

SUPREME COURT OF QUEENSLAND

CITATION: *R v Corbett* [2018] QCA 341

PARTIES: **R**
v
CORBETT, Brett Andrew
(applicant)

FILE NO/S: CA No 77 of 2018
SC No 1759 of 2017
SC No 360 of 2018

DIVISION: Court of Appeal

PROCEEDING: Sentence Application

ORIGINATING COURT: Supreme Court at Brisbane – Date of Sentence: 16 March 2018 (Ryan J)

DELIVERED ON: 7 December 2018

DELIVERED AT: Brisbane

HEARING DATE: 12 September 2018

JUDGES: Holmes CJ and Morrison and McMurdo JJA

ORDER: **The application for leave to appeal against sentence is refused.**

CATCHWORDS: CRIMINAL LAW – APPEAL AND NEW TRIAL – APPEAL AGAINST SENTENCE – GROUNDS FOR INTERFERENCE – SENTENCE MANIFESTLY EXCESSIVE – where the applicant was convicted of trafficking in, supply of and possession of methylamphetamine and a number of summary offences – where the applicant was sentenced to nine years imprisonment on the trafficking count with no order as to parole – where the applicant seeks leave to appeal against his sentence on the basis that it is manifestly excessive – where the applicant contends that the cases on which the prosecutor relied at sentencing were examples of more serious offending than his – where the applicant contends that the available range for an offender in his circumstances was eight to nine and a half years imprisonment before allowance for a guilty plea and other mitigating factors – where the applicant contends that his early plea of guilty, his remorse, the fact that his offending was largely the result of his addiction, and his co-operation with the authorities should have been reflected in a parole eligibility date at less than one-third of the sentence – whether the sentence imposed by the trial judge was manifestly excessive in all of the circumstances

R v Abbott [\[2017\] QCA 57](#), applied

R v Cameron [2014] QCA 55, considered
R v Duong (2015) 255 A Crim R 57; [2015] QCA 170, cited
R v Miller [2013] QCA 346, considered
R v Strutt [2017] QCA 195, applied
R v Tran [2014] QCA 90, considered
R v Tran; Ex parte Attorney-General (Qld) [2018] QCA 22, considered

COUNSEL: D R Gates for the applicant
D Nardone for the respondent

SOLICITORS: Dib & Associates for the applicant
Director of Public Prosecutions (Queensland) for the respondent

- [1] **HOLMES CJ:** The applicant seeks leave to appeal against a sentence of nine years' imprisonment, with no order as to parole, in respect of one count of trafficking in a dangerous drug, methylamphetamine. He was convicted and not punished in respect of a further six counts of supplying methylamphetamine and one count of possessing a quantity of the drug in excess of 200 grams. He was similarly convicted and not further punished in respect of summary offences of possessing a mobile phone used in connection with supplying drugs, receiving tainted property (\$520), possessing a set of scales suspected of having been used in connection with the commission of a drug offence, obstructing a police officer and possessing three pipes used in connection with the consumption of a drug. The proposed ground of appeal is that the sentence was manifestly excessive.

The offences

- [2] The applicant was pulled over by police on 10 May 2017. His vehicle was searched and 287.46 grams of a substance which proved to be 209.914 grams of pure methylamphetamine was found in an air filter under its bonnet. It was contained for the most part in one ounce bags, and it had a street value of somewhere between \$56,000 and \$100,000, depending on the quantities in which, and the rate at which, it was sold. The property which was the subject of the summary charges was found in a plastic container secured under the vehicle by magnets, together with a tick list.
- [3] An analysis of the applicant's phone showed that he had been trafficking in methylamphetamine between 23 March 2017 and 10 May 2017. The messages stored on the phone indicated that he was a regular supplier, occasionally dealing in ounce amounts and receiving sums as large as \$20,000. He boasted on one occasion of having made \$20,000 on four ounces in less than 24 hours and on another occasion said that he was endeavouring to turn three ounces of substance into six. The messages showed him discussing: drug debts which were owed to him; his travelling around the state in order to buy and sell drugs; and his profits and price levels. The tick list revealed that 14 customers owed him, collectively, about \$62,000. Two customers were shown as having owed \$16,400 and \$17,900 respectively. The supply counts on the indictment related to six specific occasions on which it could be shown that the applicant had supplied methylamphetamine in amounts ranging from a half ball (about 1.75 grams) to an ounce. It was not possible to establish what profit he had made, but it was accepted that there were no

signs of wealth evident in his lifestyle, and he was not in possession of any large sums of money.

The applicant's criminal history

- [4] The applicant was 45 years old at the time of his offending. He had a long criminal history, dating back to 1990, which included a number of offences of possession of dangerous drugs. Most significantly, in 2007 he was sentenced in the Rockhampton Supreme Court to 18 months imprisonment, with a parole release date fixed after five months, on two counts of possessing dangerous drugs. On that occasion he had been found in possession of 6.9 grams of cannabis and of a quantity of methylamphetamine packaged as three eight-ball (3.5 grams) amounts, with a further half gram in another bag. It is not clear what the purity of the substances was, but he was sentenced on the basis that he had the drugs for a commercial purpose.
- [5] In 2011, the applicant was again before the Rockhampton Supreme Court on counts of possessing dangerous drugs. This involved two sets of offending. On the first occasion, police found 80 grams of substance, which proved to be 33 grams pure methylamphetamine, at his house, together with \$12,000 in cash, and a mobile phone containing drug-related messages. While he was on bail in relation to those charges, he was intercepted in a vehicle and found with 17.29 grams of pure methylamphetamine and \$3,750 in cash. He was sentenced to five years' imprisonment, with a parole eligibility date set after approximately 18 months; the sentencing judge having reduced the sentence to allow for about six months which was not declarable.

