Clarke v The Queen [2009] NTCCA 5

PARTIES:	**PETER ALEXANDER CLARKE**
	v
	THE QUEEN
TITLE OF COURT:	COURT OF CRIMINAL APPEAL OF THE NORTHERN TERRITORY
JURISDICTION:	CRIMINAL APPEAL FROM THE SUPREME COURT EXERCISING TERRITORY JURISDICTION
FILE NOS:	CCA14 of 2008 (20806830, 20806831, 20809368)
DELIVERED:	20 May 2009
HEARING DATES:	23 April 2009
JUDGMENT OF:	THOMAS, RILEY AND SOUTHWOOD JJ
APPEALED FROM:	MARTIN (BR) CJ

CATCHWORDS:

CRIMINAL LAW – DRUG OFFENCES – APPEAL – Criminal appeal against sentence - clear difference between appellant and co-accused – no justifiable sense of grievance in different sentences – sufficient regard had by learned sentencing judge to prospects of rehabilitation - sentences not at the highest level – sentence not manifestly excessive on first indictment – sentence manifestly excessive on second indictment – appeal allowed – re-sentence

Lowe v The Queen (1984) 154 CLR 606; *Dinsdale v The Queen* (2000) 202 CLR 321, followed

Cransen v The King (1936) 55 CLR 509; *Daniels v The Queen* [2007] 20 NTLR 147; *Hedgecock v The Queen* [2008] NTCCA 1; *R v Woods* [2009] NTCCA 2, referred to

REPRESENTATION:

Counsel:

Appellant:	I Read
Respondent:	N Rogers

Solicitors:

Appellant:	Northern Territory Legal Aid Commission
Respondent:	Office of the Director of Public Prosecutions

Judgment category classification:	B
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IN THE COURT OF CRIMINAL APPEAL
OF THE NORTHERN TERRITORY
OF AUSTRALIA
AT DARWIN

Clarke v The Queen [2009] NTCCA 5
No. CCA 14 of 2008 (20806830, 20806831, 20809368)

BETWEEN:

PETER ALEXANDER CLARKE
Appellant

AND:

THE QUEEN
Respondent

CORAM: THOMAS, RILEY AND SOUTHWOOD JJ

REASONS FOR JUDGMENT

(Delivered 20 May 2009)

THOMAS J:

[1] I have had the benefit of reading the draft reasons for judgment prepared by Riley J and the draft reasons prepared by Southwood J.

[2] I agree that for the reasons they have each expressed, grounds 2, 3 and 4 of this appeal should be dismissed.

[3] I agree that ground 1 "manifestly excessive" of this appeal should be allowed and the appellant re-sentenced.

[4] I agree with the restructured sentence as proposed by Riley J.

RILEY J:

[5] The appellant has been granted leave to appeal against the sentence imposed upon him on 16 November 2008. He was sentenced in relation to offences contained in three separate indictments. The offending occurred in late 2007 and early 2008 and involved the possession and supply of cannabis contrary to the provisions of the *Misuse of Drugs Act*. The appellant pleaded guilty and was sentenced to imprisonment for a period of seven years with a non-parole period of three years and six months.

The first indictment

[6] On the first indictment (file 20806831) the appellant, along with his co-accused Ainsleigh Dowling and Lachlan Thompson, pleaded guilty to having unlawfully taken part in the supply of 1792 grams of cannabis plant material. The maximum penalty for the offence is imprisonment for 14 years.

[7] The circumstances of the offending were not in dispute. In 2007 the appellant had been the subject of a covert drug investigation. The investigation revealed a telephone conversation between the appellant and an identified supplier of illegal drugs in South Australia. Later, the appellant and his co-offender, Mr Thompson, had a telephone conversation regarding the importation of cannabis into Alice Springs from South Australia. The appellant then made arrangements with the person in South Australia for the supply of five pounds of cannabis with the expectation that

Mr Thompson would receive one pound, Mr Dowling two pounds and the appellant two pounds. Mr Thompson made arrangements with Mr Dowling for Mr Dowling to be the courier. In February 2008 Mr Dowling was apprehended travelling towards Alice Springs from South Australia and a search of his vehicle revealed 1792 grams of cannabis. The street value of the cannabis was said to be between $25,000 and $26,000 and, if sold in gram lots, $45,000.

