SUPREME COURT OF QUEENSLAND

CITATION:	*R v Castner* [2018] QCA 265
PARTIES:	**R** **v** **CASTNER, Rebecca Teresa** (applicant)
FILE NO/S:	CA No 178 of 2017 SC No 992 of 2016
DIVISION:	Court of Appeal
PROCEEDING:	Sentence Application
ORIGINATING COURT:	Supreme Court at Brisbane – Date of Sentence: 13 July 2017 (Bowskill J)
DELIVERED ON:	12 October 2018
DELIVERED AT:	Brisbane
HEARING DATE:	31 July 2018
JUDGES:	Philippides JA and Brown and Ryan JJ
ORDER:	**The application for leave to appeal is refused.**
CATCHWORDS:	CRIMINAL LAW – APPEAL AND NEW TRIAL – APPEAL AGAINST SENTENCE – GROUNDS FOR INTERFERENCE – SENTENCE MANIFESTLY EXCESSIVE OR INADEQUATE – where the applicant pleaded guilty to trafficking in dangerous drugs (count 1); possessing property obtained from trafficking (counts 14 and 15); possessing a dangerous drug (count 16); and possessing a thing for use in connection with trafficking in a dangerous drug (count 17); and three summary offences – where the applicant was sentenced to ten years' imprisonment on the count of trafficking in dangerous drugs and convicted but not further punished on each of the remaining counts and charges – where the applicant contends that the sentence was manifestly excessive, given the applicant's demonstrated remorse and prospects of rehabilitation – where the Crown submits that the sentence imposed contained no error and is supported by case authority – whether the sentence is so unreasonable or plainly unjust in the circumstances as to give rise to an inference that the discretion has miscarried *House v The King* (1936) 55 CLR 499; [1936] HCA 40, applied

R v Abbott [2017] QCA 57, considered
R v Barker [2015] QCA 215, considered
R v Bost [2014] QCA 264, cited
R v Feakes [2009] QCA 376, considered
R v McGinniss [2015] QCA 34, considered
R v Prendergast [2012] QCA 164, cited

COUNSEL: D S Caruana for the applicant
J D Finch for the respondent

SOLICITORS: Russo Lawyers for the applicant
Director of Public Prosecutions (Queensland) for the respondent

[1] **PHILIPPIDES JA:** For the reasons given by Brown J, I agree that the application for leave to appeal should be refused.

[2] **BROWN J:** The applicant, Rebecca Teresa Castner, seeks leave to appeal the sentence imposed in the Supreme Court of Queensland following her plea of guilty on 13 July 2017 to the following offences: trafficking in dangerous drugs (count 1); possessing property obtained from trafficking (counts 14 and 15); possessing a dangerous drug (count 16); and possessing a thing for use in connection with trafficking in a dangerous drug (count 17); and three summary offences.

[3] The learned sentencing judge sentenced the applicant to ten years' imprisonment[1] on the count of trafficking in dangerous drugs, and ordered that the applicant be convicted but not further punished on each of the remaining counts and charges. The applicant contends that the sentence is manifestly excessive. The Crown submits that the sentence imposed contained no error and is supported by case authority.

Circumstances of the offences in respect of which the application is brought

[4] An agreed schedule of facts setting out the relevant facts was tendered as an exhibit and was considered by the learned sentencing judge. It reveals that the trafficking in which the applicant engaged was for a period of some six months. The applicant was a wholesaler of dangerous drugs, predominantly methylamphetamine, for profit. The applicant's client base consisted of at least 25 customers, some of whom subsequently trafficked on their own account. Over the period in question, the applicant sold at least 107 ounces (or 2.996 kilograms) of methylamphetamine for reward. The precise amount of profit earned by her is uncertain, but one employee estimated her profit to be about $30,000 per week. On the agreed facts, it was estimated that the applicant would have made somewhere between $702,000 and $3.276 million. She "employed" four people to assist her in the operation. They were recompensed by her providing them with free accommodation and methylamphetamine. There was also evidence contained in the agreed facts

[1] With the result that the applicant is declared to be a serious violent offender.

demonstrating that the applicant endorsed threats of violence being made by her employees to enforce payment of drug debts owing to her. The applicant was brazen about her offending. For example, she had skited in a telephone conversation that she enjoyed the "crack lord" life and that her Buderim house was a "drug lord house".

