[2002] QCA 279

COURT OF APPEAL

DAVIES JA
McPHERSON JA
WILLIAMS JA

CA No 45 of 2002

THE QUEEN

v.

SCOTT ALICK MACKENZIE Applicant

BRISBANE

..DATE 31/07/2002

JUDGMENT

DAVIES JA: The applicant pleaded guilty in the District Court on 7 February this year on two counts of entering premises and stealing, four of unlawful use of a motor vehicle, two of assault occasioning bodily harm whilst armed, one of wilful damage, one of stealing and one of dangerous operation of a vehicle whilst affected by an intoxicating substance. He was sentenced to an effective term of five years imprisonment suspended after 20 months for an operational period of five years.

The applicant was 25 years of age at sentence and 24 when he committed these offences. He has a number of prior criminal convictions, the most serious being one of stealing with actual violence in company, breaking and entering, assault occasioning bodily harm, deprivation of liberty, extortion and unlawful wounding for which he was sentenced to five years imprisonment. This occurred in 1995. The sentence was accompanied by a recommendation for parole after two years. However whilst in prison he was sentenced to a year's cumulative imprisonment for supplying drugs within a correctional institution. In the result he served an actual term of six years and five weeks imprisonment and it was only shortly after he was released from prison that he committed these offences. He also has convictions in 1999 and 2000 for supplying and possessing dangerous drugs.

The subject offences were all committed on the same day in company with another offender Walsh. He first entered a Franklins store at Mudgeeraba by climbing over a wire fence

and stole a quantity of toiletries and confectioneries. He then unlawfully used a car at Broadbeach driving it to near Boonah where it broke down. Together with Walsh he then accepted a lift by generous passers-by who also assisted them to push their car out of harm's way. When the car stopped in Boonah he assaulted the driver and the passenger with a wheel lock with a view to gaining possession of their car. He grabbed one of them by the throat and threatened to kill him. The driver and the passenger sensibly ran off and the offenders took the car. It was later found abandoned near Toowoomba with some items missing, including the stereo in the car. They then took a third car in Toowoomba which was found near the Plainlands Hotel broken down. At Plainlands Hotel the applicant stole a purse from the laundry area. He and Walsh then took a fourth car when the owner, having filled it with petrol, went inside to pay leaving the keys in the ignition. The applicant then proceeded to drive it in a dangerous manner in order to elude police who at one stage took up chasing him. This included speeds up to 140 kilometres an hour in an 80 kilometre zone, turning into oncoming traffic, travelling on the wrong side of the road for about 300 metres and ultimately colliding with a police car. The applicant had been drinking that night but he had also ingested valium, cannabis and heroin.

This was a series of quite serious offences committed by the applicant. The victims of the assault were lucky to escape with, in one case, a laceration to the forehead and in the

other bruising to the back of the head. Several of the cars were damaged and items taken from them.

The applicant spent 216 days in custody not relating solely to these offences. It was submitted correctly by Mr Devereaux that the applicant was entitled to almost the whole of the time that he had spent in custody allowed in this sentence but as appears from a passage which Mr Rutledge took us to in the transcript of argument his Honour plainly did this.

In the applicant's favour is his still relative youth, an expression of remorse, through his counsel, particularly over the offences of assaulting two good Samaritans with a wheel lock and some evidence of a dysfunctional family and his descent into drug abuse.

On the other hand, very serious aspects of this matter are his previous criminal conduct, the fact that these offences occurred only three months after his release from prison and the considerable number of offences committed in such a short period of time including cowardly and vicious assaults with a weapon. Neither counsel was able to provide us with closely comparable cases; perhaps the closest of them is R v. Burnham [1999] QCA 99; CA No 398 of 1998, 25 March 1999. In that case there was only one count of assault occasioning bodily harm in company and the offender was not armed. On the other hand the assault was more serious than the one here and that was no doubt in part due to the fact that in this case the persons being assaulted sensibly ran away rather than resisting

whereas in that case the victim was a police officer attempting to execute his duty.

The offender in that case, unlike the applicant here, had only a minor criminal history and the additional factor involved here of course is the commission of these offences so shortly after his release from prison. In my opinion that case, together with a number of the other authorities cited to this Court, show that the sentence imposed here, though not a like one, was not manifestly excessive. I therefore dismiss the applicant.

McPHERSON JA: I agree.

WILLIAMS JA: I agree.

DAVIES JA: The application is dismissed.
