SUPREME COURT OF QUEENSLAND

CITATION:	*R v Martin* [2002] QCA 513
PARTIES:	**R** **V** **MARTIN, William Amos** (applicant)
FILE NO/S:	CA No 269 of 2002 SC No 65 of 2002
DIVISION:	Court of Appeal
PROCEEDING:	Sentence Application
ORIGINATING COURT:	Supreme Court at Brisbane
DELIVERED EXTEMPORE ON:	21 November 2002
DELIVERED AT:	Brisbane
HEARING DATE:	21 November 2002
JUDGES:	McMurdo P, Jerrard JA and Helman 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 AND NEW TRIAL – APPEAL AGAINST SENTENCE - where applicant pleaded guilty to one count of producing dangerous drug methylamphetamine – whether sentence manifestly excessive in all the circumstances *R v Boyd* [1999] QCA 421; CA No 134 of 2001, 3 October 2001, considered *R v Campbell* [2002] QCA 109; CA No 315 of 2001, 21 March 2002, considered *R v Denton* [1999] QCA 343; CA No 168 of 1999, 20 August 1999, referred to *R v Green* [1999] QCA 83; CA No 372 of 1998, 19 March 1999, referred to *R v Welch* [2002] QCA 36; CA No 299 of 2001, 19 February 2002, considered
COUNSEL:	A J Kimmins for the applicant B G Campbell for the respondent

SOLICITORS: Forrest Lake Lawyers for the applicant
Director of Public Prosecutions (Queensland) for the respondent

THE PRESIDENT: The applicant pleaded guilty in the Supreme Court on the 17th of July 2002 to one count of producing a dangerous drug methylamphetamine. On 22 August 2002 he was sentenced to four years' imprisonment with a recommendation for parole after 18 months. He contends that sentence is manifestly excessive.

On the 20th of August 2000 the police received information and executed a warrant at the applicant's address. There was a strong smell of methylated spirits in the house. The applicant was engaged in extracting pseudoephedrine, the base chemical used in the manufacture of methylamphetamine, from Sudafed tablets. Police located 95.4 grams of pseudoephedrine. The applicant had ground a large quantity of Sudafed tablets and mixed them with methylated spirits to separate the pseudoephedrine and was using the microwave to boil off the spirit, creating a potentially explosive situation.

Police also found iodine crystals, Pyrex dishes, grounding apparatus, scales containing traces of methylamphetamine, razor blades, scraping knives, a scientific manual, the chemical sodium hypophosphite, and caustic soda. About a third of the pseudoephedrine found had been extracted and dried. The applicant told police he was drying it out for

someone but declined to name this person, implying that to do so would place his life at risk.

The quantity of pseudoephedrine found could, under optimum circumstances, have produced up to 85 grams of pure methylamphetamine, a very substantial quantity.

The prosecution did not proceed with the circumstance of aggravation, that the quantity of the dangerous drug exceeded two grams, because the dangerous drug had not in fact been produced. See R v. Boyd [2001] QCA 421; CA No 134 of 2001, 3rd of October 2001. The maximum penalty for this offence was therefore 15 years' imprisonment, methylamphetamine being at the time a schedule 2 drug. The large amount of methylamphetamine sought to be produced nevertheless made this offence a serious example of its type.

There was some delay in finalising the matter after the applicant's arrest. The applicant originally indicated he would plead guilty to an ex-officio indictment, but then changed his mind. This delayed the hand-up committal which did not take place until 8th February 2001. There was a further delay in the presentation of an indictment in the Supreme Court because of the delay in the preparation of an analyst's certificate. The indictment was finally presented without objection by the defence after receipt of the analyst's certificate in early 2002. The matter was listed for trial in July and the applicant indicated his intention to plead guilty shortly afterwards.

The applicant was 52 years old at the time of the offence. He had a sound work history including 25 years' experience in the greyhound racing industry, and was also familiar with the trotting industry. His counsel said at sentence that the applicant had devoted his life to his greyhound dogs at the expense of his marriage and family. The applicant submitted that ephedrine was used in these industries to overcome field shyness in dogs and trotters during periods when the animals were not subject to normal drug testing. His counsel at sentence emphasised that the applicant was not involved in the commercial human drug trade. His comments to police suggesting that his life was in danger were simply him saying the first thing that came into his head.

Prosecution investigations with veterinarians revealed that pseudoephedrine is used for the treatment of incontinence in desexed greyhound bitches.

