Knight v The Queen [2001] NTCCA 4

PARTIES:	JAMES SCOTT PARNWELL KNIGHT and THE QUEEN
TITLE OF COURT:	COURT OF CRIMINAL APPEAL OF THE NORTHERN TERRITORY
JURISDICTION:	CRIMINAL APPEAL FROM THE SUPREME COURT EXERCISING TERRITORY JURISDICTION
FILE NO:	CA18 of 2000 (9802755)
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JUDGMENT OF:	ANGEL, MILDREN & THOMAS JJ

REPRESENTATION:

Counsel:

Applicant:	D Grace QC
Respondent:	R Wild QC

Solicitors:

Applicant:	Diana Elliott
Respondent:	Office of Director of Public Prosecutions

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IN THE COURT OF CRIMINAL APPEAL
OF THE NORTHERN TERRITORY
OF AUSTRALIA
AT DARWIN

Knight v The Queen [2001] NTCCA 4
No. CA18 of 2000 (9802755)

BETWEEN:

JAMES SCOTT PARNWELL KNIGHT
Applicant

AND:

THE QUEEN
Respondent

CORAM: ANGEL, MILDREN & THOMAS JJ

REASONS FOR JUDGMENT

(Delivered 12 July 2001)

THE COURT:

[1] This is an application for leave to appeal against sentence. Leave is required pursuant to s410(c) of the *Criminal Code*.

[2] On 8 August 2000, the applicant pleaded guilty to one count of unlawful cultivation of a commercial quantity of a prohibited plant, viz. cannabis, the number of plants being 1,556. The maximum penalty for this offence is twenty-five years' imprisonment. The applicant was convicted and sentenced to three years' imprisonment with a non-parole period of eighteen months. The grounds sought to be agitated are:

1. That the learned Sentencing Judge erred in law in imposing a sentence that was manifestly disparate from that imposed on the co-offenders, Braham, Collins and Booby.

2. That the learned Sentencing Judge erred in law in that the sentence imposed upon him was manifestly excessive in all of the circumstances of the case and of the applicant.

[3] The facts as alleged by the Crown were not disputed and are as follows:

> Some time after 1 September 1997, Ian Hogan, James Scott Parnwell Knight and Edward Alfred Braham agreed to cultivate a cannabis crop at a location on Laurie Creek in the Wingate Mountains. Knight owned a helicopter business, Heli-north Proprietary Limited which, amongst other helicopters, owned a Kawasaki helicopter, registration VHLFK. Knight's helicopters were to be used in getting to the crop site and providing supplies during the time the crop was growing. Braham knew Hogan was a member of the Hell's Angels.
>
> After that agreement, Knight flew Braham and Peter Collins to the crop site at Laurie Creek. The helicopter used by Knight was a Kawasaki helicopter registration, LHVHK. Knight left the two men there with supplies and equipment to grow the cannabis crop. Braham and Collins commenced growing a cannabis crop. Knight flew supplies to the men and collected Braham from the crop site to take him to Darwin on or about 8 December 1997 and flew him back to the crop on or about 16 December 1997. Braham told Knight what sort of food and materials were required on site.
>
> Gregory Booby was a person contacted by Knight. Booby had previously been recruited by Braham. In the period November 1997 to February 1998, Booby was residing with a friend at 7 James Street, Lowood, Queensland.
>
> On the morning of 3 February 1998, Booby received a threatening phone call from Knight. Booby was told that, 'We'll come and get you', and was asked to go and grow a cannabis crop. Booby said that he owed his friend $750 for rent. Knight told him he would pay that money and deposit it into his bank account. Knight also told Booby that an airfare would be paid for Booby to travel to Darwin and that he would contact Booby with the flight details.

Booby knew that Knight and Hogan were involved with the Hell's Angels Motor Cycle Club and believed that this was the 'we' that Knight was referring to. Booby agreed to help grow the crop because he feared for his life.

