

SUPREME COURT OF QUEENSLAND

CITATION: *R v Meredith* [2002] QCA 481

PARTIES: **R**
v
MEREDITH, Brett Damien
(applicant)

FILE NO/S: CA No 90 of 2002
DC No 104 of 2000
DC No 65 of 2002
DC No 66 of 2002

DIVISION: Court of Appeal

PROCEEDING: Sentence Application

ORIGINATING COURT: District Court at Townsville

DELIVERED ON: 8 November 2002

DELIVERED AT: Brisbane

HEARING DATE: 4 November 2002

JUDGES: McPherson and Jerrard JJA and Mullins J
Separate reasons for judgment of each member of the Court, each concurring as to the orders made

ORDERS: **1. Allow the application for leave to appeal against sentence.**

2. Allow the appeal and vary the order made as follows:

- **The two sentences of six months imprisonment ordered on 27 February 2002 be served concurrently with each other;**
- **The sentences of five years imprisonment imposed on 27 February 2002 in respect of counts numbered 25 and 30 on the 30 count indictment presented that day be set aside, and in lieu thereof sentences of 18 months imprisonment imposed;**
- **In all other respects the sentences of five years imprisonment imposed on 27 February 2002 be confirmed, such sentences to be served concurrently with each other but cumulatively upon the expiration of the sentences of six months imprisonment already ordered herein;**
- **Those sentences totalling five years and six months imprisonment are to commence on 27 February 2002,**

and it is declared that the appellant had spent 191 days in pre sentence custody between 20 August 2001 and 27 February 2002, in respect of the sentence of five years imprisonment.

CATCHWORDS: CRIMINAL LAW – JURISDICTION, PRACTICE AND PROCEDURE – JUDGMENT AND PUNISHMENT – SENTENCE – FACTORS TO BE TAKEN INTO ACCOUNT – CIRCUMSTANCES OF OFFENDER – where applicant committed a substantial number of property offences over a considerable period of time – where applicant readily admitted his involvement in offences – where applicant was addicted to drugs at time of committing offences – where majority of offences were committed while on probation or on bail – whether sentence manifestly excessive

CRIMINAL LAW – JURISDICTION, PRACTICE AND PROCEDURE – JUDGMENT AND PUNISHMENT – SENTENCE – MISCELLANEOUS MATTERS – MAXIMUM SENTENCE – GENERALLY – where applicant sentenced to five years imprisonment on each count for a substantial number of property offences to be served cumulatively – where learned sentencing judge also imposed such a sentence for two counts of attempted fraud contained on the same indictment – where sentences for attempted fraud exceeded the maximum available sentence of two and a half years imprisonment – whether sentence should be altered on appeal

R v Robinson [1995] QCA 131; CA No 534 of 1994, 24 March 1995, distinguished

R v Savo [1994] QCA 513; CA No 334 of 1994, 25 October 1994, distinguished

R v Whelan [1998] QCA 151; CA No 430 of 1997, 17 March 1998, distinguished

COUNSEL: The applicant appeared on his own behalf
T A Fuller for the respondent

SOLICITORS: The applicant appeared on his own behalf
Director of Public Prosecutions (Queensland) for the respondent

[1] **McPHERSON JA:** I agree with the reasons given by Jerrard JA. The application and appeal against sentence should be allowed to the extent of varying the sentence imposed on 27 February 2002 by ordering:

- (a) that the two sentences each of six months imprisonment be served concurrently;

