

SUPREME COURT OF QUEENSLAND

CITATION: *R v Worland* [2002] QCA 123

PARTIES: **R**
v
WORLAND, Shane Daniel
(applicant)

FILE NO/S: CA No 256 of 2001
SC No 542 of 2000

DIVISION: Court of Appeal

PROCEEDING: Sentence Application

ORIGINATING COURT: Supreme Court at Brisbane

DELIVERED ON: 5 April 2002

DELIVERED AT: Brisbane

HEARING DATE: 7 February 2002

JUDGES: Davies and Williams JJA and Douglas J
Judgment of the Court

ORDER: **Application for leave to appeal against sentence refused.**

CATCHWORDS: CRIMINAL LAW – PARTICULAR OFFENCES – OFFENCES AGAINST THE PERSON – OTHER OFFENCES AGAINST THE PERSON – ACTS INTENDED TO CAUSE OR CAUSING DANGER TO LIFE OR BODILY HARM – SENTENCING – where applicant convicted of grievous bodily harm for a premeditated “gangland” style attack which resulted in victim’s throat cut and two fingers severed – where sentence of 6 years imprisonment with a serious violent offence declaration imposed – whether there is any disparity between the applicant’s sentence and that of a co-offender who received 5 years imprisonment without a declaration – whether a declaration should have been imposed - application dismissed

COUNSEL: S J Hamlyn-Harris for the applicant
S G Bain for the respondent

SOLICITORS: Legal Aid Queensland for the appellant
Director of Public Prosecutions (Queensland) for the respondent

[1] **THE COURT:** The applicant seeks leave to appeal against a sentence of 6 years imprisonment, with a serious violent offence declaration, imposed after he was

found guilty by the jury of grievous bodily harm. Others were involved in the criminal activity which resulted in the applicant's conviction, and the principal submission made by counsel on his behalf was that there was a disparity between the sentence imposed on the applicant and that imposed on a co-offender, Johnston. It was submitted that considerations of parity required this Court to remove the serious violent offence declaration.

- [2] The offence occurred on 18 June 1999. On that date a young man named Ware had his throat cut, and two fingers cut off his left hand. He was gravely injured but survived the attack. The Crown case was that there was an agreement between at least five people that at least serious harm be occasioned to Ware. The background to the plan was as follows. A man named Harvey paid fines so that the de facto partner of Ware could be released from custody. Ware was known to be a person who manufactured methylamphetamines. The arrangement was that Ware would repay Harvey by doing a methylamphetamine cook. In order to obtain the finance for the equipment and ingredients Harvey obtained money from the Vagabonds motorbike gang. An amount of \$5,000 was mentioned. Harvey set Ware up in a motel room but did not provide Ware with the necessary acid. The motel owner evicted Ware along with all his possessions, which included the equipment and ingredients required for the amphetamine cook. Ware hid those possessions in an area adjacent to a car park. When he returned to retake possession of that property he found it designated a crime scene and that the police had taken possession of everything. That included most of the worldly possessions of Ware and his de facto partner. He sought assistance from Harvey to recover those items, but when cooperation was not forthcoming indicated he would have to go to the police. It was a matter of concern to a number of people that the police should not investigate who was behind the planned cook. As the learned sentencing judge observed there was also "some other concern about the failure to produce amphetamines for those who had financed the production". Against that background the plan was put in place to do Ware some serious harm in a remote location.
- [3] The parties to the plan at least involve men by the names of Anderson, Speer, Johnston and Worland. Anderson and Speer pleaded guilty to attempted murder and were sentenced to 12 years and 10 years imprisonment respectively. Worland was charged with attempted murder and grievous bodily harm; he was found not guilty of the former but guilty of the latter. Johnston was also found guilty of grievous bodily harm; he was sentenced to 5 years imprisonment. Another person named Armstrong was similarly charged but found not guilty by the jury; there was insufficient evidence identifying him as the fourth member of the gang who was the driver of the car. What is significant for present purposes is that there was a high degree of premeditation for what was a "gangland" style attack by at least four persons upon the victim.
- [4] It is now necessary to recite a little more detail about the attack in order to assess the applicant's role in it and where he stands in relation to the others.
- [5] Ware was lured out of his residence at night by Johnston upon a pretext. He was then placed in a motor vehicle seated between Speer and the applicant. In the course of the drive it was discovered that Ware had a cane knife secreted in his trousers; that was removed by the applicant. When they arrived at the bushland site where the assault occurred Worland and Speer tied Ware up with rope which had

been taken for that purpose. Both Worland and Speer then participated in taping the eyes and mouth of Ware and assisted in getting him out of the car. Worland remained at or near the car with the driver, but that was not a great distance from where the actual assault occurred. It was Anderson who cut Ware's throat. Speer held Ware's arm while Anderson chopped off the fingers. Apparently the fingers were required to prove to others that the attack had been carried out. Ware was left in the isolated area but managed to get to a nearby house for help.

- [6] It can be seen from that recitation of facts that this was a particularly brutal crime and that Worland played a significant role in its commission.
- [7] It is true that Worland did not actively participate in either the cutting of the throat or the removal of the fingers, but he did actively assist in preparing Ware for the assault carried out by the co-offenders. His involvement was much more extensive than that of Johnston. After luring Ware into the car with knowledge of what was to happen Johnston played no further part in the attack; he was not at the scene of the assault. The applicant was present at all times and therefore in a position to have intervened to protect the complainant or minimise the level of violence inflicted.
- [8] Though the applicant was only 22 at the time of the commission of the offence he had a significant criminal history involving offences of violence. On 26 July 1989 he was placed on 6 months probation for an offence of assault. On 23 August 1995 he was convicted in the Beenleigh Magistrates Court of assault occasioning bodily harm on 2 February 1995 and assault occasioning bodily harm whilst armed on 3 February 1995. Then on 17 December 1996 he committed offences of assault occasioning bodily harm in company and stealing with actual violence whilst in company and using personal violence. He was dealt with for those offences in the Southport District Court on 22 June 2000.
- [9] The learned sentencing judge referred to the fact that she accepted that the applicant (and also Speer) showed remorse for what had happened on the night in question. She also said she thought the applicant (and Speer) "will be affected by this in a way that will cause you to turn your lives around". Reference was also made to a favourable reference from a prison Chaplain.
- [10] Given the role played by the applicant in carrying the plan into effect, his criminal history, and the relevant factors in mitigation the Court is not persuaded that there is any disparity between the sentence of 6 years imprisonment with a declaration imposed on the applicant and the sentence of 5 years imprisonment, without a declaration, imposed on Johnston who, as indicated above, was not as directly involved in the brutal attack.
- [11] Further, given the particularly brutal nature of the attack, this was clearly a case for the imposition of a declaration that the offence was a seriously violent one. It cannot be said that the sentencing discretion erred by the making of that declaration.
- [12] The sentence is not manifestly excessive. When all relevant matters are considered the applicant's conduct called for a sentence such as that imposed.
- [13] The application should be dismissed.