

SUPREME COURT OF QUEENSLAND

CITATION: *R v Mee & Boullanger* [2002] QCA 468

PARTIES: **R**
v
MEE, Adam James
(applicant)
BOULLANGER, Patrick Marc
(appellant)

FILE NO/S: CA No 237 of 2002
CA No 240 of 2002
DC No 1954 of 2002

DIVISION: Court of Appeal

PROCEEDINGS: Sentence Applications

ORIGINATING COURT: District Court at Brisbane

DELIVERED EXTEMPORE ON: 1 November 2002

DELIVERED AT: Brisbane

HEARING DATE: 1 November 2002

JUDGES: de Jersey CJ, McPherson JA and Mullins J
Separate reasons for judgment of each member of the court, each concurring as to the orders made

ORDERS: **CA No 237 of 2002**
Application for leave to appeal refused.

CA No 240 of 2002
1. Application for leave to appeal granted.
2. Appeal allowed.
3. The sentence be varied by ordering that the term of imprisonment of 5 years be suspended after 18 months for an operational period of 5 years and the sentence otherwise be confirmed.

CATCHWORDS: CRIMINAL LAW – APPEAL AND NEW TRIAL AND INQUIRY AFTER CONVICTION – APPEAL AND NEW TRIAL – APPEAL AGAINST SENTENCE – APPEAL BY CONVICTED PERSONS – APPLICATION TO REDUCE SENTENCE – WHEN REFUSED – PARTICULAR OFFENCES – PROPERTY OFFENCES – where applicant pleaded guilty to offence of armed robbery in company – where applicant sentenced to 4 years imprisonment suspended after 12 months with operational period of 5 years – whether steps taken towards the rehabilitation of the applicant warrants the substitution of the sentence with an intensive corrective order which would assist the applicant in his rehabilitation – whether sentence imposed was within

range

CRIMINAL LAW – APPEAL AND NEW TRIAL AND INQUIRY AFTER CONVICTION – APPEAL AGAINST SENTENCE – GROUNDS FOR INTERFERENCE – DISPARITY – CO-OFFENDERS – where appellant pleaded guilty to offence of armed robbery in company – where sentenced to 5 years imprisonment suspended after 2 years with an operational period of 5 years – where co-offender received 4 years imprisonment suspended after 12 months with an operational period of 5 years – whether disparity between sentences – whether sentence within range having regard to all circumstances

R v Moss [1999] QCA 426; CA No 270 of 1999, 8 October 1999, considered

COUNSEL: M Byrne QC for the applicant in CA No 237 of 2002
T Carmody SC for the appellant in CA No 240 of 2002
MJ Copley for respondent in CA No 237 of 2002 and CA No 240 of 2002

SOLICITORS: Legal Aid Queensland for the applicant in CA No 237 of 2002 and the appellant in CA No 240 of 2002
Director of Public Prosecutions (Queensland) for the respondent in CA No 237 of 2002 and CA No 240 of 2002

THE CHIEF JUSTICE: Order that envelope be opened. Could I have it please, Exhibit 9?

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THE CHIEF JUSTICE: I will order that the confidential material be resealed, not to be opened except by order of a Court.

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THE CHIEF JUSTICE: I will invite Justice Mullins to deliver the first judgments.

MULLINS J: The applicants are co-accused who pleaded guilty to armed robbery in company. The armed robbery was committed on 13 February 2002. The applicant Mee was sentenced to four years imprisonment suspended after 12 months with an operational period of five years.

The applicant Boullanger was sentenced to five years imprisonment suspended after two years with an operational period of five years.

The applicants and Boullanger's younger brother went to a second-hand dealer's shop. The brother waited outside with a concealed meat cleaver. The applicants entered the store. Boullanger was armed with a knife which had a blade about 15 centimetres long.

Mee jumped over the jewellery counter. He had a bag in which he placed a quantity of diamond rings and ruby rings. The cost price of the jewellery that was taken was about \$30,000. Boullanger brandished the knife in a slashing motion towards at least one female staff member.

