

SUPREME COURT OF QUEENSLAND

CITATION: *R v Kalaja* [2002] QCA 508

PARTIES: **R**
v
KALAJA, Pjeter Frank
(applicant)

FILE NO/S: CA No 300 of 2002
SC No 405 of 2002
SC No 410 of 2002

DIVISION: Court of Appeal

PROCEEDING: Sentence Application

ORIGINATING COURT: Supreme Court of Brisbane

DELIVERED EXTEMPORE ON: 20 November 2002

DELIVERED AT: Brisbane

HEARING DATE: 20 November 2002

JUDGES: McPherson and Jerrard JJA and Philippides J
Separate reasons for judgment of each member of the court,
each concurring as to the order made

ORDER: **Application dismissed**

CATCHWORDS: CRIMINAL LAW – JURISDICTION, PRACTICE AND PROCEDURE – JUDGMENT AND PUNISHMENT – SENTENCE – CIRCUMSTANCES OF OFFENDER – where applicant pleaded guilty to drug related offences and to a charge of dangerous operation of a motor vehicle, on the same day but on a different indictment – where applicant sentenced to imprisonment for the drug offences – where only penalty for the driving offence was the disqualification of the applicant’s driver’s licence for four years – where applicant submits that sentences for drug offences are manifestly excessive – where learned sentencing judge sentenced the applicant for the drug offences with respect to the overall criminality established by his pleas to both indictments – where applicant’s driving offence alone would have justified a sentence of imprisonment – whether sentence manifestly excessive

R v Clarke [1995] QCA 111; CA No 38 of 1995, 16 March 1995, distinguished

COUNSEL: M J Byrne QC for the applicant
T A Fuller for the respondent

SOLICITORS: Boe & Callaghan for the applicant
Directory of Public Prosecutions (Queensland) for the respondent

JERRARD JA: On the 13th of September 2002 the applicant, Pjeter Kalaja, was sentenced in the Supreme Court on his pleas of guilty to five drug-related offences charged on an ex officio indictment, and was sentenced to concurrent terms of 18 months imprisonment to be suspended after he had served six months, with the operational period of suspension being three years. He also pleaded guilty that same day to a charge of dangerous operation of a motor vehicle which charge was presented on a second indictment; and on that charge it was ordered that he be disqualified from holding or obtaining a driver's licence for a period of four years. No other penalty was expressly imposed for that offence and it appears that the learned Judge sentenced for the offences disclosed on the ex officio indictment in respect of the overall criminality established by the pleas to both indictments.

The drug-related counts to which Mr Kalaja pleaded guilty were unlawfully possessing cannabis sativa on 12 September 2001, count 1; unlawfully supplying cannabis sativa to another on 12 September 2001, count 2; a further charge of unlawfully supplying cannabis sativa to another on 12 September 2001, count 3; possessing on 12 September 2001 a sum of money obtained from supplying that cannabis sativa when knowing that money had been so obtained, count 4; possessing on 12 September 2001 a motor vehicle and a mobile telephone used in connection with the commission of the crime of supplying that cannabis sativa, count 5.

The offence of dangerous operation of a motor vehicle also occurred on 12 September 2001. At approximately 2.30 p.m. that day police

from Acacia Ridge observed a Subaru motor vehicle being driven by the applicant in a manner that was causing other traffic to brake when the applicant changed lanes. The lights and siren on the police vehicle were activated to indicate to the applicant that he should pull over, but instead Mr Kalaja attempted to avoid interception and to outrun the police vehicle in a chase which then ensued.

During the course of that he drove his vehicle at speeds in excess of 140 kilometres per hour, drove through two intersections when facing "give way" signs without stopping and one when travelling at a speed of at least 80 kilometres per hour and drove through an intersection controlled by a stop sign facing him when travelling at a speed in excess of 100 kilometres per hour. He also drove past a school at a speed of around 120 kilometres per hour. During that course of driving by him other drivers were forced to take evasive action at a number of locations to avoid a collision. Mr Kalaja was an unlicensed driver at that time.

