

SUPREME COURT OF QUEENSLAND

CITATION: *R v Jackson* [2003] QCA 31

PARTIES: **R**
v
JACKSON, Peter Fancher
(applicant)

FILE NO/S: CA No 270 of 2002
SC No 254 of 2002

DIVISION: Court of Appeal

PROCEEDING: Sentence Application

ORIGINATING COURT: Supreme Court at Brisbane

DELIVERED ON: 14 February 2003

DELIVERED AT: Brisbane

HEARING DATE: 4 February 2003

JUDGES: Davies and Williams JJA and Cullinane 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 – PARTICULAR OFFENCES – DRUG OFFENCES – where applicant convicted of importing into Australia commercial quantity of cocaine – where applicant sentenced to imprisonment for 25 years – where trial judge found applicant expressed no remorse – where applicant of advanced age – whether sentencing discretion ought to have taken more account of these factors

COUNSEL: P J Callaghan for the applicant
G R Rice for the respondent

SOLICITORS: Legal Aid Queensland for the applicant
Director of Public Prosecutions (Commonwealth) for the respondent

- [1] **DAVIES JA:** I agree with the reasons for judgment of Cullinane J and with the order he proposes.
- [2] **WILLIAMS JA:** I have had the advantage of reading the reasons for judgment of Cullinane J; I agree with them and do not need to add anything. I agree that the application should be refused.

- [3] **CULLINANE J:** The applicant seeks leave to appeal against the sentence imposed upon him for bringing into Australia prohibited imports, namely a commercial quantity of cocaine. The applicant pleaded guilty and was sentenced to imprisonment for 25 years with a non-parole period fixed at 13 years.
- [4] The applicant was born on 14 June 1942 and was 60 when sentence was passed.
- [5] The quantity of drugs seized was some 89.1kg contained in 99 packages. The cocaine was 70 per cent pure.
- [6] The learned sentencing judge was informed that the quantity of cocaine found was the greatest ever seized in Queensland. The drugs had a retail value of some \$25 million and wholesale value of about \$13-14 million.
- [7] The drugs had been exported from Mexico via Noumea to Australia. The exercise commenced about one year prior to the raid by the police on the vessel on which they were found in Moreton Bay.
- [8] The applicant played a central role in the planning and commission of the offence. He supplied the vessel, provided some of the finances and arranged for the crew which included his 16 year old son. His reward was to be a payment of \$800,000.
- [9] Two others were to obtain whatever profits were produced from the sale of the cocaine.
- [10] His Honour, in sentencing the applicant, described his role as being that of a member, with two others, of an organising committee.
- [11] In sentencing him, his Honour referred to two particular features of the offence as revealing the character of the crime committed by the applicant. The first was the involvement of the applicant's 16 year old son in the enterprise and the second was the fact that the applicant had brought into Australia for personal gain such a substantial quantity of drugs after which he planned to sail off to enjoy himself and the money he had earned from doing so.
- [12] His Honour's view was that the nature of the crime would have justified the imposition of a sentence of life imprisonment. After making allowance for the plea of guilty and the fact that the applicant had no prior convictions, a sentence of 25 years with a non-parole period of 13 years was imposed.
- [13] It is accepted by the applicant that the sentence imposed cannot be regarded as manifestly excessive.
- [14] What, however, is contended is that his Honour erred in making certain findings and that as a result his sentencing discretion miscarried.
- [15] It is said that on a resentencing of the applicant, whilst the court would not disturb the head sentence, a non-parole period of somewhere in the range of between 10 to 12 years ought to be fixed.
- [16] The first of the matters in respect of which it is said his Honour erred was his finding that the applicant showed no remorse.

- [17] The applicant did not cooperate with the authorities in any way and it is not contended that anything in his behaviour exhibited remorse.
- [18] Rather it is said that his Honour, in making the finding that the applicant exhibited no remorse, erred when regard is had to the report of Dr Curtis, a psychiatrist whose report was tendered.
- [19] His Honour in fact said that he saw nothing in the report which worked in the applicant's favour.
- [20] There were, as counsel for the applicant points out and relies upon, some specific references to remorse. The applicant, according to the report, "has experienced manifest severe remorse as a result of his crime" (record, p 387). The report also states that the applicant "cried silent tears expressing to me his obvious deep regret regarding his offending ..." (record, p 392) and "there was a mild depressive condition reactive to current circumstances and exacerbated by explicit remorse and shame regarding the subject crime" (record, p 394 and 396). There are other references also.
- [21] His Honour regarded Dr Curtis' report as tending to show that the applicant's feelings were of depression and self-pity and not of remorse.
- [22] As was pointed out by his Honour, the applicant pursued the course of action involved in bringing the drugs from Mexico to Australia over more than 12 months as the drugs were moved from Mexico to Noumea and then to Australia. Furthermore, as his Honour pointed out, when in its final stages the undertaking started to develop difficulties the applicant acted with some determination to deliver the drugs and obtain his profit.
- [23] Dr Curtis referred in his report to the applicant's long-standing acceptance of the use of drugs such as cocaine.
- [24] The references in Dr Curtis' report can hardly be regarded as satisfactory. His Honour was not bound to accept the opinion based upon the reference to "silent tears". Similarly, the reference to "manifest remorse" and other references to a depressive condition exacerbated "by explicit remorse and shame regarding the subject crime" could not, in my view, be regarded as providing convincing evidence of genuine remorse in the circumstances of this case.
- [25] I think that a reading of the report as a whole justifies his Honour's observation that the applicant's feelings were primarily of depression and self-pity.
- [26] The finding that the applicant exhibited no remorse was, in my view, open to his Honour on a consideration of all the material including the psychiatric report read as a whole and I am not persuaded that his Honour erred in relation to this.
- [27] The second ground relied upon relates to the age of the applicant. Some emphasis was placed upon a passage in the sentencing remarks where his Honour said:
"In any event, the personal circumstances of an offender, in a case of this character, are of little importance in determining penalty."

His Honour went on to emphasise that it was the consideration of deterrence which loomed largest in a case of this kind.

- [28] It is necessary however to read the passage set out above in its context. It followed a reference by his Honour to the report of Dr Curtis and his Honour's observation that he saw nothing there that really worked in favour of the applicant. The report contained considerable detail relating to the applicant's history, family relations and a number of other matters.
- [29] There is, in my view, nothing to indicate that his Honour overlooked the age of the applicant. As I have said, the applicant is now 60 and, it would seem, in good health.
- [30] Whilst undoubtedly advanced age can be a relevant consideration in fixing on an appropriate sentence, there is nothing in my view in the circumstances here which would support the conclusion that his Honour's sentencing discretion miscarried in any way because of a failure to take into consideration the applicant's age or any failure to expressly further discount the sentence which had been imposed on these grounds.
- [31] The application should be refused.