Before leaving Queensland, Booby went to the Lowood Police Station and made a detailed statement about the cannabis plantation and operation at Laurie Creek. He drew a map of its location. He then returned to his residence. He hoped that the information he gave the Queensland police would be passed on to the Northern Territory police in time so that he could get caught when he got back to the crop site and before any harm was done to him.

Booby received another telephone call from Knight later on 3 February 1998 advising him of his flight details the following day, 4 February. He was told to collect his ticket at the check-in counter. After this telephone call, Booby checked the balance of his bank account and found the sum of $750 had been deposited He settled up with his friend and travelled to Brisbane where he spent the night. Booby flew to Darwin on the morning of 4 February 1998. Knight met him and they left the airport in a white utility and drove to an army disposal store in the city where Knight purchased a two-man tent and two tubes of Bushman's insect repellent.

Knight then drove Booby to the wharf precinct where he was transferred to another vehicle and driven out of Darwin by Hogan. Booby was delivered to a rendezvous point on the old Stuart Highway past the township of Adelaide River where Knight collected him in the helicopter. Hogan took Booby's photograph at this location where the helicopter refuelled. Knight flew Booby to the crop site at Laurie Creek and when they landed Booby unloaded the helicopter. Knight told Booby to leave all his personal papers with Knight, including family photographs. This meant that Booby had no identification papers on him.

Braham and another person, Peter Collins, were already at the site. Knight left the sawn-off shotgun with Collins. When Booby arrived there was already a cannabis crop growing. Booby was told that there were 1,500 plants at the site and he assisted in cultivating that cannabis crop. His endeavours were less than enthusiastic. Braham and Collins continued to cultivate the cannabis crop.

Booby was observed by members of the Northern Territory police working on cultivating the cannabis crop. The Northern Territory police had in fact been informed by the Queensland police of Booby's attendance on them. As a result, on 8 February 1998 members of the Tactical Response Group commenced surveillance of the campsite area.

Booby, Braham and Collins were arrested on 10 February 1998 at the crop site. Police seized 1,556 cannabis plants at the crop site. Booby and Braham entered pleas of guilty and agreed to give evidence for the Crown. Both men gave evidence at Knight's committal proceeding. Collins entered a plea of guilty but made no admissions in relation to the offence and did not co-operate with the authorities. To date, Hogan has not been charged.

Knight was arrested on 11 February 1998 and has not co-operated with the police in relation to this matter. He declined to participate in a record of interview and has not named any of his co-offenders. He proceeded to an oral committal in which both Braham and Booby were cross-examined on the basis that Knight had no involvement in the crop. Knight was in custody in relation to this matter from his arrest on 11 February 1998 until he was bailed on 23 February 1998.

The police investigation of Knight revealed the following evidence in addition to the evidence of Knight's co-offenders. On Knight's arrest, a photographic receipt from 'Quick as a Flash. Casuarina' was found in his possession. Police recovered the photographs which included a photograph of Booby at the place the helicopter refuelled and collected him on 4 February 1998. The photographs following the photograph of Booby were of Heli-north helicopter VHLFK landing at the refuelling point.

A copy of the receipt of Booby's Ansett flight on 4 February was also found in Knight's possession as was a cheque in the sum of $2,000 cash made out by Braham. Knight's fingerprints were located on a bank deposit slip depositing cash into Booby's bank account. When interviewed, all the other Heli-north pilots stated they had never flown a Heli-north helicopter to the location at Laurie Creek. All pilots say that they did not fly VHLFK on 4 February 1998.

On 4 February when Heli-north helicopter VHLFK piloted by Knight flew Booby to the crop site, there was no entry in the relevant logbooks for that helicopter having flown that day. But tapes seized

from air traffic control evidence Heli-north helicopter VHLFK leaving Darwin airspace for a period of time which would allow a return flight to the drug crop. Heli-north helicopter VHLFK was seized by the police. The GPS system was removed from the helicopter and data extracted from that GPS system revealed saved reference points which correspond to the refuelling point and the crop location at Laurie Creek.

The Department of Primary Industries and Fisheries confirm that there was no business reason connected with them for Heli-north helicopters to be flying in the crop location on Laurie Creek.