[8] In relation to that offence the appellant was sentenced to imprisonment for three years and nine months, Mr Dowling was sentenced to imprisonment for two years and three months suspended immediately and Mr Thompson was sentenced to imprisonment for two years and 10 months suspended after six months.

The second indictment

[9] On the second indictment (file 20809368) the appellant pleaded guilty to two offences of unlawful supply of cannabis to a child (a girl aged 17 years) and one count of unlawful supply of cannabis to another girl who was aged 18 years. The maximum penalties for those offences were imprisonment for 14 years and imprisonment for five years respectively.

[10] Notwithstanding that the supply was constituted by a greater number of separate instances of supply the appellant was only charged with three separate counts of supplying a dangerous drug. This was because the

separate instances of supply formed part of a series of offences of the same or a similar character - see section 23(6) *Misuse of Drugs Act*.

[11] The child was introduced to the appellant through a family member. She let it be known that she was looking for cannabis and he agreed to sell some to her. Thereafter, he supplied her with cannabis at the rate of two deal bags per week for the period from 17 December 2007 to 10 January 2008. Those facts constitute count 1 on the second indictment.

[12] In relation to count 2, on 21 January 2008 the child was in Tennant Creek where the appellant communicated with her, offering to provide her with cannabis. He arranged for another person in Tennant Creek to supply her with cannabis and he directed her to that particular person. The child purchased a deal bag of cannabis. Later, the child again contacted the appellant seeking more cannabis and the appellant himself drove from Alice Springs to Tennant Creek to see her and supply her with cannabis. On 25 January 2008 the appellant provided the child with one gram of cannabis for $25. Thereafter, on each of 29 January, 31 January, 7 February, 9 February and 13 February 2008 at Alice Springs the appellant supplied the child with a gram of cannabis at a cost of $25 per gram.

[13] On 21 February 2008 the appellant again contacted the child and she again asked if he had any cannabis. He later met her and gave her a “pinchful” of loose cannabis.

[14] The offences of supply to the 18-year-old commenced on 17 February 2008 when the appellant communicated with the child and she asked him if he had any cannabis. He stated that he would take the child and her 18 year old friend to smoke cannabis and he invited her to bring "her equipment" for that purpose. The appellant later drove the two girls to a location off the Ross Highway near Alice Springs and gave them cannabis to smoke.

[15] The final occasion on which he supplied cannabis to the child and to her friend occurred on 23 February 2008 when he contacted the friend. He later attended at their residence and provided a “pinchful” of cannabis in a bowl to both the child and her friend.

[16] In summary, the appellant supplied the child with approximately two deal bags of cannabis per week over the period from 17 December 2007 to 10 January 2008 and he also supplied her with cannabis on 11 other occasions in the period of almost 5 weeks from 21 January 2008 to 23 February 2008.

[17] In relation to count 3 on the second indictment, being the offence of supplying cannabis to the 18-year-old friend, the offending consisted of cannabis being supplied to her on four occasions. Two of those occasions have been described above and the other two consisted of the appellant supplying her with two deal bags of cannabis for $25 each on two separate occasions.

[18] The appellant was sentenced to an aggregate term of imprisonment of four years and six months for the two counts of supplying cannabis to the child and it was ordered that two years and three months of those sentences be served cumulatively upon the sentence in respect of the first indictment. On the third count of supplying cannabis to the 18-year-old he was sentenced to imprisonment for two years and three months with one year of that sentence to be served cumulatively upon the sentence of imprisonment imposed in relation to the supply of cannabis to the child.

