SUPREME COURT OF QUEENSLAND

CITATION:	*Till v Johns* [2004] QCA 451
PARTIES:	**PETER TILL** (applicant/applicant) **v** **ANTHONY JOHNS (SERGEANT OF POLICE)** (respondent/respondent)
FILE NO/S:	CA No 209 of 2004 DC No 1 of 2004
DIVISION:	Court of Appeal
PROCEEDING:	Application for leave s 118 DCA (Criminal)
ORIGINATING COURT:	District Court at Mackay
DELIVERED ON:	26 November 2004
DELIVERED AT:	Brisbane
HEARING DATE:	17 November 2004
JUDGES:	McMurdo P, Jerrard JA and Mackenzie J Separate reasons for judgment of each member of the Court, each concurring as to the order made
ORDER:	**Application for leave to appeal dismissed**
CATCHWORDS:	CRIMINAL LAW – APPEAL AND NEW TRIAL AND INQUIRY AFTER CONVICTION – APPEAL AND NEW TRIAL -– APPEAL AGAINST CONVICTION RECORDED ON PLEA OF GUILTY – PARTICULAR CASES – where applicant pleaded guilty to charges of production and possession of cannabis sativa – where pleas entered in an exercise of free choice – whether pleas should be set aside CRIMINAL LAW – DEFENCE MATTERS – IGNORANCE AND MISTAKE OF LAW – where applicant claims the Bible gives him an entitlement to eat cannabis sativa – whether applicant could rely on defence under s 22(2) of *Criminal Code* for charges of production and possession of cannabis sativa *District Court of Queensland Act* 1967 (Qld), s 118(3) *Justices Act* 1886 (Qld), s 222(2)(c) *Meissner v The Queen* (1995) 184 CLR 132, cited
COUNSEL:	The applicant appeared on his own behalf D L Meredith for the respondent

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

[1] **McMURDO P:** This is an application under s 118(3) *District Court of Queensland Act* 1967 (Qld) for leave to appeal from a decision of a District Court judge refusing the applicant, Mr Till's application to extend time within which to appeal under s 222 *Justices Act* 1886 (Qld) against his conviction and sentence in the Magistrates Court.

[2] Mr Till pleaded guilty in the Magistrates Court to three charges under the *Drugs Misuse Act* 1986 (Qld) involving the production and possession of a dangerous drug cannabis sativa and the possession of things used in producing it. Despite his plea of guilty, he argued before the District Court judge and again before this Court that he believed he ought not to have been charged or convicted of the offences because the Bible authorised him to eat herbs; cannabis sativa is a herb; he ate, (not smoked), cannabis sativa for pain relief; he had done nothing wrong.

[3] Assuming, (without deciding), that s 222(2)(c) of the *Justices Act* 1886 (Qld)[1] did not preclude him from arguing that his pleas of guilty should be set aside,[2] the next hurdle for Mr Till is that there was no evidence before the District Court or this Court that his pleas of guilty were anything other than free and informed. The transcript records him pleading guilty to each charge. The acting magistrate asked, "And that plea of guilty is of your own free will?" to which Mr Till responded, "Yes, your Honour." A plea of guilty entered in an exercise of free choice will not be set aside: *Meissner v The Queen*.[3] Even if the application before the District Court judge were treated as an application for an extension of time within which to appeal against his conviction in that Mr Till sought to set aside his pleas of guilty, he did not establish any grounds in the proceedings before the learned District Court judge or before this Court to warrant such an order.

[4] It may be that Mr Till is trying to articulate a claim that because of his religious beliefs and biblical studies he honestly believed he was entitled to eat cannabis sativa, which he says assisted in coping with his back pain, and that s 22 *Criminal Code*[4] exculpates him from criminal responsibility. The first answer to such a claim

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[1] "**222 Appeal to a single judge**
(1) If a person feels aggrieved as complainant, defendant or otherwise by an order made by justices or a justice in a summary way on a complaint for an offence or breach of duty, the person may appeal within 1 month after the date of the order to a District Court judge.
(2) However, the following exceptions apply –
…
(c) if a defendant pleads guilty or admits the truth of a complaint, a person may only appeal under this section on the sole ground that a fine, penalty, forfeiture or punishment was excessive or inadequate.
…"

[2] Compare the power given to set aside convictions based on errors of fact in s 147A(2) *Justices Act* 1886 (Qld).

