

# SUPREME COURT OF QUEENSLAND

CITATION:	<i>R v V</i> [2003] QCA 101	
PARTIES:	<b>R</b> v <b>V</b> (applicant/appellant)	10
FILE NO/S:	CA No 20 of 2003 DC No 167 of 2002 DC No 175 of 2002 DC No 59 of 2003	
DIVISION:	Court of Appeal	
PROCEEDING:	Sentence Application	20
ORIGINATING COURT:	District Court at Townsville	
DELIVERED EX TEMPORE ON:	12 March 2003	
DELIVERED AT:	Brisbane	
HEARING DATE:	12 March 2003	
JUDGES:	de Jersey CJ, Davies and Williams JJA Separate reasons for judgment of each member of the Court, each concurring as to the orders made	30
ORDER:	<b>1. Application for leave to appeal against sentence granted</b> <b>2. Appeal allowed only to the extent of setting aside orders recording convictions in respect of all offences except in relation to the count of armed robbery in company</b>	40
CATCHWORDS:	CRIMINAL LAW - JURISDICTION, PRACTICE AND PROCEDURE - JUDGMENT AND PUNISHMENT - SENTENCE - FACTORS TO BE TAKEN INTO ACCOUNT - PARITY - CO-OFFENDERS - DISCRIMINATION CO-OFFENDERS - where applicant sentenced to 12 months detention, three years probation and community service - where co-offender sentenced to six months detention - where applicant 12 months older than co-offender, brandished a knife in respect of one offence and had a substantially greater prior criminal history than co-offender - whether sentence manifestly excessive <i>Juvenile Justices Act</i> (Qld) 1992, s 125 <i>R v D</i> [2003] QCA 32; CA No 375 of 2002, 14 February 2003, cited	50

COUNSEL: R A East for applicant/appellant  
 B G Campbell for respondent

SOLICITORS: Legal Aid Queensland for applicant/appellant  
 Director of Public Prosecutions (Queensland) for respondent

THE CHIEF JUSTICE: I would invite Justice Davies to deliver the first judgment.

DAVIES JA: The applicant pleaded guilty in the District Court at Mackay on 21 January 2003 to a total of 37 offences. The most serious of these was one of armed robbery in company on 9 March 2002. The others were one of entering premises and stealing on 19 March 2002 and twenty four offences of burglary and stealing, one of burglary, five of burglary by breaking, four of stealing and one of attempted burglary all between 1 July 2002 and 2 August 2002. The learned sentencing judge also dealt with offences for which probation and community service had been ordered in a Children's Court on 12 December 2001 and for which probation was ordered in the District Court on 12 June 2002.

The applicant was sentenced to an effective sentence of 12 months detention, three years probation and 187.5 hours community service. The maximum period of detention, which was one of 12 months, was imposed in respect of the offence of armed robbery. The probation and community service were imposed in respect of lesser offences. 165 days were declared to be served under the sentence, which Mr Campbell has pointed out that of the period required to be actually served, there will be only ninety days in effect required to be served.

The applicant at the time of sentence was 16½ years of age having been born on 20 June 1986. He had a substantial criminal history to which I will refer later. He seeks leave to appeal against the sentences imposed.

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The relevant chronology of his offending behaviour was as follows.

On 12 December 2001 he appeared in the Mackay Children's Court and was placed on probation for 12 months and ordered to perform 40 hours of community service for offences of unlawful entry of a vehicle. Then on 9 March 2002, less than three months into his probation period, he committed the offence of armed robbery in company. He held up a fisherman at knifepoint whilst his co-offender stole tobacco. His co-offender was sentenced to detention for 6 months and placed on probation for 12 months on 23 October 2002. There is a complaint of lack of parity of the applicant's sentence with the sentence imposed on his co-offender and I will return to that question.

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Then on 19 March 2002 he committed the offence of entering premises and stealing. He and his co-offender broke into a laundromat and stole coins. Then on 12 June 2002 he appeared in the District Court of Mackay and placed on 12 months probation for 10 offences of entering a dwelling and stealing, five of stealing, one of entering premises and stealing, one of unlawful entry of a motor vehicle, one of wilful destruction, one of entering a dwelling with intent, one of

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breaking, entering and stealing and one of attempted entry of premises with intent. The value of the property stolen or damaged in these offences was over \$4,800.

On 19 June 2002 he again appeared in the Children's Court at Mackay, this time in relation to drug offences and possession of tainted property. He was placed on a further 12 months probation and ordered to perform 100 hours community service. The drug offences related to cannabis.

Then between 1 July 2002 and 2 August 2002 he committed 35 offences as I have already described. These involved property stolen or damaged of over \$3,700 in value.

It is plain that all of these offences were committed during the course of at least one probation order, many of them during periods of more than one probation order. Some of these offences to which I have referred came to light only because of the applicant's willingness to confess them to police during the course of a drive during which he identified places at which he committed various offences.

The learned sentencing judge described the applicant's prior criminal history as appalling for someone his age. That is, in my view, an accurate description. It consists of multiple offences, commencing at the beginning of 1998 and occurring at regular intervals since then. Most of them were offences of dishonesty but some involved violence including apparently more than one assault occasioning bodily harm in 1999.

Unsurprisingly the applicant has a poor family history and a history of drug and alcohol misuse. He has had poor schooling and has an IQ similar to that of a Grade one child. Two pre-sentence reports were before the learned sentencing judge. The second of those indicated that there had been some positive changes in the applicant's behaviour indicating that he had become more settled and possibly maturing. But what is plainly evident from both reports in my view is that he will require supervision for quite some time.

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The main point in the sentence application appears to be an assertion of lack of parity between the sentence imposed on the applicant and that imposed on his co-offender in the armed robbery and one other offence. It was submitted that although there was some basis for imposing a higher sentence on the applicant than on his co-offender, the difference between a six month detention order in respect of his co-offender and a 12 month detention order in respect of the applicant is manifestly excessive. I do not agree.

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The applicant was 12 months older than his co-offender, often an important difference at 15½ years of age. It was he rather than his co-offender who was armed with and brandishing a knife in a threatening manner at their victim and he had a substantially greater prior criminal history than his co-offender. Moreover the applicant here was sentenced for the totality of his criminal conduct and the effective sentence of detention for 12 months should be seen in that light.

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There were a large number of other offences, many of them serious. In one of the other offences I have described, for example, he was found in a house by an elderly woman who was no doubt frightened by being confronted by the applicant. Moreover the total amount of property involved in the other offences was quite substantial.

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The sentences which were imposed by the learned sentencing judge were, in detail, as follows. He was re-sentenced to six months detention in respect of the offences dealt with in the District Court of Mackay on 12 June 2002, he was sentenced to 12 months detention for the armed robbery, he was sentenced to six months detention for the burglary offence and he was sentenced to three years probation and 187.5 hours community service in respect of each of the other offences other than those to which I have already referred. Convictions were recorded in respect of all offences.

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In R v D [2003] QCA 32, an application for leave to appeal against sentence by the applicant's co-offender in the armed robbery count, this Court, having regard to s 125 of the *Juvenile Justice Act* 1992, granted leave to appeal only to the extent of setting aside the recording of convictions on offences other than the armed robbery offence. I would be inclined to do the same here.

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Accordingly I would grant leave to appeal and allow the appeal only to the extent of setting aside orders recording

convictions in respect of all offences except in relation to the count of armed robbery in company.

THE CHIEF JUSTICE: I agree.

WILLIAMS JA: I agree.

THE CHIEF JUSTICE: The order of the Court is that indicated by Justice Davies.

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