[5] In January 2015, the applicant was charged with possession of drugs and utensils after being present during a police search of a unit at Alexandra Headlands. She continued to traffic drugs undeterred by those charges to which she subsequently plead guilty. Between 11 June and 21 June 2015, the applicant checked in to a Mooloolaba Resort and paid $1,000 cash for a three bedroom apartment. She told her son that the "word on the street" was that she was going to be raided and so she had cleared everything out of her house at Buderim. She continued to run her trafficking business and supply drugs from the resort where she was staying. The extent of the applicant's trafficking extended to supplying her son with methylamphetamine and sourcing cannabis for one of her daughters. Both of them on-sold the respective drugs to their own customer bases. The applicant supported her son and daughter being involved in the drug trade notwithstanding that she had another daughter who was struggling with a drug addiction.

[6] Following her arrest, the applicant declined to participate in an interview.

[7] The applicant was aged 50 to 51 at the time of the offending; she is now 54. The applicant pleaded guilty to the charges saving the cost and time of a trial which serves the administration of justice.

[8] The learned sentencing judge determined that the applicant's overall criminality was to be reflected in the ten year sentence imposed for trafficking.

Approach of the learned sentencing judge

[9] Her Honour gave detailed reasons which demonstrate careful consideration of the matters before her, including:

(a) That the applicant had entered a guilty plea, which saves the community the cost and time of the trial. Her Honour expressed some scepticism that the plea of guilty represented the applicant's remorse rather than being more an expression of regret and the reality of the evidence against the applicant. However, her Honour still regarded the early plea of guilty as a matter which the applicant was entitled to have taken into account in her favour;

(b) The serious nature of the trafficking in a Schedule 1 drug;

(c) That the applicant had been somebody who had apparently been afflicted by an addiction to drugs, though her Honour noted that notwithstanding that, she was able to run what was plainly a sophisticated business. Her Honour noted that the applicant's trafficking was at a personal cost to those who used the drugs in which she trafficked and the community;

(d) Her Honour considered that the agreed facts, and the information in the psychologist's report about the applicant's role in caring for her daughter who suffered a drug addiction and mental health difficulties, did not sit easily with each other. This was particularly given the fact that as a mother, she was supplying drugs to her own children;[2]

(e) That the applicant's life had changed a lot since she had been arrested. While her Honour considered that the applicant's head had cleared considerably from when she was involved in the offending, she noted that there was a great discord between the person described in the psychologist's report and the person who was reflected in the agreed facts who ran the business and was proud of describing herself as a "crack lord" or a "drug lord";

(f) The age of the applicant at the time of offending and at sentencing;

(g) The applicant's criminal history, which showed that her offending did not start until she was 40 years of age, after which she had a number of entries in relation to possessing amphetamines, methylamphetamine and drug associated offences. Her Honour did not regard the applicant as having a significant criminal history, but one that was consistent with drug use;

(h) That the applicant had served just over five months in custody, which was to be declared as time served;

(i) That the applicant had taken positive steps while on bail. In that regard, her Honour noted that there had been one failure to appear but no further offending. Her Honour also had regard to the fact that the applicant had engaged in courses, particularly the Bayside Alcohol and Drug Service and Early Recovery Group, and had produced two negative urine tests, one from June 2017 and one from July 2017. Her Honour considered that notwithstanding the submission that the applicant had ceased drug use, she had doubts that her rehabilitation could be regarded as having completely removed her addiction as a risk to the community. Her Honour noted that the evidence of the applicant ceasing drug use was not the strongest evidence that could have been placed before the Court;

(j) The psychologist's report which was provided to the Court. Her Honour noted that the report reflected that the applicant had dealt with significant challenges in her life. In relation to the psychologist's report, her Honour stated as follows:[3]

> "I have already commented on the fact that there is a discord between the person described as the head of this business in the agreed facts, and the person described in the psychologist's report, as feeling dominated and subservient to others. Your conduct in committing these offences was of somebody who was clearly in

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2 AB 51/45-50.

3 AB 53/35-50.

> power, clearly dominating others who were below you in the business, and clearly enjoying it as well, by your references that I have referred to already.
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> I appreciate that the psychologist expresses the opinion that you are unlikely to reoffend in the future. I hope that that is entirely true, and I am sure that the issues concerning your daughter and her care are significant concerns to you and motivators for you. I often find myself saying to defendants who I am sentencing, very often, it is members of your family who will suffer the most for the conduct that you are being sentenced for. Sometimes it is people's young children, and that is a tragedy. And this is also a tragedy, where your daughter will, on the material before me, suffer by your absence. And that is matter we can have regard to, but it does not result in a lessening of the appropriateness of the punishment to the person concerned."

(k) That the employees who had been sentenced for their role in the trafficking had a lesser role than the applicant, and that her sentence would be appropriately higher;

(l) The various mitigating factors identified above in terms of the applicant's guilty plea, limited criminal history, drug use, personal circumstances and attempts at rehabilitation.

