

COURT OF APPEAL

**FRASER JA
GOTTERSON JA
BRADLEY J**

**CA No 259 of 2018
SC No 379 of 2018**

THE QUEEN

v

PETERSON, Wayne Dale

Applicant

BRISBANE

WEDNESDAY, 13 MARCH 2019

JUDGMENT

FRASER JA: On 31 August 2018, the applicant was convicted on his plea of guilty to trafficking in dangerous drugs. He was sentenced to three years imprisonment with parole release after 18 months on 7 February 2020. On 10 October 2018, 10 days after the time limited for an appeal, the applicant applied for an extension of time within which to apply for leave to appeal against the sentence. The ground of the application for an extension is that the applicant did not instruct his lawyer to file an appeal until 8 October 2018, although he did speak to a Legal Aid officer representative. That is not an explanation for the delay and the applicant has not provided any evidence to support the application. He did not wish to advance submissions in support of his application.

The absence of evidence to account for the applicant's delay is a factor opposed to the exercise of the discretion to extend time, but it is appropriate also to consider the prospects of the proposed appeal: see *R v Tait* [1999] 2 Qd R 667 at 668. That requires reference to the circumstances of the offence and the applicant's personal circumstances. Police apprehended the applicant and found 209 messages related to drug transactions on his mobile phone. During a 12-day period in July 2017 there were 34 distinct transactions in which the applicant sold small quantities of methylamphetamine ranging between a point up to seven grams, and he sold buprenorphine pills. The sentencing judge described the offending as "very basic street-level dealing by an addict".

The applicant's criminal history extended for 30 years and comprised mainly drug offences. He was also dealt with for breaches of Court orders and bail orders and occasionally offences of dishonesty. He had served short periods of imprisonment. In 2010 the applicant was sentenced to two years imprisonment cumulative on a three-month suspended sentence with parole after eight months for a commercial possession of about eight grams pure of methylenedioxymethamphetamine and for producing methylamphetamine. The sentencing judge referred to the mitigating factors that the applicant entered an early plea of guilty and the submission for the applicant that he had been drug addicted since he was 12 years old.

The sentencing judge also took into account that this was a serious offence with life destroying potential. After observing that four years imprisonment was in the range for the applicant's offence, the sentencing judge remarked that the better course was to combine punishment and prospects of rehabilitation in a sentence of three years imprisonment with a parole release date fixed after 18 months.

The sentencing judge's starting point of four years imprisonment accords with comparable sentencing decisions to which the respondent referred: see *R v Scott* [2006] QCA 76, *R v Ritzau* [2017] QCA 17 and *R v Jobsz* [2013] QCA 5.

There is no apparent error in the sentencing judge's approach of taking the mitigating factors, notably the plea of guilty, into account in the head sentence rather than in the period before

release on parole. The applicant's sentence is consistent with the cited decisions and the material before the Court supplies no support for the applicant's proposed ground of appeal that the sentence is manifestly excessive.

The respondent submitted that the extension of time should be granted, but that the appeal should be dismissed. For the reasons I have given I would instead dismiss the application for an extension of time within which to apply for leave to appeal.

GOTTERSON JA: I agree.

BRADLEY J: I agree.

FRASER JA: The application for an extension of time within which to apply for leave to appeal is dismissed.