

COURT OF APPEAL

DAVIES JA
MACKENZIE J
HOLMES J

CA No 99 of 2002

THE QUEEN

v.

JASON BRADLEY GATES

Applicant

BRISBANE

..DATE 23/08/2002

JUDGMENT

MACKENZIE J: The applicant pleaded guilty on an ex officio indictment to seven offences of burglary, six of stealing, 10 of fraud, one of attempted fraud and one of possession of housebreaking implements with a circumstance of aggravation. There are 25 offences in all. They were committed between 14 December 2000 and 26 March 2001. The first in time was the offence of possession of housebreaking implements which was committed in Cairns. The applicant was found in dark clothes with a screwdriver in the vicinity of a hire equipment store in company with two other men who ran away. He was arrested and released on bail. The next lot of offences were committed in Townsville from mid-January 2001 until 5 February 2001. Then there were some offences in Cairns and from about 23 February 2001 to 26 March the rest were in Townsville.

10

20

30

The 10 offences committed in Townsville from mid-January 2001 until 5 February 2001 involved a wallet being found missing. The applicant fraudulently used credit cards obtained from it to purchase clothing, tyres, fuel and accommodation amongst other things. He also burgled a house and used a card obtained there to withdraw money from a Flexiteller. He also stole jewellery.

40

The three offences in Cairns were committed on 9 February 2001. He burgled a house and stole a guitar, two Samurai swords and a video recorder. He tried to dispose of the recorder and the guitar using a card stolen from Townsville as identification at a Cash Converters store. When challenged he ran off leaving the VCR behind. He later pawned the swords at

50

JUDGMENT

another second-hand dealer. He was apparently arrested on 17 February 2001 in connection with the card that had been stolen in Townsville but released on bail again on 19 February.

The remaining 11 offences were committed in Townsville between about 23 February and 26 March. There were burglaries where easily disposable property was stolen and fraudulently disposed of. Money was withdrawn from ATMs using cards obtained from homes broken into. The total value of property and money not recovered was almost \$16,000. The applicant, who was 29 at the time of all but the first offence, has a criminal history of committing similar offences since 1988. According to the Crown outline that comprised over 50 break and enters and many offences of stealing and fraud.

He has served numerous periods of imprisonment including two separate terms of four years after which re-offending seems to have begun within a short period. Not surprisingly, he has had a serious heroin problem of long standing which resulted in him losing a responsible job in early 2001. He said that he now has an appreciation that if he does not break the cycle of heroin use and criminal offences he will spend much of his life in prison. He has enrolled in two pre-tertiary subjects with a view to trying to get into a course which will give him a tertiary qualification in the area of community welfare.

He was sentenced to concurrent terms of seven years' imprisonment for each of the burglary counts, four years for the offences of stealing and fraud and three years for the possession of housebreaking implements. There was also a four

1

year sentence imposed for the attempted fraud which exceeds the maximum of two years and will have to be the subject of re-sentencing. A recommendation for parole after three years of the seven years' sentence was made.

10

The applicant submits that the sentences are manifestly excessive because he had not been given credit for his early plea of guilty and positive steps taken while awaiting sentence to address his offending behaviour and to prepare himself for his return to the community.

20

The schedule of sentences relied on by the Crown and the applicant shows that while there is a wide range of sentences for these kinds of offences, in a case where there is a lengthy criminal history and a large amount of property, head sentences of the level imposed are not uncommon for burglary. Substantially higher penalties can be found but they are generally cases where value of property involved is higher than in this case. Equally, lower sentences can be found which are no doubt affected by their individual facts as well.

30

40

Having regard to the applicant's criminal history, it is my view that a head sentence of seven years' imprisonment cannot be said to be manifestly excessive. However, with respect to the non-parole recommendation, given the plea of guilty on ex officio indictment and some evidence of an attempt to rehabilitate, although it is plain, and I think the applicant recognises this, that there is a long way to go before that

50

JUDGMENT

60

can be totally achieved, it is my view that the allowance made for those factors is only six months and that benefit is, in my view, outside an appropriate range. In my view, a non-parole period of two and a half years was appropriate in the circumstances.

The outcome of the application is therefore that in respect of counts 10, 12, 17, 21 to 24, the burglary offences, leave to appeal is granted. The appeal is allowed only to the extent that a recommendation for post-prison community-based relief after two and a half years should be substituted for the period of three years. In other respects, the sentence remains as pronounced.

Save for count 13, the application in respect of other counts in the indictment is refused. With respect to count 13, leave to appeal is granted. The sentence of four years' imprisonment is set aside and a sentence of two years imposed in lieu thereof.

DAVIES JA: I agree.

HOLMES J: I agree.

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