[2002] QCA 127

COURT OF APPEAL

WILLIAMS JA
FRYBERG J
MULLINS J

CA No 39 of 2002

THE QUEEN

v.

TAO NGOC MAI Applicant

BRISBANE

..DATE 03/04/2002

JUDGMENT

MULLINS J: This is an application for leave to appeal against a sentence of seven years' imprisonment imposed on Thao Ngoc Mai on 20 December 2001 for trafficking in heroin. The applicant pleaded guilty to that offence which occurred between 31 January and 29 June 2000, 21 counts of supplying heroin during the same period and one count of possession of heroin. No further penalties were imposed in respect of the counts apart from trafficking.

The applicant's co-accused were her de facto husband Phu Quang Cao and an associate Danh Cong Le. Each of the co-accused also pleaded guilty to trafficking but in respect of a lesser period than applied to the applicant. Cao was sentenced to eight years' imprisonment and Le was sentenced to five and a half years' imprisonment.

The offenders were targets in a covert police operation. The applicant was directly or indirectly involved in the supply of heroin to a covert police operative on 18 occasions during the period between January and June 2000. The applicant initially supplied heroin to the operative on her own, then in the company of an unknown female person and then in the company of Cao and Le.

The other counts of supply relate to occasions when the applicant was observed supplying something to another person who was then intercepted carrying heroin. The total weight of heroin supplied by the applicant was 35.384 grams of which 16.398 grams was pure heroin. The covert police

operative paid a total of $12,000 to the applicant which also covers the occasions when she was in company with her co-offenders.

The applicant was born on 7 September 1978 in Vietnam. She was therefore 21 years old when the offences occurred. She was 13 years old when she came to Australia with her grandparents. At the age of 17 she met Cao and they commenced living in a de facto relationship and had a child. Cao was imprisoned in March 1998. During the period of his incarceration the applicant had another relationship, as a result of which she had a son who was born in November 1999.

After Cao was released from prison the applicant and Cao resumed their relationship. Cao was a heroin addict and began using heroin again. The applicant commenced smoking heroin in December 1999 and developed a habit which was costing her about $50 per day and that was advanced as the reason for her offending. The applicant was pregnant to Cao at the time of sentencing.

The applicant had been convicted in the Magistrates Court on 16 February 2000 of possession of dangerous drugs which had occurred on 19 January 2000 and was placed on probation for 15 months. The trafficking therefore occurred while this probation order was current.

On 31 May 2000 police raided the applicant's house while the applicant was present with her co-offenders. Heroin and

$1,500 in cash was located. The applicant admitted to possession of the money but not of the heroin and was issued with notices to appear in respect of charges that arose out of that search. Five further counts of supply were committed after the applicant had received the notices to appear.

When interviewed the applicant had told police that Cao and Le worked for her. The sentencing proceeded on the basis that Cao was a partner with the applicant in the offences and that Le's role was of less significance than either the applicant or Cao.

The learned sentencing Judge referred to the need for personal deterrence in the light of the applicant's offending after being placed on probation for possession of dangerous drugs and for continuing to offend after being served with notices to appear in respect of drug offences which occurred on 31 May 2000.

At the time of sentencing Cao was 31 years old and had a much worse criminal history than the applicant. The learned sentencing Judge referred to the youth of the applicant compared to Cao and the significant saving in resources associated with the plea of guilty. The learned sentencing Judge reflected the mitigating factors which favoured the applicant by reducing the head sentence.

The authorities on which the respondent relies show that a

sentence in the range of 10 to 12 years would have been appropriate after a trial: The Queen v. Le [2001] QCA 290. It cannot be said that the sentence of seven years imposed on the applicant was manifestly excessive. The application should be refused.

WILLIAMS JA: I agree.

FRYBERG J: I agree. The sentence is, if anything, light.

WILLIAMS JA: The order of the Court will be application refused.
