

COURT OF APPEAL

McMURDO P
WILLIAMS JA
MUIR J

CA No 313 of 2001

THE QUEEN

v.

KIM SOBORG CHRISTENSEN

Applicant

and

CA No 314 of 2001

THE QUEEN

v.

JEFF SOBORG CHRISTENSEN

Applicant

BRISBANE

..DATE 22/03/2002

JUDGMENT

THE PRESIDENT: Justice Williams will deliver his reasons first.

WILLIAMS JA: Each of Kim Soborg Christensen and Jeff Soborg Christensen, has applied for leave to appeal against a sentence imposed primarily for the offence of carrying on the business of trafficking in methylamphetamine.

It is convenient to deal with the application in so far as it involves Kim Soborg Christensen first. He was charged with a series of offences, the most significant being trafficking in methylamphetamine and cannabis sativa, between 1 January 1997 and 17 January 2001.

The matter on sentence proceeded on the basis that they were the outside dates and that the offence in question had been carried on for a lengthy period, approximating a period of four years. As other offences supporting the charge of trafficking, there were four counts of supplying methylamphetamine, two counts of supplying cannabis sativa, two counts of producing methylamphetamine and one count of possessing things used in respect to the production.

Pleas of guilty were entered on the 29th of October 2001. By way of brief background, I would record that the applicant was 40 years of age at the time of sentence and that he had only a minor criminal history, which was of little relevance to the charges to which he pleaded guilty.

The evidence before the sentencing Judge established that this was a large scale trafficking operation. Kim Christensen was not an addict and it would appear was not even a user. This was purely a commercial operation. Over the four year period, it was accepted at sentence that a profit of some \$500,000 had been generated from the illegal activity.

Throughout most of the period, the applicant had been operating a kitchen near Canungra. He was producing, or making a "cook" as the term was expressed in the material, about every 10 days. The profit from each "cook" was of the order of \$140,000 to \$150,000.

What makes the criminal activity even worse is that in about April 2000, he sold a small amount of methylamphetamine to a covert police operative. As a result of that sale, he was arrested in about May of 2000 and released on bail.

That release on bail in no way deterred the applicant from carrying on his criminal activities. Towards the end of May 2000, he became aware that a listening device had been placed in his house and correctly assumed that he was being investigated.

It was as a result of that, that he enlisted the assistance of his brother, Jeff, in the operation. He was arrested on the 11th of June 2000 with respect to certain production charges.

As will be noted in a moment, it was on that date that his brother, Jeff, was apprehended and found to be in possession of 260.027 grams of powder, which on analysis, contained 165.637 grams of pure methylamphetamine.

After that arrest, he was again released on bail and carried on his criminal activities, being involved in more transactions involving amphetamine prior to his final arrest in January 2001. The magnitude of the trafficking can be determined from a consideration of the fact that some \$500,000 profit was generated over a period slightly less than four years and that there had been a production operation in a kitchen, which was conducting a "cook" every 10 days approximately.

The learned sentencing Judge considered that a sentence of the order of 12 years' imprisonment was called for as a head sentence and discounted that because of the plea of guilty to a term of 10 years, which was in fact the sentence imposed.

It is difficult to find comparable sentences for trafficking in amphetamine to the extent that this applicant was. A number of the reported cases on trafficking do involve dealing with a cocktail of drugs, sometimes involving heroin, which at all material times, was a schedule 1 drug, whereas amphetamine was a schedule 2 drug; but nevertheless, in my view, one can have regard to other cases on trafficking, with a view to seeing what is the range appropriate to trafficking in

amphetamine of this magnitude.

In the course of submissions today, reference was made to the Queen v. Walton, ex parte Attorney-General, CA 338 of 1997; R v. Jacobs, CA 523 and 444 of 1996; R v. Chan, ex parte Attorney-General, CA 334 of 1992 and R v. Tilley, ex parte Attorney-General, CA 244 of 1994.

