you were a regular user and you anticipated using the cannabis which you grew for the purposes of alleviating your medical condition, although that may not have been the only reason.

There has been a gap between the date of your arrest and the date upon which you were dealt with by the court by reason of the fact that you did not appear in the court and your bail was breached. As a result of your breach of bail, the court estreated your bail and you were required to pay \$1000. You paid \$1000 and thought that was the end of the matter. Taking that into account, I accept that you pleaded guilty at the first reasonable opportunity in this court.

I think there are sufficient circumstances to warrant finding that, notwithstanding the number of plants, an actual term of imprisonment of 28 days is not justified. Nevertheless, there must be a sentence of imprisonment in order to deter you and others like you from offending in the same or a similar way. This is a particularly prevalent offence about which there is growing concern in the community.

There is always a risk, particularly if there are large quantities of cannabis lying around, that persons other than yourself may help themselves to the cannabis. There may also be a temptation, particularly for persons who are in poor circumstances, to break the law by selling it.

So far as count 2 is concerned, the gravamen of that offence seems to be the possibility that you purchased the book for the purpose of producing the cannabis clandestinely. I have noted before that there is, in fact, no evidence that you had taken the matter that far and, in fact, that the pots of cannabis were not hidden in any way. I think this is a case where it would be appropriate to impose an aggregate sentence.

You are convicted and sentenced to an aggregate term of imprisonment for 18 months. I order that the sentence be backdated two days to take into account time already spent in custody. The balance of the sentence will be suspended forthwith. I fix an operational period of two years as the date upon which you are not to commit another offence punishable by imprisonment if you are to avoid the consequences of section 43 of the *Sentencing Act*.

What that means is this, that you will be free to leave the court, Mr Catada. You have got a head sentence of 18 months less the two days that you have already spent in custody. You have to be of good behaviour for the next two years. If you breach the law in any way at all, in a manner which may expose you to a sentence of imprisonment, then you will be brought back before this court and I will be required to decide whether you will have to serve the whole of that balance of 18 months less two days in gaol, as well as impose a further sentence of imprisonment for the offence that you have committed. Do you understand that?

Yes, anything arising?

MR JONES: Nothing, your Honour.

MR ABAYASEKARA: Nothing arising.
