

Citation: R. v. Boyer
2007 BCPC 0313

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IN THE PROVINCIAL COURT OF BRITISH COLUMBIA

REGINA

v.

Marc Pierre Boyer

**REASONS FOR JUDGMENT
OF THE
HONOURABLE JUDGE C. L. BAGNALL**

Counsel for the Crown:
Sheardown and R. Makosz

M.

Appearing in
person:
Marc Boyer

Place of
Hearing:
Vancouver, B.C.

Dates of Hearing:
27 and August 20, 2007

July

Date of
Judgment:
October 5, 2007

[1] Marc Pierre Boyer was charged with having possessed marihuana in an amount not exceeding 3 kilograms, for the purpose of trafficking, as a result of events which occurred on July 13, 2007. The offence is an indictable offence within the absolute jurisdiction of the Provincial Court. The maximum sentence for this offence is imprisonment for five years less one day.

[2] During the bail hearing with respect to this Information, a trial was scheduled for certain dates in mid-2008. Mr. Boyer arranged to have the matter brought before the court well in advance of those dates, on July 27, 2007, for the purpose of entering a plea of guilty. He did plead guilty after some considerable discussion, to which I will refer later in these reasons, and the matter was adjourned until August 20, 2007, for the court to hear submissions from the Crown and Mr. Boyer respecting the appropriate sentence. Having heard those submissions, I reserved my decision until today.

[3] The circumstances which gave rise to the charge before the court may be stated briefly. On July 13, 2007, at approximately 4:30 PM, police officers were attending to an unrelated event in Grandview Park, which is adjacent to Commercial Drive in Vancouver. The officers could smell marihuana and went towards the source of the smell, which was a small group of people sitting on the grass near the playground area of the park. The accused was one of those people, and he appeared to be trying to conceal something under his leg. The police located 16 marihuana cigarettes (with a total weight of 8.79 grams) under Mr. Boyer's leg. He was arrested and searched. In his possession was a total of 462.78 grams of marihuana, packaged as if for sale, one more marihuana cigarette, and \$965.00 in cash. Nearby were the remains of two consumed marihuana cigarettes. Also in Mr. Boyer's possession was a cell phone. When it rang, the police answered it and were asked by persons on the line to provide drugs to them. Also in Mr. Boyer's possession were pamphlets advertising home delivery of marihuana and providing the number of the cell phone seized by the police as a means of contact.

[4] Mr. Boyer has a criminal record which dates back to 1968. The earliest related conviction was recorded in 1980, when he was convicted of possession of a narcotic. In 1984 he was convicted of possession of a narcotic for the purpose of trafficking and was fined \$3000.00 and placed on probation for two years. On December 5, 2005, he was convicted of possession of a controlled substance for the purpose of trafficking. Under the impression that he had no criminal record, the presiding judge suspended the passing of sentence and placed him on probation for one year. On May 25, 2006, Mr. Boyer was convicted of causing a disturbance. Sentence was suspended and he was placed on probation for one year. On January 11, 2007, Mr. Boyer was convicted of assault and was sentenced to serve one day taking into account 28 days of pre-sentence custody. He was placed on probation for three years.

[5] The Crown submits that the appropriate sentence is incarceration for four to six months and submits that it would not be appropriate for Mr. Boyer to serve that sentence by way of a Conditional Sentence Order.

[6] As a mitigating circumstance, the Crown drew to the court's attention the fact that Mr. Boyer entered a plea of guilty less than two weeks after the events in question.

[7] As aggravating circumstances, the Crown submits that the court must consider Mr. Boyer's criminal record and the fact that he was on probation at the time of the offence. The Crown highlights the public nature of the offence, including that Mr. Boyer committed the offence near where children were playing in Grandview Park. The amount of marihuana possessed by Mr. Boyer was not insignificant, and one of the methods he was using to sell the drug was relatively sophisticated, that is, delivery to a customer's home after an order was placed by telephone. Many of the concerns that courts have repeatedly expressed about what are known as "dial-a-dope" operations also arise with respect to Mr. Boyer's activities.

[8] The most serious aggravating circumstance, in the submission of the Crown, is the attitude that Mr. Boyer has towards his offence. He is unrepentant. He believes that his conduct is morally right and that legally, it is not wrong.

