

SUPREME COURT OF QUEENSLAND

CITATION: *R v Walker* [2019] QCA 199

PARTIES: **R**
v
WALKER, Amanda May
(applicant)

FILE NO/S: CA No 326 of 2018
SC No 1037 of 2017

DIVISION: Court of Appeal

PROCEEDING: Sentence Application

ORIGINATING COURT: Supreme Court at Brisbane – Date of Sentence: 19 November 2018 (Lyons SJA)

DELIVERED ON: 27 September 2019

DELIVERED AT: Brisbane

HEARING DATE: 23 September 2019

JUDGES: Fraser and Gotterson JJA and Crow J

ORDER: **Application dismissed.**

CATCHWORDS: CRIMINAL LAW – APPEAL AND NEW TRIAL – APPEAL AGAINST SENTENCE – SENTENCE MANIFESTLY EXCESSIVE OR INADEQUATE – where after a two week trial, the applicant was convicted of five drug offences including trafficking in a dangerous drug, possession of dangerous drugs, and possession of a mobile phone used in the commission of a trafficking offence – where the applicant was sentenced to six and a half years’ imprisonment with parole eligibility arising after the mid-point of that term for trafficking, and convicted and not further punished with respect to the remaining charges – where the applicant committed serious offences, and continued to traffic after being found in possession of a substantial quantity of methylamphetamine, and having been given a notice to appear and released on bail – whether the sentence was manifestly excessive

R v Arnott (unreported, Holmes CJ, Indictment No 941 of 2018, 25 July 2018), distinguished
R v Baradel [\[2016\] QCA 114](#), considered
R v Church [\[2015\] QCA 24](#), distinguished
R v Illin (2014) 246 A Crim R 176; [\[2014\] QCA 285](#), cited
R v Peat (unreported, Holmes CJ, Indictment No 1631 of 2017, 27 July 2018), distinguished
R v Saggars (2016) 264 A Crim R 27; [\[2016\] QCA 344](#),

distinguished

COUNSEL: J R Cook for the applicant
D Balic for the respondent

SOLICITORS: A W Bale & Son Solicitors for the applicant
Director of Public Prosecutions (Queensland) for the respondent

- [1] **FRASER JA:** After a two week trial the applicant was found guilty by a jury of five drug offences. She abandoned her appeal against conviction and seeks leave to appeal against her sentence. On count 1, trafficking in a dangerous drug, the applicant was sentenced to six and a half years' imprisonment. Parole eligibility will arise after the mid-point of that term. The applicant was convicted and not further punished on counts 2 – 5. Counts 2 – 4 charged possession of dangerous drugs, in the case of count 2 with the circumstance of aggravation that the quantity of the drug (methylamphetamine) exceeded 2 grams. Count 5 charged possession of a mobile phone used in the commission of the trafficking offence.
- [2] There is no challenge to the trial judge's findings of fact made in the course of imposing sentence. Text messages and telephone calls adduced in evidence at the trial established that for about eight and a half months between 21 August 2015 and 11 May 2016 the applicant frequently bought from her supplier and she sold at street level both methylamphetamine and cannabis. She bought methylamphetamine in ounce amounts and regularly sold "eight balls" (3.5 grams) and other amounts, including by purchases and sales on credit. There were coded references to the applicant's supplies in the course of her trafficking business. She was commercially motivated. She appears to have supplied regularly to some 15 retail customers. The trial judge found that the applicant was a "persistent trafficker" in both drugs who engaged in "eight months of great activity". It was not submitted that drug addiction explained the offending, but she used drugs several times a week. On 17 November 2015, after trafficking for nearly three months, the applicant was found in possession of about 20 grams of pure methylamphetamine (count 2) and a quantity of another dangerous drug (count 3). Despite being given a notice to appear and being released on bail, the applicant persisted in her trafficking offence for more than five months afterwards.
- [3] The trial judge took into account medical reports indicating that the applicant suffered from mental health issues, the precise nature of which was difficult to ascertain. The applicant had experienced trauma, in her youth (including when her violent father was aggressive to her mother), and whilst she endured a sometimes dysfunctional relationship with her husband. The trial judge accepted that at the time of sentence the applicant suffered from mental health issues, in particular an acute stress disorder with depressed and anxious mood. The trial judge did not find that any mental health issues affecting the applicant contributed to her offending.
- [4] The applicant was 43 to 44 years old at the time of offending, and 47 at the time of sentence. She had a criminal history that was not significant and commenced only shortly before this offending. The Crown case was overwhelming. The applicant made some admissions at the trial but they were not significant. The trial judge found that the applicant had shown no remorse.

