

COURT OF APPEAL

DAVIES JA
BYRNE J
HOLMES J

CA No 333 of 2001

THE QUEEN

v.

KEVIN WILLIAM PHILLIPS

Applicant

BRISBANE

..DATE 19/03/2002

JUDGMENT

DAVIES JA: I will ask Justice Byrne to deliver his reasons first.

BYRNE J: On 9 August last year, after a trial, the applicant was convicted of the unlawful possession of a motor vehicle between 21 June and 19 September 2000, with the circumstance of aggravation that parts of the vehicle were removed by him.

For that offence he was sentenced to imprisonment for two and a-half years. He contends that the sentence was manifestly excessive.

The circumstances surrounding the offences, shortly stated, were these. Police located a motor vehicle in the applicant's house. The vehicle was, it seems, in the course of being stripped. By the time of its discovery, many parts had been removed from it. At least some of these were found in various locations throughout the applicant's house.

The vehicle, which was new, had been stolen from a shopping centre park three months earlier. The log book for the vehicle was located on a bedside table in the applicant's bedroom.

In testifying at his trial, the applicant denied any knowledge of the origin of the vehicle or of its having been stolen.

The applicant was born in December 1952. He has an extensive criminal history extending back to 1970. He has previously

been sentenced to imprisonment on several occasions. As examples: in 1984 for rape, nine years; and break and enter of a dwelling house with intent in the night time, five years; in 1996, 18 months for drug offences suspended after three months for a period of two years; in 1998, a short sentence for drug offences; in 1999, six months upon breach of a suspended sentence. And in February 2000, when he was dealt with in respect of drug offences, a sentence of imprisonment for six months, suspended for two years after one month had been served was imposed.

In submitting that the sentence was manifestly excessive, the applicant relies principally on his personal circumstances: in particular, his family circumstances. But considerations of personal and general deterrence plainly were important considerations in the sentencing. And the applicant's criminal history tended against leniency.

The applicant was also sentenced to serve the five months of the balance of the six months partially suspended sentence of imprisonment which had been imposed in February 2000. The motor vehicle offence with which this application is concerned was committed well within the two year operational period of the suspended sentence imposed in February 2000.

The Judge ordered that the five month balance of the six months term be served cumulatively upon the sentence for two and a-half years' imprisonment imposed in respect of the motor

vehicle offence. In my view, notwithstanding the family considerations which have been urged upon us, the overall effect of the sentences imposed for the offence itself and in respect of the suspended sentence was not beyond the range of a sound sentencing discretion. I would refuse the application.

DAVIES JA: I agree.

HOLMES J: I agree.

DAVIES JA: The application is refused.