[9] The Crown referred to four cases, *Regina v. Lister*, [2003] B.C.J. No. 1078, *Regina v. Moxon*, [1995] B.C.J. No. 2152, *Regina v. Cantrill*, [1998] B.C.J. No. 2754, and *Regina v. Malmo-Levine* (in the BC Court of Appeal), [2000] B.C.J. No. 1095. I have read these cases and been assisted by the guidance contained therein.

[10] I turn to a consideration of the submissions of Mr. Boyer. These submissions were made before he entered his plea, after plea on August 20, 2007, and on one further date, October 3, 2007. On that latter date, Mr. Boyer arranged for his file to be added to the court's list in order to make certain applications. The applications were without any basis, they were unrelated to the offence before the court, and they were denied.

[11] Mr. Boyer's submission is that the property seized from him on the date of the offence should be returned to him. In this regard he refers to sections 8, 39 and 337 of the *Criminal Code*. In addition Mr. Boyer seeks a declaration that the political party of which he is a member, the Marihuana Party, has a "guaranteed right under the constitution to uphold his belief that God is supreme."

[12] Mr. Boyer's reasoning is, if I understand it correctly, as follows.

[13] Mr. Boyer asserts that he does not "hold a person" under the *Criminal Code* (nor, presumably, under the *Controlled Drugs and Substances Act*) because his birth was never registered in the usual fashion and he does not have a birth certificate. He says that this means that he holds a "void contract with society itself." He says that he instead "holds a person" under the *Elections Act*. He argues that this means that, although Canadian laws apply to him, he can seek protection from prosecution for his beliefs in the fact of his membership in the Marihuana Party.

[14] In addition, Mr. Boyer referred to the reasons for sentence handed down by Judge C. J. Bruce (now Madam Justice Bruce). Judge Bruce, as part of her probation order, prohibited Mr. Boyer from possessing certain equipment commonly associated with the growing of marihuana. She did not prohibit Mr. Boyer from possessing marihuana itself. Mr. Boyer's view is that this omission gave him a "colour of right" to possess marihuana.

[15] Mr. Boyer's beliefs were the subject of many of his comments. He believes that according to the Bible, God gave all "wind-pollinated herbs" as a gift to mankind. This category includes marihuana.

[16] The short answer to Mr. Boyer's submission is that he is a person who is subject to the laws of Canada just like everyone else. The manner in which his birth was recorded, or not, is irrelevant. His position in his chosen political party is irrelevant. He is entitled to hold any view he wishes about the illegality of marihuana, but his opinion is irrelevant to the issue of whether or not he may be prosecuted for his actions.

[17] The fact that Judge Bruce did not prohibit him from possessing marihuana is also, of course, irrelevant. It is against the law to possess marihuana.

[18] There were two aspects of Mr. Boyer's submissions that are relevant to the determination of the appropriate sentence. The first is that Mr. Boyer is terminally ill and uses marihuana to ease the symptoms of his disease.

[19] The second somewhat mitigating facet of the circumstances is that Mr. Boyer sells marihuana within the loose structure of a "compassion club" and that the product he sells is, in his words, "sparkling clean."

[20] In all of the circumstances, I am satisfied that a sentence of incarceration is necessary to address all of the principles and purposes of sentencing, including denunciation, deterrence, rehabilitation, and over all of these, protection of the public.

[21] In particular, I must address the specific deterrence of Mr. Boyer considering the following:

- This is his fourth conviction involving drugs
- It is his third conviction in the last three years for PPT
- The amount of drugs in his possession was substantial
- He was on probation at the time of the offence
- Only six months previously he had spent 28 days in jail
- He is unrepentant.

[22] I am satisfied that in the absence of a significant sentence, Mr. Boyer is likely to commit a similar offence in the near future. He may do so despite the sentence I intend to impose. It is however the only means I have of trying to deter Mr. Boyer from committing this offence in the future. The appropriate length of sentence is four months.

[23] Mr. Boyer will serve three months incarceration. For the reasons I have expressed, it is not appropriate that he serve his sentence in the community. There will be no surcharge.

The Honourable C.L. Bagnall, PCJ