R. v. KERR

Clarke C.J.N.S., Morrison, Matthews JJ.A

Docket: Doc. 01510

Counsel: *Neil S. Bell*, for the appellant.
Wayne J. MacMillan, for the respondent.

Appeal by accused from his conviction on charges of possession of marijuana and cultivating marijuana, contrary to ss. 3(2) and 6(2) respectively of the Narcotic Control Act, dismissed. Although the accused argued that his religious beliefs and practices involving the use of marijuana constituted a defence to the charge, the accused had not established such a belief, as required per Regina v. Videoflicks Limited et al., 15 C.C.C. (3d) 353 (Ont. C.A.). Further, the accused's guarantee to freedom of conscience and religion under s. 2(a) of the Charter of Rights was not infringed or denied by ss. 3(2) and 6(2) respectively. In any event, even if the accused's rights under s. 2(a) had been infringed, ss. 3(2) and 6(2) were reasonable limits demonstrably justified in a free and democratic society, pursuant to s. 1 of the Charter. (4 pp.)

Morrison, J.A. **[orally]:**

1. This is an appeal from the conviction and sentence of the appellant by His Honour Judge Stanley D. Campbell, of the Provincial Court at Baddeck, on November 22, 1985. The appellant was charged with one offence contrary to s. 3(2)(b) of the *Narcotic Control Act* and also a charge of unlawfully cultivating marijuana, contrary to s. 6(2) of the *Narcotic Control Act*.

2. The learned trial judge found the accused guilty on both counts and sentenced him to one day in jail on each count, to be served by his time in court.

3. The appellant advanced six arguments in his factum and notice of appeal. We are of the unanimous opinion that there is no merit in grounds 1, 2, 3 and 4.

4. With respect to the remaining arguments, the appellant alleged in argument No. 5 that the learned trial judge erred in finding that the religious beliefs and practices of the accused involved in the use and/or cultivation of marijuana cannot be a defence to the charges. Argument No. 6 alleges that, if the learned trial judge considered that there was any infringement of the accused's rights under the *Canadian Charter of Rights and Freedoms*, then the learned trial judge erred in finding that the limitation imposed on the accused by the *Narcotic Control Act* was a reasonable limit demonstrably justified because there was no evidence before the court on that issue.

5. I refer to the case of *Regina v. Videoflicks Ltd. et al.* (1985), 5 O.A.C. 1; 48 0.R.(2d) 395 (C.A.), as mentioned by both counsel, wherein the court said as follows (p. 423):

> ... In my view, where one claims exemption on grounds of religion or conscience to a particular government regulation or requirement, one must be prepared to show that the objection is based upon a sincerely held belief based upon a lifestyle required by one's

conscience or religion. Otherwise, s. 2(a) of the *Charter* might become a limitless excuse for avoiding all unwanted legal obligations.

6. We are satisfied from the evidence that the appellant did not establish such a belief in evidence although he testified and had the opportunity to do so.

7. We are of the unanimous opinion that the appellant's freedom of conscience and religion under s. 2(a) of the *Canadian Charter of Rights and Freedoms* was not infringed or denied by s. 3(2)(b) and s. 6(2) of the *Narcotic Control Act*.

8. Even if it were found that the appellant's freedom of conscience and religion was infringed pursuant to s. 2(a) of the *Canadian Charter of Rights and Freedoms*, we are of the unanimous opinion that s. 3(2)(b) and s. 6(2) of the *Narcotic Control Act* are reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society pursuant to s. 1 of the *Charter*.

9. We therefore dismiss arguments 5 and 6 and as a result the appeal is dismissed.