

COURT OF APPEAL

**SOFRONOFF P
HENRY J
CROW J**

**CA No 299 of 2017
DC No 1990 of 2017**

THE QUEEN

v

SHERWIN, Bradley

Applicant

BRISBANE

TUESDAY, 12 JUNE 2018

JUDGMENT

HENRY J: The applicant was sentenced on 14 November 2017 to concurrent terms of imprisonment for 24 counts of fraud with circumstance of aggravation and one Commonwealth offence of dishonestly failing to discharge his duties as a company director.

The longest of the sentences was 10 years imprisonment. The learned sentencing judge indicated she intended the applicant would be eligible for parole after serving four years of his sentences.

The applicant had served 70 days in pre-sentence custody, awaiting sentence, since 6 September 2017, which was declared pursuant to s 159A *Penalties and Sentences Act 1992* (Qld), to be imprisonment already served under the sentence.

To reflect her Honour's stated intention regarding parole eligibility, she should have fixed the date the applicant is eligible for parole, as she could pursuant to s 160C *Penalties and Sentences Act*, as a date four years after the applicant's entry into custody on 6 September 2017. Instead, in an obvious error, her Honour fixed the parole eligibility date at four years after the date of sentence, inadvertently extending the period she intended to set prior to parole eligibility by 70 days.

This error is the focus of the sole ground of the applicant's application for leave to appeal sentence. The application's initial, since abandoned, ground was that the sentence imposed was manifestly excessive. That presumably explains why the correction of a sentence decided on a clear factual error regarding the parole eligibility date is a task now before this Court rather than before the learned sentencing judge, as it readily could have been, pursuant to s 188 *Penalties and Sentences Act* 1992 (Qld). Ironically, the sentence was reopened under that section on 15 November 2017 to make some corrections but this error remained undetected.

The error is conceded by the respondent. It is not suggested that in granting the application for leave to appeal and allowing the appeal, this Court ought to vary the sentences imposed below to any greater extent than is necessary to correct the error.

To that end, there will also need to be some correction of part of the sentence imposed for count 25, the Commonwealth offence of dishonestly failing to discharge duties as a company director. For that offence, her Honour sentenced the applicant to 12 months imprisonment, ordering her s 19 *Crimes Act* 1914 (Cth), that sentence to commence on 14 November 2020. That order reflected her Honour's intention that sentence be perceived as having a cumulative quality, notwithstanding the concurrency of the sentences. Her Honour's obvious intention was that sentence should expire by the parole eligibility date, which was erroneously set for 14 November 2021.

To correctly reflect her Honour's intention, the Commonwealth sentence should have been ordered to commence on 6 September 2020, 12 months before the correct parole eligibility

date. That error should also be corrected. I would order (1) the application for leave to appeal sentence granted, (2) appeal allowed, (3) the sentence imposed below is substituted only to the following extent: (a) the date on which the applicant is eligible for parole is fixed at 6 September 2021, (b) the sentence of 12 months imprisonment on count 25 is by this order directed to commence on 6 September 2020.

SOFRONOFF P: I agree.

CROW J: I agree.

SOFRONOFF P: The orders of the Court are:

- (1) Application for leave to appeal against sentence granted.
- (2) Appeal allowed.
- (3) The sentence imposed below is substituted only to the following extent:
 - (a) The date on which the applicant is eligible for parole is fixed at 6 September 2021;
 - (b) The sentence of 12 months imprisonment on count 25 is by this order directed to commence on 6 September 2020.

Anything further?

MR CROWLEY: Nothing further, your Honours.

MS LOODE: No, your Honour.

SOFRONOFF P: Thank you.