

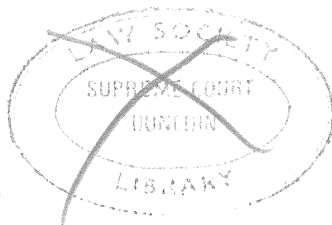
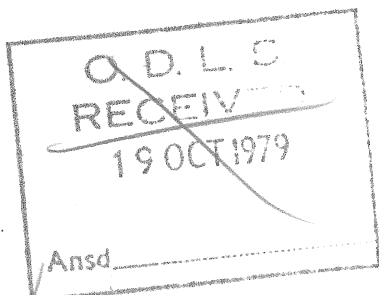
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IN THE COURT OF APPEAL OF NEW ZEALAND

C.A.132/79



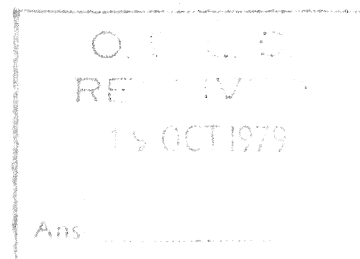
THE QUEEN

v.

CONSTANTINOS SPARTALIS

*Reported  
74 2N 2  
0 205*

<u>Coram</u>	- Richmond P. Cooke J. Richardson J.
<u>Hearing</u>	- September 20, 1979
<u>Counsel</u>	- K.G. Stone for Crown K. Ryan for Appellant
<u>Judgment</u>	- September 20, 1979



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ORAL JUDGMENT OF THE COURT DELIVERED BY RICHMOND P.

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Constantinos Spartalis was found guilty after trial by jury on a charge of having heroin in his possession for purposes of supply to others. The offence was committed on 10 May 1979. Accordingly the appropriate sentence to be imposed by the Court fell to be determined by reference to the provisions of the Misuse of Drugs Amendment Act 1978 which came into force on 16 October 1978. The Act contained various amendments to the law which reflected in one way or another the concern of Parliament at the growing amount of drug offending in this country.

For the purposes of the present application the most important change made by the Act was to increase from 14 years' imprisonment to imprisonment for life the maximum sentence for certain types of offending in relation to

Class A controlled drugs. Heroin is such a drug and the offence in respect of which the appellant was convicted was such that he was indeed liable to a maximum sentence of life imprisonment. The actual sentence imposed by the trial Judge was imprisonment for 10 years. Leave is sought to appeal from that sentence.

The amount of heroin found by the Police in appellant's possession was comparatively small. He had in his possession two packets which between them contained some 11 grams of a white powder. The amount of pure heroin in that powder was 1.203 grams. But the course of the trial was such that the jury must have accepted certain evidence given by a Police officer as to the circumstances in which appellant had this heroin in his possession. At the time of imposing sentence the Judge said that although the amount in the possession of appellant was not very much the evidence placed him squarely into the category of the more major of drug offenders. He said that the very fact that appellant was able to buy in such quantity meant that he was accepted by the higher levels of the drug scene. The Judge who, of course, was present throughout the trial and saw the witnesses give their evidence interpreted what appellant had told the Police officer as meaning that appellant had purchased ten 10-gram packets of heroin, had sold eight of them already and was about to take delivery of five more. We add that the evidence showed that appellant was selling the packets at a price of \$1,000 each. Mr Ryan submitted that some of the statements made by the appellant to the Police officer

were vague and contradictory; he urged upon us that it was not possible to support the Judge's view that the evidence placed appellant squarely into the category of the more major of drug offenders. We have given careful thought to Mr Ryan's submission but we must remind ourselves that the Judge enjoyed advantages which we do not ourselves enjoy and we refer of course to his presence throughout the trial.

In the result we do not feel justified in approaching this case otherwise than on the basis which was adopted by the Judge himself. But we do stress that this is a very important aspect of the case because quite obviously the appropriate penalty in any drug trafficking offence must be related to the degree and extent of the offender's involvement in drug dealing.

Mr Ryan also contended that even on the view of the facts taken by the Judge the sentence of 10 years' imprisonment was so out of line with penalties in similar cases that this Court should regard it as manifestly excessive and should reduce it to some lower level.

In our view it is not possible to say at the present time that any real pattern of sentencing in this type of case has emerged since the passing of the 1978 Amending Act. The only two cases to which we have been referred which are in any way comparable are the cases of Anderson, a case in which the judgment of this Court was given on 28 June 1979 and the case of Archer where judgment was given on 8 August 1979. The Anderson case involved a series of

sales of heroin in small quantities to an undercover Policeman during a period from June 1978 till half way through October 1978. The case therefore fell to be considered under the previous legislation. It will be recalled that under that legislation the maximum penalty for heroin trafficking was 14 years imprisonment. The total value of these sales as recorded in the judgment was \$2,500. Thus it appears that the level and degree of involvement of the appellant in that case was substantially less than in the present case. Nevertheless this Court increased a sentence of four years' imprisonment to one of six years' imprisonment. Again we stress that that case was decided under the legislation as it previously stood.

The case of Archer was one in which appellant had been found guilty of having 7.2 grams of powder containing two grams of pure heroin in his possession for the purpose of supply to others. He had also been convicted of some other criminal offences including one of dishonesty. In respect of the drug offences he was sentenced to five years' imprisonment cumulative on a sentence of two years' imposed in respect of the other offences. This Court upheld the effective sentence of seven years. It does not appear very clearly from the judgment just how far the appellant had previously been involved in drug dealing but he had admitted to a certain degree of such involvement. We do not find this case of any very great assistance because the Court was merely asked to rule whether the total effective sentence of seven years ought to be reduced. It decided

that it would not interfere with the sentence but we do not interpret the case as having involved the Court, in quite the same way as the present case does, in considering to what extent sentences in heroin trafficking cases may or ought to be increased substantially above the level which prevailed under the previous legislation. It follows that the present appeal is a very important one because our decision must necessarily affect the pattern of future sentencing.

It will be obvious that the Courts must now impose sentences in drug cases which properly reflect the alteration made to maximum penalties by the Misuse of Drugs Amendment Act 1978. The sentence of 10 years in the present case is substantially more severe than would have been imposed under the previous legislation. It is indeed a very severe sentence. Nevertheless we consider that it is a sentence which the Judge could properly impose having regard to the policy of Parliament, the degree of involvement of the appellant in dealing in heroin and the widespread public concern regarding the menace of heroin in our community.

For those reasons leave to appeal is refused.

Solicitors for Crown:

The Crown Solicitor,  
Wellington

Solicitor for Appellant:

Miss S.M. Moran,  
Wellington