[2019] QCA 216

COURT OF APPEAL

SOFRONOFF P
HENRY J
DAVIS J

CA No 2 of 2019
SC No 131 of 2018

THE QUEEN

v

ALLEN, Candice Bo **Applicant**

BRISBANE

WEDNESDAY, 16 OCTOBER 2019

JUDGMENT

DAVIS J: Candice Allen was convicted on her own plea of guilty of one count that between the 9th of October 2016 and the 17th of April 2017, at Townsville, she carried on the business of unlawfully trafficking in dangerous drugs. She was sentenced to four and a half years imprisonment, to be served cumulatively upon other sentences. She seeks leave to appeal against the sentence and appeals against conviction.

A plea of guilty to the charges was entered on 7 August 2018. There were then adjournments while the applicant changed legal representatives. On 3 December 2018, the matter came before the Court at Townsville, and the applicant made application for a further adjournment. That was refused.

The learned sentencing judge was informed that there was a contest as to the basis upon which the applicant should be sentenced. The applicant told the Court that she was pressured to plead guilty and that she did not, in fact, sell dangerous drugs to her alleged customers. She said that she was drug-addicted herself, that she would be contacted by a customer, take money from the customer, buy drugs that she would consume herself, and then she would deliver rock salt to the customer. The effect of what she told the Court was that she was not guilty of trafficking in a dangerous drug, but was, in effect, guilty of defrauding the customers.

The learned sentencing judge then asked the prosecutor to identify what evidence he proposed to deduce on the contested sentence, and the prosecutor said this:

> "Your Honour, can I perhaps before doing so clarify what the ambit of the contest [is], because it seems that there are two disputes. The first being that the clip seal bag containing a negligible amount of methylamphetamine, where it was detected and not weighed, belonged to somebody else. And the second aspect of it is that the drugs that were sold were in fact not drugs, but were rock salt. So prior to opening the sentence, what I would seek to clarify if possible, is whether the defendant accepts or not the contents of the communication on the mobile phone devices, otherwise, that will have to be proved. But certainly, there is a police officer available to give evidence in respect of – to give expert evidence in respect of whether – if somebody was selling rock salt instead of methylamphetamine what the likely effect would be, and then I could turn to the messages after that. But I just seek clarification as to the ambit of the contest."

His Honour then, after hearing evidence, found:

> "[T]hat over the approximate six month period of the trafficking period in the indictment the Defendant operated a trafficking business in the three drugs but primarily methylamphetamine as a street-level trafficker, offering to supply to a customer base of approximately 59 methylamphetamine in quantities from a point, 0.1 of a gram, up to a half ball or half ounce, that is 1.7 grams; that, for the most part, if not every time, the Defendant's customers were end users."

The applicant has filed an outline of submissions where she maintains that she was selling not methylamphetamine, but rock salt. She confirmed to the Court today that was still her position.

The assertions made by the applicant to the learned sentencing judge on 3 December 2018 were assertions inconsistent with her plea of guilty. The prosecutor, by inviting the judge to determine whether the applicant had trafficked in methylamphetamine or rock salt, was inviting the judge not to determine the matters relevant to sentence, but was inviting the judge to determine whether the applicant was, in fact, guilty of the charge.

Faced with the assertions by the applicant that she was selling rock salt, not methylamphetamine, it is arguable that the judge ought to have considered whether there was a challenge to the plea of guilty. The applicant said that she was pressured into entering the plea of guilty, and her submissions on sentence were inconsistent with the plea.

It is also arguable that the self-represented applicant, the defendant before his Honour, ought to have been told that her options were, (1) apply to set aside the plea of guilty, or (2) proceed to sentence on the basis that the Court could not have regard to matters inconsistent with the conviction.

There is no current matter in the Trial Division. If the applicant wishes to challenge the plea, she must do so by appealing against the conviction.

She has appealed against conviction, but she is self-represented and should be given an opportunity to properly prepare the case and seek legal assistance. In my view, the appropriate course is to adjourn the appeal to enable the applicant to ready herself for the hearing of an appeal against conviction and to apply for legal aid. The appropriate order is to adjourn the Court to a date to be fixed.

SOFRONOFF P: I agree.

HENRY J: I agree.

SOFRONOFF P: The order is that the appeal is adjourned to a date to be fixed. Ms Allen, you will be sent a copy of what Justice Davis just said in the next day or two.

Is there anything else you wanted to say?

APPLICANT: No, thank you.

SOFRONOFF P: Thank you, Ms Balic, for your assistance as usual.