

# SUPREME COURT OF QUEENSLAND

CITATION: *Abbott v Till; Canniffe v Till* [2006] QCA 275

PARTIES: **ABBOTT, Natalie**  
(respondent)  
v  
**TILL, Peter**  
(applicant)

**CANNIFFE, Christopher**  
(respondent)  
v  
**TILL, Peter**  
(applicant)

FILE NO/S: CA No 73 of 2006  
CA No 74 of 2006  
DC No 4 of 2005  
DC No 7 of 2005

DIVISION: Court of Appeal

PROCEEDING: Applications for Leave s118 DCA Criminal

ORIGINATING COURT: District Court at Mackay

DELIVERED EX TEMPORE ON: 3 August 2006

DELIVERED AT: Brisbane

HEARING DATE: 3 August 2006

JUDGES: McMurdo P, Holmes JA and Mullins J  
Separate reasons for judgment of each member of the Court, each concurring as to the orders made

ORDER: **In respect of CA No 73 of 2006 application for leave to appeal refused**  
**In respect of CA No 74 of 2006 application for leave to appeal refused**

CATCHWORDS: CRIMINAL LAW - APPEAL AND NEW TRIAL AND INQUIRY AFTER CONVICTION - APPEAL AND NEW TRIAL - MISCARRIAGE OF JUSTICE - POWER TO DISMISS APPEAL WHERE NO SUBSTANTIAL MISCARRIAGE OF JUSTICE - GENERAL PRINCIPLES - where applicant claimed his religious belief gave him an entitlement to eat cannabis sativa and that the *Drugs Misuse Act 1986* (Qld) was invalid as it prevented the practice of his religious beliefs – where applicant had been unsuccessful

previously in making that claim in other proceedings – where there was no error in the rejection by the District Court of the same claim made in these proceedings

*Commonwealth of Australia Constitution Act 1900 (Cth)*

*Drugs Misuse Act 1986 (Qld)*

*Till v Johns* [2004] QCA 451

COUNSEL: The applicant appeared on his own behalf  
P F Rutledge for the respondents

SOLICITORS: The applicant appeared on his own behalf  
Director of Public Prosecutions (Queensland) for the  
respondents

THE PRESIDENT: Justice Mullins will deliver her reasons first.

MULLINS J: The applicant Mr Peter Till seeks leave to appeal against two orders of the District Court made on 15 March 2006. The applicant was charged with possessing and producing the dangerous drug cannabis sativa and possessing things used in the commission of the crime of producing dangerous drugs. He was granted bail on his own undertaking.

He was due to appear in the Magistrates Court at Mackay on 7 July 2005. That date was set at a hearing before the Magistrate on 29 April 2005 in respect of which the Magistrate's notation on the bench charge sheet shows that the applicant appeared in person. The applicant then failed to appear on 7 July 2005. A warrant issued for his arrest and

the applicant was brought before the Magistrates Court on 11 July 2005.

The applicant was charged with breach of bail undertaking. On 11 July 2005 he was convicted of that offence, fined \$200, in default imprisonment for three days, and given three months to pay.

The drug charges were adjourned until 19 July 2005. On that day the applicant made an application for the drug charges to be tried by jury and the Magistrate refused that application.

The applicant appealed to the District Court against his conviction for breach of the bail undertaking and applied for an extension of time to appeal against the refusal of his application for trial by jury of the charges under the *Drugs Misuse Act 1986*. It is against the dismissal of the appeal and the refusal of the application for extension of time to appeal that the applicant now seeks leave to appeal.

Those appeals relied on provisions of the *Commonwealth of Australia Constitution Act* and the Universal Declaration of Human Rights. The gist of the applicant's oral submissions to the District Court was that the *Drugs Misuse Act 1986* was invalid as it was a law that prevented the applicant from practising his religious beliefs that entitled him to eat *cannabis sativa*.

This is an argument which Mr Till raised before in this Court in relation to other charges against him involving cannabis sativa and the argument was rejected in *Till v Johns* [2004] QCA 451. Although it makes no difference whatsoever to dealing with the applications today, on the day of hearing these applications the applicant filed an application for special leave against the decision in *Till v Johns* and other matters.

The learned District Court Judge dismissed the applicant's appeal against his conviction for breach of his bail undertaking on the basis that there was no merit in any of the applicant's arguments, including those based on the Constitution.

The applicant also sought to argue that the date for the appearance in the Magistrates Court had been altered, but that argument was rejected, as it had not been raised before the Magistrate. In any case, the record of proceedings in the Magistrates Court does not support the applicant's claim that there was a last minute change of dates.

In relation to the application for extension of time, the District Court Judge noted the effect of section 118 subsection 2 of the *Drugs Misuse Act 1986*, which gave the election to proceed summarily to the prosecution and rejected the applicant's arguments based on the Constitution and the Universal Declaration of Human Rights.

There is no error in the reasons for judgment of the District Court Judge. There is no point in granting the applicant leave to appeal. In each matter application for leave to appeal should be refused.

HOLMES JA: I agree.

THE PRESIDENT: I agree. The orders are that in each case the applications for leave to appeal are refused. Now, Mr Till, it is a matter for you: if you wish you can apply for special leave to the High Court from those decisions.

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