Submissions at sentence

- [6] The applicant's counsel at sentence submitted that he had been addicted to methylamphetamine since his 20s. A psychologist's report tendered on his behalf offered a diagnosis of methamphetamine dependency, depressive disorder and post-traumatic stress disorder (as a provisional diagnosis). The last was said to have resulted from a 2016 incident in which the applicant attempted, unsuccessfully, to rescue the occupant of a burning vehicle. The applicant's counsel submitted that the applicant had made some attempt to cure himself of his addiction, but a combination of a relationship with a drug user and the experience of seeing the incident involving the burning vehicle had led him to recommence using and selling drugs. The psychologist's report made the fairly obvious point that whether the applicant reoffended would depend on whether he was able to avoid relapse into use of the substance.
- [7] The applicant had at the time of sentence been in custody for about 10 months. In that time he had worked in the prison and had enrolled in various courses. He was the father of a three month old daughter and remained in a relationship with her mother, who attended court to support him. He had a number of favourable references from friends, and a solicitor had made an affidavit in relation to information the applicant was prepared to give about a criminal matter. However, it proved not to be of use to the police. The applicant himself wrote a letter to the sentencing judge about his struggle with addiction and depression, particularly after witnessing the fatal car accident.

- [8] At sentence, the prosecutor referred the sentencing judge to a number of authorities: *R v Duong*;¹ *R v Tran*;² *R v Cameron*;³ *R v Strutt*;⁴ *R v Abbott*.⁵ It was said that those cases generally supported a submission that a sentence greater than 10 years' imprisonment was warranted. In addition, reference was made to *R v Tran; Ex parte Attorney-General (Qld)*⁶ for the proposition that where a sentence is reduced from a starting point of more than 10 years to reflect a plea of guilty and other mitigating factors, parole eligibility at one third is not usually appropriate, because it would have the effect of applying a double benefit.

The sentence

- [9] The sentencing judge noted the applicant's attempt to assist police and his co-operation in the administration of justice by his guilty pleas. Her Honour expressed the view that had it not been for the applicant's pleas of guilty, in light of the scale of the offending and his criminal history, he might have expected a term of imprisonment of 11 years, which would have required him to serve 80 per cent before parole eligibility. Having regard to the seriousness of the offences and the fact that it represented an escalation in offending, but making allowance for the applicant's pleas of guilty, his remorse, his child, and the support from those who had given references, her Honour imposed a sentence of nine years' imprisonment without any order as to parole eligibility. The effect, then, was to require the applicant to serve four years and six months before eligibility for parole.

The applicant's submissions in this Court

- [10] Counsel for the applicant here submitted that the cases on which the prosecutor relied at sentencing were examples of more serious offending than his. They in fact indicated (it was contended) that in the case of a drug-dependent individual, the sentencing range, for trafficking over a six week period, with the aggravating circumstance of commercial possession, was eight to nine and a half years before allowance for a guilty plea and other mitigating factors. The applicant also relied on *R v Miller*,⁷ which, he argued, involved more serious offending, involving trafficking over eight months in a variety of drugs, but had resulted in a sentence of eight years' imprisonment with parole eligibility after one third. The sentence imposed on the applicant, it was said, made insufficient allowance for: his early plea of guilty, his remorse, the fact that his offending was largely the result of his addiction, and, in particular, his offer to provide information to authorities. Those features, particularly the offer of assistance, should have been reflected in a parole eligibility date somewhat under the one-third mark. It had been accepted in *R v Tran; Ex parte Attorney-General* that on some occasions a double benefit for mitigating factors was warranted.

The comparable cases

- [11] Of the five cases relied on by the prosecutor at sentence to contend for a sentence over 10 years, *Abbott*, *Cameron* and *Strutt* were trafficking cases. *Abbott* and *Strutt*

¹ [2015] QCA 170.
² [2014] QCA 90.
³ [2014] QCA 55.
⁴ [2017] QCA 195.
⁵ [2017] QCA 57.
⁶ [2018] QCA 22.
⁷ [2013] QCA 346.

received sentences of 10 years' imprisonment, the latter also having to serve 542 days of an activated suspended sentence. Those cases involved longer periods of trafficking than the present, in each case closer to the six month mark. Abbott had reoffended on bail, continuing to traffic and being found in possession of 130 grams of pure methylamphetamine. He was an addict with a minor criminal history. Strutt, a 27 year old, had trafficked while on a suspended sentence for offences including trafficking in dangerous drugs. He was also manufacturing methylamphetamine. While he was drug- dependent, he was also making substantial profits.