An empty Avgas drum taken from the refuelling location was from the same batch of fuel as was sold to heli-north by Mobil. A check of Telstra records confirmed the telephone calls between Heli-north's number and Booby's telephone number in Queensland.

A gun, corresponding with Booby's description, was found in Collins' possession on his arrest at the crop site and Booby had no personal papers in his possession on his arrest. The owner of the army disposal store in Mitchell Street, Darwin, confirmed the purchase of a two-man tent and two tubes of insect repellent on the afternoon of 4 February 1998.

[4] The remarks on sentence by the learned Sentencing Judge were as follows:

Mr. Knight, you may remain seated. You have pleaded guilty to unlawfully cultivating cannabis between September 1997 and February 1998, contrary to s7(1) and s7(2)(a) of the *Misuse of Drugs Act*. The unlawful cultivation involved the circumstance of aggravation that the number of prohibited plants was a commercial quantity; namely, 1556 plants. The maximum penalty for the offence is 25 years' imprisonment. That penalty reflects the very serious view taken of this offence by the Northern Territory legislature.

The circumstances of the offending are agreed and were read into the transcript by Mr Tippett. I will not repeat all that was said. Around September 1997, you agreed to cultivate a cannabis crop at a very remote location on Laurie Creek in the Wingate Mountains. That agreement was entered into with Edward Alfred Braham and others. You were to use a helicopter from your business and employ your

piloting skills in getting men and materials to the crop site and in providing supplies during the growing process.

You, in fact, transported Mr Braham, Peter Collins and Gregory Booby to the site along with supplies and materials for the enterprise.

Your role in the enterprise was not simply that of the pilot of the transport vehicle. It is agreed that you were involved in ensuring that Mr Gregory Booby, who had previously been recruited by Mr Braham, returned to the Northern Territory from Queensland to take part in the operation. You did that in a manner that Mr Booby found threatening. You also arranged payment of money to Mr Booby to cover his rent and you provided him with an airline ticket to return to Darwin. In addition to delivering material to the site, you delivered a sawn-off shotgun to Mr Collins and you required of Mr Booby that he leave all his personal papers with you. There is no suggestion that you were carrying out these functions at the direction of others.

Whilst the Crown has submitted that you were not the ultimate organiser of the crop and I have no basis for reaching any contrary conclusion, you were, at least, an organiser. You were involved to a greater degree than Mr Booby and Mr Collins who were, effectively, employed as labourers or gardeners. The submission of your counsel was that your position was similar to but different from that of Mr Braham. Mr Braham was responsible for organising the crop site and you were responsible for organising other aspects of the matter.

On the information available to me, it is not possible to determine what was the hierarchy in the organisation. However, it is sufficient for me to note that you were involved in organising events in the manner that I have discussed and that your role was more than a mere functionary. Whilst you may not have been the ultimate organiser, you were an integral part of organising the enterprise.

This as clearly more than a backyard operation. The crop was situated in a remote and largely inaccessible location. It involved transport of men and materials by helicopter. At the time of your arrest, there were 1556 plants at the site. There is no suggestion that this was other than an entirely commercial operation. It was a serious criminal enterprise.

Just what reward was in it for you is not known. All I can assume is that there was sufficient reward for you to undertake the risks

involved and to use a helicopter which belonged to your business. No precise value has been placed on the crop but it is obvious that its value was substantial and the potential for reward was significant.

Counsel before me adopted the observations made by Mildren J in sentencing Mr Collins on 15 July 1998 and in particular, the remarks that appear at transcript page 111. I will not repeat what was there said other than to note that the potential value of the crop could have been as high as $1.1 million. However, that sum may never have been realised; the crop may have failed; the average yield might be less than expected; the sale price might be less; and there may be expenses to take into account.

His Honour observed on that occasion that if only half the crop made it to the stage of yielding the expected average yield per plant, the crop would still be worth a little over half a million dollars.