The third indictment

[19] Under the third indictment (file 20806830) the appellant pleaded guilty to unlawfully taking part in the supply of cannabis to unknown persons and having possessed cannabis material. In February 2008 the appellant purchased an ounce bag of cannabis (28g) and from that he provided a "nickel bag" of cannabis to an unknown person. On 5 March 2008 his premises were searched and a total of 14 grams of cannabis plant material was located. There was no penalty imposed for the offence of possession of cannabis material and a concurrent sentence of imprisonment of four months was imposed for supplying cannabis to an unknown person.

The grounds of appeal

[20] The appellant appeals against the sentence on four grounds, namely:

(a) the total effective sentence, and the individual sentences were, in all the circumstances of the offences and the offender, manifestly excessive;

(b) the sentence imposed in relation to the joint indictment was manifestly disparate from the sentences imposed on his co-offenders;

(c) the learned sentencing judge failed to have sufficient regard to the prospects for rehabilitation of the appellant; and

(d) the learned sentencing judge erred in finding the culpability of the appellant in relation to one count of supply as being "at the highest level" having regard to all the circumstances of the offending and the victims.

[21] It is convenient to address grounds 2 to 4 before addressing the first and principal ground that the sentences were manifestly excessive.

Ground 2 - Disparity with the sentences imposed on co-offenders

[22] The sentence imposed upon the appellant for his involvement in the supply of cannabis plant material imported from South Australia was imprisonment for a period of three years and nine months. The sentences imposed on his co-offenders were less, being a period of two years and three months fully suspended for Ainsleigh Dowling and a period of two years and 10 months suspended after six months in respect of Lachlan Thompson.

[23] The appellant acknowledged that there were differences between the appellant and his co-offenders. His Honour determined that the role of Mr Dowling was on the periphery of events and observed that he carried out his part under the instruction of the others. There was no challenge to the way in which Mr Dowling's involvement was characterised and no submission that he should not have been dealt with differently from his co-offenders.

[24] The focus of the submissions related to a consideration of the involvement and culpability of the appellant in relation to the offending when compared with that of Mr Thompson. It was submitted on behalf of the appellant that the differences between the two offenders were not sufficient to justify the significant difference in the sentences imposed. It was argued that they were jointly charged with the same transaction and although there was some difference in their roles and their motivations the learned sentencing judge failed to apply principles of parity with regard to offenders of relatively like antecedents.

[25] The appellant acknowledges that, of the approximately four pounds of cannabis seized, one pound was intended to be received by Mr Dowling, one pound by Mr Thompson and two pounds by the appellant. The learned sentencing judge indicated that, in relation to the organisational aspects of the importation, he regarded the culpability of the appellant as similar to the culpability of Mr Thompson. The learned sentencing judge noted that it might be said that the culpability of the appellant was a little greater

because he made the arrangements with the supplier in South Australia but he went on to say:

> "...but in substance, you and Thompson together organised the enterprise and Thompson arranged the courier. Overall there is little difference between you in terms of your culpability (in) the organisation of the criminal enterprise."

[26] His Honour distinguished between the co-offenders on the basis of the intended use of the cannabis. In relation to Mr Thompson he accepted that the cannabis was for his own use although he had in the past given some cannabis away and sold some to recover his costs. There was no suggestion that Mr Thompson would have sought to profit from the exercise. In relation to the appellant his Honour observed that he intended to supply people known to him in accordance with his practice over a number of years of selling part of what he purchased in order to finance his habit and also to make a profit. There was an element of greed involved. His Honour went on to note that it was not "a large commercial exercise".

[27] There was a solid basis for reaching the conclusions drawn by his Honour regarding the likely approach of the appellant to disposing of the cannabis. Support for the conclusions is to be found in the nature of the other charges to which the appellant also pleaded guilty. Those charges revealed some consumption of cannabis by the appellant and the sale of the balance to others, including young people, at a profit. There was no such evidence available in relation to Mr Thompson. There was only speculation that some

of the cannabis intended to be retained by him may have been given away or sold to recover some of his cost.

