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THE SUPREME COURT OF
THE NORTHERN TERRITORY

SC 20915094

THE QUEEN

and

JOSEPH ALEXANDER CRIBB

(Sentence)

MARTIN, CJ

TRANSCRIPT OF PROCEEDINGS

AT ALICE SPRINGS ON THURSDAY 1 OCTOBER 2009

Certified a true transcript of a record.

Transcribed by:
Merrill Legal Solutions

HIS HONOUR: Mr Cribb you have pleaded guilty to unlawfully possessing cannabis in a commercial quantity, namely 1312.6 grams. As I am sure you are aware, it is a very serious offence.

Your offending came to light on 4 May 2009 when police attended at your home and executed a search warrant. You were not present, but the owner of the premises was present. During the search, police found the cannabis in a suitcase in your bedroom. There were three packages with a combined weight of 1312.6 grams.

When you were arrested later that day you told the police that you owned the cannabis, but you declined to say where you had purchased it. You said that you were a heavy cannabis smoker and intended to smoke all of it.

If the cannabis had been sold, it could have returned a very large sum of money indeed. In these circumstances, the law provides that because of the quantity of the drug involved, there is a presumption that you intended to supply that drug for commercial gain. In one sense, you supplied the drug for commercial gain because supply includes transporting the drug and you purchased the drug in South Australia and transported it to the Territory in order to obtain it at a cheaper price. In that sense, it was a commercial exercise, but the real question to be determined is whether you intended to sell the drug for commercial gain. Obviously, if you intended to sell the drug for commercial gain, it places your offending in a far more serious category than if you intended to smoke it yourself and not supply it to others.

You gave evidence about obtaining the drug and I accept that you were addicted to the use of cannabis and had been using cannabis for many years, something in the order of 15 years. I also accept that you were a very heavy user of cannabis. Part of your evidence, and the material that has been placed before me, tells me something about your background which provides an important context in which you committed this offence.

You are now 30 years of age. You grew up in Canberra and Alice Springs. Unfortunately, your parents separated when you were about 2 and you and your siblings were raised by your mother. Your upbringing has features attached to it which attract considerable sympathy and the circumstances were both traumatic and dysfunctional.

I have a reference from your sister in which she speaks of the culture and social environment. Both your mother and step-father were addicted to drugs. Your mother also had a gambling addiction. Your sister has told me, and I accept, that your mother's desire to fund her drug supply often meant that there was very little concern for what was happening in the household and you and the other children lived in extreme poverty, to the extent that often you were unable to attend school because there was insufficient food in the house to prepare lunches. You and your sisters were also exposed to an environment involving physical and mental abuse of your mother by your step-father.

During your evidence, you told me of a particular occasion of trauma when you were forced to remove your younger sister from the home and take her to the care of your older sister. It is unnecessary for me to give the details of that particular occasion.

As the Prosecutor has pointed out, it is necessary that I approach the reference from your sister with some care, but I accept her general observations about your underlying character. She speaks of your generosity within the family and of your relationship to her and her children. She speaks of you as being an honest and trustworthy person, but, as I said, that must be read against her emotional involvement.

You started smoking cannabis at about the age of fifteen and a half to 16 years and you have been a constant user of cannabis since that time. Over the years you have also used other drugs and you developed an addiction to Benzodiazepines, which include the prescription medication of Valium. Your use of other drugs included cocaine.

Notwithstanding your unfortunate background and your addiction to drugs, it is to your credit that, apart from the offence of possessing cannabis committed in May 2003 for which you were dealt with by way of a fine in July 2003, you have managed to stay out of trouble with the law. When I say that, obviously you were committing offences against the law by obtaining cannabis and using it. But it is unusual in this Court to find somebody who is so heavily addicted to cannabis and other drugs who has reached the age of 30 without other types of criminal offending.

