

SUPREME COURT OF QUEENSLAND

CITATION: *R v Jones* [2002] QCA 130
PARTIES: **R**
v
JONES, Stephen Mark
(applicant/appellant)

FILE NO/S: CA No 34 of 2002
DC No 195 of 2001
DC No 286 of 2001
DC No 7 of 2002

DIVISION: Court of Appeal

PROCEEDING: Sentence Application

ORIGINATING COURT: District Court at Maryborough

DELIVERED ON: 12 April 2002

DELIVERED AT: Brisbane

HEARING DATE: 20 March 2002

JUDGES: McPherson JA, White and Holmes JJ.
Separate reasons for judgment of each member of the Court, each concurring as to the orders made.

ORDER:

- 1. Grant the application for leave to appeal and allow the appeal against sentence.**
- 2. Set aside the recommendation for parole in relation to count 1 on Indictment No 286/01 and substitute an order that the sentence be suspended after the applicant has served a period of twelve months imprisonment, and that he must not commit another offence punishable by imprisonment within 3 years if he is to avoid being dealt with for the suspended term of imprisonment.**
- 3. Set aside the order for suspension of the period of imprisonment after three months made in respect of the sentences imposed in relation to Counts 1-5 and 8 and 9 on Indictment No 7/02. In lieu thereof order that the whole of the sentence be suspended forthwith, and that the applicant must not commit another offence punishable by imprisonment within 3 years if he is to avoid being dealt with for the suspended term of imprisonment. This sentence is to be served cumulatively upon the sentence imposed in respect of count 1 on Indictment No 286/01.**

CATCHWORDS: CRIMINAL LAW – PROBATION, PAROLE, RELEASE ON LICENCE AND REMISSIONS – QUEENSLAND – where the sentence cannot give effect to a recommendation for release on parole.

CRIMINAL LAW – APPEAL AND NEW TRIAL AFTER CONVICTION – APPEAL AND NEW TRIAL – APPEAL AGAINST SENTENCE – APPEAL BY CONVICTED PERSONS – APPLICATIONS TO REDUCE SENTENCE WHEN GRANTED – GENERALLY - where it was the intention of the trial judge for the sentence to be of a specific duration.

Penalties and Sentences Act 1992 s 157(2)

COUNSEL: J Hunter for the applicant/appellant
S G Bain for the respondent

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

- [1] **McPHERSON JA:** The applicant came before the District at Maryborough charged on three separate indictments with two offences on the first indictment, a further two on the second, and a total of 10 additional offences on the third, to all of which he pleaded guilty.
- [2] He was sentenced as follows: on the first indictment to an overall sentence of imprisonment for 12 months; on the second, to 18 months imprisonment to be served concurrently but with a recommendation for parole after 12 months, with 171 days pre-sentence being declared time served under the sentence; on the third indictment, to an effective overall sentence of 18 months imprisonment to be served cumulatively upon the sentences imposed for indictments 1 and 2, but to be suspended after three months.
- [3] The practical effect of these penalties was, as I understand it, to produce an accumulated sentence of imprisonment for 15 months, coupled with the recommendation for release on parole on the second indictment after serving 12 months imprisonment. Precisely how that recommendation could have been given effect in conjunction with a total term of imprisonment of 15 months is not altogether clear to me. It is not, however, necessary to investigate that question because, as is accepted on this appeal, the recommendation for parole is ineffective. Since the coming into force on 1 July 2001 of s 157(2) of the *Penalties and Sentences Act 1992*, parole may be granted only on a sentence of imprisonment of more than two years. Here the head term of imprisonment imposed was only 18 months. The parole recommendation must therefore be set aside.
- [4] For various reasons, arriving at a satisfactory sentence after deleting that recommendation proved rather more complex than might have been expected, with the consequence that a decision on the application was reserved to enable counsel to formulate an appropriate order. That having been done, the Court now makes the following orders:

1. Grant the application for leave to appeal and allow the appeal against sentence.
2. Set aside the recommendation for parole in relation to Count 1 on Indictment No 286/01 and substitute an order that the sentence be suspended after the applicant has served a period of twelve months imprisonment, and that he must not commit another offence punishable by imprisonment within 3 years if he is to avoid being dealt with for the suspended term of imprisonment.
3. Set aside the order for suspension of the period of imprisonment after three months made in respect of the sentences imposed in relation to Counts 1-5 and 8 and 9 on Indictment No 7/02. In lieu thereof order that the whole of the sentence be suspended forthwith, and that the applicant must not commit another offence punishable by imprisonment within 3 years if he is to avoid being dealt with for the suspended term of imprisonment. This sentence is to be served cumulatively upon the sentence imposed in respect of count 1 on Indictment No 286/01.

- [5] In the result the applicant may perhaps have escaped with a somewhat lesser punishment than his offending conduct merited or the sentencing judge, on one view, seems to have designed; but it is of some solace to the integrity of the system that at an earlier stage in the sentencing process, his Honour announced that it was his intention that the applicant should be released after serving 12 months of the sentence. The order now being made gives effect to that intention, although it does so in a slightly different fashion.
- [6] **WHITE J:** I have had the advantage of reading the reasons for judgment of McPherson JA and agree with the orders proposed.
- [7] **HOLMES J:** I agree with the reasons for judgment of McPherson JA and with the orders he proposes.