

Citation:

Date:

File No: 26424

Registry: Campbell River

IN THE PROVINCIAL COURT OF BRITISH COLUMBIA

REGINA

v.

KENNETH CHARLES REYKLIN



REASONS FOR JUDGMENT
OF THE
HONOURABLE JUDGE SAUNDERSON

Counsel for the Crown:

Kathryn J. Dirom

Counsel for the Defendant:

Wilfred K. Williams

Place of Hearing:

Campbell River, B.C.

Date of Hearing:

September 7, 2001

Date of Judgment:

September 21, 2001

[1] The defendant is charged with possession of two ounces of marijuana on July 16, 2000 in Campbell River. He admits the Crown's case, but asks the court for a stay of proceedings under s. 24(1) of the *Canadian Charter of Rights and Freedoms* on the basis that his possession of the narcotic was for medical purposes, and that to convict him would infringe or deny his rights under s. 7 of the Charter. The sections are in these words:

7. Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

24(1) Anyone whose rights or freedoms, as guaranteed by this Charter, have been infringed or denied may apply to a court of competent jurisdiction to obtain such remedy as the court considers appropriate and just in the circumstances.

[2] The defendant is a man of middle years who, since 1993, has suffered from a condition known as irritable bowel syndrome (IBS). Symptoms experienced by him have included stomach pain, constipation, diarrhea, bloody stools, nausea, nervousness and loss of appetite. The pain and nausea are daily occurrences. Two of the attacks of pain have resulted in hospitalization on an emergency basis. He has consulted four physicians, including a specialist in general surgery, about his condition. Diagnostic procedures have included gastroscopy or colonoscopy (it is not clear which), and barium enema. His physicians have prescribed dietary and lifestyle changes, and medication. The defendant has taken medical advice seriously and followed his doctors' recommendations. He experienced some improvement in his symptoms following alterations in his diet, increasing his exercise and eliminating his intake of alcohol. Prescribed medication gave him a degree of relief, but that was more than offset by adverse side effects that included bloating, body rashes and excessive urination.

[3] The defendant has smoked marijuana for thirty years. In the course of dealing with IBS, he has found that marijuana reduces the pain, assists him in coping with the remaining pain more effectively, eliminates nausea, improves his appetite, and reduces emotional stress -- itself a cause of IBS. He described marijuana as being the best of all treatments in relieving the symptoms of his condition.

[4] Dr. James S. Proctor has been the defendant's physician for nearly four years, during which he has seen him professionally on five occasions. He testified he first learned of the defendant's marijuana use in March 2001, when the defendant advised he was being prosecuted for possession of that drug. On hearing of his patient's reported relief from IBS symptoms when he smoked marijuana, Dr. Proctor had no objection to its use for that purpose, while acknowledging that smoking marijuana might have an adverse effect on one's heart and lungs, and would impair one's ability to drive an automobile. In an opinion letter dated March 22, 2001 regarding the defendant, he wrote:

Medical treatment of his problem [IBS] has been a failure, and on occasion has caused intolerable side effects.

Mr. Reyklin finds marijuana effective in curbing his abdominal cramps, diarrhea, and increasing his appetite.

Given the effective relief he gets from marijuana, and the lack of relief from standard medicines, it would seem reasonable to allow him to continue to use it.

[5] The issue of the medical use of marijuana was considered by the Ontario Court of Appeal in *R. v. Parker* (2000), 146 C.C.C. (3d) 193. The case involved a middle aged man who had suffered from epilepsy since he was a young child. Surgical intervention had failed, and "conventional medication [was] only moderately successful." However he "found that by smoking marijuana he can substantially reduce the incidence of

seizures" (p. 202) and their intensity. Writing for the court, Rosenberg J.A. summarized his decision this way, at p. 204:

I have concluded that forcing Parker to choose between his health and imprisonment violates his right to liberty and security of the person. I have also found that these violations of Parker's rights do not accord with the principles of fundamental justice. *

[6] The defendant has met the burdens cast upon him by the judgment in *Parker* of satisfying the court that marijuana is of therapeutic value in treating his condition, and that his choice of marijuana for that purpose was reasonable in the circumstances. I would add that, to establish this Charter defence, a defendant need not exhaust all medical treatments for his ailment and find them of no benefit whatsoever as a condition precedent to choosing marijuana. He need only show that marijuana was a reasonable choice. *

[7] Crown counsel advised the court that no argument would be made that the defendant ought to have applied for a medical exemption under the *Controlled Drugs and Substances Act*.

[8] In the result, the defendant's application is successful, and this proceeding against him is stayed.