During the course of the pursuit there was an occasion when the police in their vehicle lost sight of his. Mr Kalaja seized that opportunity to drive his vehicle into the premises of Mack Trucks and a passenger escaped from his vehicle. That person took a brown cardboard box from the boot of Mr Kalaja's car and placed it underneath a car in the Mack Trucks car park. Mr Kalaja then decamped in his vehicle and a police pursuit continued. The overall pursuit lasted some 15 minutes and when his vehicle was finally intercepted Mr Kalaja was its only occupant.

The brown cardboard box was found to contain 4.51 kilograms of cannabis sativa. When questioned Mr Kalaja admitted having purchased that cannabis sativa on credit in Adelaide for \$24,500. Possession of that cannabis sativa was the basis of count 1 on the ex officio indictment.

\$5,000 was found in the Subaru car. Mr Kalaja said he had bought the car on the previous Friday for \$30,500 and the \$5,000 came from the sale of one and a half pounds of cannabis made earlier that same day to a man named George. The admission of that sale was the basis of count 2 on the ex officio indictment.

Mr Kalaja also admitted that he had made a "deal" with George whereby the remaining 10 pounds of cannabis would be sold for \$3,300 per pound, either to or through George which agreement would net a profit of about \$10,000 to Mr Kalaja after repayment of his own debt of \$24,500. That agreement to sell the cannabis to George was the basis of count 3. The \$5,000 found in the car was the basis of count 4 and Mr Kalaja having admitted having used his mobile phone to contact George. That admission and his collecting and transporting the cannabis in the Subaru motor vehicle was the basis of count 5.

Mr Kalaja was 22 years old when sentenced. After being finally intercepted by police he co-operated fully with them by way of admissions and with the system of Court administration by a plea of guilty to an ex officio indictment. Information placed before the learned sentencing Judge described Mr Kalaja as an articulate and gregarious young man who had completed grade 12, and who had

begun a variety of tertiary education courses. He had completed a Diploma of Retail Management at the South Bank College of TAFE in 1998, begun a Bachelor of Arts and Communication at Griffith University, begun a course in E Commerce at an institute at Noosa and subsequently re-enrolled in the Bachelor of Arts course at Griffith which he was continuing at the time of sentence.

He had had employment with Office Works at Milton and with Telstra at Browns Plains. His own personal life had been made more difficult as a child by reason of his father's extensive domestic violence.

The possibility that Mr Kalaja would overcome early setbacks in life and achieve educational qualifications that would assist him to become a contributing member of the community is undoubtedly a relative fact in determining the appropriate penalty to be imposed upon Mr Kalaja. Also relevant is the fact that he has a poor driving record, including a record of having significantly infringed the speeding limit on 31 August 2001, a fortnight before he drove so dangerously, and further, that he drove while under the influence of liquor and with a blood alcohol concentration of .099 on 26 July 2002, as well as speeding on that occasion and exceeding the registered carrying capacity of the vehicle he was then driving. That conduct was committed when on bail for the charges for which he was being sentenced on September 2002.

Relevant too is his prior history of Court appearances for criminal offences. On 3rd October 1997 he was found guilty in the District Court in Brisbane of having gone armed in public in a manner likely

to cause fear and ordered to serve 240 hours of community service. On 28 August 1998 he appeared again in the Brisbane District Court and this time was ordered to serve 100 hours of community service upon a finding of guilt in respect of causing wilful damage. On 1st March 1999 he was sentenced to six months imprisonment suspended for four years on a charge of stealing, and on 3rd November 2000 it was ordered that upon his conviction for assaulting a police officer, that that suspended sentence be extended for a further six months from 3rd November 2000. It was conceded, probably incorrectly, at the time of Mr Kalaja's sentencing in the Supreme Court, that the effect of that last order made 3rd November 2000 was to reduce the operational period of the initial suspended sentence.