The applicant submitted he was inexperienced in the production of methylamphetamine and was following information supplied to him by others, without knowing how many grams of methylamphetamine he would ultimately produce. He was a full-time breeder and racer of greyhound dogs and was responsible for 40 to 50 animals. A number of references attesting to his hard work and reliability within the greyhound racing industry were tendered.

In reply, the Crown Prosecutor at sentence emphasised that the prosecution did not accept that the quantity of the drug to be produced was solely for administration to dogs.

In sentencing, the learned Judge referred to the applicant's plea of guilty. His Honour did not accept that all the drugs to be produced were to be used for the purpose of training greyhound dogs because of the quantity involved. His Honour said, "The explanation put before me today is that the drugs were to be used for the purpose of training greyhounds. I must accept that, to some extent, that may be true. But bearing in mind that what you are doing had the capacity to produce, as your counsel admits, some 85 grams of methylamphetamine, it leads me to believe there must have been some other purpose, particularly bearing in mind your comment to the police officers."

The applicant on this appeal does not cavil with his Honour's finding. The applicant contends, however, that the learned sentencing Judge erred in stating in his sentencing remarks, "The fact is that if the police had not intervened in the time you were cooking this drug you would have produced some 85 grams of methylamphetamine." The applicant rightly points out that the prosecution's submission was that 85 grams of methylamphetamine was the maximum quantity that could have been produced in optimum circumstances. In the earlier sentencing remarks I have quoted, his Honour correctly stated the prosecution submission. The arguably loose wording later

used by his Honour in his sentencing remarks did not constitute an error of law.

The real issue is the applicant's primary contention, that is, whether, bearing in mind the drugs were to be used in part for administration to dogs, the early plea of guilty, lack of prior convictions, prior good work history and character, and cooperation with the criminal justice system, the sentence was manifestly excessive.

The applicant's age and prior good record go in his favour. On the other hand the applicant, at an age and at a stage of his life when he does not have the mitigating benefit of the folly of youth, has become involved in serious criminal behaviour, producing a drug which has a profoundly evil effect on some vulnerable members of the community.

There are no truly comparable sentences involving such serious criminal conduct committed by a 52 year old person of prior good character. Both the applicant and the respondent have placed a number of decisions before us. The sentences involving trafficking in methylamphetamine are of very limited assistance, as are the older sentences involving the drug methylamphetamine; in recent years, sentences for offences involving methylamphetamine have increased as the Courts have become more cognisant of its detrimental effect on users.

A number of the comparable sentences to which we have been referred, including R v. Green [1999] QCA 83; CA No 372 of

1998, 19 March 1999, and R v. Denton [1999] QCA 343; CA No 168 of 1999, 20 August 1999, involve lesser quantities of the drug and the imposition of cumulative sentences for multiple episodes of offending with a necessarily moderating effect to take into account principles of appropriate totality.

Although there are significant points of distinction, the cases of R v. Boyd [2001] QCA 421; CA No 134 of 2001, 3 October 2001, and R v. Campbell [2002] QCA 109; CA No 315 of 2001, 21 March 2002, support the sentence imposed here. Perhaps the case of most assistance, although again there are points of distinction, is R v. Welch [2002] QCA 36; CA No 299 of 2001, 19 February 2002. Welch pleaded guilty to the offence of producing a dangerous drug methylamphetamine with a circumstance of aggravation, and applied for an extension of time for leave to appeal in respect of his sentence of three and a-half years' imprisonment, suspended after serving 15 months. The potential amount of methylamphetamine to be produced in that case was 40 grams compared to 85 grams here. The Court in Welch refused the application, noting that the sentence was well within range. That case demonstrates that the sentence imposed here, though not lenient in all the circumstances, was within the appropriate range. I would refuse the application for leave to appeal against sentence.

JERRARD JA: I agree with the observations and proposed orders of the President. I add that the submissions of the applicant's counsel established that a sentence of three and a-half years imprisonment for this 52 year old first offender

could hardly have been criticised. But the head sentence of four years imprisonment, with a recommendation for eligibility for post-prison community-based release after he has served 18 months, is not evidence that the learned Judge was in error in the exercise of his discretionary judgment.

HELMAN J: I agree with the reasons of the President and Mr Justice Jerrard, and with the order proposed.

THE PRESIDENT: The order is the application for leave to appeal against sentence is refused.
