

IAN CAMPBELL MACPHERSON

v

THE QUEEN

Court: McGrath, William Young and Glazebrook JJ

Counsel: A Speed and S Anderson for Applicant
A Markham and M R Davie for Respondent

Judgment: 14 March 2013

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed.

REASONS

[1] Mr Macpherson was convicted (after a trial in the High Court at Auckland) on six counts of methamphetamine and cannabis offending. He was found not guilty on three further charges. Before trial he had pleaded guilty to a charge of cultivating cannabis.

[2] Following conviction and before imposing sentence, Lang J made an order under s 142N of the Sentencing Act 2002 forfeiting 50 per cent of Mr Macpherson's interest in a property in Carter Road, Oratia, to the Crown.¹ In monetary terms, this

¹ *R v Macpherson* HC Auckland CRI-2009-090-11944, 19 August 2011.

amounted to approximately \$380,000. At sentencing, Mr Macpherson was sentenced to nine months home detention.²

[3] On 28 November 2012, the Court of Appeal dismissed Mr Macpherson's appeal against conviction but allowed his appeal against sentence, reducing the forfeiture order to only 25 per cent of his interest in the Carter Road property.³

[4] Mr Macpherson seeks leave to appeal from the Court of Appeal's judgment on the basis that:

- (a) the Court of Appeal erred in upholding, in part, the forfeiture order in respect of the Carter Road property;
- (b) the actions of Mr Macpherson were not capable of "producing" cannabis resin within the meaning of s 6 of the Misuse of Drugs Act 1975; and
- (c) the failure to sever Mr Mack's charges relating to the three other properties led to a miscarriage of justice.

[5] Mr Macpherson's complaint about the forfeiture order involves no issue of general principle. We accept the Crown submission that Mr Macpherson used his property to produce various kinds of drugs and that a forfeiture order was a reasonably proportionate sentencing response.

[6] As to the second proposed ground of appeal, Mr Macpherson's contention at trial was that his hands had become sticky while harvesting his cannabis plants. He had rubbed his hands together and the accumulated balls of resin had dropped off as an unintended consequence. This in his submission does not constitute "producing" resin for the purposes of s 6 of the Misuse of Drugs Act. We agree with the Court of Appeal that the focus must be on the word "produce". Produce means to bring into existence. This is exactly what Mr Macpherson did in respect of the cannabis resin. The point is not seriously arguable.

² *R v Macpherson* HC Auckland CRI-2009-090-11944, 16 September 2011.

³ *R v Macpherson* [2012] NZCA 552.

[7] As to the severance argument, Mr Macpherson was tried with an associate, Mr Mack. The prosecution case was that Mr Macpherson was a secondary party to methamphetamine manufacture at Carter Road carried out by Mr Mack.

[8] The charges against Mr Mack also included methamphetamine and firearms possession charges in respect of three other properties – Gum Road, Tirimoana Road and Sherrybrooke Place. Mr Macpherson’s position is that these charges should have been severed and tried separately from the Carter Road charges.

[9] In its decision, the Court of Appeal acknowledged that the evidence of Mr Mack’s offending in respect of the three other properties did not have any bearing on Mr Macpherson’s liability on the Carter Road charges. However, it held that the trial Judge had given careful, comprehensive and repeated directions as to the evidence that could be considered in judging the case against Mr Macpherson on the one hand and that against Mr Mack on the other.

[10] We accept the Crown’s submission that Mr Macpherson has not shown anything particular about the evidence that made this one of the exceptional cases in which judicial directions are incapable of curing unfair prejudice. In fact, as the Crown points out, the nature of this trial tended to make directions particularly easy to follow as the evidence concerning Mr Macpherson was discrete and stood alone from the (non-Carter Road) evidence concerning Mr Mack, in terms of time, place, and circumstance.

[11] The application for leave to appeal does not disclose any matter of general or public importance and does not raise a potential miscarriage of justice. It follows that it is not in the interests of justice to grant leave to appeal.

Solicitors:
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