- [12] Having regard to particular features of those cases – the reoffending while subject to a court order and the longer periods of trafficking – the applicant is correct in saying that the criminal conduct in those cases was of more serious proportions. But it is clear that a significantly higher starting point than 11 years was identified in each of those cases; in *Strutt* it was identified as approximately 13 years' imprisonment. And, correspondingly, the resulting sentences were significantly more onerous; in each case, despite a plea of guilty, a 10 year sentence requiring the offender to serve at least eight years' imprisonment was imposed. *Abbott* and *Strutt* are consistent with the starting point of the sentencing judge in this case, of 11 years' imprisonment.
- [13] In *Cameron*, the applicant had trafficked in a variety of drugs, primarily amphetamines, over a four week period. He was sentenced to eight and a half years' imprisonment, with parole eligibility after two years and 10 months; a further 56 days of pre-sentence custody was declared. Most of the profits were spent on his lifestyle, although it was accepted that some might have gone to finance his own drug use. He had taken steps toward rehabilitation and had entered a timely guilty plea. The sentence was imposed having regard to the need to achieve parity with the sentences of three other offenders associated with the applicant's trafficking business. His application for leave to appeal the sentence, on the basis that it was manifestly excessive and also offended the parity principle, was unsuccessful. Because of the parity considerations and because it in effect says no more than that the sentence imposed was not too high, that case provides little assistance to the applicant in arguing that his sentence was outside an appropriate range.
- [14] The other two cases on which the Crown relied as comparable involved large commercial possessions. In *Tran*, the applicant was on parole for earlier drug offences when he was found in possession of 83 grams of pure heroin and 125 grams of pure methylamphetamine. He absconded on bail and was later found in possession of 131 grams of pure methylamphetamine, with smaller amounts of other drugs, as well as almost \$10,000 in cash. He was said to have a "raging addiction" to the drugs in question. That applicant was sentenced to 11 years and three months' imprisonment after pleading guilty, with the Court of Appeal interfering with that sentence only to the extent of reducing the period before which he was eligible for parole by one year: to four and a half years. It is to be noted that the offences were not serious violent offences, and thus did not attract a requirement that he serve 80 per cent of the sentence in custody; his guilty pleas and some steps taken towards rehabilitation were thus able to be reflected in the parole eligibility recommendation. In *Duong*, the applicant was convicted, after a trial, of possession of 204 grams of pure methylamphetamine and of supply, that being his intended use for the drugs. He was sentenced to nine years' imprisonment, without any recommendation for parole.

- [15] Those cases demonstrate the seriousness with which commercial possessions of large amounts of drug are regarded. They do nothing to demonstrate that the sentence imposed on the applicant for trafficking, with the aggravating feature of the large commercial possession, was excessive.
- [16] In *Miller*, the decision relied on by the applicant here, the offender had been trafficking in a variety of drugs - methylamphetamine, ecstasy, GHB and cocaine - over an eight month period. He was aged between 24 and 27 at the relevant time and had a long-standing addiction. He had a long criminal history, but was accepted to have made efforts at rehabilitation. Having entered a relatively late plea of guilty, he was sentenced to eight years' imprisonment with parole eligibility after 32 months. His trafficking period was longer, but it did not involve the feature of a very large commercial possession, and he had, unlike this applicant, youth in his favour. And, again, since the case involved refusal of an application for leave to appeal against sentence, it has nothing to say about the adequacy of the sentence actually imposed.

Conclusion

- [17] The cases cited do not, for the reasons discussed, demonstrate that the sentence imposed on the applicant was outside a proper sentencing range. The starting point of 11 years was not out of the question for offending of this seriousness, notwithstanding that a relatively short trafficking period was involved. Although short, it was an intensive period of trafficking for both profit and personal use, with the applicant amassing substantial debts owed to him; as the tick list demonstrated. The proportions of the offending were made considerably more grave by the fact that the applicant was found in possession of such a large amount of pure methylamphetamine.
- [18] As to the mitigating factors, the offer to provide information was of some importance as an indicator of remorse and willingness to co-operate with the administration of justice, but it was of no practical value. Prospects of rehabilitation did not loom large as a consideration, given the applicant's four previous convictions for commercial possession, his history of relapse into addiction and the fact that he was a mature offender. The mitigating factors, such as they were, were reflected in the applicant's being afforded the considerable benefit of the lowering of the head sentence below the 10 year point; so that he was required to serve, not a minimum of eight years, but a much lower period before parole eligibility, of four years and six months. The applicant is correct in saying that in *R v Tran; Ex parte Attorney-General (Qld)*, it was acknowledged that in some instances where a sentence was reduced below 10 years, there might be a basis for affording a double benefit for a guilty plea, in the form of a further reduction of the non-parole period; but there was nothing in this case to warrant such an approach.

Order

- [19] My conclusion is that the sentence, while a severe one, was not outside a proper sentencing range so as to be manifestly excessive. I would refuse the application for leave to appeal.
- [20] **MORRISON JA:** I agree with the reasons of the Chief Justice and the order her Honour proposes.
- [21] **McMURDO JA:** I agree with Holmes CJ.