[2002] QCA 228

COURT OF APPEAL

DAVIES JA
WILLIAMS JA
JERRARD JA

CA No 110 of 2002

THE QUEEN

v.

JORDAN JAMES FAIRFAX Respondent

and

ATTORNEY-GENERAL OF QUEENSLAND Appellant

CA No 111 of 2002

THE QUEEN

v.

JORDAN JAMES FAIRFAX Respondent

and

COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS Appellant

BRISBANE

..DATE 24/06/2002

JUDGMENT

24062002 T3-4/MUM26 M/T COA148/02

DAVIES JA: The respondent pleaded guilty in the District Court on 15 March this year on 22 counts. They were five of imposition on the Commonwealth, 16 of opening or operating an account in a false name and one of dishonestly obtaining property with a circumstance of aggravation. In addition, a further 20 offences of breach of the Financial Transactions Reports Act 1988 (Cth) were taken into account pursuant to section 16BA of the Crimes Act 1914 (Cth).

The offences of imposition on the Commonwealth occurred between January 1998 and March 1998 and the other offences on which the respondent was indicted occurred between July and August 2000. On the offence of dishonestly obtaining property with a circumstance of aggravation, the respondent was sentenced to 18 months imprisonment suspended after five months with an operational period of three years. On all other offences he was sentenced to 12 months imprisonment to be released after five months upon a recognizance for 24 months. Those sentences were concurrent among themselves but cumulative upon a term of imprisonment which the respondent was then serving.

The Attorney and the Commonwealth Director of Prosecutions have appealed against those sentences, the Attorney in respect of the offences under the Code and the Commonwealth Director in respect of the Commonwealth offences, on the ground in each case that the sentences were manifestly inadequate. It is said in the Notice of Appeal that the

learned sentencing judge failed to have regard or sufficient

regard to the need for specific deterrence, to the respondent's criminal history and to the need to ensure that the respondent was adequately punished for the offences. It was also said that he gave undue weight to the totality principle.

The respondent is 35 years of age having been born on 14 July 1966. He has a long history of offences of dishonesty. There appears to have been some difficulty in tracing all of these because over the time during which these offences were committed, he used no less than 10 aliases. It is possible therefore that he has other previous offences than those which I am about to mention.

In 1982 and 1983 he was dealt with as a juvenile on eight charges of breaking, entering and stealing and one of stealing. He was sentenced to probation and community service. Then in August 1990 he was convicted of a total of 56 offences of dishonesty over a period of nine months and was sentenced to three years imprisonment.

Leaving out some minor offences, he was then convicted in October 1997 on 42 offences of dishonesty including offences of false pretences, misappropriation and breaches involving in opening and operating bank accounts in false names. He adduced false identities to obtain $23,000 and had attempted to obtain expensive motor vehicles through false pretences.

He was arrested trying to leave Australia with a passport in a false name. He was sentenced to four years imprisonment with a recommendation for parole after 16 months. He was also convicted shortly after this on four counts of making application for a driver's licence in a false name and was sentenced to six months imprisonment. Then, in November the same year he was fined in the Magistrates Court for assault occasioning bodily harm, wilful destruction and some street offences.

In January 1998 he escaped from prison. Twelve days later he commenced upon the commission of the five offences of imposition on the Commonwealth, the subject of the first indictment before this Court. These were all committed between January and March. They all involved applications for Newstart Allowance in a false name. For that purpose, in each case, he was able to produce a false extract of birth and a false bank keycard. In some of the cases he also produced a rental receipt and an employment separation certificate both in a false name. Five days after the last of these frauds he was arrested for other dishonesty offences in New South Wales of obtaining property by deception and possession of property suspected of being stolen. He was sentenced to nine months imprisonment but apparently the commission of the offences against the

Commonwealth escaped notice.

It was not until December of that year that his escape from lawful custody apparently caught up with him and he was

sentenced to four months imprisonment, cumulatively upon his existing sentence, for that offence. Perhaps surprisingly, in the light of all this, he was released on parole on 22 June 2000. The remainder of the present offences were committed shortly after his release on parole. These consisted of 16 offences of opening or operating an account in a false name, one count of dishonestly obtaining property with a circumstance of aggravation and the 20 offences for breach of the Financial Transactions Reports Act which were taken into account. During that period he managed to open 29 bank accounts in false names. Moreover, he continued his fraudulent activities even after being interviewed by police on 31 July 2000.

A total of $120,000 of money or property was obtained by the respondent through these offences. However, apart from about $9,000 the rest of this sum consisted of the value of a Porsche Boxster motor vehicle, the subject of the count on which the sentence of 18 months imprisonment was imposed. It should be noted, as Mr Callaghan pointed out, that the learned sentencing judge was prepared to find on the evidence that the respondent may have had a misguided

expectation that he would be able to finance the purchase of that vehicle. The finding, however, goes no further than that despite the able argument of Mr Callaghan to the contrary. Nor was a finding more strongly in favour of the respondent justified.

