



MEDICAL MARIJUANA

Court File: 23347-01-D

IN THE PROVINCIAL COURT OF BRITISH COLUMBIA
(BEFORE THE HONOURABLE JUDGE J.E. GODFREY)

Vancouver, B.C.

July 14, 1998

REGINA

v

STANLEY CZOLOWSKI
and
TRUDY GRIEF

PROCEEDINGS AT

SENTENCE

APPEARANCES:

S. HELENCHILDE for the Crown

J. CONROY for the Defence

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Proceedings

MS. HELENCHILDE: If it please the court, Your Honour, Susan Helenchilde appearing for the Federal Crown. I don't have the court list but I believe that the Czolowski matter is number 1. I have conduct of that this morning.

THE COURT: Yes, all right.

MR. CONROY: John Conroy appearing on behalf of Mr. Czolowski, Your Honour. He is present in court, as is Ms. Grief. It's acceptable if they could just perhaps sit where they are.

THE COURT: Yes, that's fine. You can just stay where you are.

MR. CONROY: I apologize. The facts described you as His Honour Judge Godfrey.

THE COURT: That's all right.

MR. CONROY: Instead of Her Honour.

THE COURT: It's unfortunate it didn't hit my desk until nine o'clock this morning, so I was quickly reading this morning, Mr. Conroy.

MR. CONROY: Well, I have extra copies of Dr. Dobrogowski's report. Perhaps I should file -

THE COURT: Yes.

MR. CONROY: -- one of them as an actual exhibit. My friend has a copy.

THE COURT: So you can make that the next exhibit, whatever it is. We may be up to about Exhibit 3.

THE CLERK: Exhibit Number 3.

THE COURT: Yes, all right.

EXHIBIT 3: REPORT OF DR. DOBROGOWSKI

MR. CONROY: I should explain that I had a lengthy telephone conversation with Dr. Dobrogowski after I had sent him a large package of the materials, most of the materials that the court has. He declines to express any opinion on the marihuana question, his position basically being as follows: That there are no ophthalmologists who are treating people with marihuana. He agrees of course that it reduced inter-ocular pressure, but because nobody in the profession is treating people with marihuana he declines to express an opinion on it or to treat anybody at this point.

He says that, like with other drugs, they have to go through all of the federal approvals and so on, various tests and so on before they will use it on a patient. I did point out to him of course that many of the drugs that have gone through that process seem to have side effects that are quite substantial and that, whereas the evidence in terms of the marijuana seems to be that the side effects, if any, are quite benign, and yet they have a positive influence.

He said that was a good question but that until such time as the literature from the ophthalmologists showed that they were actually treating, that they wouldn't be treating. So I think the only option that Mr. Czolowski has in terms of pursuing the possibility of getting a prescription is to go back to his general practitioner to see if that doctor is prepared to prescribe for the discomfort and pain, mainly the side effects, so that it's not a prescription to treat glaucoma but a prescription much in the way that a doctor would prescribe morphine or Demerol or anything like that in terms of a patient's comfort. So that's I think where we stand.

I did also include -- well, before I do that, I asked Mr. Czolowski to tell me why he wouldn't go through the other types of surgery that Dr. Dobrogowski has been recommending, and instead of just reading that response to you, Ms. Czolowski gave me a written response, so I've got two copies of it. If we could make one of them an exhibit and there is one for the court to mark up.

THE COURT: Yes, we'll make that the next exhibit.

MR. CONROY: So that you have that. I can't explain it better than Mr. Czolowski has. Essentially he has a great fear of the surgery, and I'll just let the court read that.

THE COURT: All right. We'll accept that, then.

MR. CONROY: And then finally I gave you the case of R. v. I think it's pronounced Lieph. It might be Leppe (phonetic).

THE COURT: Yes, I have read that, a decision of Judge Toy.

MR. CONROY: Yes, and so that's the only decision I have been able to find that comes close to the circumstances here where a conditional discharge was granted in relation to the cultivation count and an absolute discharge in relation to the simple possession count, an individual with no prior record, but speaks to unique circumstances.

The part, of course, that I would emphasize is that the court found and the Court of Appeal accepted that it was not contrary to the public interest and was in the accused's interests in the unique circumstances of the case. In my submission the same applies here.

When we have regard to Mr. Czolowski's situation and go back to the Parker case and what the judge said in the Parker case when he spoke at page 17 about the autonomy to make decisions of personal importance, that clearly achieving one's health or best level of health is of personal importance, and to be free of

the effects of the heavy drugs that he is under, in my submission goes to his security of the person.

