

COURT OF APPEAL

McMURDO P
DAVIES JA
MACKENZIE J

CA No 246 of 2000

THE QUEEN

v.

ANDREW STEVEN PERICIC

Applicant

BRISBANE

..DATE 19/10/2000

JUDGMENT

DAVIES JA: The applicant was convicted of conspiracy to import a commercial quantity of cannabis in the Supreme Court on 18 March this year. The offence occurred between 1 April 1996 and 26 March 1997. By an application filed on 15 September this year approximately five months out of time, the applicant seeks an extension of time within which to appeal against this conviction.

Although the trial of the applicant and his co-offenders took some weeks, the case against him and at least some of them was overwhelming, depending substantially as it did on evidence of surveillance of their activities over a substantial period of time including recordings of what they said. The applicant's defence was rightly described by the learned trial judge in sentencing him as derisory.

The sole basis for the application is the discovery by the applicant, it is said by him for the first time in August this year, that the Australian Federal Police had on its web-site at the time of the applicant's trial information in relation to "Operation Niacin", the description which they gave to their investigation of this conspiracy.

It is unclear when that information with respect to "Operation Niacin" first appeared on that web-site, but

I am prepared to assume for the purpose of this application that it was on the web-site before and during the applicant's trial.

The information was in the following terms:

"Operation Niacin was conducted in four Australian states, investigating a syndicate involved in the importation of cannabis into South Australia between April 1996 and March 1997. The investigation took place over several years, resulting in the arrest of 19 people who were charged with drug and money laundering offences. To date, more than \$13 million in various assets has been seized. This investigation identified and dismantled an organised crime syndicate which was operating on an international scale."

As can be seen from this it did not identify the applicant but the applicant says, and I am prepared to accept, that documents tendered at the trial identified the investigation as "Operation Niacin".

There does not seem to be any doubt that "Operation Niacin" did investigate a syndicate involved in the importation of cannabis into South Australia during the period mentioned. The only question in the applicant's trial, it seems, is whether the applicant was part of that syndicate.

That being the case, I do not think that this information was likely to prejudice the applicant's fair trial even if members of the jury had seen it and accepted what was said in it. That is not to say that it is a sensible or desirable course to publish material of this kind before a person charged with an

offence has been convicted. Quite the contrary. There is a serious risk, in my view, that publication of information of this kind may prejudice the fair trial of such a person. But for the reason I have mentioned I do not think it did in this case.

More importantly, however, the learned trial judge on more than one occasion during the course of this trial directed the jury to decide the case solely on the evidence before them. He gave such a direction both before the commencement of the trial and several times during the course of his summing-up. On one of the latter occasions he said, amongst other things:

"You should disregard anything you may have seen, read or heard, outside the confines of this Court".

As the High Court has recently said in Gilbert (2000)
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ALJR 676, for example:

"The system of criminal justice, as administered by appellate courts, requires the assumption that, as a general rule, juries understand and follow the directions given by trial judges".

There is no reason in the present case to depart from that assumption.

Consequently, in my view, no substantial miscarriage of justice has occurred and I would refuse the application.

McMURDO P: I agree.

MACKENZIE J: I agree.

McMURDO P: The order is the application is refused.
