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R. v. Smillie

Between

Regina, and

John Donald Smillie

[2000] B.C.J. No. 2227

2000 BCPC 49

Maple Ridge Registry No. 27697-01

British Columbia Provincial Court

Maple Ridge, British Columbia

Gove Prov. Ct. J.

Heard: November 2, 1999 and February 18, 2000.

Judgment: May 8, 2000.

(11 paras.)

Counsel:

Monica McParland, for the Crown.

David Donelly, for the accused.

¶ 1 **GOVE PROV. CT. J.:**— John Smillie pled guilty to a charge that on July 16, 1998, in Pitt Meadows, British Columbia, he unlawfully produced the controlled substance cannabis (marihuana) contrary to Section 7(1) of the Controlled Drugs and Substances Act.

¶ 2 Smillie and his wife live in a rural area. On their property the police found a "grow operation" of 323 plants along with the usual growing apparatus. There was no hydro bypass.

¶ 3 Smillie is 68 years old. He and his wife lived together from 1955 to 1979. They have six children and nineteen grandchildren. They resumed living together in 1998.

¶ 4 Smillie has epilepsy. He has used marihuana for many years to assist him in dealing with this condition. His wife has used marihuana to give her relief from osteoporosis. Prior to growing his own marihuana, Smillie purchased it. He grew marihuana for seven months before being arrested. He used some of the marihuana for his and his wife's use. The rest of the marihuana he sold. Since his arrest in July 1998, he and his wife have lived on government pensions.

Crown position

¶ 5 The Crown says Smillie should be sentenced to four months imprisonment. I asked if there are any recent cases from the British Columbia Court of Appeal or Supreme Court of Canada on sentencing on the facts of cultivation of marihuana: "a grow operation". The Crown referred me to three cases - two are British Columbia Court of Appeal decisions of ten years ago (*R. v. Coulson* [1989] B.C.J. No. 220 and *R. v. Jennes* [1990] B.C.J. No. 964) where the sentences were six months imprisonment. The Crown also referred me to a more recent decision of *Regina v. Houblert* (1998) Prov. Ct. B.C., Abbotsford File No. 41577, where the accused was cultivating marihuana for medical purposes and received a discharge.

Defense position

¶ 6 The defense referred me to a number of cases dealing with the medical use of marihuana: *R. v. Parker*, [1997] O.J. No. 4923, Ont. Ct. of Justice (Prov); *R. v. Wakefield* (1999) Ont. Superior Ct. of Justice; and *R. v. Richardson* (2000) Prov. Ct. B.C., North Vancouver No. 33558.

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¶ 7 Since August 3, 1999 Smillie has been a member of the B.C. Compassion Club Society which, as I understand it, provides its members marihuana for medical use. He has also applied to the federal government for authority to obtain and use medical marihuana for medical purposes. He takes the position, not disputed by the Crown, that he is a bona fide medical marihuana user and not one who simply uses any available drug. Further, it is not disputed that Smillie got involved in the cultivation of marihuana for the purposes of supplying himself and his wife with marihuana for medical use.

¶ 8 The defendant has a military history, a career as a writer, and no related criminal record. There is no reason to believe that he will be involved in criminal activities in the future.

Decision

¶ 9 The accused's situation is no different than other recent decisions of this Court where it is accepted that the accused was growing marihuana to deal with a medical condition. The Honourable Judge Paradis in Richardson carefully canvassed the law and principles to be considered.

¶ 10 Incarceration is not called for. Given that Smillie was producing the marihuana not only for his and his wife's medical use but also to sell at a profit, and having regard for the quantity that he was producing, as well as his prior Code conviction, I do not consider that it would be in the public interest to grant a discharge.

There will be a suspended sentence for a period of one year during which time Smillie will be on probation with the conditions that he: keep the peace and be of good behavior; report to a probation officer in Maple Ridge by noon tomorrow forthwith and continue to report thereafter as directed; and advise the probation officer of his residential address and not change the address without the probation officer's prior written permission. As part of his rehabilitation, Smillie will perform 50 hours of community work service by September 1, 2000.

¶ 11 There will be an order of forfeiture of the marihuana and cultivation materials seized by the police.

GOVE PROV. CT. J.

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