DISTRICT COURT OF QUEENSLAND

CITATION:	*Le Fevre v Commissioner of Police* [2020] QDC 295
PARTIES:	**LACHLAN ANTHONY LE FEVRE** (Appellant) **V** **THE COMMISSIONER OF POLICE** (Respondent)
FILE NO/S:	Appeal No 850 of 2020
DIVISION:	Criminal
PROCEEDING:	Appeal
ORIGINATING COURT:	Magistrates Court at Brisbane
DELIVERED ON:	16 October 2020 (*ex tempore*)
DELIVERED AT:	Brisbane
HEARING DATE:	16 October 2020
JUDGE:	Porter QC DCJ
ORDERS:	**1. The sentence imposed on count 1 be set aside;** **2. The appellant be placed on a good behaviour bond for a period of 3 months;** **3. Recognisance in the amount of $500.**
CATCHWORDS:	MAGISTRATES – APPEAL AND REVIEW QUEENSLAND – APPEAL – where the appellant pleaded guilty to possession of 0.9 of a gram of methylamphetamine – where the learned magistrate imprisoned the appellant for 14 days, fixing parole release after 6 days – where the learned magistrate must have intended the appellant be on parole for a period of 8 days – where the sentence of imprisonment was imposed in circumstances where the prosecution made no such submission – where the learned magistrate did not flag such a sentence – where the appellant has shown significant progress with his rehabilitation – whether the learned magistrate had proper regard to s. 9(2) of the *Penalties and Sentences Act 1992* (Qld) – whether the learned magistrate had regard to the undesirability of short periods of

	imprisonment – whether the sentence was in all regards excessive
LEGISLATION	*Justices Act 1886* (Qld) s. 222(2)(c)
	Penalties and Sentences Act 1992 (Qld) s. 9(2)
COUNSEL:	J R Hunter QC for the appellant
	N Hopper for the respondent
SOLICITORS	Gnech & Associates for the appellant
	Office of the Director of Public Prosecutions for the respondent

[1] This is an appeal by Mr Le Fevre, in respect of the sentence imposed upon him in the Magistrates Court, at Brisbane, on the 18th of March 2020. He was convicted on his own plea of one count of possessing a dangerous drug and two counts of possessing utensils.

[2] The background to the matter is set out in the submissions of Mr Hunter QC, filed in this appeal, at paragraphs one to eight. They are as follows:

> 1. On 18 March 2020, the appellant pleaded guilty to three offences:
>   a. Possession of 0.9 of a gram (gross weight) of methylamphetamine on 31 August 2016;
>   b. Possession of a glass pipe on the same date; and
>   c. Possession of a glass pipe on 17 March 2020.
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> 2. On the first count, Magistrate Bradford-Morgan imprisoned him for 14 days, and fixed a parole release date of 23 March 2020, that is, after six days. Thus, the magistrate must have intended that he be on parole for a period of eight days. On the second and third counts, her Honour fined him $400 and recorded convictions.
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> 3. The appellant had a relevant criminal history, however it related to offences that were committed in 2014, when he was 19. Apart from the most recent possession of the pipe, he had not reoffended since the imposition of a wholly suspended three year sentence imposed in December 2016 for an offence of trafficking.
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> 4. The sentence of imprisonment was imposed in circumstances where the prosecution made no submissions on penalty, and where the magistrate did not at any point suggest to the appellant's solicitor that she was contemplating such a sentence. Presumably if she had, the solicitor would have made submissions about the undesirability of short sentences of imprisonment and the utter futility of placing the appellant on parole for a period of a little over a week.
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> 5. The appellant was granted bail the day after the sentence was imposed. He complains that the sentence imposed on the charge of possession is manifestly excessive.
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> **The Offences**

6. Over a period of about six weeks in late 2014, the appellant trafficked in methylamphetamine. On 31 August 2016, presumably whilst on bail, the appellant was found in a motor vehicle at Southport in possession of a Clipseal bag containing less than a gram of crystalline substance. There was also a container with eight tablets. The prosecutor told the magistrate that the total weight was "in the order of a gram". Police also found a glass pipe.