Others involved in the production of the crop have been dealt with by the court. Mr Booby and Mr Braham entered pleas of guilty and agreed to give evidence for the Crown. In fact, they gave evidence at your committal proceeding. Mr Collins entered a plea of guilty but made no admissions and did not co-operate with the authorities.

You have entered a plea of guilty and you did so on the morning of the trial. It seems that this plea reflects the strong case that the Crown had against you in relation to the matter. It was a last minute plea. It was not accompanied by any sign of remorse that I can detect. You did not co-operate with the authorities. Notwithstanding that lack of co-operation and the lateness of your plea, you are entitled to a credit for the fact that you have entered a plea of guilty and you have thereby saved the community from the inconvenience and cost of a trial. In recognition of that plea, I have reduced your sentence by almost 15%.

As to your personal circumstances, I am instructed that you are 33 years of age and that you have been in the Territory since you were 4 years old. You are married but separated and you have two daughters aged 5 and 9 and they presently live with your wife on Groote Eylandt. You have contact with your wife and you see your children regularly. You completed year 10 at school. You went on to complete an apprenticeship as a diesel fitter and you obtained flying qualifications which enabled you to work as a helicopter pilot.

In 1991, you commenced the business Heli-North and I am told that became a successful operation. At the time of the offending in 1997 and 1998, the business had troubles. It was the subject of investigation by the Civil Aviation Safety Authority and after your arrest, one helicopter was seized and the authority suspended the certificates of airworthiness relevant to the remaining two helicopters then available to the business. They were suspended because of an under recording of the flying hours relevant to the airframe and engine of each aircraft.

I am told and I accept that the cost involved in bringing the aircraft back to a condition in which certificates of airworthiness could have been issued would have amounted to approximately $150,000.

In addition, Mr Wardle tells me that at the time, there was a downturn in your work as a consequence of publicity surrounding this matter and another matter with which you were charged and in relation to which proceedings were subsequently not pursued. That may have been a contributing factor to the position of the business. In any event, the business was in increasing difficulties during the period leading up to you being charged and thereafter.

It was submitted that as a consequence of your involvement in this crop, you suffered a significant financial loss. Whilst you may have lost time and money as a consequence of that involvement and the consequent prosecution, much of the loss to which I was referred and which led to the ultimate sale of your company, Heli-North Proprietary Limited, was being suffered for reasons not connected with the crop.

Mr Wardle did not go higher than putting those financial pressures as being a contributing factor rather than actually being the reason for you entering upon this project. It was not submitted that you proposed to use any profits to save the business. There was no suggestion of any compelling need on your part. No other explanation for your conduct was proffered.

I note that at about this time you were having difficulties in your marriage as a result of allegations of rape made against you. Subsequently, your marriage broke down.

I am told that you now work as a salesman earning between $600 and $700 per week, depending upon overtime. It seems from the history

that I have been given that you have been in employment for many years.

Although you do have convictions for offences against the Civil Aviation Regulations in 1994, those convictions have no relevance to the matters before me today. You have no other convictions. When you were arrested, you spent from 11 February 1998 to 23 February 1998 in custody. I take that into account when passing sentence.

I have been referred to the sentences and the sentencing remarks made in relation to Mr Collins, Mr Braham and Mr Booby. Whilst I accept that I must bear in mind those sentences when determining an appropriate sentence in your case and endeavour to avoid disparity in the sentences, I note that the circumstances of their individual involvements in the offence and the personal circumstances relating to each of them are quite different from your own, and it follows there will be a difference in sentences imposed.

As I have observed, this was a substantial and sophisticated project. You played a significant part in it. I am satisfied that I need to bear in mind and give emphasis to both general and personal deterrence when imposing sentence in relation to this offence. Whilst your history suggests you ought to be a good candidate for rehabilitation, I note you have not expressed or exhibited any remorse in relation to this offence. However, I have assumed that your prospects for rehabilitation are positive when I have determined your sentence. You are not entitled to the credits which flow from co-operation with authorities.

