[2002] QCA 188

COURT OF APPEAL

McMURDO P
WILLIAMS JA
JONES J

CA No 66 of 2002

THE QUEEN

v.

DAVID GARY TWADDLE Applicant

TOWNSVILLE

..DATE 27/05/2002

JUDGMENT

THE PRESIDENT: The applicant pleaded guilty on the 6th of February 2002 to one count of trafficking in methylamphetamine, between 1 January 1997 and 6 October 2000, and one count of possession of a mobile telephone and a set of electronic scales used in connection with trafficking. He was sentenced to eight years' imprisonment with a recommendation that he be considered for parole after serving three years and three months. Eight days presentence custody was declared to be time served under the sentence.

The applicant submits the sentence was manifestly excessive, in that the learned sentencing Judge failed to place sufficient weight on matters of mitigation, in particular, the timely plea of guilty.

With the concurrence of defence counsel at sentence, the Prosecutor relied on the applicant's conduct over a two month period from about 27 August 2000 to 26 October 2000, as representative of the applicant's conduct during the entire period of the trafficking charge, which extended over a three year and 10 month period.

The representative conduct relied on by the Prosecutor was as follows: On 27 August 2000, an undercover female police agent travelled to Ingham and met Frank Patane, who provided the police officer with a mobile telephone number. The undercover police officer keyed that number into her mobile phone and handed the phone to Patane, who had a conversation. Patane and the undercover agent waited in her motor vehicle until the

applicant drove by in a Ford Falcon and parked it some 30 metres away. Patane walked to the Falcon and got into the front passenger seat, the Falcon then drove off, returning a short time later. Patane got out of the Falcon and walked to the undercover agent's car and directed her to another address at Ingham, where she again saw the Falcon driven by the applicant in the driveway of the showgrounds.

Patane left the undercover agent's car, went to the Falcon driven by the applicant and returned shortly afterwards with a clipseal plastic bag containing white powder. She handed Patane $2,100. Patane then walked towards the applicant's vehicle. The police agent gave Patane $300 and dropped him off at his address. The white powder was later calculated to weigh 6.299 grams with a pure weight of 1.014 grams of pure methylamphetamine, 16.1 per cent pure.

On the 1st of September 2000, the police agent again met with Patane who made a number of phone calls, and they later met with the applicant who produced a clipseal plastic bag containing white powder, in return for $2,100. This powder had a gross weight of 6.348 grams and a calculated weight of .818 grams of pure methylamphetamine.

On 8 September 2000, the undercover police agent again purchased methylamphetamine from the applicant for $2,100. Its total weight was 6.279 grams, with a calculated weight of 1.065 grams of pure methylamphetamine.

On 7 September, the undercover police agent met with the applicant and expressed her dissatisfaction with the quality of the methylamphetamine she had been receiving. She said she did not presently have money for the drugs, but the applicant insisted she could take them and pay later. She paid the applicant for the drugs on 12 September and tape recorded the conversation. The applicant said he would have a new batch next week, and advised her to ensure her customers did not run short of drugs. The applicant frequently used different vehicles, which is not contended that he owned.

On the 21st of September 2000, the applicant and the undercover police officer met at the Victoria Hotel in Ingham. The applicant said he had no drugs to offer, but he would do his best and telephone her shortly. He did not phone, and the agent tried to contact him. He next phoned her on 23 September 2000, explaining that the delay was because he had lost his mobile phone.

The police agent next received a phone call from Troy Perry on behalf of the applicant and the two agreed to meet at the car park of the Causeway Hotel in Townsville. Before that occurred, the undercover police agent contacted the applicant, who assured her that Troy was safe to deal with. She met with Troy as arranged, and Troy produced a latex glove and a clipseal plastic bag containing white powder, in return for $2,100.

The applicant was arrested on the 26th of October.

The applicant was born in 1958 and was aged 44 at sentence. He has a significant criminal history which included a number of convictions for assault some of which involved short periods of imprisonment. He had convictions for drink driving offences, and more significantly in 1982, convictions for possession of a dangerous drug, marijuana for a specified purpose and possession of money obtained directly from the commission of an offence for which he was sentenced to five years' imprisonment and three years' imprisonment respectively. The facts of those convictions were not provided to the sentencing Court, and nor have they been provided to this Court, but the length of the sentence, from which there was no appeal, suggests that a substantial commercial quantity of marijuana was involved. In 1989, the was convicted of failing to take reasonable precautions in relation to a firearm, and was convicted and fined $150. He has no relevant convictions since 1989.

