
MEMO

To: You (counsel for the Appellant Crown)

From: Senior Crown Attorney

Date: September 22, 2009

Re: *R. v. Judy Ann Craig*

We act for the Crown in this criminal appeal. I filed the notice of appeal and will prepare the appeal book, but I need you to write the factum and argue the appeal for me.

Our factum is due on Thursday, October 22, 2009 between 9:00 a.m. – 11:00 a.m. in Room 207.

The appeal will be heard during the week of January 25-28, 2010. I am scheduled to be out of town that week. You will need to check the Court's docket to determine the exact date and time of the appeal.

I've summarized the facts of the case below as found by the trial judge and set out our grounds of appeal. Feel free to use any other facts mentioned in the lower courts' decisions, if you think they might be useful.

Good luck!

Facts

Judy Craig pleaded guilty to one count of producing marijuana contrary to s.7(1) of the *Controlled Drugs and Substances Act (CDSA)*. She ran a lucrative grow-op out of her North Vancouver home that grossed more than \$100,000 per year. It was her only source of income for many years.

Police seized 186 marijuana plants in her basement and on the main floor. They estimated the value of the crop at \$87,500 per year when sold by the pound. Ms. Craig disputed this estimate. She testified at her sentencing that the drugs were worth \$31,875. Also seized were packaging, scales, \$22,275 in Canadian cash, \$787 in U.S dollars, \$2,390 in traveller's cheques, score sheets documenting marijuana sales from

her car, and a container with a pound of marijuana packaged in ounce, quarter-pound, and half-pound bags. Police estimated the value of a pound of packaged marijuana found in her car at \$15,000, which was not challenged by Ms. Craig.

Ms. Craig had run the grow-op since at least 1998, though she did not use drugs herself. The operation included industrial lighting, ventilation, and irrigation systems. Ms. Craig did not steal electricity to maintain the grow-op, and no weapons were found in the home. She also used the home as her residence, and lived there alone.

She sold drugs to various clients, including friends with AIDS, and hired employees to help her with the operation.

At the time of sentencing, Ms. Craig was 54 years old, divorced, had no dependents, and no previous criminal record. She had a university education and had worked in real estate. After her divorce, she was left depressed and without employment. She was an exceptional gardener and her garden had been featured in a regional magazine. She began the grow operation at the suggestion of a friend.

The North Vancouver home that housed the grow-op was worth \$460,000 at the time of sentencing, with \$119,000 remaining on the mortgage. A second home in Richmond that Ms. Craig inherited from her parents was worth about the same, with \$135,000 remaining on the mortgage.

The Canada Revenue Agency reassessed Ms. Craig as owing \$250,000 in unpaid taxes relating to her marijuana earnings back to 1998. She disputed this amount, which was secured with a lien on her North Vancouver home and the home in Richmond, B.C. that she'd inherited from her parents. Neither home was purchased with proceeds of crime, but both homes were maintained with profits from the grow-op.

Provincial Court Judge Gedye, J. sentenced Ms. Craig to a 12 month conditional sentence, a fine of \$100,000, and a victim fine surcharge of \$15,000 but declined to order forfeiture of the North Vancouver home.

Both parties appealed the sentence. The B.C. Court of Appeal unanimously upheld the conditional sentence but set aside the fine and victim fine surcharge. Instead, they ordered forfeiture of Ms. Craig's North Vancouver home.

Ms. Craig appealed further to the Supreme Court of Canada. The Supreme Court of Canada allowed the appeal and set aside the forfeiture order. The Crown had not sought reinstatement of the fine, so it was not reinstated. Ms. Craig had already served the 12 month conditional sentence.

The Supreme Court of Canada split on two issues: first, whether the decision to order forfeiture should be considered in crafting a fit sentence, or independent from it; and second, whether partial forfeiture is available under s.19.1 of the *CDSA*. Separate majorities concluded that forfeiture should be considered independently from sentencing and that partial forfeiture is possible under s.19.1 of the *CDSA*.

We have appealed to the Supreme Moot Court of Dalhousie on the basis that s.19.1 of the *CDSA* does not permit a partial order of forfeiture. Further, while the majority at the Supreme Court of Canada was correct that forfeiture orders should be considered independently from the sentencing process, we will argue that they erred in failing to reinstate the Court of Appeal's forfeiture order in this case.

Ms. Craig cross-appealed on the issue of whether a forfeiture order can be considered when arriving at a fit sentence. For convenience, we've agreed that we will be referred to as the appellant and Ms. Craig as the respondent throughout the proceeding, notwithstanding her cross-appeal.

First Issue:

1. Should any forfeiture order be considered when arriving at a fit sentence?

Second Issue:

2(a) Does s.19.1 of the *Controlled Drugs and Substances Act* allow for an order of partial forfeiture of real property?

2(b) Should forfeiture have been ordered in this case?

Sources

You will want to look at the Supreme Court of Canada decision at 2009 SCC 23. The Court of Appeal decision is available at 2007 BCCA 234. The trial judge's decision is available at 2005 CarswellBC 3685; [2005] B.C.J. No. 3238.

The Supreme Moot Court of Dalhousie prefers that counsel cite only the most relevant cases and authorities. You may cite up to five cases on each issue (including the cases mentioned above), any relevant legislation you feel should be brought to the Court's attention, and up to two secondary sources (such as journal articles.) Lower court decisions in this matter do not count towards the five-case limit.