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THE SUPREME COURT OF
THE NORTHERN TERRITORY

SCC 20914469

THE QUEEN

and

MARK WESLEY DICKFOSS

(Sentence)

OLSSON AJ

TRANSCRIPT OF PROCEEDINGS

AT DARWIN ON WEDNESDAY 7 OCTOBER 2009

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Transcribed by:
Merrill Legal Solutions

HIS HONOUR: Mark Wesley Dickfoss, you have by your pleas of guilty admitted two offences under the Misuse of Drugs Act. First, you admit that on 27 April 2009 at Darwin River you unlawfully possessed cannabis, a dangerous drug specified in Schedule 2 of the Act, the circumstance of aggravation being the amount of the drug possessed was a commercial quantity, namely, 1.205 kilograms. Second, you admit that on the same date and at the same place you unlawfully cultivated a prohibited plant, namely, cannabis, the circumstance of aggravation being that the number of prohibited plants was a commercial quantity, namely, 22 plants.

Both of these offences are serious. The first carries a maximum penalty of imprisonment for 14 years whilst the second attracts a maximum penalty of imprisonment for 25 years.

Convictions will be recorded against you in respect of both of those offences. The relevant facts are not in dispute. You were 46 years old at the time of the offences. You lived and still reside with your elderly father at lot 370 Darwin River Road, Darwin River. That property was originally owned by your father and mother but at some stage you purchased your mother's interest.

At approximately 11.10 am on 27 April last, police officers, acting upon information received, executed a search warrant at the property. Both you and your father were home at the time. As police approached the house you attempted to hide some cannabis plant material that was in your possession by grabbing handfuls of it from a chest of drawers and throwing it underneath a bed in the main bedroom.

Police entered the house, escorted you and your father outside and then commenced their search. During the course of the search a substantial quantity of cannabis plant material was located in the main bedroom in a bedside chest of drawers and also under the bed where you had thrown it. Cannabis seeds were also located in a clipseal bag and a film canister in a refrigerator in the kitchen. Two further clipseal bags and a Bushell's tin containing cannabis were found in the kitchen. The police further located cannabis plants growing in various locations outside the house. It is common ground that these had been cultivated by you. They consisted of one large mature cannabis plant in a 44-gallon drum and a variety of cannabis plants and seedlings in two plastic pots. Additional loose cannabis plant material was found in a bowl inside a caravan together with a homemade bong.

Police seized a total of 1.205 kilograms of cannabis plant material and the 22 cannabis plants. A set of digital scales and unused clipseal bags of various sizes were also discovered.

You were arrested and conveyed to the Darwin City Police Station watchhouse where you subsequently participated in a formal record of interview. In the course of the interview you indicated that the cannabis was all owned by you and that you had cultivated the growing plants. You indicated that you possessed the cannabis and were cultivating the plants

essentially for your own personal use. When asked how much cannabis you smoked you stated that you smoked about one or two rollies a day and that they were normal cigarette-size smokes. You were thereafter charged with the present offences and spent one day in custody on remand before being granted bail.

You have a prior record of offending including several drug offences. However, it must be said that at least two of those offences were of a relatively minor nature and attracted penalties by way of fines. The most recent conviction for a drug offence was recorded as long ago as early 1994. This was for cultivating cannabis plants and attracted a penalty of nine months imprisonment, of which you were required to actually serve three months. I do not regard the other offences as being of significance for present purposes and, in any event, they were all committed a considerable time ago.

However, the existence of the prior drug offences necessarily attracts the operation of section 37(2) of the Misuse of Drugs Act. It is incumbent upon me to impose a sentence requiring you to serve a term of actual imprisonment unless, having regard to the particular circumstances of the offence or yourself, I am of the opinion that such a penalty should not be imposed.

As I have recited, your last offence of that type was committed as long ago as 1994. Since then there has been only one other conviction for a motor vehicle offence in early 1998.

Character references have been tendered to me and those testify to your present general good character and reputation.