The respondent pleaded guilty but at no stage cooperated with the police. He declined to be interviewed about these matters and appeared to have ceased offending only when he was unable to do so.

The sentence of 18 months imprisonment required the respondent to serve only five additional months for the totality of these offences. The reason for the apparently lenient sentence appears to be the fact that these sentences were imposed cumulatively upon the respondent's existing sentence and the concern of the learned sentencing judge that otherwise the totality might be crushing upon the respondent.

Whilst one can understand the learned judge's concern about this I have no doubt that the sentence imposed was, having regard to the totality of these offences, the previous criminal record of the respondent and the fact that these offences were committed in one case when he was unlawfully at large and in other cases whilst he was on parole and immediately after his release on parole, manifestly

inadequate even when regard is had to the fact that he had already been sentenced for offences committed at about the same time as the commission of the imposition offences. The offences committed in 2000, in my opinion, were alone sufficient to require a substantially heavier sentence than this and a substantially greater period to be actually served before suspension or some other form of release.

The respondent seems incapable of resisting the temptation to commit offences of this kind. And, even when he comes to court, he seems inclined to falsify to his advantage his personal background and education. Moreover these were highly sophisticated offences involving the production of forged documents and they were conducted in a systematic way. Neither imprisonment nor parole appears to have deterred him.

The appellants have contended for a sentence of five to six years imprisonment ameliorated by suspension or recommendation after 15 to 18 months; or reduction of the head sentence to two and a half to three years. Mr Callaghan points out, however, that the submission made below was not five to six years but four to six years.

The cases referred to by the appellants may well justify a sentence up to that range. I am referring in particular to R v. Cheers, CA No 214 of 1997, and R v. Pearson-Harding, CA No 377 of 1998. However, taking a conservative approach,

as one must in appeals of this kind, I think that a sentence of four years for the totality of these offences would be appropriate. It is convenient to impose this in the circumstances as his Honour did with the highest of the sentence he imposed on count 17.

To mitigate the effect of the mitigating factors to which I have already referred, in my opinion, that sentence would be suspended after the respondent has served 18 months. His

Honour was correct, in my opinion, in imposing the sentences here cumulative upon the term of imprisonment which the respondent is now serving.

I would, therefore, order that the appeal be allowed in respect of the appeal imposed for count 17 on the second indictment. I would set aside that sentence and in lieu impose a sentence of four years imprisonment suspended after 18 months with an operational period of four years cumulative upon the sentence which the respondent is now serving.

WILLIAMS JA: The respondent's criminal history, his pleas of guilty on 15 March 2002 to the two indictments then before the Court, and the 20 other offences then taken into account all go to establish that previous punishment has not deterred the respondent from committing offences of

dishonesty. Some of the relevant offences occurred very shortly after release on parole or escape from custody. In these circumstances the sentence with which the Court is now concerned was clearly inadequate.

In my view, the appropriate sentence effectively to impose is one of four years' imprisonment suspended after 18 months. I agree with the reasons given by Justice Davies and with the orders imposed.

JERRARD JA: In this matter, I am of the opinion that some of the remarks of the High Court in the matter of Wong v. R,

reported in volume 185 Australian Law Reports at page 233, have some relevance. The High Court there was concerned to describe the role of a Court of Appeal, observing in the Judgment of the Chief Justice that it involved communicating the collective experience of sentencing Judges as part of the Court of Appeal.

In my Judgment in this matter the learned trial Judge imposed a sentence significantly less than what might be expected from the collective experience of sentencing Courts in this State. The relevant principles to the sentencing of this offender included the necessity generally for deterrence for the variety of conduct to which he habitually engages, and the significance of criminal conduct committed

when on community based release to the likelihood of reoffending.

Further, there is the generally established significance to the likelihood of reoffending of repetition of dishonesty at the earliest available opportunity.

Accordingly, the need arose to impose a sentence which would encourage this particular offender to reach the stage in his life where he would point to persuasive evidence of efforts he had made, or was making, to exist in the future in the wider community without reoffending, and before he is again released.

For that reason, I agree with the sentence suggested by his Honour Justice Williams.

DAVIES JA: The orders are as I have indicated.

MR CALLAGHAN: Can I just clarify one point? I understand your Honour Justice Davies at one stage to say the period after which-----

DAVIES JA: No, I meant 18 months. I meant to say 18 months in both. In the order I finally pronounced I said 18 months, yes. I'll correct that. Thank you, Mr Callaghan.
