

COURT OF APPEAL

de JERSEY CJ
McMURDO P
ATKINSON J

CA No 29 of 2002

THE QUEEN

v.

DANIEL TERRANCE BROOKS

(Appellant)

BRISBANE

..DATE 26/04/2002

JUDGMENT

THE PRESIDENT: The applicant pleaded guilty on 10 January 2002 to three counts of stealing, one count of entering premises with intent, one count of armed robbery, one count of armed robbery in company and one count of unlawful use of a motor vehicle.

He was sentenced to nine years' imprisonment for the armed robbery in company and to lesser concurrent sentences on the remaining offences. A period of 200 days was declared to be already served under the sentence.

The applicant, who appears for himself on this application, contends that the sentence was manifestly excessive; that inappropriate comparative sentences were used by prosecution and defence for the sentencing Judge's guidance and that too much emphasis was placed by the sentencing Judge on the victim impact statement.

The applicant was 27 at sentence. He cooperated fully with the authorities, entered an early plea by way of ex officio indictment and volunteered information which assisted the police to clear up the armed robbery simpliciter charge.

The applicant, however, has a lengthy criminal history commencing with convictions for property offences in the Beaudesert Childrens Court in 1989. He had further convictions for offences of dishonesty in the Brisbane Childrens Court in 1990. Later that year, in the Brisbane District Court he was convicted of armed robbery in company with personal violence and was placed in two years care and control of the Director of Children's Services. His criminal history continued in 1991 when he was placed on probation for two years in the Brisbane Magistrates Court. Later that year

he was sentenced to six months' imprisonment for escaping legal custody. His offending continued throughout 1991 when he was convicted of further offences of dishonesty and was sentenced to a short term of imprisonment followed by 18 months probation. In 1992 he was sentenced to six months' imprisonment for breaking and entering a place with intent, wilful and unlawful destruction of property and assault with intent to prevent arrest. His offending behaviour continued throughout 1992 and 1993 when he was sentenced to further terms of imprisonment for offences of dishonesty. In July that year he was sentenced to 12 months' imprisonment for the offences of assault occasioning bodily harm and unlawful wounding. Whilst in prison he was sentenced to terms of imprisonment for assaulting a correctional officer and assault occasioning bodily harm. In 1994 in Rockhampton he was sentenced to six months cumulative imprisonment for the offence of assault occasioning bodily harm whilst in company and later that year to a further term of nine months' cumulative imprisonment for the offence of armed robbery in company. He committed offences whilst in gaol for which he was sentenced to further cumulative terms of imprisonment. In 1995 he was sentenced to three years' imprisonment cumulative upon his sentences then being served, but with a recommendation for eligibility for parole after 18 months after his most recent eligibility for parole, for the offence of unlawful wounding with intent to do grievous bodily harm. In 1996 he was convicted of the offence of assault occasioning bodily harm in company and sentenced to eight months

cumulative imprisonment.

He was released from prison, he tells us, in late 2000. His co-accused Jeffers' criminal history was even worse and included multiple prior convictions for armed robberies.

The offences for this Court's consideration occurred in this way. The applicant put \$20 of petrol into his car and drove off without paying on 26 March 2001. He committed a similar offence on 31 March 2001. Between 1 April 2001 and 5 April 2001 he stole two vehicle registration plates from a used car yard and placed them on his own vehicle.

On 4 April 2001 the applicant and his accomplice were seen leaving the complainant's garage. The complainant noted the registration of their vehicle. When intercepted by police the applicant told them he stood guard whilst his co-offender tried to steal the vehicle in the garage but they were disturbed by the complainant and fled.

On 6 April 2001 at 9.30 a.m. the applicant confronted the owner of the Dawn Theatre, Chermside, claiming to be armed with a gun. He had his hand hidden in his jacket. He demanded \$100. The complainant refused and the applicant said, "You don't want to get hurt, do you?" The complainant pushed an alarm button and the applicant left after stealing some candy bars. The applicant told police he needed money to support his drug habit.

On 5 June 2001 at 3.20 p.m. the applicant and his co-offender, Jeffers, entered the Commonwealth Bank at Kallangur. Jeffers was wearing a balaclava and carrying a sawn-off double barrel shot gun. He told the staff and customers, "Get on the fucking floor. I don't want to hurt you." They got on the floor and Jeffers said, "No, you cunt give me the fucking money" to a teller. The teller said he did not have any money. The applicant passed a plastic bag to another teller who filled it with money. The applicant and his accomplice left on foot. A staff member followed them.