I turn to sentence you. You are convicted. You will be sentenced to imprisonment for a period of 3 years, such sentence to run from your entry into custody on your plea of guilty on 8 August 2000. I was invited by your counsel to consider suspending that sentence, however, I see nothing in the circumstances of the offence or of you, the offender, which would lead to that result. I set a non-parole period of 18 months dated from 8 August 2000.

[5] Each of the other co-offenders were sentenced by different Judges of the Supreme Court. Booby, who was first to be sentenced, pleaded guilty to two counts of cultivating a commercial quantity of cannabis (one of which was

the same as Knight) and was sentenced to six months' imprisonment on each count to be served concurrently. Collins was the next to be sentenced. In addition to pleading guilty to the same count as Knight, he fell to be dealt with for breach of a bond. Collins received a sentence of imprisonment of two years, six months and was ordered to serve six months of a suspended sentence which was partly reactivated, concurrently. A non-parole period of twenty months was fixed. Braham, who pleaded guilty to three counts of cultivating a commercial quantity of cannabis, was the next to be sentenced. He received sentences of six months, eight months and ten months' imprisonment, all to be served concurrently. The third count was the same as Knight.

Manifestly excessive – Ground 2

[6] It is convenient to deal with this ground first because the parity argument assumes that the applicant's sentence is not in itself manifestly excessive. The applicant's submission was that the learned Sentencing Judge gave inadequate weight to the circumstances of the offender.

[7] The applicant was thirty-three years of age, married but separated with two children who resided with their mother, and self-employed in his own helicopter business which had collapsed prior to his sentencing. He had no relevant prior convictions and a good employment record. At the time of sentencing he was employed as a salesperson earning $600 to $700 per week. He entered a plea of guilty at a late stage, but was successful in

having one of the charges against him not proceeded with. However, as the learned Sentencing Judge observed, the change of plea was made on the morning of the commencement of the trial; it reflected the strength of the Crown case against the applicant and was not accompanied by any sign of remorse. The learned Trial Judge nevertheless reduced the applicant's sentence by almost 15%, i.e. from three years six months to three years. Given that the non-parole period fixed reflected the minimum period allowed by law, this also reduced the non-parole period by three months. Counsel for the applicant, Mr Grace QC, submitted that the discount given was inadequate because the applicant's stance was vindicated by the decision of the Crown not to proceed with the first count on the indictment. However, the applicant made no offer to the Crown to plead to the second count, although an indication had been made by the applicant's legal representatives on the previous Friday subject to instructions which were not confirmed until the following Monday, the morning of the trial. By this time the Crown's witnesses, including two from interstate and one from overseas, were already in Darwin for the trial. We do not consider that his Honour failed to give the plea adequate weight.

[8] Mr Grace QC, submitted that inadequate weight was given to the applicant's financial and personal difficulties arising from this and another charge. In 1997 the applicant had been charged with rape, the trial of which took place before the learned Sentencing Judge in the earlier part of 2000. That charge attracted media publicity, particularly as it was said to have occurred at the

local headquarters of the Hell's Angels Motorcycle Club. The applicant's defence was that the sexual intercourse between he and the prosecutrix was consensual. He was acquitted. During the sentencing hearing it was put that that charge 'led to the breakdown or the commencement of the breakdown of the defendant's marriage', and that his arrest for the cannabis charges was 'the last straw'. We do not consider that this factor so far as it related to the applicant's marriage, warranted any leniency. There is nothing exceptional about the applicant's loss of his marriage which must have been a foreseeable consequence of his involvement in the cannabis plantation. It is not a mitigating factor that imprisonment will cause hardship to families except in truly exceptional circumstances: see *R v Nagas* (1995) 5 NTLR 45 at 54. In our opinion, the same reasoning applies to the applicant's loss of his marriage.

