

# COURT OF APPEAL FOR ONTARIO

CITATION: R. v. D'Souza, 2015 ONCA 805

DATE: 20151123

DOCKET: C57869

MacPherson, Tulloch and Pardu JJ.A.

BETWEEN

Her Majesty the Queen

Respondent

and

Sherwin D'Souza

Appellant

Mark Halfyard, for the appellant

Andrew Wiese, for the respondent

Heard and released orally: November 20, 2015

On appeal from the sentence imposed on October 8, 2013 by Justice S. Rebecca Shamai of the Ontario Court of Justice.

## ENDORSEMENT

[1] The appellant was convicted of trafficking marijuana. He placed an advertisement on the website 'Craigslist' offering to sell half an ounce (14 to 28 grams) of marijuana. An undercover officer responded to the ad, saying that he needed a quarter pound (110 grams approximately). The appellant agreed to sell this amount for \$750. The appellant and the undercover officer met at the

Scarborough Town Centre and the transaction took place. The appellant was arrested immediately thereafter.

[2] The appellant pleaded guilty. The Crown proposed a conditional sentence of 120 days. The defence argued for a conditional discharge. The sentencing judge imposed a \$750 fine, with six months to pay.

[3] The appellant appeals the sentence. He contends that a youthful first offender with good prospects does not deserve a criminal record. He says that the sentencing judge erred in principle by interpreting the public interest too narrowly and by ruling that the nature of the offence, on its own, could not warrant a discharge.

[4] We accept the appellant's submission. The appellant has taken remarkable steps to change his way of life, including successful treatment for his addiction to marijuana, substantial volunteer work, part-time employment, and full-time university studies. The trial judge recognized the appellant's progress, but seemed focussed heavily on general deterrence. In the circumstances of this case, we think there was room to recognize that a criminal record for this first time youthful offender was not necessary.

[5] The appeal is allowed. The conviction and the \$750 fine are set aside. We would impose a conditional discharge with the condition only that he keep the peace and be of good behaviour for one year.

"J.C. MacPherson J.A."

"M. Tulloch J.A."  
"G. Pardu J.A."