[10] The learned sentencing judge stated that, having considered the submissions and cases carefully, the submission by the Crown that a sentence of 12 to 13 years' imprisonment was warranted, could well have been appropriate. Her Honour did not accept the submission by the Crown that the sentence should rest at 12 years but determined that the appropriate sentence was ten years, particularly having regard to the plea of guilty. Her Honour considered in particular, the cases of *R v Barker*,[4] *R v Feakes*,[5] and *R v Bost*,[6] as the most relevant to the applicant's offending, given the serious nature of the applicant's offending. Her Honour concluded that it would not be consistent with previous authorities of principle for her to impose a sentence of less than 10 years, given the nature of the offending, and regarded the amelioration of the sentence to 10 years as giving fairly significant value to the plea of guilty in her case.[7]

Matters relied upon by the applicant

[11] Counsel for the applicant contends that the sentence was manifestly excessive by virtue of the fact that the applicant's demonstrated remorse and prospects of

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4 [2015] QCA 215.

5 [2009] QCA 376.

6 [2014] QCA 264.

7 AB 55, lines 20-25.

rehabilitation support the fact that the sentence imposed was manifestly excessive and that a head sentence of eight years with no order as to parole eligibility and no serious violent offender declaration was the appropriate sentence.

[12] While the applicant conceded that the cases which could be regarded as having some comparability to the applicant's offending supported that a sentence between 10 and 12 years could be imposed, the applicant's genuine remorse, efforts at rehabilitation and relatively favourable antecedents entitled her to a head sentence of less than 10 years' imprisonment. The applicant's counsel relied upon *R v Feakes*,[8] *R v Barker*,[9] *R v Abbott*,[10] and (to a lesser extent) *R v Prendergast*.[11]

[13] Based on the Crown's analysis of the cases relied upon by her Honour and the applicant, the Crown submitted that the sentence was well within the sentencing discretion. It further referred to a decision of *R v McGinniss*,[12] as providing further support for the sentence imposed.

Consideration

[14] In an application for leave to appeal against sentence, it is not sufficient for the applicant to show that another sentence may be open to a sentencing judge. Rather, it is necessary to show that the sentence is so unreasonable or plainly unjust in the circumstances as to give rise to an inference that the discretion has miscarried.[13]

[15] The difficulty for the applicant is that her Honour considered both the applicant's rehabilitation and remorse in her reasons and indeed considered that a sentence in the realm of 12 to 13 years' imprisonment could have been appropriate if it were not for the mitigating circumstances. Her Honour accepted the mitigating circumstances and moderated the sentence imposed to ten years.

[16] Her Honour's scepticism as to whether the applicant's plea of guilty genuinely indicated remorse and in respect of some of the matters outlined by the psychologist said to indicate remorse as well as her Honour's scepticism about the apparent awakening that the applicant had experienced since being arrested and spending time in custody were findings that were open to her Honour when assessed against the circumstances surrounding the applicant's offending as outlined in the agreed schedule of facts. In particular, the schedule of facts demonstrated that the applicant aggressively headed up the drug trafficking operation. She was originally in partnership with Dean Lacey until he was incarcerated, after which she paid his

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8 [2009] QCA 376.

9 [2015] QCA 215.

10 [2017] QCA 57.

11 [2012] QCA 164.

12 [2015] QCA 34.

13 *House v The King* (1936) 55 CLR 499 at 504 to 505. See for example: *R v Ikin* [2007] QCA 224 at p 6, per Keane JA (as his Honour then was).

debts and took over the business. The applicant then made it clear in a number of phone calls to other defendants, suppliers and customers that she was in charge. She was prepared to encourage employees to use stand-over tactics in order to get paid and continued to traffic notwithstanding that she had been charged with drug offences to which she had pleaded guilty. She paid her employees by providing them with drugs as well as accommodation. She had sought to evade police by moving to a hotel resort to continue trafficking when she heard her house was to be raided. This conduct does not sit easily with the applicant claiming that she only realised the damaging effect of drugs while in custody and that she thought she had been helping to comfort others in need while supplying them.

[17] The applicant stated to the psychologist that her time in custody had brought her face to face with many women who were victims of drug addiction and that she was horrified to see the state of their health. However, that sits uneasily with what the applicant told the psychologist about her other daughter who had started to use marijuana from the age of 14 and had a growing need for self-medication for depression.[14] The applicant stated that after her divorce from her abusive husband in 2003, her daughter's depression deepened; her "mental health condition deteriorated and her addiction worsened," such that the applicant became her sole carer. As such, the applicant's apparent awakening when she saw women who had been victims of drug addiction in jail and the state of their mental health could properly give rise to scepticism, given what was happening to the applicant's daughter before her very eyes.

