SUPREME COURT OF QUEENSLAND

CITATION:	*R v Enright* [2002] QCA 490
PARTIES:	**R** **v** **ENRIGHT, Tim** (applicant)
FILE NO/S:	CA No 258 of 2002 DC No 1932 of 2000 DC No 1302 of 2000 DC No 3111 of 2000
DIVISION:	Court of Appeal
PROCEEDING:	Application for Extension (Sentence)
ORIGINATING COURT:	District Court at Brisbane
DELIVERED EXTEMPORE ON:	12 November 2002
DELIVERED AT:	Brisbane
HEARING DATE:	12 November 2002
JUDGES:	de Jersey CJ, Williams JA, Mullins J Separate reasons for judgment of each member of the court, each concurring as to the order made
ORDER:	**Application for extension of time refused**
CATCHWORDS:	CRIMINAL LAW – PAROBATION, PAROLE RELAESE ON LICENCE AND REMISSIONS – where applicant convicted and sentenced to 4 years 6 months for trafficking heroin with recommendation to be considered for parole after 12 months – where applicant released on parole and re-offended – parole suspended and cancelled once taken into custody – pleaded guilty and sentenced for re-offending behaviour of dangerous operation of a motor vehicle (6 months) cumulative upon sentence for trafficking and sentenced for driving under the influence (21 days), and two counts of fraud (2 years and 18 months) to be served concurrently amongst themselves, but cumulatively upon expiration of sentence of 6 months for dangerous operation of motor vehicle – recommendation to be considered for parole after serving 6 month term – applicant had mistaken belief that period whilst on parole counted towards sentence of trafficking – s207B *Corrective Services Act* 1988 (Qld) extinguished eligibility of applicant for remission sentence for trafficking – no mistake about the effect of then provisions made on sentencing for re-offending – lack of eligibility for remission of cumulative sentences caused by introduction of *Corrective Services Act* 2000 (Qld) – did not affect correctness of sentencing for re-offending – no

	prospects of success on appeal – application for extension of time refused
	Corrective Services Act 1988 (Qld), s 190(1), s 207B *Corrective Services Act* 2000 (Qld), s 75(1)(c)
	R v McMahon [2002] QCA 18; CA No 233 of 2001, 6 February 2002, followed
COUNSEL:	The applicant appeared on his own behalf DL Meredith for the respondent
SOLICITORS:	The applicant appeared on his own behalf Director of Public Prosecutions (Queensland) for the respondent

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

MULLINS J: The applicant applies for an extension of the time within which to apply for leave to appeal against the sentences imposed on him on 26 February 2001 in the District Court.

The applicant was convicted of trafficking heroin and was sentenced on 6 March 1997 to imprisonment for four years six months, with a recommendation that he be considered for parole after serving 12 months. He was released on parole on 27 April 1998.

The offences for which he was sentenced on 26 February 2001, were committed whilst he was on parole. The applicant's parole was suspended by the Queensland Community Corrections' Board on 8 May 2000. He was returned to custody on 12 May 2000 and his parole was cancelled by the Board on 8 June 2000.

On 26 February 2001, the applicant pleaded guilty to one count of dangerous operation of a motor vehicle, for which he was

sentenced to imprisonment for a period of six months, cumulative upon the expiry of the sentence imposed on 6 March 1997. He was also sentenced to imprisonment of 21 days for the summary offence of driving under the influence of liquor or drugs, two years' imprisonment for one count of fraud and 18 months' imprisonment for one count of fraud, involving the applicant's father's Credit Union account.

The sentences imposed for the drink/driving and fraud counts were ordered to be concurrent amongst themselves, but cumulative upon the expiry of the sentence of six months imposed for the offence of dangerous operation of a motor vehicle.

The learned sentencing Judge recommended that the applicant be considered for parole at the expiry of the sentence for dangerous operation of a motor vehicle, which the learned sentencing Judge calculated would occur six months or so after 16 September 2003, which was the date that the learned sentencing Judge treated as the expiry of the sentence for the offence of trafficking.

There are two aspects of the sentencing about which the applicant complains. He states that at the time of his sentencing, he was under the belief that the period during which he had been released on parole for the trafficking offence, a period of approximately 745 days, would be calculated towards the original term of imprisonment for the trafficking offence.

His second ground of complaint is that as a consequence of changes effected by the Corrective Services Act 2000, he is no longer eligible for remissions on either the sentence for trafficking or the sentences imposed on 26 February 2001.

This application was brought after the applicant had ascertained from the Department of Corrective Services that his parole eligibility date, on the basis of the recommendation of the learned sentencing Judge, made on 26 February 2001, would be 20 March 2004 and that his full-time discharge date was 20 March 2006.

Although the applicant may have had a mistaken belief at the time he was sentenced on 26 February 2001 about whether or not the period of 745 days during which he was released on parole would count towards the sentence of trafficking, the effect of Section 190, subsection 1 of the Corrective Services Act 1988 as it stood at the time of the sentencing in the District Court, was that upon the cancellation of the applicant's parole for the trafficking sentence, no part of the time between his release on parole and his recommencing to serve the unexpired portion of the term of imprisonment for trafficking would be regarded as time served in respect of that term.

The learned sentencing Judge was clearly cognisant of that when he anticipated that the six months' term of imprisonment which he imposed for the dangerous operation of a motor

vehicle would commence on 16 September 2003. With respect to the second complaint, the applicant's sentence in respect of the trafficking was affected by the enactment on 24 November 2000 of section 207B of the Corrective Services Act 1988. As the applicant had been released on parole before the commencement of that section, Section 207B, subsection 3 provided that his eligibility for remission was extinguished when he was released on parole, which was on 27 April 1998.

As a result of the commencement of the Corrective Services Act 2000, his eligibility for remission on the subsequent cumulative terms of imprisonment, which were imposed on 26 February 2001, was removed by Section 75(1)(c) of that Act. That was as a consequence of the legislative action. It does not impact on the correctness of the sentencing process undertaken by the learned sentencing Judge, on 26 February 2001.

The applicant's complaint was also expressed that his head sentence is greater than his non-parole period in respect of the sentences imposed by the learned sentencing Judge. Although that is how the applicant sees it, in substance, it is not a true description of how the sentences imposed by the learned sentencing Judge were intended to work, which were that they would take effect after the applicant had completed the term of imprisonment for the existing sentence imposed for the trafficking in heroin.

There is no suggestion by the applicant in his submissions that there was any error in the sentences imposed by the learned sentencing Judge when sentencing on 26 February 2001. In light of the approach taken by this Court in similar cases to that of the applicant, such as McMahon [2002] QCA 18 (CA No 233 of 2001, 6 February 2002) the applicant has no prospects of successfully appealing against the sentences on the basis of the complaints which he has raised on this application. I would therefore refuse the application for extension of time.

THE CHIEF JUSTICE: I agree.

WILLIAMS JA: I agree.

THE CHIEF JUSTICE: The application is refused.
