[2002] QCA 109

COURT OF APPEAL

DAVIES JA
MUIR J
WILSON J

CA No 315 of 2001

THE QUEEN

v.

SIMON FRASER CAMPBELL Applicant

BRISBANE

..DATE 21/03/2002

JUDGMENT

DAVIES JA: The appellant was convicted on his own plea of guilty in the Supreme Court on 20 August 2001 to one count of producing a dangerous drug, namely methylamphetamine, of a quantity exceeding two grams, between 1 September 1998 and 20 November 1998, one of possession of things for that purpose and one of possession of cannabis sativa. On 23 August he was sentenced to five years' imprisonment for each of those offences with a recommendation that he be eligible for consideration for post-prison community-based release after serving two years of that sentence. A declaration was also made with respect to three days of presentence custody. The applicant seeks leave to appeal against that sentence. He has a minor criminal history of little relevance.

He became involved in an operation for the production of methylamphetamine after another man, White, came to live at the applicant's house. The applicant agreed to permit his house to be used as a place for the production of methylamphetamine, accepted instruction by White on the method of its manufacture and, under White's direction, produced a quantity of methylamphetamine. Neither White nor the applicant were addicted to the drug.

The applicant assisted in the production of the drug by making his premises available for that production and by participating in its production principally when White was absent. When police searched the applicant's premises, they

located 120 grams of methylamphetamine and sufficient chemicals to enable production of a further quantity estimated at between 160 and 190 grams.

There is no doubt that, as the learned sentencing Judge found, the applicant willingly engaged in a commercial operation of producing this dangerous drug. His Honour concluded, correctly, that he must have been aware of the serious harm that the drug does in the community and, by producing it, had demonstrated a complete disregard for the suffering of others that this drug causes. As I have already said, he contributed not only his own labours to the task of production but the use of his own premises for that purpose. His Honour also concluded, correctly in my opinion, that he engaged in the operation, at least partly, for his own commercial benefit. He had been offered and had apparently accepted the offer of an overseas trip for his part in the operation.

Mr Moynihan, for the applicant, puts the appeal on sentence on two bases; the first that there is a manifest disparity between the sentence and that imposed on his co-offender White; and the second that it is, in any event, outside the permissible range for the level of offending in this case.

White was sentenced to seven years' imprisonment with a recommendation for post prison community based release after two and a half years. He also pleaded guilty and his plea was an early one. Two other persons were sentenced at the same

time. One of them, Geary, appears to have been the mastermind of this operation and of a wider operation involving the trafficking in that drug. The other, Cando, had circumstances involved in his sentence which were not relevant to the applicant's. Mr Moynihan does not submit that either Geary's sentence or Cando's sentence are relevant for the purpose of comparison with the applicant's.

In order to compare White's sentence with that of the applicant it is important to note that the learned sentencing judge thought that the appropriate sentence for White was one of eight to 10 years' imprisonment. However, White had served 10 months in gaol for an offence of which he had subsequently been acquitted and his Honour, relying on R v. Marabe, CA No 39 of 2000, thought that in the interests of fairness, having regard to that period of imprisonment served, it was appropriate here to impose a lower sentence of seven years' imprisonment. In comparing the applicant's sentence with that of White, therefore, White's sentence must be looked at in the light of that reduction to which I have just referred.

It is correct that White's involvement in the production of amphetamine was greater than that of the applicant. He was convicted not only of the production in which the applicant was involved but also of two additional counts of production and he was also convicted of trafficking in the drug. It was he who provided the equipment and ingredients and it was he who provided the instruction to the applicant on how to make

the drug. His purpose was also a commercial one.

White also had a criminal history for serious drug related offences. In all of those circumstances it was certainly appropriate that White receive a substantially heavier sentence than the applicant.

It seems, however, that he would have received a substantially heavier sentence but for the 10 months' imprisonment he had wrongly served. For that reason, as
Mr Heaton has pointed out, his sentence must not only be looked at as a sentence of somewhere between eight and 10 years' imprisonment but as a sentence which in the end is one of seven years' imprisonment for which he will really in effect have to serve three years and four months, that is before he becomes eligible for post prison community based release.

On this basis I think that the sentence imposed on White and on the applicant is sufficient, and only just sufficient, to cause a justifiable sense of grievance in the applicant. Looked at more generally, it must be said that the sentence imposed on the applicant is a high one.

On the other hand of course it must be borne in mind, as the learned sentencing judge pointed out, that the production of this drug has become quite prevalent.

There is not a great deal of help to be derived from the comparable cases to which we were referred, R v. Boyd [2001] QCA 421 or R v. Green CA No 372 of 1998, and I can derive little assistance from the Western Australian case of Nobes, (unreported WA Court of Criminal Appeal) CCA 55 of 1997, at least partly because the sentencing regime there may be sufficiently different to make it difficult to make an adequate comparison.

In the end, I am satisfied, but only just so, that the sentence imposed on the applicant was so high as to be manifestly excessive.

I would accordingly grant the application, allow the appeal, set aside the sentence imposed on the applicant and substitute a sentence of four years with a recommendation for post-prison community based release after he has
served 18 months.

The declaration which was made by the learned sentencing Judge should remain.

MUIR J: I agree.

WILSON J: I agree.

DAVIES JA: The orders are as I have indicated.
