SUPREME COURT OF QUEENSLAND

CITATION:	*R v Hall* [2002] QCA 438
PARTIES:	**R** **v** **HALL, Barry William** (applicant)
FILE NO/S:	CA No 253 of 2002 SC No 52 of 2002
DIVISION:	Court of Appeal
PROCEEDING:	Appeal against sentence
ORIGINATING COURT:	Supreme Court at Brisbane
DELIVERED EXTEMPORE ON:	17 October 2002
DELIVERED AT:	Brisbane
HEARING DATE:	17 October 2002
JUDGES:	McPherson JA and Cullinane and Holmes JJ Separate reasons for judgment of each member of the Court, each concurring as to the orders made
ORDERS:	**1. Leave to appeal granted** **2. Appeal allowed** **3. Vary the sentence on the production counts by substituting a sentence of two years imprisonment suspended after eight months with an operational period of three years** **4. Reduce the sentence on the count of possession of instructions to eight months imprisonment.**
CATCHWORDS:	CRIMINAL LAW – APPEAL AND NEW TRIAL AND INQUIRY AFTER CONVICTION – APPEAL AND NEW TRIAL – APPEAL AGAINST SENTENCE – APPEAL BY CONVICTED PERSONS – APPLICATIONS TO REDUCE SENTENCE – GENERALLY – applicant sentenced to term of imprisonment for production of a dangerous drug and possessing instructions for producing a dangerous drug – applicant appeals against sentence imposed – whether learned sentencing judge erred in finding that the amount of drug produced was inconsistent with the recent taking up of amphetamine use – whether the learned sentencing judge failed to give sufficient weight to the applicant's person circumstances at the time of the offence – whether the learned sentencing judge erred in concluding that the plea of guilty was a late plea

	Corrective Services Act 2000 (Qld), s 157(2)
	R v Pierpont [2001] QCA 493, CA No 211 of 2001, 13 November 2001, considered
COUNSEL:	The applicant appeared on his own behalf
	P D Kelly for the respondent
SOLICITORS:	The applicant appeared on his own behalf Director of Public Prosecutions (Queensland) for the respondent

McPHERSON JA: I will ask Justice Holmes to give justice in this matter.

HOLMES J: The applicant seeks leave to appeal against sentences imposed in respect of one count of producing a dangerous drug and one count of possessing instructions for producing a dangerous drug. He pleaded guilty in the Supreme Court on the 8th August 2002.

In respect of the count of production he was sentenced to two years' imprisonment suspended after 12 months with an operational period of three years. In respect of the count of possession of instructions he was sentenced to nine months' imprisonment to be served concurrently.

The two counts arose out of a police raid on the 23rd October 2000 on a unit rented by the applicant at Alexandra Headlands. The police found material associated with methylamphetamine production, precursor chemicals and laboratory equipment such as beakers and reaction flasks. In one of the vessels they found a substance which proved to contain 8.16 grams pure of methylamphetamine.

It was conceded by the Crown that the amounts of methylamphetamine and precursors found were not enough to suggest that the drug was produced by the applicant for a commercial purpose. Rather it was submitted that it was likely to be cut with glucose, giving about 20 grams, and supplied at least to friends.

The defence submission was that the applicant had produced the drugs jointly with a person named Hovey who was to share in the finished product. The learned sentencing Judge made a finding of probable supply to others without any commercial purpose.

The applicant was born in November 1954 and was 45 years of age at the time of the offences. He had married in 2001 and his wife is expecting their child. He supported her and her two children from a previous relationship. He had a good work history in the building history and had his own business performing home maintenance. He had some prior convictions for drug offences dating back to 1973, all dealt with in the Magistrates Court, the most serious of which was selling heroin for which he received six months' imprisonment coupled with probation. That conviction was in 1984. In addition he had two convictions of possession of a dangerous drug and two of possession of a utensil, the most recent in 1993. Apart from that he had been dealt with on one occasion for breaching probation and on another for breaching a fine option order.

The applicant here relied on a written outline of submissions filed prior to the appeal. One of the matters raised in it was that the learned sentencing Judge had placed undue weight on his prior conviction for the sale of heroin and insufficient weight to his prolonged period of good behaviour. His Honour referred to the applicant's history of involvement with drugs predominantly as a user and over a lengthy period of time while noting that the number of offences was not large and the history did not disclose very serious charges. Those observations seem accurate to me.

It is also said that the learned sentencing Judge erred in finding that the amount of drug produced was inconsistent with the recent taking up of amphetamine use. What his Honour said was that the defence submission that the applicant had only recently taken up the use of amphetamines and was using them at a level which did not interfere with his life was difficult to reconcile with the quantity produced.

There are two propositions there and it is not clear whether it was the second or both which his Honour found difficult to reconcile with the amount but, again, it seems to me perfectly open to infer that if the drugs were for personal use, that use must have been somewhat heavier than was being suggested. His Honour was not bound to accept submissions which he found improbable.

It is said too that the learned sentencing Judge failed to give sufficient weight to the applicant's personal

circumstances at the time of the offence. There seems, in fact, to have been nothing remarkable about the circumstances at the time of the offences but I would accept that the applicant's position at the time of sentence when he had three dependents with another expected was a factor of some significance.

Finally, it is submitted that the learned sentencing Judge erred in concluding that the plea of guilty was a late plea. He said of the plea of guilty that it could be,

> "taken into account if it is thought that the plea is indicative of a willingness to assist the administration of justice. It is, in this case, fairly feeble evidence of the existence of such a willingness. Your intention to plead guilty was relatively late, it was notified to the Crown at a relatively late stage, that is on 23 May this year, after the community was obliged to conduct committal proceedings in respect of you."

His Honour went on to observe that the applicant had at no time agreed to be interviewed by police or to assist with information about Hovey. However, he said the applicant was entitled to some benefit for the plea.

With all respect to his Honour I think that the applicant was entitled to be dealt with as having entered an early plea and to receive somewhat more credit by way of an earlier suspension of sentence than was in fact given. There was a committal, it is true, but it was not suggested by the Crown that it involved the calling of any witnesses. It is apparent from the notations on the indictment that the plea of guilty was indicated relatively early in the process of criminal

reviews and there was never any suggestion that a trial would be required.

While two years was, in my view, an appropriate head sentence, the applicant, having committed the offences prior to the commencement of section 157(2) of the Corrective Services Act on 1 July 2001, would have been automatically eligible for parole at 12 months, see The Queen v. Pierpont [2001] QCA 493.

It is difficult to see that any discount has been given by suspension of the sentence after that period. In my view allowance should be made for the plea of guilty by suspension after a period of eight months. I would grant leave to appeal, allow the appeal and vary the sentence on the production counts by substituting a sentence of two years' imprisonment suspended after eight months with an operational period of three years.

To ensure some consistency with that result I would reduce the sentence on the count of possession of instructions to eight months' imprisonment.

McPHERSON JA: I agree.

CULLINANE J: I agree.

McPHERSON JA: The order will be as it has been expressed by Justice Holmes.