[28] There were other bases upon which a distinction could be drawn between the appellant and Mr Thompson. The most obvious and significant difference was the amount of cannabis to be received by the offender. In the case of the appellant, he was to receive twice the quantity of cannabis that was to be received by Mr Thompson. This, presumably, involved him in double the financial commitment to the project and also would lead to the introduction through him of a significantly greater quantity of cannabis into the community. Given the unchallenged conclusions drawn by his Honour as to the expected disposal of cannabis by the appellant the greater quantity received by him also meant he had the potential for making a greater profit.

[29] Further, at the time of the importation of the cannabis from South Australia, the appellant was already involved in the offending referred to in the second indictment. He had been supplying cannabis to others at least since 17 December 2007. He was guilty of ongoing conduct of a criminal nature whilst his co-offenders were being dealt with for a single offence.

[30] In addition, although not nearly so significant, the appellant had a criminal history, albeit quite old, and Mr Thompson had no criminal history at all.

[31] In other respects there were similarities between the co-offenders. First, as I have noted, his Honour regarded them to be similarly culpable in relation to the organisational aspects of the exercise. Subsequent to the offending

they had each undergone a process of rehabilitation and both were abstinent at the time of sentencing. They each had good prospects for rehabilitation although there was some concern regarding Mr Thompson in relation to whom his Honour said that he "had not been entirely frank with the court." The learned judge was not persuaded that Mr Thompson was "truly sorry" for his involvement in the criminal enterprise.

[32] An appellate court will only intervene where the disparity between co-offenders is such as to give rise to a justifiable sense of grievance.[1] In my opinion, there was a clear basis for distinguishing between the appellant and his co-offender Mr Thompson. Given the significant identified differences between them I do not regard the difference in sentences as being such as to give rise to a justifiable sense of grievance.

[33] I would dismiss this ground of appeal.

Ground 3 - Prospects for rehabilitation

[34] It was accepted by the learned sentencing judge that the appellant had successfully completed the CREDIT programme by undertaking a 12 week residential rehabilitation placement with the Drug and Alcohol Services Association and had remained drug-free since that time. His Honour accepted that the appellant had "taken significant steps towards (his) rehabilitation and (had) good prospects of fully rehabilitating". In express recognition of the appellant's efforts at rehabilitation his Honour indicated

[1] *Lowe v The Queen* (1984) 154 CLR 606 at 623.

that he fixed a non-parole period shorter than the non-parole period he would otherwise have fixed. He fixed the minimum non-parole period which could have been fixed pursuant to s 54(1) of the *Sentencing Act*.

[35] The appellant submitted that it was not apparent from the sentencing remarks that the learned sentencing judge had regard to the efforts of the appellant towards rehabilitation in determining the total effective head sentence. It was submitted that this was an error as such prospects are matters to be taken into account in determining both the head sentence and the minimum release date.[2]

[36] A fair reading of the sentencing remarks of his Honour makes it clear that he took the appellant's prospects for rehabilitation into account when determining the head sentence and also when considering the minimum release date. Immediately before imposing sentence his Honour observed that he accepted that the appellant had taken significant steps towards his rehabilitation and that he had good prospects of fully rehabilitating. Notwithstanding those matters, his Honour concluded there needed to be a penalty which would act as a personal deterrent. Later, when considering the minimum term to be served and the fixing of a non-parole period, his Honour said he recognized the appellant's efforts at rehabilitation and fixed a non-parole parole period that was shorter than the non-parole period he would otherwise have fixed.

[2] *Dinsdale v The Queen* (2000) 202 CLR 321.

[37] This ground of appeal is without foundation.

Ground 4 - Characterisation of the offending as "at the highest level"

[38] In the course of his sentencing remarks the learned judge addressed the appellant saying:

> So Mr Clarke, I must deal with you for your criminal conduct in the joint criminal enterprise with Dowling and Thompson and also for your individual offending involving the child, her friend and unknown persons. I must look at your criminal conduct in each of the offences, and also look to the totality of your criminal conduct in order to arrive at an overall sentence which is proportionate to the totality of your criminal conduct.
>
> As to the supply of drugs to the child and her 18 year old friend, your culpability is at the highest level. You took advantage of the relative youth of the child and her friend and their desire for cannabis. Over a significant period you encouraged them by readily supplying cannabis, at times without charge, and you did so for financial gain.

