[2002] QCA 227

COURT OF APPEAL

DAVIES JA
WILLIAMS JA
JERRARD JA

CA No 116 of 2002

THE QUEEN

v.

J

BRISBANE

..DATE 24/06/2002

JUDGMENT

DAVIES JA: I shall ask Justice Williams to deliver his reasons first.

WILLIAMS JA: The applicant pleaded guilty on the 18th of March 2002 to the offence that on the 2nd of February 2002 he entered a dwelling house in the night time with intent to commit an indictable offence therein.

It was of particular relevance when it came to the question of sentence that, having been born on 4 March 1987, the applicant was 14 years of age when the offence was committed and 15 years when he stood for sentence.

He had, when aged about 10, received a warning with respect to a somewhat similar incident, but this was the first occasion on which he had been before the Court.

The circumstances of the commission of the offence are somewhat unusual. He was present at a party in a block of units and some of the partygoers had apparently spilled out into the common area of that building.

The complainant was the occupier of a neighbouring unit. He asked the group of partygoers to move on and be quiet. He then returned to his unit. Subsequently, he heard a noise and observed the applicant in his unit with a bottle of rum and Coke in his hands.

The applicant said that he was "looking for Jennifer". The complainant took the bottle from the applicant and asked him to leave, indicating that he would call the police. The applicant responded by raising his fists and inviting a fight. He also said, "Go ahead. I'm 14 and you're breaking up a party."

The applicant left the building. The police were contacted, and the applicant was subsequently located a short distance away with a group of juveniles. There was, again, liquor found in the possession of that group.

It appears that after his apprehension, the applicant, accompanied by his mother, sought to contact the complainant to apologise for the conduct in question, but the complainant was not able to be located on that occasion.

The fact that his mother went with him on that occasion demonstrates that he does have family support. It appears that he is a competent student at school.

It was in those circumstances that the learned sentencing Judge placed him on probation for a period of two years and ordered that he serve 100 hours community service.

In other words, the learned sentencing Judge combined a reasonably lengthy period of probation with a significant amount of community service. Because an appeal against the

sentence was recommended, the applicant has not yet been requested by the authorities to perform any community service.

The learned sentencing Judge in the course of his sentencing remarks referred to the involvement of alcohol in the commission of the offence, and to the fact that the applicant had a previous warning with respect to a reasonably similar incident.

With respect to the community service, his Honour said,

> "Community service means you are going to put something back into the community and show that you can be a responsible member of the community."

He also said that he was giving the applicant an opportunity to "tow the line, keep off alcohol, and be subject to supervision and put something back into the community".

Mr Moynihan, who appears for the applicant, submitted that it was the combination of the probation and community service which, in the particular circumstances of this case, made the sentence manifestly excessive.

Before the sentencing Judge, counsel for the applicant had contended for a good behaviour bond and Mr Moynihan submitted that either such a bond or probation was an adequate punishment.

I should say that no conviction was recorded, and that has not been the subject of any submissions here.

As I have already said, the applicant was born on the 4th of March 1987, and the two years probation imposed on 18 March 2002. That means that the probation order will expire approximately two weeks after the applicant attains the age of 17.

That, in my view, is an adequate penalty to be imposed in this case. The addition of the community service makes the overall sentence manifestly excessive.

In my view, leave should be granted to appeal against sentence. The appeal should be allowed, and the sentence varied by deleting therefrom the reference to community service.

DAVIES JA: I agree.

JERRARD JA: I agree. I have nothing to add.

DAVIES JA: The orders are as indicated by Justice Williams.
