

SUPREME COURT OF QUEENSLAND

CITATION: *R v Rhoden* [2002] QCA 415

PARTIES: **R**
v
RHODEN, Linda
(applicant)

FILE NO/S: CA No 113 of 2002
DC No 6151 of 2001

DIVISION: Court of Appeal

PROCEEDING: Sentence Application

ORIGINATING COURT: District Court at Gladstone

DELIVERED EXTEMPORE ON: 7 October 2002

DELIVERED AT: Brisbane

HEARING DATE: 7 October 2002

JUDGES: McPherson JA, Cullinane and Holmes JJ
Separate reasons for judgment of each member of the Court,
each concurring as to the order made

ORDER: **Application for leave to appeal against sentence refused**

CATCHWORDS: CRIMINAL LAW - PUNISHMENT - SENTENCE –
PROBATION AND PAROLE - DISCRETION OF COURT
– forgery – imprisonment for 3 years - no recommendation
for parole - whether trial judge erred in exercise of discretion

COUNSEL: M J Byrne QC for the appellant
M J Copley for the respondent

SOLICITORS: Ryan & Bosscher Lawyers for the appellant
Director of Public Prosecutions (Queensland) for the
respondent

McPHERSON JA: The applicant for leave to appeal against sentence was found guilty at trial in the District Court at Gladstone, of three counts of forgery with a circumstance of aggravation, and two counts of uttering. She was sentenced to imprisonment for three years.

Three cheques were forged by altering the name of the payee to a name that resembled that of the applicant, and then paying them into her husband's bank account. Two of those cheques were for sums totalling \$30,000, which amount was not recovered.

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The third forged cheque was for a total of \$50,000, but the bank intercepted it before it was cashed or credited. The victim of the fraud was the applicant's employer, which we were told, was a company incorporated in Alberta, for whom the applicant worked in some capacity in which she was responsible for preparing cheques for payment of the company's suppliers.

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The amount of the loss has not been recovered, apart from the sum of \$1,200, to which our attention was drawn, and it seems that the money was outlaid on general expenses and on expenses incurred in connection with some investment properties that the applicant and her husband owned.

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She and he had several such properties and were involved in building a house, or another house, for themselves at the time. Curiously and rather sadly, at the time of the offences, her husband had already left her as a result, we see from the record, of his having found someone else through the use of the internet. The applicant was, at the time of the offences, a 35 year old woman, married with three children and no previous criminal record of any kind.

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It is a little difficult to see a reason or motive for the commission of these offences after a history of honesty and hard work like hers; but she does not seem to have been in any particular financial need at the time, or at least not such financial need as to put pressure on her to commit these offences.

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Emotionally, it must have been distressing to have her husband leave her in that way, but nothing in the record suggests any direct connection between that event or circumstance and the commission of the offence itself.

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The husband has now been left looking after the children. There were in fact four children of the marriage, but it seems that only three are of an age that need continued care and he is providing it.

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The sentence of three years imposed in this case seems to me to be at the higher end of the range in all the circumstances, but it is a sentence with which defence counsel at the hearing said he could not disagree.

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In these circumstances it is not altogether easy to see how the sentence can be regarded as excessive. It is within range, and although perhaps at the higher end of the range, it does not seem to me to suggest any error in the exercise of the discretion on the part of the sentencing Judge.

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The submission before us that, on one view of it, the head sentence should be only 18 months, is not supported, I think, by the trend of sentencing in comparable cases.

The applicant is a first offender, but she cannot be described as young, or as young as some of those referred to in the sentencing comparatives. She did not plead guilty and there is no compelling reason for saying that the learned sentencing Judge ought to have made a recommendation for early parole, or that he erred in the exercise of his discretion in not doing so.

The applicant seems to me not to have shown any remorse either by pleading guilty, which she did not do, or in any other way, and the offences involved an element of infidelity to her employer who is said to have treated her well. It was pointed out to us that she had in effect paid \$1200 of the total obtained. That arose in this way; that her attention was drawn, so she said, to the money in her husband's account, which was a surprise to her, and she made a point of paying or repaid that sum. She then appeared to rely on that as some evidence of her honesty in the course of her evidence at the trial.

In my view, one would not be able, on what we know of her, to treat her action in that regard as evidence of any remorse on her part, and the jury evidently did not consider it was an indication that she had been honest in this matter.

In all the circumstances, although not without some regret, I would refuse the application for leave to appeal.

CULLINAN J: I agree.

HOLMES J: I agree.

McPHERSON JA: The order is that the application for leave to appeal against sentence is refused.