The applicant was interviewed by police on 6 June 2001, the next day. He said he was asked to take part in the offence by his co-offender. A female drove the getaway car. He borrowed the balaclava and gloves. After the robbery his co-offender dropped him off and he purchased some heroin.

He did not otherwise receive any money from the robbery although it seems that an amount in excess of \$8,000 was taken.

The applicant's counsel at sentence told the Court that the applicant had a happy, stable childhood until he was seven when his parents separated. His life then became dysfunctional and at age 13 he was placed in Boystown and then other institutions. He has now become institutionalised. He commenced to use heroin to deal with his anxiety on his release from prison. In the most serious of the offences, the

armed robbery in company, his accomplice Jeffers was an experienced armed robber who instigated the offence. The applicant did not intend that anyone be hurt, believed the gun was unloaded and told the teller filling the plastic bag with money, "You're all right, mate. No-one is going to get hurt. Sorry, mate."

At sentence, the applicant directly addressed the Judge in these terms:

"I'm sorry for what I've done. Now that I've had time to think about what I've done, I'm all off drugs, I can see that I've hurt a lot of people in the process and I've hurt not only the victims but my loved ones. My girlfriend's here today, she's got kids. They need me. And I just hope you won't crush me with a really big sentence. That's it, your Honour."

The applicant, when questioned by the learned sentencing Judge, said that he had read the victim impact statement. That statement was from a bank teller who was greatly traumatised by the offence. He has developed a severe panic disorder and is unable to leave his home. His sleep is broken by nightmares. He has given up his second job and is unable to work in his position with the bank. He has weekly visits with a psychiatrist or psychologist. He is on antidepressant tablets and is shortly to start electroconvulsive therapy. That statement was not challenged or put in issue at sentence.

His Honour indicated that without the mitigating features of this case he would have sentenced the applicant to between 10 and 12 years imprisonment for the armed robbery in company.

That would, of course, automatically have incurred a declaration of a conviction of a serious violent offence under part 9A of the Penalties and Sentences Act 1992 (Qld). His Honour took into account the plea of guilty and the other mitigating factors and determined to impose a sentence of nine years' imprisonment without any declaration that the applicant had been convicted of a serious violent offence.

The offence of armed robbery in company of a bank is an extremely serious one. It has had a devastating effect on one of the bank tellers involved. The applicant has an appalling criminal history including prior convictions for offences of violence and robbery.

The applicant believes that his sentence was harsher than that imposed on two of his fellow in-mates. He has referred us to their cases which were not taken on appeal. Whilst no two sentences are ever likely to be identical both as to the facts of the offences and the personal circumstances of the offender, the comparable sentences referred to in the schedule by the respondent to this appeal confirm that the sentence imposed upon the applicant at first instance was well within the appropriate range. See, for example, R v. Irving [2001] QCA 472, CA No 199 of 2001, 12 November 2001 and R v. Downard [1997] QCA 164, CA No 147 of 1997, 30 May 1997.

The applicant is concerned that his prior criminal history means that it is unlikely that he will be released on early

parole but that is a matter for the correctional authorities and not something relevant for this Court's consideration, if the sentence imposed is within the appropriate range.

The learned primary Judge, rightly, placed some weight on the victim impact statement, see s.9(4) Penalties and Sentences Act 1992 (Qld), especially s.9(4)(c) and s.14 Criminal Offence Victims Act 1995 (Qld). But the sentence does not suggest he placed undue weight on this factor and that he consequently gave insufficient weight to the factors favouring the applicant.

The sentence imposed by the learned primary Judge adequately balanced the mitigating factors and the seriousness of the offence.

I would refuse the application for leave to appeal against sentence.

THE CHIEF JUSTICE: I agree. As I mentioned during argument, I believe the applicant was extremely fortunate in avoiding a declaration that he had been convicted of a serious violent offence. It could not, in my view, sensibly be argued that this nine year sentence visited on a violent offender with this applicant's criminal history was manifestly excessive.

ATKINSON J: I agree with the orders proposed by the President and with her reasons.

THE CHIEF JUSTICE: The application is refused.
