

PARTIES:

GLASSON, Jamie John

v

MATERNA, Robert Bruce

TAPP, Shane

v

MATERNA, Robert Bruce

TITLE OF COURT:

SUPREME COURT OF THE
NORTHERN TERRITORY

JURISDICTION:

SUPREME COURT OF THE
NORTHERN TERRITORY OF
AUSTRALIA EXERCISING
TERRITORY JURISDICTION

FILE NO:

No JA58 and JA59 of 1996

DELIVERED:

Darwin, 5 February 1997

HEARING DATES:

15 October 1996

JUDGMENT OF:

MARTIN CJ.

CATCHWORDS:

Appeal and New Trial - Appeal - General principles - Interference with discretion of Court below - Justices appeal - Appeal against conviction and fine - Effect, if any, of change in legislation affecting penalty, after offence but before conviction, upon exercise of Magistrate's discretion - Amendment not in force at time of commission of offences and therefore has no impact upon law to apply and exercise of discretion.

Criminal Law and Procedure - Jurisdiction, practice and procedure - Judgment and punishment - Conviction and fine - Possession of cannabis offences - Amendment to Misuse of Drugs Act 1993 (NT)

allowing for service of infringement notices - Effect, if any, of change in legislation affecting penalty, after offence but before conviction, upon exercise of Magistrate's discretion - Amendment not in force at time of commission of offences and therefore has no impact upon law to apply and exercise of discretion.

Magistrates - Appeals from and control over Magistrates - Conviction and fine - Possession of cannabis offences - Amendment allowing for service of infringement notices - Effect, if any, of change in legislation affecting penalty, after offence but before conviction, upon exercise of Magistrate's discretion - Amendment not in force at time of commission of offences and therefore has no impact upon law to apply and exercise of discretion.

Misuse of Drugs Act 1993 (NT)

Misuse of Drugs Amendment Act 1996 (NT) (No. 4 of 1996)

Sentencing Act 1996 (NT), s8(1)

REPRESENTATION:

Counsel:

Appellant:	Ms J C Gibson
Respondent:	Mr R P Noble

Solicitors:

Appellant:	NTLAC
Respondent:	DPP

Judgment category classification: B

Judgment ID Number: mar97005

Number of pages: 6

mar97005

IN THE SUPREME COURT
OF THE NORTHERN TERRITORY
OF AUSTRALIA
AT DARWIN

No. JA 58

BETWEEN:

JAMIE JOHN GLASSON
Appellant

AND:

ROBERT BRUCE MATERNA
Respondent

No. JA 59 of 1996

BETWEEN

SHANE TAPP
Appellant

AND

ROBERT BRUCE MATERNA
Respondent

CORAM: MARTIN CJ.

REASONS FOR JUDGMENT

(Delivered 5 February 1997)

Each of the appellants was convicted and fined \$300 in the Court of Summary Jurisdiction sitting at Katherine on 16 July 1996 for that on 13 June 1996 they each unlawfully possessed a dangerous drug, namely cannabis, with the additional circumstance of aggregation that the possession was in a public place. The maximum penalty is \$5,000 or two years imprisonment. They had pleaded guilty. By the Notice of Appeal each of them claims that the learned Stipendiary Magistrate failed to take into account considerations provided for in s8 of the *Sentencing Act* 1996 (NT) and failed to reflect a change in legislation affecting the penalty which could be imposed upon offenders for similar offences committed after 1 July 1996. Other grounds of appeal were subsumed under these two propositions.

The appellants were together in a motor car travelling along the Victoria Highway within the town of Katherine when intercepted by the police, acting on information which had been received, and were found to have cannabis, weighing in all 15.4 grams and eleven cannabis seeds in satchels in the car. They were not charged with any offence in relation to the seeds. It seems that they were incidentally in the satchels along with the cannabis. They were arrested and at interview made full confessions as to their possession of the prohibited drug, and as already stated, pleaded guilty when they came before the Court about a month later. The fact that they cooperated with authorities and pleaded guilty does not provide much by way of mitigation, given the circumstances I have already described. At the time of the offence the appellant, Jamie Glasson was 21 years of age with no prior convictions. He had some casual work, earning about \$100 per week which was supplemented

by unemployment benefits. He was paying \$50 a week rent and paying an unspecified amount off an undisclosed debt in relation to the purchase of a motor car which was said to be worth \$4,000. The appellant, Shane Tapp, was 19 years of age and unemployed, but not receiving unemployment benefits. He was said to be living off savings from a previous job. He was actively seeking employment. He had no relevant prior convictions.

