

SUPREME COURT OF QUEENSLAND

CITATION: *R v Pearse* [2003] QCA 167

PARTIES: **R**
v
PEARSE, Tessa Joanne
(applicant)

FILE NO/S: CA No 41 of 2003
DC No 2359 of 2002
DC No 3195 of 2002
DC No 227 of 2003
DC No 228 of 2003

DIVISION: Court of Appeal

PROCEEDING: Sentence Application

ORIGINATING COURT: District Court at Brisbane

DELIVERED EX TEMPORE ON: 22 April 2003

DELIVERED AT: Brisbane

HEARING DATE: 22 April 2003

JUDGES: McMurdo P, Williams JA and Holmes 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 dismissed**

CATCHWORDS: CRIMINAL LAW – APPEAL AND NEW TRIAL AND INQUIRY AFTER CONVICTION – APPEAL AND NEW TRIAL – APPEAL AGAINST SENTENCE – APPEAL BY CONVICTED PERSONS – APPLICATIONS TO REDUCE SENTENCE – WHEN REFUSED – GENERALLY – where applicant sentenced on various counts of fraud and related offences – where protracted pattern of dishonesty – where lenient sentence imposed

COUNSEL: S P Durley for the applicant
M J Copley for the respondent

SOLICITORS: Smith & Associates for the applicant
Director of Public Prosecutions (Queensland) for the respondent

HOLMES J: The applicant seeks leave to appeal against sentences of two years imprisonment, suspended after four months for an operational period of two and a half years.

Those sentences were imposed in respect of four counts of fraud, one count of attempted fraud, two counts of stealing and four counts of forgery and uttering. A further sentence of seven days to be served concurrently was imposed on a count of wilful damage. She had pleaded guilty to all of these offences in February 2003.

The fraud offences entailed obtaining advances from financial institutions by using false identification details. On the first occasion in November 1999 the applicant obtained \$14,000 from Westpac using a false driver's licence.

She was interviewed by police shortly after that and claimed that she used the money to pay her dead de facto husband's drug debts to a man who had followed her from Victoria. She was charged and while on bail for this offence committed the remaining offences on the indictments.

In February 2000 she obtained another loan of \$14,500 from Westpac using credit cards and a licence she claimed to have found at the casino. As well as a fraud count, that set of events gave rise to charges of stealing and forgery and uttering.

In April 2000 the applicant unsuccessfully used a stolen Visa card in an attempt to obtain yet another advance of \$14,500 from Westpac. Again, as well as an attempted fraud charge these events also led to charges of stealing and forgery and uttering.

In September 2000 the applicant obtained a driver's licence in a variation of her own name and used it to get a \$5,000 cash loan from Credit Union Australia and a credit card facility with Suncorp on which she drew \$5,000 in transactions between December 2000 and February 2001. She also managed in December 2000 to obtain an EFTPOS terminal from Suncorp.

In a final burst of criminal activity in September 2001 the applicant obtained a credit card facility from St George using false personal particulars and used it to draw \$2,000.

Apart from this pattern of fraud, the applicant also faced a charge of wilful damage in relation to having thrown some garden ornaments through the window of an ex partner's house, but the learned sentencing Judge, correctly, in my view, considered that that was not of great consequence in the overall scheme of things.

The protracted pattern of fraud, involving as it did the use of false identities and repeated offending on bail, called for a very significant custodial sentence. That was particularly so where there was no evidence of restitution. Some receipts were offered to the Court; the Prosecutor identified them as

being unrelated to the offences the subject of the charges. The case was not one, therefore, where it could at least be said in the accused's favour that no one was left out of pocket at the end of the day.

His Honour, however, imposed a head sentence of only two years on each of the fraud related counts with a suspension after four months.

A number of things identified in his sentencing remarks seem to have produced this unusual degree of leniency. The applicant was before the Court for the first time, having entered guilty pleas; she was the mother of two small boys; she had co-operated with the police in another matter; and his Honour proceeded on the basis that all but the last of the fraud offences had been committed to obtain funds for payment of the former de facto's drug debts. A criminal figure was said to have threatened the applicant and her family with death if the money was not forthcoming.

Improbable though the story seems, for a number of reasons, his Honour acted on it. That is plain both from his reasons and the sentence itself which would otherwise be inexplicably light, even allowing for the co-operation and other features in the applicant's favour.

His Honour did, however, observe, accurately, that there was no explanation for the applicant's preferring to resort to criminality rather than merely returning to her home in New

Zealand and, in effect, he said that society could not tolerate self help of this kind rather than recourse to the law enforcement authorities. The last observation was the subject of complaint by the applicant's counsel, but it seems to me entirely correct, as was his Honour's comment to the effect that it was incumbent on him to have regard to this Court's views on sentencing.

Other matters of remark by his Honour which were complained of also seem to me unexceptional: his Honour's reference to the applicant having spent more than \$5,000 obtaining psychiatric attention, rather than making restitution, his comments on the remorse shown, and his reference to the impracticability of restitution all were accurate.

His reference to the internet material produced on sentence as scuttlebutt was unsurprising, and although he was mistaken in referring to the Crown as having submitted that the appropriate sentence was two years suspended after six months when in fact the Prosecutor had advocated suspension after some unspecified period in custody, it is hardly material when his Honour did not, in any event, act on what he perceived as the submission.

In my view the applicant has nothing to complain of in the sentence. It was extremely light, particularly when one has regard to the amount involved, the absence of restitution, the protracted period, the repeated offending on bail, the sheer criminality of the manufacturing and use of false documents

and the fact that even accepting the applicant's version, the last occasion was an instance where she chose without any operative threat to resort to fraud as a means of obtaining needed funds.

There is no reason to suppose that his Honour overlooked, or failed to give appropriate weight to any factor pointing to leniency.

I would dismiss the application for leave to appeal against the sentence and order that a warrant issue for the apprehension of the applicant, but that it be let lie for 48 hours.

THE PRESIDENT: I agree.

WILLIAMS JA: I agree.

THE PRESIDENT: Those are the orders of the Court.
