**[2018] QCA 26**

**COURT OF APPEAL**

**SOFRONOFF P**
**PHILIPPIDES JA**
**BODDICE J**

**CA No 212 of 2017**
**DC No 1718 of 2017**
**DC No 762 of 2017**
**DC No 1859 of 2017**

**THE QUEEN**

**v**

**NELSON-ADAMS, Jamie Christopher** **Applicant**

**BRISBANE**

**THURSDAY, 8 MARCH 2018**

**JUDGMENT**

**SOFRONOFF P:** Justice Boddice will deliver the first judgment.

**BODDICE J:** Jamie Christopher Nelson-Adams makes application for leave to appeal an effective head sentence of four years imprisonment imposed on 24 August 2017. The sole ground of appeal, if leave is granted, is that the sentence was manifestly excessive.

On 26 July 2017, a jury found the applicant guilty of one count of indecent treatment of a child under 16 under 12. The jury found the applicant not guilty of five other counts of indecent treatment of a child under 16 under 12. On 24 August 2017, the applicant was sentenced in respect of that offence and three further offences to which the applicant pleaded

guilty. Those offences were attempted stealing from the person, kidnapping and unlawful use of a motor vehicle. At the same time, the applicant pleaded guilty to two summary charges, being one of contravening a direction or requirement of police, and one of assault or obstructing a police officer.

The sentencing judge sentenced the applicant to 15 months imprisonment in respect of the indecent treatment count, 15 months imprisonment in respect of the attempted stealing count, four years imprisonment in respect of the kidnapping count, and four years imprisonment in respect of the unlawful use of the motor vehicle count. The applicant was sentenced to three months imprisonment in respect of the "assault or obstructing a police officer charge" and convicted but not further punished in respect of the "contravention of a direction or requirement" charge. All sentences were to be served concurrently. The sentencing judge declared 415 days the applicant had served in pre-sentence custody from 5 July 2016 to 23 August 2017 as time served in respect of those sentences. Allowing for that time and the applicant's pleas of guilty, the sentencing judge set the applicant's parole eligibility date at 5 March 2018.

In imposing those sentences, the sentencing judge observed, first, that the indecent treatment offence fell very much at the lower end of the offences dealt with by the Court. Second, the applicant was convicted of that offence following a trial by jury, but at the same trial the applicant was acquitted of five other counts of indecent treatment, and the fact he went to trial should be seen in that context. Third, that the applicant had pleaded guilty to the remaining counts and summary charges, although in the context of an extremely strong case. Fourth, although there was not any element of real remorse or a desire to assist in the administration of justice, the applicant was still entitled to some benefit for his pleas of guilty.

The indecent treatment offence was committed on 3 July 2016 shortly after the applicant had been released on parole for offences committed in New South Wales. It involved a female complainant aged 10 years. The applicant placed his arm down the front of the young girl's clothing and grabbed and squeezed her breast area. It was accepted the applicant was heavily

intoxicated at the time. The remaining offences were all committed in the context of one episode, some three days after the commission of the indecent treatment offence. Again, the applicant was intoxicated at the time.

The kidnapping offence related to a female complainant aged 22 years. She was unknown to the applicant. The applicant accosted that complainant while she was seated in her motor vehicle in a shopping centre carpark. The applicant entered the passenger seat of her vehicle. He sought to take her mobile phone before threatening her with a knife and requiring her to drive to Southport. The female complainant bravely drove to a police station where she successfully sought assistance. The applicant decamped her vehicle after again trying to take her handbag. Those circumstances gave rise to the offences of attempted stealing, kidnapping and unlawful use of a motor vehicle. The applicant was located by police hiding under a motor vehicle a short distance from the police station. He refused a police directive to come out from under the motor vehicle. He resisted police attempts to remove him from that vehicle. Those circumstances constituted the two summary charges.

The applicant was aged 30 years at the time of all of the offences. He was 31 years of age at the time of sentence. He is indigenous. He has a long-established history of mental illness. His current diagnosis includes schizophrenia. He reports active symptoms. The applicant has an extensive and appalling criminal history in Queensland and New South Wales. He has multiple prior convictions for property related offences and for offences of violence. He has breached Court orders on numerous occasions. He has previously served actual periods of imprisonment. The applicant also has a prior conviction for indecent treatment of a child under 16, although that occurred when he was himself a teenager.

The sentencing judge rightly observed that the applicant's criminal history reflected a total disregard for the safety of the community and for prior opportunities provided by Court orders. The sentencing judge also noted that the complainant in the kidnapping offence had become more withdrawn and felt less safe in public as a consequence of the applicant's

actions. Similarly, the complainant in the indecent treatment offence had suffered a loss of confidence. That offence had also had a devastating impact on her family.

The sentencing judge observed that the applicant had been in custody for some 415 days and that any sentence had to send an appropriate message of deterrence, both general and personal. However, the sentencing judge observed that the sentence imposed should not be crushing in the overall sense. After considering comparable authorities, the sentencing judge declined to impose any cumulative period of imprisonment. Instead, the sentencing judge affixed an overall head sentence of four years to reflect the applicant's overall criminality.

The applicant seeks to rely on a number of matters in support of his proposed ground of appeal, in the event that leave is given, that the sentences imposed were in all of the circumstances manifestly excessive. A number of those matters are of no relevance. They go to the form of charge and whether the charges ought to have been heard in the Magistrates Court. There is no need to consider those matters in the present application.

Of relevance to the present application, the applicant submits that (1) there were additional facts that ought to have been taken into account, and (2) that he was told that he would receive a sentence of less than three years imprisonment. Neither contention has any factual support. In any event, neither would advance the proposition that the sentence imposed was manifestly excessive. As to the remaining factors, a consideration of the applicant's circumstances and of comparable authorities supports a conclusion that an effective sentence of four years imprisonment was well within a proper exercise of the sentencing discretion. Indeed, the sentence imposed was lenient, having regard to all of the offending the applicant committed shortly after he was released on parole.

The applicant committed these offences whilst a mature man. He has an appalling criminal history. His actions in the indecent treatment offence involved a breach of trust. They occurred in his sister's home. His conduct in relation to the other episode of offending included being armed with a knife. The victim was a young female complainant unknown to the applicant. That conduct would have been terrifying and occurred over a not insignificant

period of time. A consideration of the circumstances of the episode involving the kidnapping and associated offences alone would support a sentence of four years imprisonment: *R v AR* [2003] QCA 538, *R v El-Masri* [2003] QCA 52, *R v Von Pearson* [2006] QCA 292.

Against that background, an overall effective head sentence of four years imprisonment imposed to reflect the applicant's criminality, which included an offence of indecent treatment committed on a separate occasion and in unrelated circumstances, more than appropriately reflected the applicant's cooperation with the administration of justice, evidenced by his pleas of guilty to the offence of kidnapping and the related offences the subject of the second episode. There is no basis to conclude that the imposition of an effective head sentence of four years imprisonment involved a misapplication of principle, or has resulted in a sentence that is plainly unjust. In such circumstances, there is no basis for this Court to intervene on a ground that the sentence was manifestly excessive. I would refuse leave to appeal.

**SOFRONOFF P:** I agree.

**PHILIPPIDES JA:** I also agree.

**SOFRONOFF P:** The order of the Court is the application for leave to appeal is dismissed. Adjourn the Court.