Boullanger wiped the fingerprints from the counter with his shirt. Mee jumped back over the counter and they both ran out of the store and ran away with the brother. The brother was caught and detained by a staff member. The applicants got away, changed their shirts and hid the knife and shirts in a nearby house.

The robbery was caught by the video surveillance at the shop. Boullanger was apprehended by the police on 18 February 2002. Mee was apprehended by the police when he attended at the police station on 19 February 2002 to inquire after Boullanger. Approximately \$18,000 worth of the jewellery was recovered.

The robbery was Mee's idea as he wanted to pay off a drug debt. He was a heroin addict at the time of the offence.

Boullanger was also heroin dependent at the time of the offence.

Both applicants were in custody from the time of arrest until sentence on 19 July 2002, 150 days in pre-sentence custody in the case of Mee and 151 days in the case of Boullanger.

Mee was born on 13 April 1978 and was 23 years old at the date of the offence. He had six prior Court appearances, the most serious being for two counts of enter with intent for which he was placed on probation for three years on 8 December 2000.

He was, therefore, on probation when the robbery was committed.

Boullanger was born on 20 September 1975 and was therefore 26 years old at the date of the robbery. His prior criminal history was minor. The only recorded conviction was on 26 September 2000 for breaching a community service order imposed on 17 September 1999 for breaching a domestic violence order. He was convicted for stealing as a servant on 17 June 1999 for which he was ordered to perform community service.

In the case of each of the applicants the learned sentencing Judge referred to the seriousness of the offence and that it was the sort of offence not uncommonly committed by offenders in the grip of drug addiction.

He also referred to there being some preparation for the robbery although it was not sophisticated and that each of the applicants had pleaded guilty to an ex officio indictment after cooperation with the police.

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The learned sentencing Judge referred to the general range of a first offence of armed robbery being between three to five years with suspensions after some period to reflect the matters favourable to the offender. That accords with what was said in R v. Moss (unreported, CA No 270 of 1999, 8 October 1999).

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A matter which differentiated the sentence imposed on Mee compared to that imposed on Boullanger was that disclosed to the Court in Exhibit 9. But for Exhibit 9, the learned sentencing Judge would have required Mee to serve more in the order of 18 months in actual custody rather than 12 months.

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Boullanger relies on the disparity between his sentence and that imposed on Mee as giving a justified sense of grievance.

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Mee seeks to have a sentence substituted which enables him to be released back into the community with ongoing supervision. What is put forward on Mee's behalf is that an appropriate sentence at this stage recognising that he has been in custody since mid-February 2002 is a term of imprisonment of nine to 12 months to be served by way of an intensive correction order.

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Apart from the question of disparity between the sentences, each of the sentences imposed on the applicants was within range. There is no basis, in principle, to support a challenge to the learned sentencing Judge's approach to requiring each of the applicants to serve further imprisonment before allowing the suspension of the head sentence having regard to the circumstances of the applicants and the offence and in view of the significant amount of property taken in the robbery of which about \$12,000 worth has not been recovered.

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It is not usually appropriate to use an application for leave to appeal against sentence as an opportunity for re-sentencing when the learned sentencing Judge's approach to sentence structure at the time of sentencing is within the range of an appropriate sentencing discretion.

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Even allowing for the matters which favoured Mee, having regard to the roughly equal culpability of Mee and Boullanger there is a disparity in the sentences which should be rectified by reducing the actual time in custody which Boullanger has to serve to 18 months.

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In respect of the application by Mee I would order that the application be refused.

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In respect of the application by Boullanger I would order that the application be granted, the appeal be allowed and the sentence be varied by ordering that the term of imprisonment

of five years be suspended after 18 months for an operational period of five years and the sentence otherwise be confirmed.

THE CHIEF JUSTICE: I agree.

McPHERSON JA: I agree.

THE CHIEF JUSTICE: The orders are as indicated by Justice Mullins.