It was not suggested that the penalty imposed was excessive, it was conceded to be within the range available to his Worship in the exercise of his discretion. In general terms, young people who are found in possession of cannabis ought to be penalised as a deterrent to them and others. It is the experience of this Court that the desire to obtain cannabis for personal use is quite often the motivation for criminal conduct, and the effect of cannabis inhalation is often put forward as a reason why offences of a variety of kinds are committed.

The substance of the appeal involves consideration of the effect, if any, which an amendment to the *Misuse of Drugs Act* 1993 (NT), which came into operation on 1 July 1996 (No 4 of 1996), after the offence, but before conviction, should have had upon the exercise of his Worship's discretion. That amendment was incorporated into the Act as Part IIB - Infringement Notices. Had that law been in effect at the time that these offences were committed, it would have been open to a policeman, in the exercise of his or her discretion, to serve on each of the appellant's an Infringement Notice in accordance with ss20B and 20C of the Act. In those circumstances where,

before the expiration of the period specified in the notice, 28 days from its date, the fixed penalty, \$200, is paid at a place specified in the notice then the offender is deemed to have expiated the offence by payment of the penalty (s20E). The procedure is discretionary, and nothing in that part of the Act prejudices or affects the institution or prosecution of proceedings, or limits the penalty that may be imposed by a Court, in relation to an offence (s20F). That procedure may be utilised where the amount of the drug in possession of the person involved, if it be cannabis plant material, as described in Sch3 of the Act, is 50 grams. If an offender accepts the opportunity presented to him or her, upon being served with an Infringement Notice, there will undoubtedly be a significant saving in cost and inconvenience, both to the community and the offender compared with the procedure on prosecution before a Court.

The argument on appeal is that the benefits potentially available to other like offenders after 1 July 1996, if the new procedure were adopted, ought to be extended to these appellants. That would have a significant result in that they would not have suffered a conviction being recorded. Less significantly, not urged as strongly, was the contention that the appropriate penalty should have been \$200 and not \$300. This is not the type of case envisaged in s121(2) of the *Sentencing Act* providing that where an act reduces the penalty or the maximum or minimum penalty for an offence, the reduction extends to an offence committed before the commencement of the provision effecting the reduction for which no penalty had been imposed at that commencement. The penalty for the offence under s9 of the *Misuse of Drugs Act* remains unchanged. The penalty of \$200 is for the purposes of Part IIB only, (s20D).

It is a separate and distinct penalty payable only in the circumstances set out in that Part. That Part was not in operation at the time the offence was committed by each of the appellants.

The issue is whether his Worship ought, in the exercise of his discretion, to have taken into account the potential operation of Part IIB and applied like considerations to those appellants. The argument was that in the circumstances his Worship ought to have proceeded to order the appellant's to pay a fine or release them on a bond without recording a conviction, see ss7, 8 and 11 of the *Sentencing Act*. They should have been dealt with by giving them the same opportunity that others may have received after 1 July. In deciding whether or not to record a conviction, a Court shall have regard to the circumstances of the case including the various specific matters referred to in s8(1). Relevant to this case, they would be the character, antecedents and age of each of the appellants and the extent to which the offence was of a trivial nature. There was nothing else about the circumstances of the case which would attract the operation of the discretion not to record a conviction. There was nothing in the subjective circumstances of the case which his Worship felt should attract the discretion, and I am not prepared to hold that he was wrong in that regard. It was put that the offence could rightly be regarded as being trivial, because shortly after the time the offences were committed the parliament enacted Part IIB. It was put, as I understand it, that a change in attitude by the community was reflected through the enactment of that part, possession of amounts of cannabis less than 50 grams could be dealt with without a conviction being recorded and by the imposition of a flat

penalty regardless of the amount found in possession of the offender within the prescribed limit. However, as already indicated, there was more to the purpose of enacting that part of the Act than that.

Part IIB was not in force at the time the offences were committed, it did not change the law in relation to the offences as at the date they were committed. It was rightly regarded by his Worship as having no impact upon the law that he should apply and the discretion which he should exercise. I would not interfere with his Worship's approach to the matter as it has not been shown that he erred in any way which would permit this Court on appeal to interfere with the exercise of that discretion.

The appeals are dismissed.