[9] As to the applicant's financial difficulties, the learned Sentencing Judge heard evidence on this issue and concluded that much of the loss which was suffered and which led to the ultimate sale of the applicant's company, was being suffered for reasons not connected with the crop. In fact, only one asset was seized as a result of this offending, the net proceeds of which were used for the payment of the applicant's legal expenses. There was no surplus. The other financial losses do not appear to have been connected with the consequences of his arrest for this offence, although the consequences of the forfeiture are relevant to penalty (see *The Queen v Hoar* (1981) 148 CLR 32 at 39). We do not consider that it has been

demonstrated that this factor entitled the applicant to any significant degree of leniency in this case which the learned Sentencing Judge did not accord to it.

[10] In all the circumstances, including the circumstances of the offence and of the offending, we do not consider that the sentence imposed was manifestly excessive. We would refuse leave to appeal on this ground.

Parity

[11] The relevant principles are well known and may be briefly summarised. The parity principle, as it is called, is an aspect of equal justice which requires that, all things being equal, like should be treated alike. Thus in *Lowe v The Queen* (1984) 154 CLR 606 at 610 (per Gibbs CJ), at 613 (per Mason J) and at 623 (per Dawson J), it was recognised that equal justice requires that, as between co-offenders, there should not be a marked disparity which gives rise to a justifiable sense of grievance. But if there are relevant differences as between co-offenders, different sentences may be imposed which reflect the different degrees of culpability or their different circumstances. Nevertheless, as was recognised in *Postiglione v The Queen* (1996-97) 189 CLR 295 at 302 (per Dawson and Gaudron JJ) there must still be due proportion between the sentences having regard to the different degrees of criminality and the different circumstances of the offender. If the differences in sentences are not duly proportional in that sense, an appellate court will intervene to correct what is an error in sentencing principle. But,

the difference must be "manifestly excessive and call for the intervention of the appellate court in the interests of justice"; see *Lowe v The Queen, supra* at 624 (per Dawson J and with whom Wilson J agreed); *Postiglione v The Queen, supra,* at 323 (per Gummow J) and at 338 (per Kirby J)

[12] It was submitted by Mr Grace QC for the applicant, that there was such manifest disparity between the sentences imposed upon the applicant and those imposed upon his co-offenders so as to engender a justifiable sense of grievance by the applicant. As to Braham, it was submitted that the applicant's level of culpability was less than that of Braham's. It was submitted that Braham was a "serial cannabis cultivator", an expert in horticulture who had been involved as a principal previously, that he was an organiser whose skills were used to set up the crop and whose motive was one of profit and who had committed the relevant offence whilst on bail and the first of three offences whilst on parole. Further, it was submitted that Braham had been involved at an earlier time in the enterprise than the applicant because there had been a failed crop planted at the site previously as to which Braham had pleaded guilty, whilst the applicant had not been proceeded with on that charge.

[13] The learned Sentencing Judge had noted that whilst the applicant was not the ultimate organiser of the crop, the applicant was at least *an* organiser and was involved to a greater degree than Booby or Collins. His Honour noted the submission of the applicant's counsel that the applicant's position

> ...was similar to but different from that of Mr Braham. Mr Braham was responsible for organising the crop site and you were responsible for organising other aspects of the matter. On information available to me, it is not possible to determine what was the hierarchy of the organisation...Whilst you may not have been the ultimate organiser, you were an integral part of organising the enterprise.

It was not submitted that this assessment of the situation was in error.

[14] The main difference between the applicant and Braham related to their personal circumstances. Braham pleaded guilty to three counts. The first related to the growing of 268 plants at Dead Man's Gully in the Wingate Mountain area between 1 May and 24 July 1996. Braham and one of his co-offenders were arrested on the site on 24 July 1996. He was charged and bailed. The second count related to a crop at Laurie Creek between 1 October 1996 and 31 August 1997. The number of plants was not specified. This crop was organised by a man called Hogan who was a senior member of the Hell's Angels. Hogan was not charged, but another co-offender, Booby, who did most of the labouring work was later dealt with. Braham received a couple of bags of the crop for his troubles and Booby got nothing (according to Braham) except some money out of his old age pension to help him out. The crop, which weighed 100 pounds, was given to Hogan. It was because the crop was said to be no good that Hogan told Braham that he needed to go out and grow the third crop (which the applicant was involved in). At the time of sentencing, Braham's bail in respect of the first offence had been estreated and he had been ordered to serve 100 days' imprisonment in default. The sentences imposed upon Braham have already been noted. The

