

TASMANIA v GARY ASSEN PANOFF
COMMENTS ON PASSING SENTENCE

8 JUNE 2007
TENNENT J

Gary Assen Panoff you have been found guilty by a jury of cultivating a controlled plant for sale contrary to s7(1) of the *Misuse of Drugs Act* 2001. The jury by their verdict have clearly not accepted that you grew this cannabis for the purpose of your own personal use but have accepted that the quantity that was found was intended for sale.

There is no part of the Crown case that you had already in fact embarked on selling or that you had previously sold. For the purpose of your sentence I accept the evidence that was presented that the value of the cannabis head were it sold, and that is the nearly two kilograms, was likely to be in the region of \$10 to \$12,000.

You have no prior relevant convictions. I accept for the purpose of sentence that notwithstanding the jury's verdict this was not a sophisticated commercial operation.

You are 51 years old. You live in a de facto relationship of longstanding. You have four children. You and your partner are in receipt of social security benefits, you as a disability pensioner, she as your carer. The children remain dependent on you. I am told that you and your partner own your house together, and that it is subject to a mortgage in respect of which you pay \$500 per fortnight.

You have not worked for many years. You have a chronic lung disease. The medical information provided to me indicates that was diagnosed in 1977. It has resulted in your having significantly reduced lung function and you have been treated with cortico-steroids since 1977. As a complication of that therapy you have developed a steroid related osteoporosis which has manifested itself in repeated spontaneous rib fractures.

During the course of the evidence in this trial there was evidence that you were hospitalised late in 2005 for the same sort of condition and the medical report now handed to me indicates that occurred again in June of 2006. I accept that you require constant treatment in the form of morphine-based painkillers and that it is likely that situation will be ongoing for the rest of your life, absent perhaps a lung transplant.

For the purpose of sentence, as I indicated, I accept that this was not a sophisticated operation and I accept that it was no part of the Crown's case that you had embarked on a long-running scheme of selling. I accept that the value of what it was anticipated you were going to sell was overall not particularly high. You have no prior convictions. I also accept that drug related crimes of this nature must be treated seriously by the courts, because of the impact on the community of putting out in the community this quantity of drugs, and that a term of imprisonment is appropriate. However, I also accept in that context that a term of imprisonment for somebody in your position, would be exceptionally hard.

Given your lack of prior history and the circumstances involved in this case, it would appear to me that a wholly suspended term of imprisonment would adequately act as a deterrent both to you and others.

In the circumstances of this matter there will be a conviction recorded in respect of the count on the indictment. You will be sentenced to serve a period of 4 months' imprisonment, but that will be wholly suspended on condition that for a period of 2 years from today's date you

commit no offence contrary to the *Misuse of Drugs Act* and that you otherwise be of good behaviour. You will pay a victims of crime compensation levy of \$50 within three months of today's date. I further order pursuant to s38 of the *Misuse of Drugs Act* that all drug related items seized from your property by Tasmania Police on 31 May 2006 be forfeited to the Crown.