SUPREME COURT OF QUEENSLAND

CITATION:	*R v Watson* [2002] QCA 488
PARTIES:	**R** v **WATSON, Leslie Anthony** (applicant)
FILE NO/S:	CA No 177 of 2002 SC No 439 of 1999
DIVISION:	Court of Appeal
PROCEEDING:	Sentence Application
ORIGINATING COURT:	Supreme Court at Brisbane
DELIVERED EXTEMPORE ON:	11 November 2002
DELIVERED AT:	Brisbane
HEARING DATE:	11 November 2002
JUDGES:	McMurdo P, Davies and McPherson JJA 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 dismissed**
CATCHWORDS:	CRIMINAL LAW - PARTICULAR OFFENCES - DRUG OFFENCES - PENALTIES - TRAFFICKING, TRADING, SELLING, SUPPLYING OR DISTRIBUTING - TRANSACTIONS INVOLVING HEROIN - where the applicant pleaded guilty to two counts of supplying heroin while in a correctional facility and one of possession of heroin with a circumstance of aggravation - where the applicant had a very bad criminal history - where the applicant was not charged with the supply offences for a number of years - where sentenced to seven years imprisonment - whether the sentence was in accordance with the totality principle
COUNSEL:	D Walsh for applicant T A Fuller for respondent
SOLICITORS:	A W Bale & Son for applicant Director of Public Prosecutions (Queensland) for respondent

DAVIES JA: The applicant pleaded guilty in the Supreme Court on 4 May 2000 to one count of supplying a dangerous drug on 12 August 1996, one of supplying a dangerous drug with a circumstance of aggravation on 15 August 1996 and one of possession of a dangerous drug with a circumstance of aggravation on 25 May 1999. In each case the dangerous drug was heroin. He was sentenced to an effective term of seven years imprisonment, that being the sentence imposed on each of those counts, and his Honour made a recommendation for post prison community based release after the applicant had served 27 months of that term. The sentence was ordered to be served concurrently with a sentence which he was then serving. Seventeen days presentence custody was declared to be time already served under the sentence. He seeks leave to appeal against that sentence.

The applicant is 38 years of age with a very bad criminal history commencing in 1978 when he was a teenager. Since then he has been convicted on more than 20 occasions, on many of them for multiple offences. Most of them are for offences of dishonesty, breaking and entering and the like, but increasingly over the years there are convictions for drug offences and in 1994 he was convicted of armed robbery with actual violence and some other offences and sentenced to his longest term of imprisonment which was one of seven years.

While he was undergoing that sentence he committed the first two of the offences the subject of the present application. They consisted of supplying heroin to a fellow inmate who, as

it turned out, was a police informant. Because these supplies occurred within a correctional facility the maximum penalty was one of 25 years.

As a result of the commission of these offences the applicant's work release was cancelled and he was required to serve a longer period of his sentence in custody before being released on parole. However curiously he was not charged with these offences for a number of years. Had he been charged and sentenced for these offences shortly after they were committed he would no doubt have been sentenced to a cumulative term of imprisonment.

In the meantime he was convicted after a trial on 13 January 2000 of another offence of supplying heroin within a correctional institution on 2 January 1999 for which he was sentenced to two years imprisonment.

The third offence the subject of the present proceedings was committed after the offence to which I have just referred. Indeed he was on bail for that offence when he committed this offence. Both were committed within a year of his release from custody which was in April 1998. Also he was sentenced to one month's imprisonment on 3 June 1999 for possession of dangerous drugs on 12 April 1999.

In the third of the present offences the applicant was intercepted at Brisbane Airport with a quantity of heroin secreted on his person. It was, according to the

investigating police officer a large quantity, having a total weight of over 55 grams which included a calculated weight of heroin of over 40 grams. According to the police officer it had a street value of between $25,000 and $40,000. Such a large amount, he thought must have been purchased directly from a manufacturer or importer of heroin. The learned sentencing judge sentenced the applicant on the basis, as he said, that it was not unlikely that he would have supplied at least some part of it to others, notwithstanding that, given his heroin habit he might use the whole amount himself which he would be likely to do if he did so over a period of about four weeks.

When the applicant committed these offences, as I have already mentioned, he was on bail for the offence of supply and also for the offence of possession. It is common ground that he was addicted to heroin.

The applicant makes come complaint in his original written submissions about his Honour's finding to which I have just referred but that complaint does not appear to be pursued in oral argument on his behalf today and I shall not deal with it any further. His Honour's finding was in accordance with submissions which were made on the applicant's behalf.

Nor is there any basis for the original criticism made that his Honour failed to sufficiently particularise the sentence which he was imposing.

The basis which appears to be pursued today is really based on the totality principle and in that respect it is no doubt unfortunate that the 1996 offences were not dealt with when they were discovered. And it is also unfortunate it seems to me that the third of the offences was not dealt with, at the latest, when the sentence of two years imprisonment was imposed on the applicant in January 2000. However, his Honour seemed plainly to have taken all of these factors into account in the sentence which he imposed and the recommendation which he made.

When the applicant was sentenced for these offences on 4 May 2000 he was then undergoing a total sentence of two and a half years imprisonment from 13 January 2000. This would have left him with a full-time discharge date of approximately July 2002, with a half way mark of about April 2001. His Honour's recommendation for post prison community based release after 27 months, which when calculated would come out as about August this year but as we have been told today was in fact on 18 July this year, gave him a date for which he would be eligible for consideration for post prison community based released after serving only about a year and four months or even perhaps a year and three months longer than he was already serving.

There can be no doubt of the seriousness of these offences and in my opinion they justified a sentence of seven years imprisonment.

Apart from his plea of guilty and the time and cost which that saved, there are no other mitigating factors. The applicant has a long and serious criminal history and it seems unlikely that unless he can rid himself of his serious drug addiction it will continue much as it has. In my opinion the recommendation which his Honour made for post prison community based release adequately took into account the failure of the relevant authorities to bring the applicant to sentence at the same time as he was sentenced appropriately for similar offences and it also took into account his plea of guilty. In my opinion there is no substance in this application and I would dismiss it.

THE PRESIDENT: I agree.

McPHERSON JA: I also agree.

THE PRESIDENT: The application for leave to appeal against sentence is dismissed.