So bearing in mind Mr. Czolowski's motivation here, his primary motivation in terms of the relief of both the glaucoma and the symptoms of the side effects from the medication, in my submission an absolute or conditional discharge would be an appropriate disposition here. Those are my submissions.

THE COURT: All right.

MS. HELENCHILDE: I'll keep my comments fairly brief, Your Honour, and only merely address the Lieph decision which I have just read this morning. It seems to me that it can certainly be distinguished from the case at bar in that, unlike the case at bar, there is no indicia of trafficking in that case. Of course in this case there is such an indicia in the diary and I made reference to that in my original submissions. I take it the court knows what I am referring to.

THE COURT: Yes.

MS. HELENCHILDE: Yes. I think the indicia of trafficking is an aggravating factor, and I appreciate that Mr. Czolowski maintains that he was not trafficking but trafficking to the Compassion Club. It is nevertheless trafficking and there are certainly monetary considerations that are mentioned in the diary that Mr. Czolowski kept.

With reference to the judgment of Her Honour Judge Howard, the name of which escapes me at the moment -it's the Surrey case that my friend has just referred to -- that of course was a possession case. Those are my comments, Your Honour.

THE COURT: The accused is a 44-year-old man with no criminal record charged with cultivating marihuana. The facts disclose that the officers found a large quantity of marihuana at his residence. Depending on the level at which it might be sold or to whom it is sold, the value was between 35 and \$50,000.

The accused has pled guilty to this charge. The key aspect of this case is the fact that the accused suffers from I believe what's known as open-angle glaucoma, and has for the last 25 years. I understand this disease to be something that causes degeneration in his vision, that that is controlled by various medications, that these medications have extreme side effects and that his purpose in growing this marihuana has been to deal with both the side effects and the fact that marihuana assists in dealing with the pressure inside the eyeball, as I understand the evidence, arising from this disease and the efforts to treat it.

So his purpose in growing the marihuana is to both assist in the treatment of this condition and deal with the side effects. That appears to be supported by the medical literature, although no doctor, no ophthalmologist, I am told, is prepared to prescribe this at this point, given the lack of testing.

I have heard from the accused and I have read the material that is filed in terms of what his daily existence is like, and I have no difficulty whatsoever in understanding his personal motivation and I have extreme sympathy for his personal situation. The troubling factor, I suppose, and the factor that the Crown emphasizes is the volume of marihuana that was in the premises and the fact that the accused was selling some of the marihuana to what's known as the Compassion Club, a group of individuals, I am advised, who provide marihuana to other individuals who suffer from medical conditions which marihuana assists, somewhat in the fashion of the glaucoma.

I have been referred to the case of R. v. Parker, a decision of the Ontario Court of Justice Provincial Division, a very recent decision of Judge Sheppard, the reasons for which are dated December 10, 1997, out of the Toronto region where Judge Sheppard read down the relevant legislation to include an exemption for possessing or cultivating marihuana for the accused's personal medically approved use. In that case the charge was simple possession.

I have also considered the case of R. v. Lieph, a decision of our Court of Appeal, July 17, 1989, where Mr. Justice Toy stated in circumstances very similar to the facts at bar, absent the volume, that the decision of the trial judge in that case that it was in the interests of the accused and not contrary to the public interest to grant a discharge was correct.

I have considered the facts before me and the case law and in all of the circumstances I am satisfied it's not contrary to the public interest, notwithstanding the volume involved, and certainly it's in the interests of the accused to grant him a discharge, and I do so conditional on his entering into a probation order to keep the peace and be of good behaviour for a period of one year. Those are the only terms of the order.

MR. CONROY: Thank you, Your Honour.

MS. HELENCHILDE: The Crown directs a stay of proceedings with respect to both counts as they relate to Ms. Grief and with respect to Count 2 as it relates to Mr. Czolowski. THE COURT: All right. I should indicate that I consider this case to be unique on its facts. This is not an open invitation to others to follow the accused's approach, absent medical problems of their own.

MR CONROY: My advice too, Your Honour, is to try and get a medical prescription from a doctor.

THE COURT: Even if he has to go to Toronto.

MR CONROY: That's right.

THE COURT: All right.

(PROCEEDINGS CONCLUDED)

Godfrey, J.E., P.C.J.