[39] It was submitted on behalf of the appellant that these observations amounted to error because such a finding "fails to recognize the many other circumstances which would elevate the moral culpability". It was submitted that the circumstances of the offending "tends toward the middle to lower end of the spectrum". In those circumstances, it was submitted, the finding of the learned sentencing judge was not reasonably open on the evidence and was a finding that must have significantly increased the penalty upon the second indictment.

[40] The submission of the appellant proceeds on a misunderstanding of what was said by the learned sentencing judge. His Honour did not say that the

offences were within the most serious class of offences of that kind. Taken in the context of the remarks in the first paragraph his Honour made the uncontroversial observation that, considered in light of the whole of the offending of the appellant, his culpability in relation to the supply of drugs to the young women was "at the highest level". The comparison was with the appellant's own offending not with other offences within that class. This interpretation of the sentencing remarks is confirmed by reference to the sentences imposed in respect of that offending. The maximum penalty for each of the two offences of supply to the child was imprisonment for 14 years and the maximum penalty for the offence of supply to the 18-year-old was imprisonment for five years. In relation to the supply to the child the learned sentencing judge imposed an aggregate term of imprisonment of four years and six months and in relation to the supply to the 18-year-old he imposed a term of imprisonment of two years and six months. Those sentences do not reflect penalties imposed at the top of the range.

[41] This ground of appeal is not made out.

Ground 1 - Manifest excess

[42] The principles applicable to an appeal on this ground are well known. It is fundamental that the exercise of the sentencing discretion is not disturbed on appeal unless error in that exercise is shown. The presumption is that there is no error. An appellate court does not interfere with the sentence imposed merely because it is of the view that the sentence is excessive. It interferes

only if it be shown that the sentencing judge was in error in acting on a wrong principle or in misunderstanding or wrongly assessing some salient feature of the evidence. The error may appear in what the sentencing judge said in the proceedings or the sentence itself may be so excessive as to manifest such error. In relying upon this ground it is incumbent upon the appellant to show that the sentence was not just excessive, but manifestly so. The appellant must show that the sentence was clearly and obviously, and not just arguably, excessive.[3]

[43] The submission on behalf of the appellant was that the total sentence was manifestly excessive and that the individual sentences in relation to the offences in the first and second indictments were also manifestly excessive. It was submitted that, despite some prior criminal history, there was evidence that the appellant had been a "good member of the Alice Springs community, a loyal and good member of his family who had been through some considerable hardship and family tragedy." It was submitted that his circumstances explained his decline into cannabis addiction and his impaired decision-making "whilst under the grip of marijuana dependence".

[44] The learned sentencing judge correctly characterised the offending as very serious. He noted that a large quantity of cannabis had been brought into Alice Springs and to some extent would have been supplied to users of cannabis in or around Alice Springs.

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[3] *R v Woods* [2009] NTCCA 2; *Cransen v The King* (1936) 55 CLR 509; *Hedgecock v The Queen* [2008] NTCCA 1.

[45] The seriousness of the offending was also reflected in other aspects of the matter. As the respondent pointed out the appellant was a mature person (51 years) who supplied drugs to young people with the consequent risk of harm to themselves and the community. He encouraged the use of cannabis by those young people by making it readily available to them. On one occasion he arranged for another person to supply cannabis whilst the child was in Tennant Creek and, on another, the appellant went so far as to travel from Alice Springs to Tennant Creek in order to supply the child with cannabis. On every occasion that the child or her friend requested cannabis the appellant ensured it was available to them. On two occasions he consumed cannabis with them. His actions went well beyond the mere supply of cannabis as a cold commercial transaction. The offending in relation to the child carried on over a period of weeks and involved numerous incidents of supply. The offending only came to an end when the police intervened.

[46] The courts in the Northern Territory have expressed ongoing concern as to the prevalence of offences involving cannabis and have reflected on the harm that it causes to many in the community.[4] Considerations of general deterrence must weigh heavily in determining an appropriate sentence in a case such as the present.

