[2002] QCA 128

COURT OF APPEAL

McMURDO P
DAVIES JA
HELMAN J

CA No 2 of 2002

THE QUEEN

v.

ROBERT JAMES MATTHEWS Applicant

BRISBANE

..DATE 03/04/2002

JUDGMENT

HELMAN J: On 10 December last year, before a Judge of the Supreme Court, the applicant pleaded guilty to five offences: unlawfully supplying a dangerous drug to a minor, unlawfully doing grievous bodily harm, unlawful assault occasioning bodily harm when armed with an offensive instrument (a baseball bat), unlawfully possessing a thing (a pipe) that he had used in connexion with the smoking of a dangerous drug, and unlawfully possessing a dangerous drug (cannabis sativa). All but the last offence were committed on 2 February 2001, the last on 4 February 2001. The judge sent him to prison for each offence: for five years for doing grievous bodily harm, for twelve months for the assault, and for one month for each of the other offences. The sentences were to be served concurrently. The applicant had been in custody for 309 days. His Honour declared the 309 days to have been served under the sentences.

The applicant complains that the sentences were manifestly excessive. Clearly enough the three one-month sentences are not, and the argument proceeded in relation to the sentence for doing grievous bodily harm.

The applicant was born on 28 June 1974 and so was twenty-six years old when he committed the offences. He has no prior convictions of any relevance. In a report placed before his Honour dated 8 November 2001, Dr Peter Fama, forensic psychiatrist, expressed the opinion that the applicant was suffering from an emotionally unstable personality disorder,

a prolonged depressive reaction then in remission, and multiple psychoactive substance dependence. At times he had suffered from mildly paranoid beliefs and troublesome auditory hallucinations attributable to stress and substance abuse. At the time of committing the offences on 2 February 2001, the applicant was tense and was suffering from paranoid thinking and from the effects of intoxication.

The minor referred to in the first charge, who is also the complainant in the second, was a schoolboy who was celebrating his sixteenth birthday on 2 February 2001. The victim of the assault occasioning bodily harm was a schoolboy then aged fifteen years. They were with other boys outside a shop at Corinda when the applicant struck up a conversation with them. Drugs were discussed, and the sixteen-year-old boy asked the applicant if he had any drugs, and the applicant replied that he did and agreed to get some. He went away and came back with some cannabis sativa. When he returned, the applicant was also holding a baseball bat. The applicant hit the two complainants, the older boy suffering a severe head injury from which he has not fully recovered. His injuries included a bone fracture, internal bruising, and brain tissue swelling. He suffered amnesia and has been left with double vision in his left eye, difficulty with auditory memory reasoning, and high language difficulty.

He was in Grade 11 at the time of the attack. He returned

to school part-time, and after three months returned full time. The injuries suffered by the younger boy were less serious but included bruising, swelling, and discomfort. He was hit on the back.

The applicant was interviewed by police officers investigating the incident on 5 February 2001. He admitted what he had done. He explained to them that he had failed to take medication for a mental disorder for some days before the incident of 2 February and on that day had smoked some cannabis (five to six cones), and had drunk some alcoholic liquor (ten to fifteen pots of beer), and had taken a lysergic acid diethylamide tablet.

It is not in the least surprising that in sentencing the applicant, the learned judge referred to the fact that the attack on the two boys was not provoked and had had serious consequences for the sixteen-year-old boy. His Honour was mindful of the need to deter others from committing violent offences of the kind of which the applicant was guilty. His Honour took into account too the applicant's early remorse when he confessed to what he had done to the investigating police officers.

We have been referred to a number of cases in which sentences for offences of this kind have been considered by the Court of Appeal. There is, as one might expect, a variety of circumstances. The most recent decisions of

relevance are those in R v. Hoogsaad (C.A. No. 277 of 2000, 9 February 2001), R v. D'Arcy (C.A. No. 214 of 2000, 7 February 2001), R v. Richmond (C.A. No. 233 of 1997, 17 July 1997), and R v. Anderson (C.A. No. 434 of 1995, 1 February 1996).

It may be said, when those cases are considered, that were it not for the mitigating factors that were evident in this case - the cooperation with the police officers, the evident remorse, the early pleas of guilty - the range of sentence available to the learned sentencing judge would have been up to imprisonment for six years. Clearly enough, his Honour allowed some discount for those matters and instead sentenced the applicant to imprisonment for five years. It is said on the applicant's behalf that some greater leniency should have been shown to him, but giving full weight to the matters I have mentioned and to the applicant's explanation for his wrongdoing, I nonetheless conclude that a substantial sentence was called for in this case. The applicant's explanation for his conduct, his failing to take the medicine prescribed for a mental disorder and his taking the stupefying drugs and intoxicating drink, serves to emphasize his irresponsibility rather than to justify a reduction in the penalty, in my opinion. In the result I conclude that there is no proper basis for this Court to interfere with the sentencing discretion of the learned sentencing judge. I should refuse the application.

THE PRESIDENT: I agree. The learned sentencing Judge here did not state that he took into account the guilty plea in determining the sentence. Reference should be made to the significant discounting factor of a plea of guilty in the sentencing remarks: see s.13(3) Penalties & Sentences Act 1992 (Qld). But this does not invalidate the sentence (see s.13(5) Penalties & Sentences Act 1992 (Qld).

Whilst the sentence was in my view high considering the applicant's plea of guilty, remorse and absence of prior relevant criminal history, for the reasons given by Mr Justice Helman, it cannot be said to be manifestly excessive.

DAVIES JA: I agree with the reasons given by Mr Justice Helman, and I agree with the remarks of the President that this sentence was at the very high end of the appropriate range, but not in my opinion so high as to require this Court to interfere.

THE PRESIDENT: The order is the application is refused.