In addition, you have been, over the years since you left school, a good worker. You are currently fully employed as a taxi driver and you have had that employment for something of the order of 10 years. Your employer knows what has happened and is prepared to stand by you.

All of these things explain why you became involved as heavily as you have in the use of drugs and they help explain something about your underlying character. This is the context in which you committed this offence and I accept your evidence that the immediate background followed a trip interstate when you attended a celebration involving your younger sister. After what appears to be a somewhat vitriolic argument with your father, you travelled to Adelaide on your way back to Alice Springs where you got mixed up with persons who were able to supply you, subsequently, with the cannabis. Following communication from those persons, you drove to Adelaide where you purchased the cannabis for \$9000 and you returned it to Alice Springs by placing it in your vehicle, which you put on the train because the vehicle had broken down. As a result of the breakdown of your vehicle, you were forced to fly back.

So you spent something in excess of \$10,000 for this large quantity of cannabis and the question for me is whether you have discharged the burden of disproving that you intended to sell it, or supply it, to use the term, for commercial gain.

I put to you a question during the course of your evidence, as to why I should believe what, in most circumstances, would appear to be an unrealistic story, in a number of ways, and you answered that in a straightforward manner. I also need to bear in mind, in assessing this, the background about which I have spoken and my assessment of your underlying good character. I also need to bear in mind that sometimes truth is stranger than fiction. I had an example of that recently when a significant quantity of drugs were found, together with \$12,000 cash. Normally one would view the cash as the product of the sale of drugs, but it turned out, and was proven, that the person had won the \$12,000 at the casino only a few days earlier.

So I need to balance all of these things out, but primarily I need to make my own assessment of you and the truthfulness of your evidence.

I am suspicious that you intended to supply at least some of these drugs to others. Indeed it would be very surprising if, having friends who also use cannabis, you had not intended to at least let them avail themselves of some of your supply. However, and somewhat unusually, I accept your evidence on the balance of probabilities. That is, I am of the view that probably you did not intend to sell for commercial gain. Having a suspicion that you might not have done so, is not inconsistent with the view that probably you would not have done so, and that is the view that I have reached. To that extent, you have discharged that burden.

Nonetheless, the offence you committed was serious and warrants a term of imprisonment. The critical question for me is whether I should require you to serve a sentence, bearing in mind that your previous offence with respect to cannabis is an aggravating circumstance, and the direction in the Misuse of Drugs Act concerning imprisonment for an actual period, unless I am satisfied there are particular circumstances why that should not apply. A number of the matters about which I have spoken can be considered as part and parcel of the circumstances, but of particular importance is the effort that you have made towards your own rehabilitation.

Within a few days of your arrest, you had set out to engage in the CREDIT NT Program, with a view to overcoming your addiction and rehabilitating yourself. I have three reports from the Court Clinician, which first provide me with valuable information about your background, and secondly, about how you have progressed in your treatment.

I have no doubt that being apprehended on this occasion was a major wake up call for you, and has forced you to re-evaluate your priorities in life and where you were going. Importantly the reports demonstrate that you participated well in the program and that you have good insight into your problems.

You also have a determination to overcome your addictions. In the final report, dated 21 July 2009, the Court Clinician has said that you made a strong effort and a number of significant positive changes in your successful completion of the program. The Court Clinician recommends that the Court favourably consider your efforts and achievements in the sentencing process.

General deterrence, that is imposing penalties that will act as a deterrent to others who attempt to obtain drugs in the same way you obtained them, is an important part of the sentencing exercise. Contrary to the belief of some people, cannabis is a major problem; that is, it is a major health problem in our community, and particularly in Aboriginal communities. It is important that the Court impose penalties that will assist in deterring would-be offenders, and it is correct that in the case of offending involving significant quantities of cannabis, such as the quantity you purchased, usually a term of imprisonment to be served for at least some period, is imposed. But there is no strict tariff and each case must be determined according to its individual circumstances, and in this particular matter, weighing against the requirement that you serve part of the sentence, is your good working history and the fact that, apart from the one offence, you have not been in trouble with the criminal law, together with your background, about which I have spoken and, significantly, your own efforts at rehabilitation.

