

SUPREME COURT OF QUEENSLAND

CITATION: *R v Sanderson* [2003] QCA 42

PARTIES: **R**
v
SANDERSON, John Cyril Michael
(applicant)

FILE NO/S: CA No 309 of 2002
DC No 18 of 1999

DIVISION: Court of Appeal

PROCEEDING: Application for Extension (Sentence)

ORIGINATING COURT: District Court at Beenleigh

DELIVERED EX TEMPORE ON: 14 February 2003

DELIVERED AT: Brisbane

HEARING DATE: 14 February 2003

JUDGES: Williams and Jerrard JJA and Mullins J
Separate reasons for judgment of each member of the Court;
each concurring as to the order made

ORDER: **Application for extension of time within which to appeal refused**

CATCHWORDS: CRIMINAL LAW – JURISDICTION, PRACTICE AND PROCEDURE – JUDGMENT AND PUNISHMENT – SENTENCE – CONCURRENT, CUMULATIVE AND ADDITIONAL SENTENCES, SENTENCES ON ESCAPE AND COMMENCEMENT OF SENTENCE – POWER TO IMPOSE – POWER TO IMPOSE SECOND CUMULATIVE SENTENCE – where trial judge imposed second sentence concurrently with the first – whether the second sentence should have been imposed cumulatively
Penalties and Sentences Act 1992 (Qld), s 156A

COUNSEL: The applicant appeared on his own behalf
M J Copley for the respondent

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

WILLIAMS JA: The applicant was sentenced on the 1st of February 1999 at the Beenleigh District Court to imprisonment for a period of 10 years on five counts of armed robbery and

two counts of deprivation of liberty to be served concurrently with an earlier sentence. This Court is told that he was then represented by Legal Aid.

The matter was complicated by the fact that at that time he was serving a sentence of imprisonment imposed in December 1991 for an earlier offence of armed robbery. According to the applicant that sentence was for a term of 15 years though 10 years is stated on the criminal history. That is a matter which needs to be clarified. Certainly the District Court Judge seems to have proceeded on the basis that the sentence was for 15 years.

The applicant had been released on parole from that sentence and was on that parole at the time the offences in question were committed.

He now seeks an extension of time within which to appeal against the sentence imposed on 1 February 1999, primarily contending that it is a crushing one and failed to have due regard to issues of rehabilitation. However, when the matter came on for hearing before this Court it became obvious that there was an error in the sentencing process.

Section 156A of the Penalties and Sentences Act required the sentence for the five robberies and two counts of deprivation of liberty to be made cumulative on the other term of imprisonment.

The learned sentencing Judge expressly made the sentence concurrent with the other sentence he was then serving. It therefore seems that there was an error in the sentencing process which needs to be addressed.

Counsel for the Director of Public Prosecutions has given an undertaking to this Court to have the matter taken back before the District Court at Beenleigh for resentencing on the basis that there was an error of law in the sentence originally imposed.

Because of the issues which will arise at that time it is important in my view that the present applicant be represented by counsel familiar with issues of sentencing pursuant to the Penalties and Sentences Act and the Corrective Services legislation.

Of course, once a fresh sentence has been imposed the applicant would have his rights to seek leave to appeal against it.

In the circumstances a transcript should be made of this morning's proceedings, and I would direct that a copy of these reasons and that transcript be sent by the Registrar of the Court of Appeal to the Director of Legal Aid so that the Legal Aid office is fully appraised of the situation and with this Court's view that the applicant should be represented when, pursuant to the undertaking given by the Director of Public

Prosecutions, the matter comes on for resentence in the Beenleigh District Court.

The only order that this Court need make today is that the application for an extension of time within which to seek leave to appeal against sentence should be refused.

JERRARD JA: I agree. I add only that it is certainly appropriate that the applicant should be sentenced according to law and in accordance with section 156A of the Penalties and Sentences Act, and the director has given the appropriate undertaking.

I add further that the applicant today appeared to be particularly well spoken and courteous. And it is possible that, when ultimately resented, it does appear that a sentence which extends his earliest release date by five and a-half years is perhaps more severe than is actually necessary. But that remains to be seen.

MULLINS J: I agree.

WILLIAMS JA: The order of the Court is that the application for an extension of time within which to appeal against sentence is refused.