learned Sentencing Judge was aware of the sentences imposed upon the other co-offenders and expressly stated that regard was had to the parity principle. Braham also had a previous conviction for cultivating cannabis in 1993 which resulted in a sentence of imprisonment for 3 ½ years with a non-parole of 21 months. However, a number of factors were clearly identified which justified what might have been thought to be a lenient disposition. First, Braham was 84 years of age and in poor health. He was mostly confined to a wheelchair. He suffered from several chronic medical problems, including extensive degenerative arthritis of the lumbar spine. His pain, instability and leg weakness would slowly worsen increasing his dependence on his wheelchair. He suffered cardiac valve disease with moderate aorta stenosis and cardiomeoaly. He was at risk of cerebral emboli. He had bilateral hearing loss and short term as well as long term memory problems. The degenerative problems in his mind and back were likely to worsen quickly. His state of health overall would not improve. Secondly, he had pleaded guilty at an early stage and had promised assistance to the police with respect to their investigations into charges of unlawful cannabis plantations, as to the organisation involved and as to the persons involved and the names of their associates. The Court found that he had been fully co-operative, frank and forthright and had provided valuable and important information. He had undertaken to give evidence for the prosecution against the applicant and against Hogan. He had been held in protective custody whilst in prison, which made his confinement more

difficult and there was a real possibility that he would be harmed upon his release. The Court did not indicate the extent to which this was taken into account other than to say that Braham was to be given "full credit for his co-operation" and that the discount should be substantial. The sentence was not fully backdated as part of his pre-trial custody related to the default of his bail estreatment. There was no appeal by the Crown against this sentence. Braham was still alive at the time of the applicant's sentence and had been brought to Darwin for his trial. We are told that he has subsequently died. In these circumstances, we do not accept the submission of the applicant that there was a manifest disparity between the applicant's sentence and Braham's sentence such as to engender a justifiable sense of grievance by the applicant. The sentences imposed were to be fully served and allowance was also made for the abolition of remissions. The effect of making Braham's sentences concurrent was that he in effect served only two months for the third offence (or alternatively served no sentence for the first and second offences). This was perhaps the result of the application of the totality principle, i.e. that the court had to consider the totality of Braham's criminal record after taking into account not only his criminal record, but also his personal circumstances, but we think it more likely that Braham received a large degree of mercy from the Court due to his very advanced age, ill health and co-operation with the authorities which make it impossible to say that there is such manifest disparity that this Court should intervene in the interests of justice.

[15] As to Booby, it was accepted by the applicant that Booby's role was less than his. Booby pleaded guilty to two counts, the first being the crop which was allegedly no good. The facts alleged that Booby had been recruited by Braham in 1996, that Booby was involved in an initial planting in 1996 which totally failed, that Booby did not supply any of the equipment and that he was a mere worker. Because the crop failed, it was necessary to start again with another crop in late November or early December 1996. Booby was not charged with any offence in relation to the initial planting. Booby was a reluctant participant in the November/December crop. He had wanted to leave but was dissuaded by Braham who had told him that the organisers would shoot him if he left. He was very scared and could not leave the Laurie Creek area because of its remoteness and because he did not know where he was. When the crop was harvested he was transported back to Darwin. He received only about $2,350 for his work, which was given to him over a period of time by Braham and Knight. The facts alleged that he had been taken to and from the site by Knight in his helicopter and that he was subjected to continuous threats to his life by Braham if he did not do the work.