[3] (1995) 184 CLR 132.

[4] "**22 (1)** Ignorance of the law does not afford any excuse for an act or omission which would otherwise constitute an offence, unless knowledge of the law by the offender is expressly declared to be an element of the offence.

is that he did not give any evidence of it before the magistrate and admitted his guilt when he entered his free and informed pleas of guilty. Even had he given such evidence in the Magistrates Court, it would not have afforded him a lawful excuse to the charges. The Bible is not the criminal law of this State. The *Drugs Misuse Act* 1986 (Qld) creates the offences of which he has been convicted on his plea of guilty. Had Mr Till pleaded not guilty and given evidence of the belief of entitlement he now claims in his written and oral submissions, this would provide no defence under s 22 *Criminal Code* or otherwise to the charges: see *R v Cunliffe*.[5] The observations made in that case[6] are equally apposite to Mr Till: if Mr Till chooses to commit offences against the *Drugs Misuse Act* 1986 (Qld), even if he earnestly disagrees with the law creating those offences, he must be prepared to face the legal consequences of his unlawful actions. If he is dissatisfied with the statutory law he should take that matter up with the legislature, not the courts.

[5] Before this Court, Mr Till raised in oral argument and for the first time a claim that the sections of the *Drugs Misuse Act* 1986 (Qld) under which he was convicted offended against s 116 of the Constitution which provides:

> "The Commonwealth shall not make any law for establishing any religion, or for imposing any religious observance, or for prohibiting the free exercise of any religion, and no religious test shall be required as a qualification for any office or public trust under the Commonwealth."

[6] He further argued that the *Drugs Misuse Act* 1986 (Qld) was inconsistent with a law of the Commonwealth, namely s 116 of the Constitution, and, under s 109 of the Constitution, Commonwealth law should prevail. A cursory reading of s 116 the Constitution shows immediately that there is no inconsistency between it and the provisions of the *Drugs Misuse Act* 1986 (Qld) and it has no effect on or relevance to that Queensland statute. This argument is so plainly without merit that it does not "involve" a matter arising under the Constitution or involving its interpretation under s 78B *Judiciary Act* 1903 (Cth) requiring notices to be given to the Attorneys-General of the Commonwealth and the States: see the observations of Toohey J in *Re Finlayson; ex parte Finlayson*.[7]

[7] The learned primary judge rightly dismissed his application. Mr Till has demonstrated no reason justifying the grant of leave to appeal from his Honour's decision.

[8] The application for leave to appeal must be dismissed.

[9] **JERRARD JA:** This proceeding is an application brought under s 118(3) of the *District Court of Queensland Act* 1967 for leave to appeal a decision of that court given 17 June 2004. That decision dismissed Mr Till's application by notice dated 6 January 2004 for an extension of time within which to appeal against orders made

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(2) But a person is not criminally responsible, as for an offence relating to property, for an act done or omitted to be done by the person with respect to any property in the exercise of an honest claim of right and without intention to defraud.

…"

5 [2004] QCA 293; CA Nos 115 and 116 of 2004, 13 August 2004.

6 Above, para [5].

7 (1997) 72 ALJR 73, 74, approved by the High Court in *Glennan v Commissioner of Taxation* (2003) 198 ALR 250, 253.

in a Magistrates Court on 7 October 2003, when Peter Till pleaded guilty to three charges of offences against the *Drugs Misuse Act* 1986. The grounds of both the application for an extension of time and the appeal were simply "new information and ignorance." He did not specify the orders that he said should have been made by the Magistrate. Mr Till was treated by the learned judge as having applied thereby for an extension of time in which to appeal against his conviction on those pleas of guilty, and also the sentence. He had been fined the one sum of $800.00, in default of payment 13 days imprisonment, and allowed 12 months to pay. On the hearing before this court he informed us that the fine had been paid by his ex-wife, and without his agreement; he made no submissions about its severity.