[4] *Daniels v The Queen* (2007) 20 NTLR 147; *Hedgecock v The Queen* [2008] NTCCA 1.

[47] I am unable to accept the submission that the sentence in respect of the first indictment, being the supply of 1792 grams of cannabis, was manifestly excessive.

[48] In relation count 3 on the second indictment, the offence of supplying cannabis to the 18-year-old, I note that there were four instances of supply over the period from 17 February 2008 to 23 February 2008. On three of the four occasions the supply was to the 18-year-old in conjunction with the child. There is a degree of overlap between this offending and the offending relating to the child. The amounts of cannabis involved in the supply were small. On two occasions she was supplied with one gram of cannabis at a cost of $25 per gram, on one occasion she and the child were supplied with a "pinchful" of cannabis and, on the fourth occasion, the appellant smoked cannabis with the 18-year-old and the child. The offending occurred over the period of a week.

[49] The maximum penalty for the offence is imprisonment for five years. In my view the offending, whilst serious, is towards the lower end of the scale of seriousness for such offending. The learned sentencing judge identified a starting point of imprisonment for three years in respect of this offending and reduced the sentence to imprisonment for a period of two years and three months to reflect the credit due for the plea of guilty. In my opinion, and in all the circumstances, a starting point of three years leading to a sentence of imprisonment for a period of two years and three months in

relation to this offending is manifestly excessive. The appeal should be allowed in relation to this sentence and the sentence should be set aside.

[50] In relation to the supply to the child the offending was of a more serious nature. The offending involved the supply of cannabis to a child (albeit a 17-year-old) and the applicable maximum penalty was imprisonment for 14 years. The offending conduct took place over a period of weeks between 17 December 2007 and 23 February 2008 and there were numerous instances of supply during that period.

[51] On the other hand, the amounts of cannabis involved were small and, likewise, the amount of money which changed hands was small. The child was only just under the age of 18 years. She was already a user of cannabis and she had her own equipment for that purpose. It was not in dispute that it was the child who initially requested the appellant to supply her with cannabis, although he willingly did so. This was not a case of an offender introducing cannabis to a young child and corrupting that child. The child was not an impressionable child of tender years. She was not pressured or seduced into using cannabis. There was no evidence leading to a finding that the supply of cannabis led to sexual offending against the child as is often the case. The supply was limited to the one child and was not to a range of children. In my opinion, the level of offending was, as the appellant submits, towards the middle to lower end of the spectrum.

[52] This Court was supplied with a table of sentences relating to offences of supplying cannabis and other drugs to children. There are very few convictions for offences of this type in the Northern Territory. It was submitted, and it is the case, that there is no tariff. The matters drawn to the attention of the Court revealed that there has been no sentence in excess of three years imprisonment previously imposed in relation to such offending in this jurisdiction. That observation relates to matters which include circumstances where the drug supply was associated with the commission of sexual offences by the offender against the child victim.

[53] It is my opinion that the sentence of four years and six months imprisonment in relation to the offending in this case was manifestly excessive. In my view the appeal should be allowed in relation to the aggregate sentence imposed in respect of counts 1 and 2 on the second indictment. The sentence should be set aside.

Re-sentence

[54] In re-sentencing the appellant I would substitute an aggregate sentence of imprisonment of three years in relation to counts 1 and 2 on the second indictment. I would direct that 15 months of that sentence be served cumulatively upon the sentence imposed in respect of the offence of supply cannabis contained in the first indictment, being the joint indictment.

[55] In relation to count 3 on the second indictment I would impose a sentence of imprisonment for 12 months. There is, in my opinion, a substantial overlap

between the offending involving the supply of cannabis to the 18-year-old and the offending involving the supply of cannabis to the child. A substantial degree of concurrency is warranted. It is also necessary to consider the totality principle and in light of those considerations I would direct that the sentence be served concurrently with the aggregate sentence of imprisonment for three years imposed in relation to counts 1 and 2.

