[2020] QCA 94

COURT OF APPEAL

MULLINS JA
LYONS SJA
RYAN J

CA No 241 of 2019
SC No 39 of 2019

THE QUEEN

v

GEDDES, Paul Joseph **Applicant**

BRISBANE

WEDNESDAY, 6 MAY 2020

JUDGMENT

MULLINS JA: I will ask Justice Ryan to deliver her reasons.

RYAN J: The applicant, Paul Geddes, applies for leave to appeal against a sentence of ten years' imprisonment which was imposed upon his plea of guilty for the offence of trafficking in dangerous drugs. At his sentence hearing, the applicant pleaded guilty to other offences, namely, four other drug offences, including the aggravated possession of methylamphetamine, and 18 summary charges. The learned sentencing judge imposed a term of imprisonment upon him for the offence of trafficking only. For the other offences, the applicant was convicted but not separately punished except by way of the disqualification of his driver licence in the case of two summary offences.

The applicant submits that the sentence of ten years' imprisonment was manifestly excessive.

The hurdle he faces in this application for leave is that the sentence imposed was one which his counsel expressly acknowledged was, in effect, within range. As his Honour Justice Keane said in *R v Flew* [2008] QCA 290:

> "[t]he circumstance that the sentence which was imposed accorded with the submission put to the sentencing judge on the offender's behalf means that an assertion that the sentence imposed was manifestly excessive could be upheld only in circumstances which are sufficiently exceptional to warrant relieving the applicant from responsibility for the conduct of his case at first instance."

It is not suggested by the applicant's current counsel that sentencing counsel erred in acknowledging that an appropriate penalty for the applicant's offending would be ten years' imprisonment; rather, she submits that the sentence is manifestly excessive having regard to the applicant's voluntary cessation of his trafficking activities prior to his being charged with trafficking, and the rehabilitation undertaken by the applicant prior to his being charged with trafficking and which he continued until the sentence hearing.

It is well established that this Court will not intervene where it is submitted that a sentence is manifestly excessive, unless convinced that there must have been some misapplication of principle having regard to all of the relevant sentencing factors, including the degree to which the sentence under consideration differs from those imposed in comparable cases. The applicant here submits that the sentence imposed could have been, and should have been, lower. When the sentence imposed is considered in the context of relevant sentencing principles, including, in particular, the need for general deterrence; and when it is compared against the yardsticks of the comparable decisions to which his Honour was referred, in my view, it cannot be said that the sentence imposed was manifestly excessive.

For the reasons which follow, I am of the view that the sentence imposed by the learned sentencing judge reveals no failure by his Honour to properly exercise his sentencing discretion.

First, the offending was a serious example of the offence of trafficking. There was no challenge at sentence to the facts alleged by the prosecution. They included that the applicant conducted a prolific drug trafficking business dealing primarily in methylamphetamine, but also occasionally in cannabis and MDMA. He had 29 customers to whom he supplied drugs, 20 of whom, to his knowledge, onsold; thus, he was above a street-level dealer.

Although he was a drug user, he admitted to being involved in the business of drug trafficking for the business benefits and not to cover a habit. Those business benefits depended on the ability of the persons to whom he sold the drugs to onsell them, and at times he instructed them to "smash it".

His offending spanned a period of about five months from 21 August 2017 until 16 January 2018, interrupted, but not deterred, by his spending about one month in custody.

When the applicant's house was searched in November 2017, police found evidence that indicated that he was owed a little over $69,000.

Before his arrest in November 2017, the applicant was supplying drugs almost daily and sometimes multiple times during the day. He supplied in amounts ranging from points to ounces. On four occasions, he flew or travelled from Mackay to Brisbane to obtain large quantities of methylamphetamine – it seems about 10 ounces on each occasion. On a fifth occasion, he sent an associate to collect about 12 ounces of the drug. In the period between 3 September 2017 and 18 October 2017, he purchased at least 875 grams of methylamphetamine. And another 258 odd grams, destined for his customers, were intercepted by police.

He purchased the methylamphetamine by way of substantial cash deposits, including in the tens of thousands of dollars, with the balance on tick.

He expressed the hope – or the intention – to source methylamphetamine in ounce amounts every week. He arranged the supply of between $65,000 and $70,000 worth of cannabis on one occasion, and the supply of 22.65 kilograms of cannabis on another, and he occasionally

sourced between 50 and 100 MDMA pills. The prosecution was able to particularise 91 supplies during the trafficking period; thus, the applicant's trafficking business involved his shifting very large quantities of methylamphetamine and other drugs, mostly as a wholesaler, but also to end users over a period of months.

Secondly, in the course of his conducting his trafficking business, he made threats of violence to those who owed him money. His threats included, among them, threats to "sort it out" with the debtor's mother and to kill. He engaged muscle to assist him with one debtor and the sentence proceeded on the basis that the applicant had visited actual violence upon a person once.

Thirdly, the applicant's offending was persistent. It was not deterred by police engagement or by a period of custody.