Offenders need to be encouraged to undertake their own rehabilitation and it is important that the Court recognise those efforts. Sometimes it is not possible to fully suspend a sentence, notwithstanding efforts of rehabilitation, because the offending is too serious. But in all cases, it is important to recognise the efforts and to encourage them. It is plainly in the best interest of the community that offenders like you be fully rehabilitated and that you continue with your full employment. It would be counterproductive if you were to go to gaol for a significant period and lose your employment.

As I have said previously, it is a very difficult sentencing exercise because factors pull in different directions. On the one side is the seriousness of the offending, but on the other are the factors that pull towards leniency and to enabling you to continue with your rehabilitation. It would be counterproductive to the rehabilitation to require you to serve a sentence of imprisonment.

You are convicted. Had it not been for your plea of guilty, I would have imposed a sentence of three years imprisonment. After allowing for your plea of guilty I impose a sentence of two years, three months imprisonment and I have decided that this is one of those relatively rare and exceptional cases in which the best interests of the community are served by suspending that sentence immediately. So you will be released today.

The operational period of the suspension is two years and six months. It is a condition of the suspension that during that period of two years and six months you be under the supervision of the Director of Correctional Services and that you obey the reasonable directions of the Director or a probation officer, as to your residence, employment, associates, that is who you mix with, counselling and treatment, including counselling and treatment in relation to the use of alcohol, cannabis, other illicit drugs and gambling.

Further, it is a condition that you, during the period of two years and six months from today, are not to consume or use cannabis or any illicit drug and you are to submit forthwith, upon request by a probation officer or a police officer, to the provision of a

urine sample for urinalysis in testing for the presence of cannabis or any other illicit drug. Further, you are not to attend any casino premises or any TAB premises and you are not to gamble in any form.

Now, Mr Cribb, you are obviously an intelligent person. Do you understand first that the sentence is two years and three months. That is the actual sentence, but you will not have to serve that sentence. You will be released on probation.

First, understand that the probation people are there to help you. They are not there to make life difficult; they are there to help you. But secondly, it can be considered as part of the punishment that you have to obey the directions of the probation people, and if you do not obey their directions, you will be brought back here and you will be liable to go to gaol for two years and three months.

If you commit further offences you will be liable to go to gaol. And when I talk about obeying their directions, they can tell you where to live, where to work, and importantly, they can tell you who you are to mix with or, not to mix with, more importantly. And there is reference in the material before you to you saying that you have broken your associations with those who are in the drug scene. Now that is a very important step and you have to do what the probation people tell you about that sort of thing.

In addition, although you have done the CREDIT Program, there is still, as you know, a long way to go before you can truly say you are out of the woods with regard to your addiction. You will need help, counselling and treatment and the probation people can tell you what to do. And you have to go and have whatever counselling and treatment they tell you. You have no choice in the matter. They will be reasonable about it, but whatever they tell you, you must do.

And because you have told me that you have not had any cannabis or other drugs now for some months, there is no reason why you cannot stay off the drugs entirely, and you have to now, because it is a condition that you do not consume any drug. And you will have to provide urine for testing, and if the testing comes back positive, then you will be in breach of your bond and again, you will be back here facing the prospect of going to gaol. And the same thing applies about the gambling.

So they are quite tough conditions, but it is part of the penalty you pay for having committed this offence and it is part of the price you pay for not having to go to gaol. I have made an assessment that you have an underlying good character and that you can carry this off, but now it is over to you. Nobody else can do it for you. You will get help, but it is over to you and you obviously have good family support. Even though they are at a distance, there is still good family support from some and you also have close family support here in Alice Springs.

Make the most of it and good luck.

Would you adjourn, thank you.
