[2002] QCA 45

COURT OF APPEAL

DAVIES JA
McPHERSON JA
WILLIAMS JA

CA No 358 of 2001

THE QUEEN

v.

BRETT DEAN DEMPSEY (Applicant)

BRISBANE

..DATE 22/02/2002

JUDGMENT

DAVIES JA: The applicant pleaded guilty in the District Court on 10 December 2001 to two offences committed some time between 20 December 2000 and 2 January 2001. They were destroying forest products contrary to section 56(1) of the Wet Tropics World Heritage Protection and Management Act 1993, and stealing with a circumstance of aggravation. On the same day he was sentenced to 12 months imprisonment. He seeks leave to appeal against that sentence.

During the period I have just mentioned the applicant cut down and removed 25 trees in an area of approximately one hectare of wet tropics world heritage-listed rainforest in the region of the Upper Barron River between Herberton and Malanda. The species of trees were Queensland Maple, Maple Silk Wood, Northern Silky Oak and Black Walnut. Most of the trees removed were over a hundred years old, the oldest of them being 300 years old. They were all very large trees. In fact it appears that they were selected because of their size. A public auction of the logs so yielded resulted in their sale at $45,000. However the learned sentencing judge accepted that had the applicant sold them he would have obtained substantially less than this.

Although the applicant eventually pleaded guilty he initially denied any involvement in the commission of these offences, told false stories and went to substantial lengths to avoid

detection. The result was a lengthy and expensive investigation which ended only when the applicant pleaded guilty at the committal hearing.

The removal of so many large trees was a major task involving a number of items of heavy equipment. The applicant is a self-employed timber cutter. Moreover it is plain that the applicant embarked on this work for the purpose of commercial profit. It was premeditated, performed systematically and efficiently and elaborate efforts were made to avoid detection.

In addition the environmental harm done by the removal of so many old and mature trees was very serious. It may take in excess of a hundred years to repair and will be costly to do so. Significant other damage was caused to the area by the use of heavy machinery causing soil disturbance, compaction, and damage to immature plant species. The rainforest in this area is, it need hardly be said, of national and international significance and quite rare.

The applicant is 31 years of age whose only prior convictions are for assault occasioning bodily harm in 1994, and for carrying, in a public place, a weapon capable of being discharged in 1996.

The only mitigating factor in this case is the applicant's plea of guilty. No doubt that saved some time and expenditure of resources but it was, as I have said, one which occurred only at committal after the expenditure as I have also mentioned of considerable money and time by the prosecuting authorities, and no doubt in the full realisation of the inevitability of conviction.

Nevertheless Mr Rafter for the applicant, whilst conceding that the sentence of 12 months imprisonment was not outside the appropriate range, submitted that his Honour failed to have sufficient regard to the applicant's plea of guilty.

We were referred to a number of comparable cases, both by Mr Rafter and in the respondent's outline, all except one of them being decisions of the District Court. That one was a decision of this Court, R v. Moore [2000] QCA 431, in which this Court held that a sentence of 18 months imprisonment was not manifestly excessive. That sentence had been imposed on an executive officer of a company for failing to comply with storage conditions of toxic chemicals which caused or potentially could cause damage by entering into the waters. The case was described as one of recklessness rather than of deliberate conduct but it also, unlike this case, was one of a continuing course of conduct.

All of the other cases referred to except one were also cases of recklessness rather than of deliberate conduct. It is unusual to be confronted with a case of intentionally done environmental damage for commercial gain. In that sense this case is more serious than those referred to us.
On the other hand, in a number of those cases to which we were referred, as I have already mentioned in the case of Moore, the course of conduct was continuing and persistent in nature. Here, although the act was not one isolated act, it was one venture only.

This is an offence in which, in particular, the imposition of a custodial sentence may be an effective deterrent and, in my opinion, that is an important factor here. This was a serious, blatant and cynical act of environmental destruction for commercial gain. Even when one has regard to the plea of guilty I do not think that the sentence imposed for it was manifestly excessive.

I would accordingly refuse the application.

McPHERSON JA: I agree. I also agree specifically with Mr Justice Davies' remarks about the custodial period and its effect in cases of this kind. An actual period of prison custody is likely to have a real deterrent effect on others minded to commit like offences over and beyond that in other

cases. If offenders consider that they might succeed in escaping with nothing more than a financial penalty, it may be that they would take the risk of doing so for the profit that appears to be recoverable from acts like this.

I agree that the application for leave to appeal should be dismissed.

WILLIAMS JA: I agree.

DAVIES JA: The application is dismissed.