It is relevant to refer to three other sentences imposed upon persons in possession of cannabis and to which the learned sentencing judge was referred. One was the matter of Clarke, CA No 38 of 1995, in which this Court dismissed an application for leave to appeal against a sentence of 18 months imprisonment which was ordered to be suspended entirely for a period of four years where that 32 year old applicant was found in possession of a bag of cannabis weighing 1.2 kilograms. That applicant was sentenced on the basis that he was looking after that cannabis for another unidentified person in circumstances in which the applicant knew that that other person intended to sell it. Mr Clarke had 12 prior convictions for criminal conduct since 1977 but none for drug offences. It appears that Mr Clarke was not sentenced by either the original sentencing judge or this Court on the basis that he

himself was to make any commercial gain from his possession of that cannabis.

The two other matters are sentences at first instance of offenders with a like quantity of cannabis to that which Mr Kalaja possessed. One is a matter of Lesley Robert Saunders sentenced on his own plea of guilty on 27 July 2001 for one count of possession on 8 August 2000 of ten blocks of cannabis weighing approximately 4.5 kilograms and which Mr Saunders had brought by plane to Coolangatta that day from Adelaide. Mr Saunders had bought the cannabis there the day before for \$25,000. The sentencing judge was satisfied that the object of the purchase was essentially commercial and that Mr Saunders had a substantial criminal history extending back to 1982. After his arrest he had become a tow truck driver and had financial responsibilities in respect of the lease of the truck. The sentencing judge sentenced him to 15 months imprisonment to be suspended after four months for an operational period of two years.

The other sentence to which the learned judge and this Court has been referred was the sentence imposed upon one of Mr Kalaja's cousins, Daniel Kalaja. Daniel Kalaja was sentenced on 30 April 2002 after pleading guilty to the offence of possession of 4.5 kilograms of cannabis found in his possession in November 2001. Daniel Kalaja had cooperated fully with the police and claimed that he had been told by another unidentified person that that other person could obtain cannabis cheaply from South Australia, and that other unidentified person then supplied Daniel Kalaja with ten bags of cannabis to sell. Daniel Kalaja hoped to make a \$1,000 profit out of his sales and was described by the sentencing judge as a

well-motivated young man who had no previous convictions. The judge accepted that Daniel Kalaja's conduct was entirely opportunistic with no element of sophistication attaching to it. Daniel Kalaja was sentenced to nine months imprisonment suspended entirely for a period of two years.

Leniency was extended to Mr Saunders and to Daniel Kalaja by the learned judges sentencing each of them for reasons expressed in the sentencing remarks of those two judges. Mr Saunders appeared likely to lose his truck and had expended \$25,000. He pleaded guilty to one offence. He had a back disability, and the sentencing judge had no doubt that Mr Saunders intended to use some of the cannabis himself to cope with the complications of that disability. Daniel Kalaja received leniency on the basis that the cannabis was offered and supplied to him in Queensland to sell.

The reasons for the leniency apparent in those two sentences and in the matter of Clarke do not exist here. Pjeter Kalaja brought this cannabis on consignment, sold it for the purpose of commercial gain, and there is some degree of sophistication apparent in his actions. His plea to count 3 establishes that he had agreed upon terms of sale for all of the cannabis within a very short time of bringing it to Queensland. He significantly put the lives of other people at risk in an endeavour to be avoid being found in possession of that cannabis. There is no sense in which the overall terms of imprisonment imposed upon him for the five related counts on the first indictment and the indictment charging dangerous operation of a motor vehicle are excessive, and his dangerous operation of that motor vehicle that day would certainly have

justified by itself a sentence of imprisonment actually served.
Accordingly I would dismiss his application.

McPHERSON JA: I agree.

PHILIPPIDES J: I also agree.

McPHERSON JA: The application for leave to appeal is dismissed.