[10] The three offences admitted by Peter Till's pleas were:

- one count of unlawfully producing a dangerous drug, namely cannabis sativa, between 1 January 2003 and 19 September 2003;
- a count of unlawful possession of cannabis sativa on 19 September 2003;
- a count of possessing things (two florescent lights, one spray bottle, one watering system, one electric fan, one alkaline tester, one temperature gauge, one piece of chain, one piece of string, one electric timer and cord, one exhaust fan, two transformers, two power boards, one lamp shade, and one bottle of fertiliser additive) that Mr Till had used in connection with the commission of a crime defined in the *Drugs Misuse Act* 1986, namely unlawfully producing a dangerous drug.

All offences were committed at Shinfield, via Sarina.

[11] The learned acting Magistrate was informed without objection that police had attended Mr Till's residence on 19 September 2003 and observed 10 marijuana plants in pots, each about one foot tall, located near the road leading to his residence. He admitted cultivating those and possession of them; another 21 growing marijuana plants were located in a chook shed, which was set up for plant production by a hydroponic system. Mr Till admitted growing those plants as well, and explained that he had grown all of them for his own consumption to relieve back pain from which he suffered. His preferred method of consumption was by eating, rather than smoking, the plant; and he told the police that he consumed cannabis rather than use the otherwise large number of pain killing drugs prescribed for him, some of which were addictive. He exists on a disability support pension.

[12] Section 222 of the *Justices Act* 1886 makes provision for an appeal to a District Court Judge from an order made by "any justices or justice" in a summary manner upon a complaint for an offence or breach of duty. "Offence" is defined in s 3 of the *Criminal Code* to mean both criminal and regulatory offences, and the former includes crimes and simple offences. The charges against Mr Till, although crimes, were dealt with summarily pursuant to s 13 and s 118 of the *Drugs Misuse Act* 1986. However, s 222(2)(c) of the *Justices Act*, as in force since 5 January 2004 by reason of the amendments made to it in the *Evidence (Protection of Children) Amendment Act* 2003, provides that:

> "if a defendant pleads guilty or admits the truth of a complaint, a person may only appeal under this section on the sole ground that a fine, penalty, forfeiture or punishment was excessive or inadequate."

That provision limited Mr Till's application to the District Court to one for an extension of time within which to complain that the fine was excessive, the only complaint he did not make to either this court or the District Court. To the extent that he sought to appeal the orders convicting him before the Magistrate, his application ought to have been for an extension of time within which to seek leave to have his pleas of guilty set aside, assuming in his favour that application could have been heard by the District Court, a point not conceded by the respondent. His application to this court, accepting once again in his favour that his arguments should be heard on their merits, should be treated as one for an appeal against a refusal to allow an extension of time in which to apply to set aside his pleas of guilty, with the issue being whether his convictions on those pleas resulted in any miscarriage of justice. It is appropriate, because of the nature of his argument, to assume that a miscarriage of justice did occur if he had an arguable defence to the three charges, even though that assumption is contrary to the authority of *Meissner v The Queen* (1994-95) 184 CLR 132, at 141 and 157.

[13] The argument he presented to the learned judge and to this court centred upon references in the Bible to commands and authorisations by God for the consumption by humans of every herb and its seed, and the flesh of some animals. In addition to those biblical references, Mr Till provided the learned judge with encyclopaedic and dictionary references demonstrating support for Mr Till's contention that cannabis sativa is a herb.

[14] The learned judge's reasons for decision explained that Mr Till's biblically sourced argument for eating cannabis was irrelevant to the gravamen of the charges, which were for production and possession of it, not consumption. The learned judge also noted that the application was doomed to failure in so far as it was an appeal against conviction, by reason of the pleas of guilty, freely and knowingly made.

[15] Mr Till's notice of application for leave to appeal from that decision, dated 1 July 2004, gives as its grounds:

"who can tell how much faith? a person has?"

The document further urges that "No judge should be able [to] tell a person his faith in god. The law is to judge people who break the law not the eating habits of some one who has faith in God I was eating like the bible said. I am doing this because of my faith in god and his laws."

His written outline of argument reads "how can a person who only seen me for 1 hr know how much faith I have in god?"

