

IN THE SUPREME COURT OF NAURU

CRIMINAL APPEAL 1/2004

RENDELL HUBERT & CONGO SCOTTY

v

THE REPUBLIC

P. Aingimea for Appellants

W. Togamae for Republic

DECISION

The Appellants were charged under the Dangerous Drugs Act 1968 with an offence of, without reasonable excuse, having possession of a prohibited import, namely Indian hemp.


The Appellants had been arrested by the police on 26 December 2003 for consuming liquor on unlicensed premises and both were found to be in possession of marihuana (Indian hemp), and both confessed to having such possession.

I have accepted the submission of counsel for the Republic that both pleaded guilty when charged before the learned Magistrate and that, in accordance with the procedure in Deidanang v The Republic, (Criminal Appeal No. 22 of 1970) the prosecutor then stated the facts to the Court which constituted the offence, and the Court was satisfied that such was the case. The accused when asked agreed without reservations to the facts disclosed constituting the offence. Such procedure must always, of course, be followed when the accused are unrepresented. The notes of the learned Magistrate made at the time lend corroboration to this.

I am satisfied that that procedure was followed. I was concerned that the charge was stated to be laid under S. 10 (3) rather than S.10 (1) (c) of the Act. It was explained as a typing mistake. This should not happen and the Republic escaped embarrassment probably because there was no S.10 (3). Much greater care must be exercised by those in authority for the entering of charges. The fact that this morning in Court the Act itself could not be produced by the Republic does not say much for the efficiency of the prosecutions branch.

So far as the penalty is concerned, each was sentenced to three months imprisonment. To succeed before the Court on appeal it has to be shown to be manifestly excessive. It was, in fact, the minimum under the section. The appellants, though first offenders, were both of majority. The learned Magistrate has, in the District Court, a close view of the pulse of society. Unless it could be demonstrated on appeal that he had been manifestly excessive in penalty then this Court would not intervene. Furthermore, he was operating with an Act that, whilst long standing, has relevance to present societal problems and requires the Courts to administer such Acts with fairness but with strength.

The Appeals are dismissed.


BARRY CONNELL
CHIEF JUSTICE

16 February 2004