

ORIGINAL

Date: 20020625  
Docket: 43714  
Registry: Chilliwack

IN THE SUPREME COURT OF BRITISH COLUMBIA

Oral Reasons for Judgment  
Mr. Justice Grist  
June 25, 2002

HER MAJESTY THE QUEEN

AGAINST

WALLACE WESLEY WINCHESTER

Counsel for the Crown  
Counsel for the Defendant

C. Pagé  
P. Derksen

[1] THE COURT: The accused is charged with production of marihuana relating to the 27th of September, 2000. I have it right, the production charge remains and the for the purposes charge was stayed, am I right, in that Ms. Pagé?

[2] MS. PAGÉ: Yes.

[3] THE COURT: All right. The police searched his premises, finding a room containing three grow lights and 96 small

small marihuana plants, the accused admitted possession of the marihuana and said he was growing it for his own use to enable him to tolerate the side-effects of medication prescribed for HIV infection.

[4] At trial, the accused gave evidence indicating that his condition, that has now developed into AIDS, required a number of medications daily. One of the side-effects of the medications is severe nausea. I accept the evidence of the accused given in this regard and no contrary evidence of lack of therapeutic effect was advanced by the Crown.

[5] I understand from the Crown that the availability of marihuana for medical use at the time of this offence was not significantly different from the circumstances outstanding in the case of *R v. Parker*, a case taken on appeal to the Ontario Court of Appeal. The Crown has indicated that there has been subsequent changes to the regulations to the *Controlled Drugs and Substances Act* which gives substantially greater access to marihuana for medical use and this case and my comments are not comment on the present circumstances in respect of those new regulations.

[6] In *Parker*, the Court decided that the criminal prohibition from possession or cultivation of marihuana amounted to a breach of a Charter s. 7 right to liberty, in

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cases where the drug could be shown to be reasonably required for the treatment of a medical condition. In that case, the accused presented evidence of therapeutic value in controlling his epilepsy. In *R v. Rakeland* (phonetic), a decision of Judge Sanderson of the B.C. Provincial Court, the accused gave evidence of relief from the effects of a bowel syndrome which included severe pain and nausea.

[7] In Mr. Winchester's case, at the time of the offence, he was taking a combination of medications to delay the onset of AIDS. His evidence was that this caused severe vomiting, to the extent he could not keep any food down, sometimes going two to three days without eating. He found the use of marihuana relieved the nausea and helped with his appetite. He was then able to take small portions of food through the day. He said that without the marihuana, he doubted he could have continued with the drugs he was being prescribed.

[8] I note from the evidence that a total 96 plants were seized. This, under many circumstances, might indicate possession exceeding the amount that might reasonably be necessary for therapeutic use. Mr. Winchester's explanation was that he was only growing the plants to a small size before harvesting them. He estimated the total yield to be one to one-and-a-half pounds. This is perhaps consistent with the



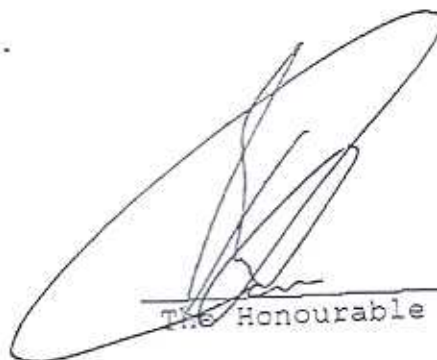
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fact that only three grow lights were being used and the Crown has not presented evidence indicating any contrary purpose. In fact, the charge of possession for the purposes was stayed during the course of the trial.

[9] The charge relates to production of marihuana, the form of charge replacing the earlier section which made reference to cultivation. In other respects, the circumstances are very similar to those in *R v. Parker*. I note that the onus is on the accused to establish a Charter breach on a balance of probabilities.

[10] On the evidence presented on this trial, I am satisfied to that degree of proof that Mr. Winchester's use of marihuana was reasonably required for the treatment of his medical condition and accordingly direct that a judicial stay be entered in respect of the outstanding charge. You are free to go, Mr. Winchester.



The Honourable Mr. Justice Grist