

COURT OF APPEAL

WILLIAMS JA
MUIR J
ATKINSON J

CA No 75 of 2005

THE QUEEN

v.

GENSI KERMA

Appellant

BRISBANE

..DATE 25/10/2005

ORDER

WILLIAMS JA: Gensi Kerma was convicted after a trial in the Supreme Court at Cairns of one count of trafficking, one count of producing a dangerous drug with a circumstance of aggravation, one count of possessing a dangerous drug with a circumstance of aggravation and one count of possessing things used in the commission of a crime. He has appealed against his conviction.

Initially, grounds of appeal were set out in a Notice of Appeal and by the outline the appellant seeks to add an additional ground. The Court grants leave to add, as an additional ground of appeal, ground 6, as it appears in the appellant's outline of submissions.

Given that ground, the appellant has filed inter alia an affidavit by Carol Jean Mayne, a scientist, and an affidavit by Ronald Grice, another scientist. Each of those affidavits calls into question the accuracy of scientific DNA evidence lead by the prosecution at the trial, the effect of which was to connect the appellant with the plantation of marijuana in question.

The prosecution has responded by filing affidavits from the scientist who gave evidence at the trial, namely, Alice Orwat, and also an affidavit of Vanessa Lentile.

When the matter was called on for hearing, the Court raised with counsel the procedure which was to be followed, given the contents of those affidavits in particular. Counsel are in

general agreement that there will be extensive cross-examination given the nature of the scientific evidence involved and it would appear that the cross-examination and taking of the evidence is likely to occupy some two days before the Court would then be in a position to deal with the questions of law raised by the appeal.

Counsel for the appellant referred the Court to Section 671B(d) of the Criminal Code. It provides, in essence, that where the Court thinks it necessary or expedient in the interests of justice, because prolonged examination of scientific matters are involved which cannot conveniently be conducted before this Court, this Court can refer the question for inquiry and report to a Commissioner appointed by the Court and then act upon the report so far as the Court thinks fit.

After hearing further submissions, this Court is of the view that that is the appropriate procedure to be followed in this case. Again, after further exchange between Bench and Bar, three questions have been identified for the Commissioner to determine and report on to the Court. Justice Atkinson, who is a member of the Court today, is able to sit and hear the evidence commencing on the 5th of December this year.

In consequence, the appropriate order to make is that, pursuant to Section 671B of the Criminal Code, this Court appoints Justice Atkinson, a Judge of the Trial Division of the Supreme Court, to be a Commissioner pursuant to that

provision to inquire into the questions which I have marked "A" and which will form part of the order and report thereon to the Court.

The further hearing of the appeal is adjourned awaiting the report of the Commissioner.

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WILLIAMS JA: As Justice Atkinson has indicated, she is prepared to, in effect, manage the matter between now and the 5th of December.
