

COURT OF APPEAL

DAVIES JA
WILLIAMS JA
JONES J

CA No 139 of 2002

THE QUEEN

v.

KEVIN GLEN PRICE

BRISBANE

..DATE 20/09/2002

JUDGMENT

APPLICANT conducted his own case

MR P D KELLY (instructed by the Director of Public Prosecutions (Queensland)) for the Crown

WILLIAMS JA: In this matter the applicant pleaded guilty to attempted break and enter with intent to commit an indictable offence. Conviction for that offence also constituted the breach of a suspended sentence which had been imposed on the applicant at an earlier point of time.

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The circumstances of the offence were that, with a sledge hammer and other implements to be used in breaking and entering premises, the applicant went to a chemist shop in Townsville and attempted to knock down a door. The activity was heard by police officers who were nearby and he was apprehended.

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The offence occurred on 20 December 2001. That date is of some significance because on 2 November 2001 the applicant had been dealt with in the Townsville Magistrates Court for a variety of offences including possession of property reasonably suspected of being stolen and was then convicted and sentenced to imprisonment for three months which was wholly suspended for 24 months. So it was shortly after he was dealt with on that occasion that this offence occurred.

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I should also record briefly that the applicant also had a criminal history; he had been convicted and sentenced to eight months' imprisonment on 9 March 2001. He was also subject to

an intensive correctional order for a period of six months imposed by the Townsville Magistrates Court on 17 July 2001.

He is a relatively young man, having been born on 29 September 1974 which made him 27 at the time of the offence. The sentence imposed was 18 months' imprisonment. The learned sentencing Judge expressly said in the course of his reasons: "You will be eligible to apply for post prison community based release orders after nine months."

It seems clear that the learned sentencing Judge was of the view that it was sufficient punishment if the applicant was to serve nine months in custody.

However, the relevant legislation had been amended so that after 1 July 2001 a prisoner could only apply for post prison community based release where the sentence was for a period of imprisonment of more than two years. In consequence it is conceded by the respondent Director of Public Prosecutions that there was an error in the sentence. The respondent has conceded that this Court should interfere with the sentence to the extent of ordering that it be suspended after a period of nine months. In my view, if that was done the operational period should be made the period of two years.

In all of the circumstances I would grant leave to appeal against the sentence, allow the appeal to the extent of ordering that the sentence of 18 months imprisonment be

suspended after serving nine months with an operational period
of two years.

DAVIES JA: I agree.

JONES J: I agree.

DAVIES JA: The orders are as indicated by Justice Williams.
Do you understand that, Mr Price?

APPLICANT: Yes, I do, your Honour.

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