- (b) that the sentences of five years imprisonment imposed on each of counts 25 and 30 in the 30 count indictment presented on that day be reduced to 18 months;
 - (c) that the other sentences of five years imprisonment imposed on that day be served concurrently with each other but cumulatively on the expiration of the sentences of six months imprisonment specified in paragraph (a);
 - (d) that the total sentences of five years and six months imprisonment are to commence on 27 February 2002; but it is declared that the appellant has spent 191 days in pre-sentence custody beginning on 20 August 1991.
- [2] **JERRARD JA:** On 13 April 2000 the applicant Brett Meredith was sentenced to six months imprisonment in the Townsville District Court, upon Mr Meredith's conviction for the offence of dangerous operation of a motor vehicle while adversely affected by liquor. The court ordered that Mr Meredith be on probation for three years after that six month sentence was served. That offence of dangerous operation of a motor vehicle was committed on 24 December 1999, and on 3 July 2000 Mr Meredith was convicted in the Townsville Magistrates Court and sentenced to six months imprisonment, to be suspended entirely for two years, for an offence of breaking and entering premises and stealing therein committed on 23 December 1999. On 27 February 2002 Mr Meredith was again sentenced in the Townsville District Court upon Mr Meredith's pleas of guilty to a large number of offences, the commission of which breached the probation order earlier imposed by that court, and which had also occurred during the period of suspension of the sentence imposed on 3 July 2000. Mr Meredith was re-sentenced to six months imprisonment for that original offence of dangerous operation of a motor vehicle whilst adversely affected by alcohol, ordered to serve all of the six months imprisonment originally suspended on 3 July 2000 with the latter sentence of six months to be cumulative upon the first sentence of six months imprisonment imposed for dangerous operation of a motor vehicle, and sentenced to five years imprisonment for his more recent offences, cumulative upon the sentences totalling 12 months imprisonment already ordered. Mr Meredith seeks leave to appeal those sentences totalling six years imprisonment, arguing that in the circumstances they result in a total period of imprisonment which is manifestly excessive.
- [3] At the time of his sentence on 13 April 2000 Mr Meredith already had a significant history of convictions for committing criminal offences, and for breaching the laws controlling the driving of motor vehicles. That latter "traffic" history included four convictions for driving while disqualified, and five for driving while under the influence of liquor, all incurred before 24 December 1999, when Mr Meredith drove both while disqualified and when under the influence of liquor (with a blood alcohol concentration of .145), on the occasion when he also committed the offence of dangerous operation of a motor vehicle. He had been disqualified absolutely from driving on four occasions before 24 December 1999.
- [4] On that day his motor vehicle had been stopped, and he had been required to provide a road side breath test for analysis. The test proved positive, and when asked to step out of his vehicle he drove away. He was pursued at speeds reaching 160 km per hour, on several occasions driving onto the wrong side of the roadway and forcing oncoming motorists to leave the roadway to avoid a collision. The pursuit ended with his vehicle crashing through a small wooden fence and stopping

suddenly when the roadway ended in a creek. He eventually surrendered to a number of police.

- [5] As at 13 April 2000 Mr Meredith had already been ordered to serve sentences of imprisonment on eight earlier occasions, for offences which included aggravated assault of a female, dangerous driving, false pretences, receiving, wilful destruction of property, and unlawful possession of a motor vehicle.
- [6] In the light of Mr Meredith's prior convictions, and history of offending and anti social behaviour, the sentences imposed on 13 April 2000 and 3 July 2000 were relatively lenient ones. Mr Meredith was in fact released from custody on 25 August 2000, having been sentenced on 7 July 2000 for the offences committed on 24 December 1999 of driving whilst disqualified, and with a blood alcohol concentration of .145. On 6 February 2001 he committed the first of the offences for which he was ultimately dealt with on 27 February 2002. By that date he had been in custody since 20 August 2001.
- [7] On 26 February 2002 he had pleaded guilty to a total of 39 counts on 2 ex officio indictments, and the offences admitted by those pleas included 23 counts of varieties of burglary, eight counts of fraud, two of attempted fraud, one of stealing, one of receiving, one of unlawful use of a motor vehicle, one of dangerous operation of a motor vehicle with circumstances of aggravation, one of entering a motor vehicle, and one of wilful damage. The offence of dangerous operation of a motor vehicle was committed on 12 April 2001, when Mr Meredith was pursued along the Bruce Highway at Jensen for some four kilometres at speeds of up to 180 km, and with other vehicles pulling over to allow safe passage of Mr Meredith's car. He was apprehended in a quarry. He was charged and released on bail, and the majority of the offences to which he pleaded guilty were thus committed when he was on probation, under a suspended sentence, and on bail. His pleas of guilty to the offences involving burglary admitted breaking into 21 different dwelling houses, a golf club, and the premises of a State Primary School Parents and Citizens Association. He stole jewellery and electrical equipment from the homes he burgled, and his offending behaviour caused a total loss or damage to property of \$99,900.86.
- [8] Mr Meredith was born on 7 June 1973 and was 28 years old when sentenced. I am satisfied that the sentences to which the respondent Director of Public Prosecutions has referred this court demonstrates that the sentence of five years imprisonment for the substantial number of property offences committed in the circumstances described between February 2001 and August 2001 is not manifestly excessive. It is sufficient to refer only to the decision of this court in the matter of *R v Whelan* (CA No 430 of 1997 judgment delivered 17 March 1998), in which this court reduced a sentence of nine years imprisonment to one of seven years imprisonment. In that matter the applicant had committed 42 offences which involved the theft of property worth \$160,000.00. That applicant was aged 30 at the time of sentence, and had pleaded guilty to 19 counts of house breaking and 19 other counts of stealing. Like Mr Meredith, she had readily admitted her involvement in the offences she committed. Like Mr Meredith, she was addicted to drugs at the time of committing those offences, and in Mr Meredith's case that was an addiction to amphetamine. Ms Whelan had three young children aged six, three, and two as at the date of sentence who were then living with her. Like Mr Meredith, she had a

substantial criminal history which in her case dated back to 1984. Mr Meredith's starts in 1991.