- [5] The only ground of the proposed appeal is that the sentence is manifestly excessive. That ground is pursued upon the basis that, having regard to the applicant's mental health issues and the circumstance that she does not have a relevant criminal history, manifest excess in her sentence is revealed by comparing it with other sentences in what are submitted to be comparable cases. The authorities upon which the applicant principally relies are two sentences imposed by the Chief Justice in cases in which the applicant's supplier supplied drugs to other offenders who were convicted of trafficking offences, *R v Peat* (unreported, Indictment No 1631 of 2017, 27 July 2018) and *R v Arnott* (unreported, Indictment No 941 of 2018, 25 July 2018). (The applicant disclaimed any contention that these offenders were co-offenders of the applicant such as to attract the application of the parity principle: see *R v Illin* (2014) 246 A Crim R 176.) In addition, the applicant relies upon *R v Church* [2015] QCA 24 and *R v Siggers* [2016] QCA 344. The respondent submits that those sentences are explained by the different circumstances in those cases and that *R v Baradel* [2016] QCA 114 demonstrates that the applicant's sentence is not manifestly excessive.
- [6] There are significant distinguishing features in each of the four cases upon which the applicant relies, including the important distinction that in each of them the offender pleaded guilty.
- [7] In *Arnott*, the sentence was seven years' imprisonment with parole eligibility after 25 months. She was guilty of objectively more serious offending. She had a network of at least 28 customers, including both recreational drug users and sellers, she had a supplier or suppliers in addition to the applicant's supplier, she sometimes assisted the applicant's supplier in his business, and she had other people working with her on occasions. The early parole eligibility date was fixed with reference to mitigating circumstances that included the plea of guilty, a prospect of deportation during her sentence, and a period of pre-sentence custody. The Chief Justice referred to factors explaining why a term of seven years was imposed even though it was shorter than the term in comparable cases to which her Honour was referred, including a relationship between that offender's addiction and her offending. But for that significant distinguishing factor and that offender's plea of guilty her sentence might have been markedly more severe. The applicant's sentence is readily reconcilable with the sentence in *Arnott*.
- [8] A sentence of six years' imprisonment with parole eligibility after about 15 months in *Peat* was imposed upon a count of trafficking for an offence which was objectively more serious than the applicant's trafficking offence. That offender had her own trafficking business and she sometimes helped the applicant's supplier with his business. She also bought drugs from a different supplier, she supplied in both wholesale and street level amounts, and there were other indications of sophistication in her business. On the other hand, the period of her trafficking (about four and a half months) was much shorter than the period of the applicant's trafficking and that offender's profits, apparently like any profit earned by the applicant, seemed to be modest. In addition to that offender's plea of guilty, the Chief Justice took into account many distinctive personal circumstances in addition to that offender's prejudicial early life, various serious traumas in her adult life, and her mental health issues. She had a significant physical disease. Her drug addiction appeared to have been sparked by her husband's death. She was rehabilitated to the extent that she was not using drugs. For her, serving a sentence of imprisonment would be very difficult. In light of the many distinguishing features, that offender's

sentence does not supply any indication that the applicant's more severe sentence imposed after a trial is excessive.

- [9] In *Saggers*, the Court refused an application for leave to appeal against sentence. That offender was sentenced to five years' imprisonment, suspended after 12 months for an operational period of five years, upon her plea of guilty to one count of trafficking in methylamphetamine and one count of possession of the same drug. Allowing for pre-sentence custody, the sentence was regarded by the Court for comparison purposes as five years and eight months imprisonment suspended after 20 months. That offender's trafficking offence was objectively more serious than the applicant's. That offender had multiple suppliers and 25 customers. She conducted her business at a distribution level between that of a wholesaler and a street level dealer. On the other hand, the period of her trafficking was only about three and a half months and there was again no evidence of unexplained income or accumulated assets. Important mitigating circumstances distinguishing the case from the applicant's case include a plea of guilty, albeit a much delayed plea, and progress in her rehabilitation which mostly occurred during that period of delay. At 25 years of age that offender was also much younger than the applicant. Furthermore, Henry J, who delivered the principal judgment, considered that the sentence was "comfortably within the range of a sound exercise of discretion". For these reasons *Saggers* does not support the applicant's argument.
- [10] *Church* is not a comparable case for many reasons. His sentence of six years' imprisonment with parole eligibility after a third of that period, imposed on appeal, took into account the period of his trafficking of about three and half months. That 32 year old offender had a long criminal history and a lengthy and very disturbing traffic history, and his trafficking business was apparently more substantial than the applicant's. He trafficked in methylamphetamine at a low level, with the significant amount of the drug trafficked being cannabis. There was a combination of mitigating factors not present in the applicant's case; his offence was driven by addiction, he entered timely pleas of guilty and cooperated in a full hand up committal, developed some insight into his offending, engaged in activities that promoted rehabilitation, and continued those activities after he was sentenced. Also bearing in mind that his sentence was ordered to be served concurrently with the balance of a sentence he was then serving, *Church* cannot be regarded as supporting the applicant's argument.
- [11] In *Baradel* the Court rejected a contention that a sentence of five years and six months imprisonment was manifestly excessive. That sentence reflected the criminality in trafficking in methylamphetamine for about four months, and other drug offences including a production offence. The offender had a minor criminal history. His personal circumstances were much more compelling than the applicant's, in that he was only 22 years old, he ceased using drugs following his arrest, and he pleaded guilty. The applicant's sentence derives some support from *Baradel*.
- [12] The applicant committed very serious offences, as is reflected in the maximum penalty of 25 years imprisonment for each of Count 1 and Count 2 and the maximum penalty of 15 years imprisonment for the other offences. Her criminality was increased by the combination of the intensity and duration of her trafficking offence and her conduct in continuing to traffic after she was found in possession of a substantial quantity of methylamphetamine, given a notice to appear, and released on bail. In circumstances in which the applicant could not seek mitigation in her

sentence for remorse or the utilitarian value of a plea of guilty, her sentence could not be regarded as manifestly excessive.

[13] I would dismiss the application.

[14] **GOTTERSON JA:** I agree with the order proposed by Fraser JA and with the reasons given by his Honour.

[15] **CROW J:** I have read the reasons of Fraser JA and agree with those reasons and the order his Honour proposes.