

SUPREME COURT OF QUEENSLAND

CITATION: *R v Hanvey* [2002] QCA 498

PARTIES: **R**
v
HANVEY, Sascha Damian
(applicant)

FILE NO/S: CA No 290 of 2002
DC No 136 of 2002

DIVISION: Court of Appeal

PROCEEDING: Sentence Application

ORIGINATING COURT: District Court at Mackay

DELIVERED EXTEMPORE ON: 15 November 2002

DELIVERED AT: Brisbane

HEARING DATE: 15 November 2002

JUDGES: de Jersey CJ, Jerrard JA, Mullins J
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 refused.**

CATCHWORDS: CRIMINAL LAW – APPEAL AND NEW TRIAL AND INQUIRY AFTER CONVICTION – APPEAL AGAINST SENTENCE – GROUNDS FOR INTERFERENCE – DISPARITY – CO-OFFENDERS – where applicant sentenced after trial to 18 months imprisonment for attempted armed robbery – where applicant knowingly drove the motor vehicle to assist in the commission of the offence – where co-offender pleaded guilty and sentenced to 18 months imprisonment suspended after 5 months for an operational period of 3 years – where co-offender instigated and was the active participant in the attempted robbery – whether disparity between sentences – where co-offender obtained benefit under s13A *Penalties and Sentences Act* 1992 (Qld) – where no disparity between the sentences – where sentence not manifestly excessive

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

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

MULLINS J: The applicant seeks leave to appeal against the sentence of 18 months imprisonment imposed on him after trial where he was found guilty of one count of attempted armed robbery.

The circumstances of the offence were that the applicant's co-offender had planned to rob a liquor store in Mackay and was across the road from the store observing it when the applicant came upon him. The co-offender informed the applicant about what he was going to do and the applicant agreed to assist him by driving the vehicle which was to be used in the robbery.

In order to carry out the plan the applicant drove the co-offender to the vicinity of the store immediately before the attempted armed robbery took place. The co-offender approached the attendant of the store as he went to get into his vehicle at the end of the day. The co-offender was armed with an object that could have been a piece of wood. The attendant moved away from the vehicle.

The co-offender believing the takings were in the vehicle attempted to gain entry to it. That was unsuccessful. The co-offender left the scene in the vehicle driven by the applicant.

Both the co-offender and the applicant were charged with the offence of attempted armed robbery. At the commencement of the trial the co-offender pleaded guilty and supplied the police with a statement implicating the applicant. The co-

offender was sentenced to a term of imprisonment of 18 months suspended after five months for an operational period of three years.

If the co-offender had not been sentenced under section 13A of the Penalties and Sentences Act 1992 the sentence that would have been imposed was indicated by the learned sentencing Judge to have been two and a half years' imprisonment suspended after nine months for an operational period of three years. At the time of sentencing the applicant, counsel for the applicant had submitted that the range for the offence applicable to the applicant was 12 months to 18 months imprisonment.

The applicant is unrepresented on this application. The complaint made about his sentence is that the co-offender was the instigator and active participant and the co-offender received only five months' imprisonment. This complaint overlooks that parity has to be considered before the benefit given to the co-offender under section 13A and that even though the co-offender had the greater role in the commission of the offence, the applicant's sentence was imposed after a trial in which he was found guilty.

In the circumstances the sentence imposed on the applicant is not out of proportion to that imposed on the co-offender and is not manifestly excessive. I would therefore refuse the application.

THE CHIEF JUSTICE: I agree.

JERRARD JA: I agree.

THE CHIEF JUSTICE: The application is refused.
