

Date: 20020507
Docket: X23619-2
Registry: Duncan

IN THE SUPREME COURT OF BRITISH COLUMBIA

Oral Reasons for Judgment
The Honourable Madam Justice Downs
May 7, 2002

HER MAJESTY THE QUEEN

AGAINST

REGAN PETER HEINRICHS

Counsel for the Crown: M. Coleman
Counsel for the Defendant: S. Theobald

[1] THE COURT: Mr. Heinrichs, I am going to tell you so you are not kept in suspense that I am going to grant the absolute discharge sought by your counsel. If you will be kind enough to have a seat and be comfortable for a minute wherever you choose – you do not have to get in there.

[2] THE DEFENDANT: Okay.

[3] THE COURT: I am going to deliver the reasons why I have reached this conclusion.

[4] Regan Peter Heinrichs was charged that he did between the 4th day of December 2000 and the 4th day of January 2001, at or near Crofton in the Province of British Columbia, did unlawfully produce a controlled substance, to wit: cannabis marihuana contrary to s. 7(1) of the *Controlled Drugs and Substances Act*. Mr. Heinrichs pled guilty to this offence.

[5] As a result of a warrant executed at the residence of Mr. Heinrichs, a marihuana grow operation was found in the basement of his residence. There were a significant number of plants previously. There was 14.09 dried ounces of marihuana there which had been taken from, I understand, 42 12-inch pots where the stumps of the plants were still remaining at the time of the execution of the warrant. There were 7 mature plants and 52 immature plants. The cultivation was with hydroponics techniques. There was significant equipment to support this growing operation. The expert report tendered by the Crown indicates a fairly significant potential production from the plants grown by Mr. Heinrichs.

[6] Mr. Heinrichs is 37 years of age. He has the care and custody of two children, one his stepchild and one a younger child which is his natural child. He receives no child support. He has grade 12 and one year of college and earned an industrial first aid ticket that has since lapsed. When he

was employed, he was employed at occupations requiring a considerable amount of physical labour. This was difficult for him. Mr. Heinrichs was born with a condition leading to serious spinal problems. He also suffers from osteoarthritis. As a result, for a significant amount of time, Mr. Heinrichs has experienced considerable pain and previously had a serious problem with depression. He has been required to take many medications which cause serious detrimental side effects. Of interest is the fact – and I have medical evidence filed with respect to this matter, including clinical records of the accused dating back some years – Mr. Heinrichs, in dealing with his medical problems, was, as I said, taking significant quantities of medications both for pain and non-steroidal anti-inflammatories.

[7] In 1999 he advised his doctor that he was using marihuana, consuming it at that point in various bakery products, and that greatly reduced his needs for medications. At that time, that is back in late 1999, Mr. Heinrichs discussed applying for an exemption under the *Controlled Drugs and Substances Act* with his doctor, and his doctor was supportive of his intention. Indeed, he did make application for an exemption under that Act. He was refused that exemption for reasons not made clear in the evidence.

[8] I should note that Mr. Heinrichs is in receipt of a Level 2 disability pension and supports himself as well as the two children on \$1,165 per month. After having his application for an exemption refused, which I said it is not clear on the evidence why it has been refused, he has since reapplied for an exemption again with his doctor's support, but he awaits a reply.

[9] I have reviewed all of the materials provided in support of the application for a discharge by counsel for Mr. Heinrichs. I make particular note of a letter which Mr. Heinrichs prepared and is contained in a volume called "Material for Sentencing," filed on May 6, 2002. I direct that this volume of documents be marked as an exhibit in this proceeding in case the matter should proceed further, and the record is fully before the Court of Appeal with respect to the medical condition of Mr. Heinrichs. Mr. Heinrichs himself prepared a seven-page letter setting out his history and background, which is found at Tab 13 of this document which will be marked as Exhibit 3 on Sentence.

EXHIBIT 3: Booklet entitled Material for Sentencing

[10] I accept what is said by Mr. Heinrichs and is set out in that letter. I accept that he had an extremely difficult time with his medical condition and he has suffered from serious

pain and problems for a number of years. I accept that he found that marihuana assisted his condition and that he attempted to secure a legal means supported by his physician of obtaining it. He had limited income and even obtaining marihuana from the local compassion society, which requires a doctor's letter in order to purchase marihuana from that society, even with that assistance he was unable to afford the purchase of marihuana, given the quantities of this medication required by him. As a result, he did grow marihuana and, as I indicated, there were considerable plants growing.

[11] However, I also accept Mr. Heinrichs' position set out in the letter, which I have mentioned, that he had no intention of growing marihuana for profit, but he intended to either keep any excess crop for his own use should he have times between being able to harvest, or alternatively that he was going to donate the excess product which he grew to the Vancouver Island Compassion Society.

[12] I have considered the numerous authorities to which I have been referred, and I will not mention all of them, but I have found of great assistance the following cases provided by counsel for Mr. Heinrichs: *R. v. Czolowski*, 14 July 1998, unreported, Vancouver Registry No. 23347-01D; *R. v. Davis*, September 15, 1999, unreported, Vancouver Registry No. C40172-

01-D; R. v. Gionet, December 3, 1999, unreported, Surrey Registry No. 9450501; R. v. Cruise, May 3, 2000, unreported, Nakusp Registry No. 3189C; R. v. Lieph, July 17, 1989, unreported, Victoria Registry No. V00939, a judgment by the British Columbia Court of Appeal; R. v. Richardson, January 28, 2000, Unreported, North Vancouver Registry No. 33558; R. v. Slykerman, March 1, 2000, unreported, Vancouver Registry No. 102370-10-T; R. v. Small, July 27, 2000, unreported, Vancouver Registry No. CC991259; and the Court of Appeal decision in R. v. Small, February 9, 2001, [2001] B.C.J. No. 248. I have long also been familiar with the decision of our court in R. v. Fallowfield (1973), 13 C.C.C. (2d) 450.

[13] In the circumstances of this case and this offender, I am satisfied it is in the best interests of the accused that he should be discharged and that discharge is not contrary to the public interest. On the basis of the materials before me, it would appear that Mr. Heinrichs likely was entitled to an exemption allowing him to use marihuana before the commission of the offence and likely continues to be so entitled. I therefore grant the absolute discharge sought by him through his counsel.

[14] With respect to forfeiture of items seized, Mr. Heinrichs' exemption application is still being processed. I

direct that the items seized pursuant to the search warrant, those items used for the purpose of producing marihuana, be held for a period of one year from today's date. If Mr. Heinrichs receives that exemption within that period of time, then such items seized as are permissible to him to have pursuant to the terms of his exemption shall be returned to him. If the exemption is not received or the exemption does not cover the items seized, then they shall be forfeited.

[15] I am required by the *Criminal Code of Canada* and specifically s. 109 of the *Criminal Code* to effect a mandatory requirement that Mr. Heinrichs not possess firearms, ammunition, explosive devices or like items for a period of 10 years from today's date. I understand that he has none of these items, but I am required to make this order in any event. Should he have any of those items or possess any of those items, they must be surrendered within 48 hours of this time.

Downs, J. (retired)
by [Signature]
12/15

The Honourable Madam Justice Downs