[2002] QCA 39

COURT OF APPEAL

DAVIES JA
McPHERSON JA
BYRNE J

CA No 298 of 2001

THE QUEEN

v.

ADAM ROBERT BELL

BRISBANE

..DATE 20/02/2002

JUDGMENT

20022002 T10-11/JAP22 M/T COA 1/2002

DAVIES JA: The applicant seeks an extension of time within which to seek leave to appeal against a sentence imposed on him in the District Court on 21 June 2000.

On that day he pleaded guilty to 13 defences. They were, in substance, four offences of entering a dwelling house and stealing, three of unlawful use of a motor vehicle with a circumstance of aggravation and one each of dangerous operation of a motor vehicle with a circumstance of aggravation, wilful destruction, unlawful entry of a motor vehicle, stealing and an attempt to enter premises with intent. The thirteenth count was an alternative count of receiving, that is, alternative to one of the stealing counts.

He was sentenced to four years' imprisonment with a recommendation that he be considered eligible for parole after serving 15 months of that term. The Court declared that a total of 92 days pre-sentence custody be regarded as part of the sentence already served and he was disqualified from holding or obtaining a driver's licence.

The applicant does not contend that the sentence when imposed was manifestly excessive. Indeed, it would be extremely difficult to argue that it was having regard to the number and seriousness of these offences and the applicant's substantial prior criminal history of having committed many similar

offences over a substantial period commencing in about 1990.

The applicant is now aged 29 and was about 27 at the time of commission of these offences. He apparently has a drug problem as the learned sentencing Judge noted which, at least in part, explains although it does not excuse his long history of criminal conduct involving dishonesty.

The basis of the application is that, according to the applicant's documents and submissions today, in order to obtain an order for parole he must have a suitable sponsor or place to stay and, as he has neither, he is not eligible for parole. Consequently, he seeks an order that the sentence which was imposed be vacated and that there be imposed, in lieu of a sentence of imprisonment with a recommendation for parole, a suspended sentence. Before dealing with this contention I should say something about the delay and the applicant's explanation for it.

The delay is substantial, in all about 15 months. However, the applicant says that he did not discover until recently, presumably when he came to make his application for release of some kind, that the facts as he now understands them would be so. If they are as he now understands them that would certainly not have been the position when he was sentenced and it would not have been within the contemplation of the learned sentencing Judge.

Since the sentence was imposed the legislative regime under which the applicant must now apply for parole has changed but not, it seems to me, in a way which is in any way material to the applicant's application.

It is unnecessary to go through the provisions of the Corrective Services Act in its present form to demonstrate that. It is plain from the letter of the Brisbane Community Corrections Board to the applicant of 31 January 2002 that the reason why the applicant is unable to obtain parole has nothing substantial to do with the matters of which he complains, but because, in reliance on breaches of condition of his home detention, the Board has formed the view that the risk of his re-offending poses a significant risk to the community.

Until he has successfully undertaken a drug rehabilitation program that will remain, in the view of the Community Corrections Board, a sufficient impediment to him being granted any form of release. He was granted release to home detention at Loganhouse Drug Rehabilitation Centre but there were two aspects of misconduct. He formed a relationship with another woman resident. They were found in a room alone together and threatening some other residents of Loganhouse which terminated his participation in that program. The applicant accordingly, in my view, has failed to demonstrate

any error in the sentence imposed by the learned sentencing Judge. Accordingly, the application for an extension of time within which to appeal against that sentence should be refused.

McPHERSON JA: I agree.

BYRNE J: I agree.

McPHERSON JA: The application is dismissed.