[56] There is no call to interfere with the sentence in relation to the offences in the third indictment which sentence was directed to be served concurrently with the sentence in relation to the first indictment. The total sentence would, therefore, be imprisonment for a period of five years. I would set a non-parole period of two years and six months.

SOUTHWOOD J:

[57] The principal issue in this appeal is: were the sentences of four years and six months imprisonment for the two counts of supplying cannabis to a child, two years and three months imprisonment for the single count of supplying cannabis to an 18 year old, and the total sentence of imprisonment of seven years with a non-parole period of three years and six months manifestly excessive? In my opinion, each of these sentences was clearly and obviously excessive[5] and the first ground of appeal should succeed.

[58] As to the two counts of supplying cannabis to a child, the learned sentencing judge correctly characterised the supply of cannabis to a child as serious

[5] *Cransen v The King* (1936) 55 CLR 509.

offending. The maximum penalty for such offending is 14 years imprisonment. Cannabis is a dangerous drug which can cause considerable harm to young people and there were numerous instances of supply between 17 December 2007 and 23 February 2008. However, there was only a small amount of cannabis involved. The child was 17 years of age, she was already a user of the drug and it was she who initially approached the appellant to supply her with cannabis. The level of the appellant's dealing in cannabis was towards the lower end of the range of such offending. The offender did not have an extensive criminal record and he has taken significant steps to rehabilitate himself.

[59] As to the count of supplying cannabis to the 18 year old, the maximum penalty for such an offence is imprisonment for five years. There were four instances of supply over a short period of time and only a small amount of cannabis was supplied. The level of the appellant's offending was towards the lower range of such offending.

[60] The total sentence of seven years imprisonment with a non-parole period of three years and six months was disproportionate to the whole of the appellant's criminal conduct. Such terms of imprisonment have usually been imposed for the supply of very much greater quantities of cannabis. The total sentence of imprisonment that was imposed by the learned sentencing judge reflects the manifestly excessive sentences that were imposed for the three counts on the second indictment and does not give sufficient weight to the significant steps that the appellant had taken towards

rehabilitating himself including his successful completion of the CREDIT (NT) program. The learned sentencing judge found that the appellant had good prospects of rehabilitation.

The sentence imposed for the joint count on the first indictment and grounds 2, 3 and 4 of the Appeal

[61] I agree with Riley J that the sentence imposed for the count of supplying 1792 grams of cannabis plant material which was charged on the first indictment was not manifestly excessive and grounds 2, 3 and 4 of the appeal should be dismissed. I add the following further remarks.

[62] The sentence imposed for the count of supplying 1792 grams of cannabis, which was charged against the appellant and his two co-offenders on the first indictment, duly reflected the weight which should be given to general deterrence in cases involving a joint enterprise, the importation into the Territory and supply of a commercial quantity of cannabis, and a profit motive for the offending. Such crimes are prevalent and the community must be protected. The supply of cannabis causes considerable harm to members of the community.

[63] There were justifiable grounds for the disparity in the sentences imposed on the appellant and his co-offenders, Thompson and Dowling. The appellant was to receive double the amount of cannabis which his co-offenders were going to receive, he made a greater financial commitment to the venture, he made the arrangements with the supplier in South Australia, he intended to

supply to people known to him in accordance with his practice over a number of years of selling part of what he purchased in order to finance his use of the drug and also to make a profit, and he was already involved in the supply of cannabis to others for profit. The appellant's offending was of a significantly different quality to his co-offenders.

[64] While the courts have made it plain that offenders who succeed in becoming drug free through the CREDIT (NT) program will usually receive a high degree of leniency, this must be balanced against the need for general deterrence, and, also, in appropriate cases, for specific deterrence. In cases involving the supply and importation of a significant commercial amount of cannabis into the Territory, the supply of cannabis to children and the supply of cannabis for profit, the need for general deterrence may be such that an actual prison sentence may be expected, even if the offender might otherwise have personal circumstances warranting considerable leniency.

Re-sentence

[65] As to re-sentencing the appellant, I agree with the sentences of imprisonment proposed by Riley J.