The applicant has lived in a stable relationship for the last 15 years, and he has the support of his parents, partner and three children aged 13, 10 and 8.

His counsel at sentence submitted that he committed these offences because he had serious financial problems. When he left school in Year 9 he commenced work with his father as an apprentice butcher, and worked in the family business for about six years. He then worked as a haul-out driver and general farm worker before opening his own business in Ingham. Following his release from prison, he worked as a labourer. His businesses in Ingham and Lucinda failed, and he lost

approximately $400,000, including the family home. In these circumstances, it was submitted, he turned to drugs, both using them and selling them for profit.

The applicant pleaded guilty at what was accepted at sentence in the circumstances to be at an early stage. Through his counsel he expressed his regret in his involvement in the offences, especially as he had seriously let down his partner and children. The applicant emphasises that he is a mature man with family support and a strong employment history. He turned to drug dealing because of his business difficulties, and used the proceeds of his trafficking to subsist rather than for high living. His activities were restricted to two sales per month of relatively small amounts of methylamphetamine, with low levels of purity.

The representative facts placed before the learned sentencing Judge mean, however, that the applicant was involved in trafficking a substantial quantity of methylamphetamine, a drug objectively recognised as dangerous to both the user and the community, for a period of nearly four years, at substantial profit to himself. Although he has no significant convictions in 1989, he had a previous serious conviction for drug offences, for which he was sentenced to five years' imprisonment.

The cases which the applicant contends are comparable, namely R v Crocker, CA No 118 of 1999, 10 September 1999, R v Dalton, [2002] QCA 108, CA No 296 of 2001, 21 March 2002, R v Neave,

CA No 186 of 1995, 20 June 1995, R v Radlovic, CA No 281 of 1993, 18 October 1993 and R v Cuddy [1988] 37 A Crim Rep 226 were all less serious examples of dealing in methylamphetamine than this case.

The other case referred to by the applicant, R v Gordon [2002] QCA 83, CA No 330 of 2001, 18 March 2002, also had different features and turned on the totality principle, which has no application here. None of the comparable sentences referred to by the applicant persuade me that the sentence imposed was manifestly excessive.

This case, although not closely comparable on its facts to any other matter to which we have been referred, is closer to the facts of R v Everett [1999] QCA 14 CA 311 of 1998, 5 February 1999. Everett was sentenced to nine years' imprisonment with a recommendation for parole after three and a-half years. The Court noted that the conduct of Everett, which involved a purely commercial motivation carried out by a man of mature years, (Everett was 33 years of age) warranted a head term within the range of eight to 10 years, and that his personal circumstances, plea of guilty and co-operation were appropriately reflected by the one year credit allowed with respect to the recommendation as to parole.

Although the learned sentencing Judge did not specifically note that he also reduced the head sentence in partial recognition of the plea of guilty, in my view, the head term of eight years combined with a recommendation for parole

eligibility nine months earlier than otherwise would be the case, was a sentence within the appropriate range in all the circumstances, and sufficiently recognised mitigating factors in this case.

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

WILLIAMS JA: The principal offence to which the applicant pleaded guilty was that of trafficking in methylamphetamine between 1 January 1997 and 26 October 2000. At that time, methylamphetamine was a Schedule 2 drug under the Drugs Misuse Act.

The offence was clearly carried on with a commercial purpose in mind, and that was carried on throughout the whole of the period in question. The President has detailed the activity between 27 August 2000 and 26 October 2000, which was agreed to be indicative of the level of trafficking for the entire period.

The other matter of major concern is the fact that in 1982 the applicant was convicted of the offence of possession of cannabis for the purpose of supply, and sentenced to a period of imprisonment for five years. That offence also had as an element, the intention to deal in an illicit drug for commercial gain. It is clear that the applicant did not learn from his earlier conviction, that the community would not tolerate trafficking in dangerous drugs for commercial profit.

In my view, a sentence of eight years' imprisonment with a recommendation that the applicant be eligible to apply for parole after serving three years and three months, adequately reflects the criminality of the conduct and includes an appropriate allowance for the timely plea of guilty.

I agree with what has been said by the President; the application should be refused.

JONES J: I also agree, the applicant engaged in a commercial operation of drug trafficking over a prolonged period. This has to be seen against a background of an earlier commercial drug dealing in cannabis sativa, which resulted in a sentence of five years' imprisonment. The drug trafficking in this case involved the more damaging drug methylamphetamine.

Looking at the total effect of the penalty, I do not regard the sentence as manifestly excessive, and I agree with the orders proposed by the learned President.

THE PRESIDENT: The order is, the application for leave to appeal is refused.