Section 37(6) of the Act also gives rise to a presumption that by virtue of the quantity of cannabis found in your possession you intended to supply it to others for commercial gain. It has been submitted to me by your counsel that notwithstanding the considerable quantity of cannabis plant material in your possession and the number of plants cultivated, you did not in fact intend to supply cannabis to other persons for commercial gain although you concede that on occasions when an acquaintance might come to the premises, you may well have supplied an occasional smoke to them as a matter of social courtesy, but not for reward.

The Crown was content to accept that situation in rebuttal of the statutory presumption. I therefore proceed on the basis that the cannabis was essentially for your personal use only.

I am told that you have suffered from insomnia for many years and have resorted to the use of cannabis to enable you to obtain a good night's sleep. You grew your own cannabis because it was too expensive to buy it from others. You are said to be not well educated and cannot read and write well. Notwithstanding that situation, you have had reasonably consistent work

as an adult in a variety of occupations up until 2008, from which time you have been in receipt of a carer's allowance.

Your elderly father is both visually and hearing impaired and cannot drive a motor vehicle. In recent times it has been necessary for you to act as his full-time carer including attending to his daily needs such as food preparation, procurement of necessities for him and transporting him as required. There is no other person readily available to attend to those tasks. The Darwin River property is not connected to the Darwin water supply system and there is a need for you to ensure the provision of water for your father and the property.

You have entered a timely plea to the charges against you and have cooperated with the authorities in relation to those matters. You must receive full credit for so doing. Your counsel submits that you realise that you have let yourself down by the present offending and that you have now ceased use of cannabis and, instead, are resorting to the use of appropriate medication to assist you to sleep. It is put to me that there are some reasonable prospects of your rehabilitation.

Whilst having regard to the commercial quantities of dried cannabis and plants, these charges are of an inherently serious nature. The Crown, quite properly, accepts that your offending does lie toward the bottom end of the range of seriousness. Certainly this is not a case in which there were any indicia of a commercial operation and it must be accepted that there was a real practical reason why you resorted to the use of cannabis.

In the circumstances, whilst I accept that the factors of general and personal deterrence must be given due recognition, I feel able to accord you a degree of leniency that would otherwise not be possible, especially having regard to the need for you to provide care for your aged father.

I note that you have been assessed as suitable for a home detention order and have consented to the making of such an order. Normally, I would not have considered such an order appropriate to offences of the nature of those pleaded to by you. However, in the particular circumstances of this case I am persuaded that it would be proper to impose a sentence involving the making of an order of that type.

I have taken as a commencement point an aggregate sentence of 18 months imprisonment as appropriate in this matter, having particular regard to the quantity of cannabis involved, the quantity of plants involved and the fact that you are not entitled to leniency as a first drug offender. I reduce that, however, by 25% to an actual sentence of imprisonment for 13 months and 2 weeks by virtue of your pleas. That sentence will run from today but will be suspended on the rising of the Court upon your entry into a home detention order for a period of six months upon the following conditions to operate during that period:

1. that you reside at 4 Darwin River Dam Road, Darwin River NT 0841 or any other residence subsequently approved by the Director of Correctional Services or his or her delegate for the duration of the order and shall not leave those premises without the prior approval of the Director or an authorised surveillance officer;
2. That you wear or have attached a monitoring device in accordance with the directions of the Director and allow the placing or installation in and retrieval from the premises to which I have referred such machine, equipment or device necessary for the efficient operation of a monitoring device;
3. that upon discharge from Court today you report immediately to the Community Corrections courts officer;
4. that you obey all reasonable directions of the Director or his nominee in relation to the home detention;
5. that you do not consume any dangerous drug or abuse a prescribed substance that is lawfully obtained for the duration of the order; and
6. that you submit to random urinalysis for the purpose of detecting the presence of dangerous drugs in your urine for the duration of the order.

You should understand that if you breach the terms of the home detention order you are liable to be brought back before the Court and that the suspension of your sentence might then well be revoked.