7. The appellant was at that time the subject of a return to prison warrant because he had breached his parole, and so he was taken into custody. It seems that the police overlooked charging him with those offences.

8. On 17 March 2020, as he went through the security checking area at Brisbane Airport, the appellant was detected to be in possession of a glass pipe. When police spoke to him, they discovered that he was the subject of a warrant in respect of the earlier offences. The appellant's solicitor explained to the magistrate that the appellant had travelled to Brisbane for his brother's engagement party, and that he was detected in possession of the pipe whilst on the way home to Tasmania, where he had been living since late 2016.

[3] The appeal is only in respect of the sentence imposed on count 1 for the reasons articulated in Mr Hunter's outline. And, in my respectful view, properly conceded by the Commissioner.

[4] The sentence imposed in respect of count 1, of 14 days imprisonment with parole release after six days, was excessive within the meaning of s. 222(2)(c) *Justices Act 1886* (Qld), and was excessive for the reasons articulated in Mr Hunter's outline from paragraphs 11 to 17:

Antecedents

11. The applicant was born on 23 March 1995, making him 21 at the time of the first two offences, and 25 at the time of the third.

12. He was educated to year 12, and found employment after leaving school, but soon developed a methylamphetamine habit. His criminal history is consistent with that and includes a variety of drug and property offences, culminating in the sentence of three years imprisonment that was imposed in the Supreme Court on 16 December 2016.

13. Immediately upon the imposition of that sentence, the applicant moved to Tasmania. By the date of sentence, he was in a stable relationship, living in his own unit and had almost completed the second year of a refrigeration mechanic's apprenticeship.

Sentencing remarks

14. In deciding to impose a sentence of actual imprisonment the magistrate rejected a submission by the appellant's solicitor that considerations of totality meant that, had he been dealt with for charges 1 and 2 in the Supreme Court at the same time as the trafficking, he would not have received a longer sentence than that imposed. Her Honour said:

> *Taking into account your considerable criminal history for drug use, I am not satisfied that, if this matter had been dealt with by the Supreme Court on the 16th of December, that you would not have imposed an additional custodial sentence (sic), given the sentences imposed on the 5th of January 2016 and the imposition of custodial sentences for drug possession.*

The appellant's argument

15. It is accepted that the appellant has a relevant criminal history, however all of the offences were committed when he was aged between 19 and 21. Despite his recent possession of the pipe, he appears to have made significant progress with his rehabilitation.

16. Despite the magistrate saying that she was "satisfied that, given your criminal history, it is appropriate to impose a term of 14 days", her Honour does not appear to have adverted to section 9(2) of the *Penalties and Sentences Act 1992*, nor to the undesirability of short periods of imprisonment.

17. With respect, it is not at all clear (and her Honour did not find) that the Supreme Court judge who sentenced the appellant *would* have imposed a further period of imprisonment, had the appellant's more recent offending been known. Rather, her Honour found that she was not satisfied that the appellant *would not* have received further punishment. Even if that were so, that did not mean that, despite the effluxion of time and the appellant's rehabilitation, that it was necessary to impose a sentence of actual custody. The offence of possession of less than a gram of methylamphetamine was simply consistent with the appellant's addiction.

[5] It only remains for me to add this: while the Judges of this Court understand the pressures that Magistrates are under every day, for the reasons articulated in Mr Hunter's outline, this was a sentence which would be, frankly, almost impossible to defend on any number of grounds on an appeal to this Court. And while I, as I say, respectfully acknowledge the pressure Magistrates are under, the fact is the result of this sentence was that this man was placed in custody in circumstances where, despite his apparent bad start in life, he was in a stable relationship and moving in the right direction.

[6] It can be accepted that the fact that he was caught with a utensil suggests that is not going as well as that should be, but one cannot let the perfect be the enemy of the good. This was a mistake and more care should have been taken, especially in that circumstance where the sentencing discretion is hovering around whether someone does actual time in custody or not.

[7] The orders I make are that the sentence on count 1 be set aside. I further order the appellant be placed on a good behaviour bond for a period of three months with an amount of the recognisance of $500.