

## Anders v Police Department

Supreme Court

Hill J

Crim App 88/1978

*Criminal law - sentencing - principles to be applied with regard to drug offences*

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10 Anders, an American citizen, was convicted in a Magistrate's Court of two offences relating to Indian Hemp: growing it and possessing it. He was sentenced to a fine of T\$100 for growing, and six month's imprisonment for possession. He appealed against the latter sentence.

The Supreme Court dismissed the appeal, describing the sentence as exceptionally lenient and laid down guidelines for the sentencing of persons convicted of possessing, growing and importing or trafficking in cannabis, and also persons convicted of possessing, and importing or trafficking in hard drugs, such as heroin, cocaine or LSD.

Hill J

### Judgment

The Appellant in this case is an American citizen who has been in Tonga for some time. He was convicted of two offences. One of Growing Indian Hemp and the other of Possessing it. On the charge of growing, he was fined one hundred pa'anga and there is no appeal against that. On the charge of possessing, he was sentenced to six months imprisonment and it is against that sentence that he appeals to this Court. It has been said on his behalf that he has been helpful to Tongans and indeed he is supporting a young Tongan in the South Pacific School of Agriculture. However, this is a bad possession case in that there was a substantial amount of the Hemp obviously more than just one cigarette which he might have had in his possession, as tourists sometimes do. Further more, he received an exceptionally lenient punishment for growing. I do not want anybody to think that a hundred pa'anga fine is the standard penalty for growing Indian Hemp in this country. In my view, the growing of any substantial quantity is a very serious offence and should be tried in the Supreme Court. In the circumstances, the sentence of six months for possession can be considered extremely lenient.

Now, as this is the first drug case which I have dealt with myself, I am going to say a few words about my views on proper sentences for drug offences. At the present, Tonga is reasonably free from this curse. However, it exists in a number of neighbouring countries in an aggravated form and I want to make it quite clear that I am going to do my utmost to make sure that it does not spread here. And I want everyone to understand that if anybody is convicted of possessing a substantial amount, that is more than two or three cigarettes, they will certainly go to prison as far as I am concerned. I want all the Magistrates in this country to take notice of this Judgment because I expect them to follow my directions. And I want them to know that such sentence will certainly be upheld by me in the absence of very exceptional circumstances. If there is a case of trafficking or importing substantial quantities of cannabis, in my view the correct sentences, and this is in line with other countries, is between three and five years. If there is any attempt to supply or import hard drugs that is heroin, cocaine or LSD, the standard sentence will be around seven years up to the maximum which I can impose which is ten years. The sentence for possessing such drugs without supplying them will be in the region of 3 years to six. I want everybody to know that there are not going to be drugs in Tonga if the Courts can stop it.

The only matter I have not mentioned is what I consider to be the appropriate sentence for growing Indian Hemp. Now growing in this country can be a very serious offence indeed because the population is spread over many islands and it is easy for evil people to come and persuade the locals to grow the stuff and indeed that has been done in the past. Anybody who encourages or promotes growing may expect to receive a minimum sentence three years, and I also draw attention to the fact that the Court has power to confiscate any yacht or means of conveyance which such persons use. I want to leave no doubt but that I shall not hesitate to use this power in a proper case. In view of what has been said by Mr Finau there is one more thing which I feel I ought to say: while it is a matter for the executive, the Cabinet, I think it would be a great pity if people thought that they could commit drug offences here and that they would then merely be expelled from the country without serving their sentence.

This Appeal is dismissed.