[16] The implication that the District Court Judge assessed Mr Till's faith is unfair. The learned judge did not express any opinion on that or how deeply held Mr Till's beliefs were. Accepting that the justification Mr Till gives is a deeply held belief, it appears to overlook the contents of Deuteronomy Ch. 17:8-13, Romans Ch. 13:1-7, and King Artaxerxes' letter to Ezra, quoted in Ezra Ch. 7:13-25, all of which advise those who accept God's commands of the need to also obey the civic laws. The biblical injunctions Mr Till relies on at best would permit consumption of cannabis sativa, and it is the statute law prohibiting unlicensed and unlawful production and possession of cannabis which the courts of this State must apply, irrespective of any conflict, real or perceived, between that statute law and passages in the Bible or any other source of spiritual convictions. Mr Till's belief in the religiosity of eating

cannabis is not a belief in a right to grow or have it, and even if it was, that belief does not create any excuse or lawful justification for disobeying the laws of the State that say Mr Till cannot do that.

[17] Any authorisation, justification or excuse for Mr Till's conduct must be found in the statute or general law, and Mr Till has not suggested he can point to any. Section 116 of the *Drugs Misuse Act* requires that the *Criminal Code* be read and construed with it, and neither that Act or the Code gives Mr Till any answer to the charges based on his having followed and applied his own interpretation of passages in the Bible. Section 129(1)(e) of the *Drugs Misuse Act* puts the burden of proof on Mr Till to show that he was authorised to produce or possess cannabis sativa, and he has not done that. There is no suggestion he was licensed to do it.

[18] Mr Till submitted in his oral argument that he had what he termed a religious right to eat all herbs, including cannabis, and that this right existed by reason of s 116 of the Commonwealth Constitution. That important section prohibits the Commonwealth Parliament from making any law for establishing any religion, or for imposing any religious observance, or for prohibiting the free exercise of any religion, and from requiring a religious test as qualification for any office or public trust under the Commonwealth. It does not give any right such as that claimed by Mr Till, as his other oral arguments really admitted. For example, he agreed that his claimed religious right to eat seeds, herbs, and certain animals did not give him a right to ignore prohibitions in quarantine laws enacted by the Commonwealth Parliament. He accepted in argument that his religious right to eat herbs and some flesh did not allow him to bring seeds, herbs and animals he intended to eat into Australia, if those seeds, herbs or animals contained or carried contagious diseases harmful to other plants and animals in Australia, but not to humans, and where their entry was prohibited by quarantine laws. He acknowledged that that meant the claimed right did yield to some degree of statutory control, accepted by him as not contravening or inconsistent with his claimed right.

[19] I observe that that statutory control would be by the Commonwealth Parliament, pursuant to the provisions of the *Quarantine Act* 1908. Once that concession was made by Mr Till, he really had no answer to the prosecution case that the State legislature has prohibited the production and possession of a particular herb, declared by that legislation to be a dangerous drug, and that Mr Till could not selectively disobey that law but obey quarantine laws. After all, the Commonwealth Parliament has made cannabis sativa a prohibited import, by reason of the provisions of s 50 of the *Customs Act* 1901, Regulation 5 of the *Customs (Prohibited Import) Regulations* 1956, and Schedule 4 to those Regulations. Severe penalties are provided for importing that prohibited import, by the combination of s 233 and s 235 of the *Customs Act,* and the definition in that Act of "narcotic substance", and the provisions of its Schedule VI. Once Mr Till accepts, as he did, that despite his beliefs he must obey quarantine restrictions on plants which he would otherwise eat, he must logically accept he has no religious right selectively to ignore more general import prohibitions on specific plants and seeds, imposed by the Commonwealth Parliament on grounds which include that the plant and its seed is harmful to humans. Nor can he lawfully choose to disobey the State laws.

[20] It follows that no miscarriage of justice has resulted from Mr Till being convicted on his own pleas of guilty. I would dismiss his appeal against the decision of the

District Court which of necessity effectively refused to set aside the pleas of guilty, and expressly dismissed his curiously worded application to it. That leaves the matter of the appeal against the dismissal of an application, if made, for an extension of time within which to appeal against the severity of the fine; it was a substantial fine for a person who was a first offender and who relies on a disability support pension, but he did not complain about that fine to the District Court, and complained instead in this court only about his ex-wife paying it for him. Accordingly, that appeal, if there was one, should be dismissed too.

[21] **MACKENZIE J:** I agree with the order proposed by the President for the reasons given by her.