As I say, none of those sentences is of direct relevance to the appropriate sentence in this case, but a consideration of the sentences therein imposed sets a broad guideline.

Of more relevance for present purposes is the decision in Everett C.A. 311/98. That was a case which, in my view, was closer on the facts to the operation in the present case because of the amount of profit being generated.

The learned sentencing Judge considered that a sentence as high as 12 years could be imposed and that was discounted because of the plea of guilty to 10. It seems to me that given the magnitude of the operation, the starting point could well have been a sentence as high as 13 or 14 years if one took into the calculation of the head sentence the fact that the trafficking had been carried on after the applicant had been arrested and released on bail on two occasions.

It seems to me that in fixing the starting point at 12 years and reducing it for the plea of guilty to 10, the learned

sentencing Judge was effectively taking into account the continuance of the operation whilst on bail as going to the question of remorse and therefore the reduction for the plea was somewhat lower than might otherwise have been the case.

At the end of the day it is my view that trafficking of this magnitude, particularly where it involves production of the magnitude disclosed by the evidence in this case, calls for a sentence of 10 years' imprisonment, even after taking into account all the mitigating factors including the plea of guilty.

In the circumstances I would dismiss the application by Kim Soborg Christensen for leave to appeal against his sentence. I turn now to consider the position of Jeff Christensen. He was aged 26 at the time of the offences and 28 at the time he stood for sentence. He had only a minor criminal history which is of no relevance for present purposes.

It is true that he was only involved in the trafficking for a period of some 16 days, but significantly during that period he was involved in two "cooks" and conversations recorded between Jeff and Kim indicated an expectation of a gross profit of \$70,000 to \$77,000 for each of those cooks.

Jeff Christensen was also party to an agreement to utilise the services of a third person to act as storeman/salesman with respect to the operation. On the 11th June 2000 police

searched the production factory near Canungra and the fingerprints of Jeff, along with those of his brother Kim, were located on a number of the items.

Further and very significantly when the applicant Jeff Christensen was intercepted by the police, he was found to have in his possession 260.027 grams of powder which on analysis contained 165.637 grams of methylamphetamine. Again, all the evidence pointed to the fact that this was purely a commercial enterprise on the part of Jeff Christensen.

Possession of such a large quantity of methylamphetamine for commercial purposes would in my view call for a very significant sentence of imprisonment; but here the matter is more serious, because the applicant pleaded guilty at an early stage to trafficking. In other words, he admitted by his plea that he was involved in a business which was generating and was expected in the future to generate profit. That is the basis on which he fell to be sentenced.

One cannot really add significantly to the list of authorities to which I have already referred with respect to the application of Kim Christensen. Counsel for the Crown did refer, however, to Whitehouse CA472 of 1997, and Bellino (1998) 105 ACR 137.

The learned sentencing Judge here fixed a head sentence of

five years and then discounted it to three and a half years, the sentence in fact imposed because of the early plea of guilty.

It was submitted by counsel for the applicant that whilst the head sentence was within a broad range, there had been an inadequate discounting for the early plea. On the other hand, counsel for the Crown has submitted that if anything the head sentence was on the low side given the extensive nature of the trafficking to which the plea of guilty related.

On that basis an actual sentence of three and a half years' imprisonment would be well within range, taking into account the plea of guilty.

At the end of the day it seems to me that the submission of counsel for the Crown is correct. Given the extensive operation with which the applicant Jeff Christensen was involved, I am not persuaded that taking into account all relevant circumstances, a sentence of three and a half years' imprisonment was manifestly excessive.

I would therefore dismiss the application for leave to appeal against sentence.

It follows that the order of the Court would be that each of the applications for leave to appeal against sentence should be dismissed.

THE PRESIDENT: I agree.

MUIR J: I agree.

THE PRESIDENT: The order is that each of the applications for leave to appeal against sentence are dismissed.