- [9] The substantial reason the sentence in the matter of *Whelan* was reduced from nine to seven years was that that was the result indicated by comparison with decisions of this court in the matters of *Robinson* (judgment delivered 24 March 1995), and *Barnes* (judgment delivered 10 November 1993). *Robinson* had pleaded guilty to 15 offences, and had 76 other offences taken into account. His offences involved 10 of burglary and 35 of house breaking, which total offences involved 43 different residences and property to a total value of over \$80,000.00. He had a history of similar offences in Victoria and had previously had the benefit of a community based order for 12 months. He had offended during that period of that order. He was a heroin addict. His sentence of seven and a half years was not changed on his appeal.
- [10] In the matter of *Barnes* that applicant pleaded guilty to 51 counts which included one of burglary, 31 of stealing, 11 of receiving, and three of false pretences. Many of his offences were committed when on bail, and all were committed to fund a heroin addiction. His sentence of seven years imprisonment was not altered on appeal.
- [11] In the judgment of this court in *Whelan*, it was determined that the appropriate sentence was much closer to seven years than to nine or ten, when sentencing for a cluster of offences in which violence was not involved, and where the offender was not being dealt with for repetition of the like conduct previously committed and dealt with earlier on a more lenient basis.
- [12] In this matter Mr Meredith has not previously been dealt with for a cluster or large group of property offences committed by him. On a comparison of the sentence of five years imprisonment imposed on Mr Meredith with:
- The sentence of seven years imprisonment imposed by this court on Ms Whelan, who committed much the same number of offences but who stole property of greater value;
 - The sentence of seven years imprisonment imposed on Mr Barnes, who committed slightly more offences and also while on bail;
 - The sentence of seven and a half years imprisonment imposed on Mr Robinson, who committed more than twice as many offences and stole property of at least comparable value:-
- Mr Meredith is unable to show that the sentence of five years imposed on him was manifestly excessive.
- [13] I think the same would have been the position if the sentence imposed for those offences of dishonesty by Mr Meredith committed in 2001 had been a total sentence of six years imprisonment. The previous judgments of this court in the matters of *Whelan*, *Barnes* and *Robinson* would not have demonstrated that six years was manifestly excessive.
- [14] However, the learned judge did not so order, and instead ordered the five years imprisonment cumulative on the two sentences of six months, each cumulative upon

the other. The outline of submissions in this matter for the Director of Public Prosecutions submits that since the two offences in respect of which those two sentences of six months were imposed were committed on consecutive days in December 1999, it would be appropriate for the sentences now imposed for those offences to be served concurrently. Accordingly, in the Director's submissions, a total sentence of five and a half years imprisonment ought originally to have been imposed. The Director also draws the attention of this court to the fact that the sentences imposed on the two counts of attempted fraud exceed the maximum available sentence of two and a half years imprisonment for those offences.

[15] In those circumstances it is appropriate to make the order submitted by the Director, to allow the application for leave to appeal against the sentence, allow the appeal and vary the order made as follows:

- The two sentences of six months imprisonment ordered on 27 February 2002 be served concurrently with each other;
- The sentences of five years imprisonment imposed on 27 February 2002 in respect of counts numbered 25 and 30 on the 30 count indictment presented that day be set aside, and in lieu thereof sentences of 18 months imprisonment imposed;
- In all other respects the sentences of five years imprisonment imposed on 27 February 2002 be confirmed, such sentences to be served concurrently with each other but cumulatively upon the expiration of the sentences of six months imprisonment already ordered herein;
- Those sentences totalling five years and six months imprisonment are to commence on 27 February 2002, and it is declared that the appellant had spent 191 days in pre sentence custody between 20 August 2001 and 27 February 2002, in respect of the sentence of five years imprisonment.

[16] **MULLINS J:** I agree with the reasons of and orders proposed by Jerrard JA.