[18] The psychologist's report states that the applicant took responsibility for not removing her children from an abusive home environment and for exposing them, particularly one of her daughters, to the high risk of becoming addicted to drugs in associating with criminals.[15] However, those statements could again give rise to scepticism given that the applicant was supplying drugs to two of her children for them to on-sell to their own customer bases.

[19] In terms of the applicant's rehabilitation, there was evidence that the applicant had undertaken some drug rehabilitation programs. She was described by her counsel as "highly motivated". Her Honour considered that while the applicant demonstrated steps towards rehabilitation, having regard to the references tendered, that there were only two negative urine drug analysis tests provided to the Court, and from what she had told her psychologist, she did not accept that the applicant was fully rehabilitated. While the psychologist's report described the applicant as "highly motivated to continue her self-initiated rehabilitation", the evidence did not support a finding that she had been successfully rehabilitated. She had not participated in an intense drug rehabilitation program and there were only two urine results which were drug free. Her Honour's finding was open on the evidence.

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14 AB 261 at subparagraphs (n), (o) and (q).

15 AB 264 at subparagraph (c).

[20] Further, with due respect to the psychologist, he only met with the applicant on one occasion,[16] such that his assessment that she had been able to address her addiction was limited, notwithstanding the broader inquiries he made. In any event the psychologist's findings were largely based on information provided by the applicant and were insufficient of themselves to demonstrate full rehabilitation.

[21] While the applicant's counsel relied particularly on the applicant's statement to the psychologist that she was relieved when she was arrested because it removed her from the environment where she was constantly under threat and gave her time to take stock of her life and its consequences, the assessment by the psychologist was correctly weighed by her Honour against the nature of the offending outlined in the agreed schedule of facts which revealed no evidence of any duress and the limited evidence of rehabilitation presented to the Court.

[22] There are a number of factors which were outlined by the psychologist which provided some explanation, although not a complete explanation, as to how the applicant came to be involved in the drug world. However, as outlined above, the material before the learned sentencing judge was such as to justify her Honour's cautious approach to the applicant's statements as to her attempts at rehabilitation and as to her remorse.

[23] While her plea of guilty was certainly some evidence of remorse, as were her statements to her family, members of the church community and the psychologist, the nature and circumstances of the applicant's offending is a factor relevant to any assessment of the genuineness of the applicant's remorse. In any event, notwithstanding expressing a degree of scepticism, her Honour did take into account the mitigating circumstance of remorse, including the plea of guilty, as well as the applicant's attempted rehabilitation, in reducing the sentence from the starting head sentence as her Honour did.

[24] Her Honour did not give inadequate weight to the evidence that was before her. I find no error in the approach adopted.

[25] The cases considered by her Honour of *R v Feakes*,[17] and *R v Barker*,[18] as well as the more recent case of *R v Abbott*,[19] support the sentence imposed by the learned sentencing judge. While the applicant's counsel submits that there are certain different features in those cases in terms of aggravating circumstances, no case is, of course, exactly the same. When the circumstances of those cases are weighed against the particular circumstances of the applicant's offending, the points of difference do not support a finding that the sentence imposed was not appropriate.

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16 AB 255, at subparagraph (i).

17 [2009] QCA 376.

18 [2015] QCA 215.

19 [2017] QCA 57.

[26] In the case of *R v Feakes*, the Court of Appeal upheld a sentence of 10 years' imprisonment with a serious violent offence declaration for the offence of trafficking in dangerous drugs. The offender was 30 and 31 at the time of his offending and 34 at the time of sentence. He commenced drug trafficking while subject to a good behaviour bond imposed as part of a drug diversion program. In the present case, the applicant was convicted on her own pleas of guilty of possession of drugs and utensils on 30 January 2015, but subsequently continued to traffic. Further, the applicant was older than the offender in *Feakes*, employed other addicts, encouraged them to use threats of violence to recover debts and the scale of trafficking was significantly greater[20] (notwithstanding that Feakes was trafficking in two Schedule 1 drugs[21]). The offender in *Feakes* similarly had extenuating circumstances including difficulties affecting his childhood, just as the applicant had some personal extenuating circumstances as described to the psychologist. The offender in *Feakes* had stronger evidence supporting his drug rehabilitation. He had participated in programs to address his drug taking and had undertaken urine tests twice a week. For the period from February to September 2009, all but one test were drug free and after July 2009, all tests were clear. The one urine test which detected drugs could be attributed to legitimate medication. He also had good prospects of employment and there was an absence of any use of violence in the trafficking business.