On 4 November 2017, police intercepted the applicant and another in the applicant's car; a controlled drug and cash were found. Four days later, the applicant's house was searched and, among other illicit things, 16.278 grams of methylamphetamine were found in 28.899 grams of substance. The applicant was remanded in custody. He was granted bail on 13 December 2017. Within weeks of his release, he contacted his usual suppliers and continued his business by way of sourcing another ounce of methylamphetamine on 4 January 2018.

The sentence proceeded on the basis that, while he resumed his trafficking soon after his release from custody, it was to a lesser extent.

I acknowledge that it is not suggested by the applicant's counsel that his offending is not serious or prolific or persistent, or that it was not aggravated by his threats of, if not actual, violence; rather, it is said, in effect, that having regard to particular mitigating factors, the sentence of 10 years' imprisonment was manifestly excessive.

The mitigating factors included the applicant's minor criminal history, his longstanding issues with drugs and alcohol, his life circumstances before he began his offending, and that he was said to have ceased trafficking by the end of January 2018 (which was before he was charged with it) and had taken steps towards rehabilitation. It is those last two matters which are emphasised in this application.

The submissions about the applicant's voluntary cessation of his trafficking business must be viewed in context. His Honour made no particular finding about the motivation for it.

The applicant was released on bail on 13 December 2017, and, as noted, he recommenced his trafficking business within weeks. A condition of his bail was that he not have contact with his then partner. He breached that condition within about one month. It is true that he self-referred to Lives Lived Well in Mackay on 11 January 2018. It does not seem, though, that he attended any counselling in Mackay; but, in any event, he admitted to using drugs days later on 15 January 2018 when he was intercepted by police in his car. Also on that day, he lied about the source of money found in his possession.

He told Dr Hatzipetrou, who prepared a report for use by the applicant in mitigation of penalty at sentence, that his apprehension on 15 January 2018 alerted him to the police findings and intercepts that confirmed his involvement in trafficking methylamphetamine in Mackay. So he was, at the least, aware of the police interest in him by that date. He told Dr Hatzipetrou that he recognised the seriousness of his offending and he was, in effect, struggling with the likely punishment of detention.

His parents encouraged him to participate in rehabilitation and he did so, and that is to his credit. But, in my view, it was not as if it could be said that his interception by police caused in him, personally, an awakening that he really had to address his own drug issues. Indeed, his participating in rehabilitation was a condition of his bail. The suggestion by his counsel that the sentencing judge ought to take the fact that his trafficking ceased in mid-January before the operation closed down as a considered decision by him to exit the industry and to deal with his underlying issues, in my view, overstates the position.

The applicant went into residential rehabilitation on 29 January 2018, where he remained to complete the program until 4 April 2018. The police operation closed down in March. Thus, it may be said that he did not traffic in dangerous drugs whilst in rehabilitation. The police operation closed down whilst he was still there, and it is in that context, and in the context of

his awareness of police interest in him, that the suggestion that he voluntarily ceased his trafficking business must be viewed.

He failed to report to police as required after the residential program was completed. Rather than show any maturity about the inevitability of his punishment for serious offending and surrender to police as required as a condition of his bail, he decided he would prefer to spend time, or as much time as possible, with his family, and he evaded police, it seems, for a couple of months.

He did not reside at his bail address, but, instead, at another address. And when police went to that other address – a caravan – he ran from it and hid in the bushes. There was a bong inside the caravan, and he had been hiding there with his girlfriend.

The very positive comments about him by those engaged in his treatment whilst he was in residential rehabilitation and contained in letters written before his release from treatment need to be viewed, in my view, in the context of his behaviour upon release. The cessation of his trafficking business and his engagement with rehabilitation cannot be dressed up as matters which warranted particular leniency in the circumstances.

The applicant was not an offender who could be said to have woken up to the enormity of his offending, and to have taken genuine steps to improve his position whilst, at the same time, maturely taking responsibility for his criminal conduct and preparing himself for incarceration. One does not expect the path to rehabilitation for drug users to be smooth, but there was, really, no sign of anything genuine about the applicant's commitment to rehabilitation on show after his release from the program.

Nevertheless, the learned sentencing judge placed appropriate emphasis on the applicant's efforts at rehabilitation both before and after his incarceration. His Honour was very aware of the family support available to the applicant and that he was, otherwise, well regarded by others. It is not suggested that the learned sentencing judge overlooked anything in the applicant's favour. The learned sentencing judge was well aware of, and appreciated the

relevance of, the assault upon the applicant in 2017 and its aftermath, and the applicant's having to cope with sad life events before he began offending. It is not suggested that his Honour failed to give sufficient weight to those matters.

The authorities to which his Honour was referred, including in particular, *R v Feakes* [2009] QCA 376, supported the sentence imposed upon the applicant, which was a sentence against which his own counsel acknowledged that he could not sensibly argue. As I indicated, I would dismiss the application for leave to appeal against sentence.

MULLINS JA: I agree.

LYONS SJA: I also agree.

MULLINS JA: So the order of the Court is application for leave to appeal against sentence is refused. Thank you. We will do the next matter.