[16] As to the second count, Booby was approached by Braham in relation to that crop in September 1997, but told Braham he wanted nothing to do with it. He left Darwin and went to live in Queensland. Whilst there he went to the police and gave them a detailed statement about the cannabis plantations and the operation at Laurie Creek. On 3 February he received a threatening

telephone call from Knight to return to the Northern Territory and assist in the crop relating to the second count. Because he feared for his life, he returned to Darwin on 4 February and was met by Knight at the airport. Knight had arranged for his airline ticket and had also arranged for $750 to be placed into his account. Knight drove him into the city where he purchased supplies. He was later driven to a collection point by another person unknown, where he was met by Knight and taken to the site by helicopter. The Queensland police had passed on the information Booby had given them to the Northern Territory Police in the meantime. His involvement was limited to assisting in cultivating the crop for a few days. He was arrested at the site by Northern Territory police on 10 February 1998. Prior to being contacted by the Queensland police, the Northern Territory police had had no information concerning the existence of the plantations at Laurie Creek.

[17] As to his personal circumstances, Booby had prior convictions, some of which were serious, but they were unrelated to drugs and not recent. The only relevant priors were a group of five convictions in 1992-3 relating to cannabis for which he received fines. Booby was thirty-three, single and described as a depressed, lonely and vulnerable man who had been recruited by Braham because he was emotionally and financially vulnerable and not likely to be missed. Booby had pleaded guilty at the first opportunity and had co-operated fully with the authorities and offered to give evidence against the others involved. The learned Sentencing Judge found that

Booby's co-operation was total and that his information was extremely valuable and warranted a discount at the higher end of the scale. Because his involvement in the second count was entered into under pressure and after he had reported the operation to the police, the learned Sentencing Judge said that this warranted a fully concurrent sentence. Although the learned Sentencing Judge did not specifically refer to the existence of remissions, sentences of six months to be fully served would normally indicated that the sentences had been discounted from nine months, *vide* s.58 of the *Sentencing Act*.

[18] As can be seen, Booby's very different role and personal circumstances fully warranted a disparate sentence when compared to the circumstances of the applicant. We do not consider that the disparity was such as to engender a justifiable sense of grievance on the applicant's part.

[19] As to Collins, he faced one count only which was the same count as the applicant. His role was that of a labourer and security guard. He met Braham whilst in prison for unlawfully causing grievous harm. He was released from prison pursuant to an order which had partially suspended his sentence on a good behaviour bond in January 1996. Thereafter, he found work in various locations until November 1997 when his money ran out. At this time he went looking for Braham to obtain work and Braham recruited him for the last of the plantations. When he arrived at the site, the crop had already been started and the irrigation equipment was in place. He took with him two sawn-off shot guns for security purposes. Thereafter, he was

involved in planting, fencing and nurturing cannabis plants and did most of the work as Braham was too ill to be of much help. When the police arrested him at the site, he tried to eat a piece of paper which was some sort of shopping list for items needed for the plantation. He was to be paid something commensurate for his time and trouble, working in difficult and trying conditions and the risks he took, out of the profits. In fact, he got nothing for his efforts. His role was obviously less than that of the applicant's.

[20] Collins was twenty-six years of age. He had prior convictions, the only serious one being for unlawfully causing grievous harm. At the time of the offending, he was in breach of his bond which was treated as an aggravating circumstance and which had eight months left to run. He pleaded guilty at an early stage but was not remorseful. He had lied to the Court during the sentencing hearing which diminished his right to any leniency. He was sentenced to a term of imprisonment for two years and six months and ordered to serve six months of the term held in suspense concurrently. A non-parole period of twenty months was set. Given Collins' much lesser role than the applicant's we do not consider that there is a marked disparity in the head sentences imposed, even allowing for Collins' prior criminal record and the aggravating factor of having committed this offence in breach of his bond. In any event, his non-parole period was four months longer than the applicant's. We do not consider that there is such a manifest disparity in comparing Collins' sentence with that of the applicant's as to

result in a conclusion that it has been demonstrated that the applicant has a justifiable sense of grievance warranting the intervention of this Court.

[21] We have borne in mind that allegations have been made against the applicant and others which were accepted in the sentencing of Braham, Booby and Collins which were not ultimately proved when Knight came to be sentenced, which has at times made comparisons difficult.

[22] The application for leave to appeal should be granted, but the appeal is dismissed. There will be orders accordingly.