[27] In *R v Barker*, the Court of Appeal upheld the head sentence imposed of 10 years' imprisonment for trafficking in dangerous drugs. While the learned sentencing judge took into account the offender's timely plea of guilty, his Honour did not accept that the offender was remorseful. The applicant's trafficking was comparably profitable to that in *Barker*. In *Barker*, there was no suggestion of violence in the conduct of the trafficking business. Like *Feakes*, there had been an extended period during which the offender in *Barker* was on bail and did not offend; that was also the case for the applicant. Like the applicant, both *Feakes* and *Barker* had limited criminal histories. While the offender in *Barker* was not drug dependent and his motivation was for financial gain, the applicant, while certainly a user of methylamphetamines, was not so affected by her drug addiction that she could not carry on a sophisticated trafficking business and the scale of the business supports the fact that the business was carried on for financial gain beyond that required to support either her habit or her living expenses.

[28] In *R v Abbott*, the Court of Appeal upheld a sentence of 10 years' imprisonment imposed on the offender, who had trafficked at a wholesale level in methylamphetamine and cocaine for an active period of six and a half months.[22] The offender had engaged in a substantial business of trafficking involving large amounts of money and drugs over a significant period. There was no evidence that he had used or threatened violence. His criminal history was minor. He had also pleaded guilty in a timely

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20 See *R v Feakes* [2009] QCA 376 at [3] and [9].

21 *Feakes* was relevantly trafficking in cocaine and 3, 4-methylenedioxymethamphetamine (MDMA). MDMA was a Schedule 2 drug at the time but has since been made a Schedule 1 drug on 1 June 2008 by *Drugs Misuse Amendment Act* 2008 (Qld).

22 At [4].

way and was found to have succumbed to the use of drugs when his mother died and struggled with an addiction. He was found to have a difficult background and he had fallen into depression after he lost everything in the Global Financial Crisis. On appeal, the offender contended that his sentence of 10 years was excessive, given his plea of guilty, the absence of violence in his offending, his remorse, his willingness and efforts to rehabilitate himself including that he had offers of employment awaiting him upon his release from prison as well as commitments to care for and protect his family. The Court of Appeal refused his application for leave to appeal against the sentence, finding that the sentence imposed in respect of the trafficking count was "well within the sentencing discretion".[23] Philippides JA, with whom Fraser JA and McMurdo JA agreed, referred to the case of *Feakes* and stated that:[24]

> "McMurdo P undertook a comprehensive review of comparable sentences, concluding that a range of 10 to 12 years imprisonment was ordinarily imposed on mature offenders who have pleaded guilty to trafficking. *Feakes* supports the contention that the sentence imposed on the applicant for the trafficking offence was well within the sound exercise of the sentencing discretion." (footnote omitted)

[29] The additional case relied upon by the Crown, *R v McGinniss*,[25] also supports the sentence imposed by her Honour where the circumstances of offending was not incomparable to the applicant's offending. In *R v McGinniss*, the offender was sentenced to 10 years for trafficking over a seven month period, and eight years for possession of a dangerous drug in excess of 200 grams, to be served concurrently. The offender was 26 years old when he offended and 28 at the time of sentence, with a limited criminal history. The Court stated that he had made commendable efforts at rehabilitation. The sentence was upheld upon appeal. He had made an early plea of guilty.

[30] Fraser JA stated at [11]:

> "The Court has recently analysed the relevant sentencing decisions: see *R v Galeano* at [26]-[31], *R v Ryan* [2014] QCA 78 at [43]-[45], and *R v Johnson* at [43]-[46]. As I observed in *R v Safi* [2015] QCA 13 those analyses indicate that, whilst each sentence requires an exercise of discretion with reference to the facts and circumstances of the case, for substantial trafficking in a Schedule 1 dangerous drug of the order of the applicant's trafficking, offenders who have pleaded guilty and invoked a range of mitigating factors have commonly been sentenced to terms of imprisonment of between 10 and 12 years (with the automatic declaration that the offence was a serious violent one)."

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23 At [24].

24 At [23].

25 [2015] QCA 34.

Order

[31] In my view, the sentence imposed in respect of the trafficking count was within the sentencing discretion of the sentencing judge. The application for leave to appeal against the sentence should be refused.

Conclusion

[32] I would refuse the application for leave to appeal.

[33] **RYAN J**: I agree with the order proposed by Brown J for the reasons given by her Honour.