

SUPREME COURT OF QUEENSLAND

CITATION: *R v Carroll* [2003] QCA 239

PARTIES: **R**
v
CARROLL, Leslie James
(applicant)

FILE NO/S: CA No 53 of 2003
DC No 404 of 2002

DIVISION: Court of Appeal

PROCEEDING: Sentence Application

ORIGINATING COURT: District Court at Ipswich

DELIVERED EX TEMPORE ON: 4 June 2003

DELIVERED AT: Brisbane

HEARING DATE: 4 June 2003

JUDGES: Davies and Williams JJA and Atkinson 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 – JURISDICTION, PRACTICE AND
PROCEDURE – JUDGMENT AND PUNISHMENT –
SENTENCE – FACTORS TO BE TAKEN INTO
ACCOUNT – where offences committed in breach of
suspended sentences – where applicant had extensive
criminal history

COUNSEL: A J Rafter for the applicant
P F Rutledge for the respondent

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

DAVIES JA: I will ask Justice Atkinson to deliver her reasons first.

ATKINSON J: This is an application for leave to appeal against sentence imposed upon the applicant in the District

Court at Ipswich. The applicant pleaded guilty to one count of receiving stolen property, which was an alternative on the indictment to stealing, and one count of fraud.

Count 1 on the indictment was that on dates unknown between 9 November 2001 and 3 April 2002 at Ipswich or elsewhere in the State of Queensland, the applicant received medical prescription forms, the property of Eric Mulvy and others, which had been stolen and the applicant had reason to believe that the things had been so obtained and the offence by which the things were obtained was a crime. Count 2 on the indictment was that between the same dates the applicant dishonestly applied to his own use medical prescription forms belonging to Eric Mulvy and others.

The circumstances in the offences were that the police became aware of large quantities of morphine based drugs being obtained through the use of prescriptions stolen from doctors in the Brisbane and Ipswich areas.

The applicant was identified as a member of the group involved in those offences. On ten occasions, the applicant had personally presented prescriptions to obtain these drugs, and on another 13 occasions, he had knowingly permitted others to use the details on his health care benefits card for the purpose of acquiring the drug.

When the police searched his residence on 15 March 2002, they located three pieces of paper in his back pack which bore the

wording used by medical practitioners on prescriptions for MS Contin. They also located what appeared to be forged signatures on pieces of paper. He declined to take part in an interview and was arrested on 22 July 2002. His reward for taking part in these offences was keeping a proportion of the drugs to which he had become addicted.

The Prosecution submitted that a sentence of four years' imprisonment was appropriate. Defence counsel submitted that a sentence in the order of two and a half to three years with an appropriate recognition for the plea of guilty would be appropriate. The applicant was sentenced to three years' imprisonment and the learned sentencing judge recommended that he be considered for post-prison community based release after serving 12 months of that sentence.

In addition, the sentencing judge found that the applicant was in breach of a suspended sentence and imposed the whole of that sentence. That sentence was four months' imprisonment, which had been wholly suspended for a period of two years when it was imposed on 10 July 1999. On 10 August 2001, that suspended sentence had been extended for six months when the applicant was convicted of possessing dangerous drugs and failing to take reasonable care and precautions in respect of a syringe or needle.

On 23 April 2002, the applicant was convicted of break and enter and commit an indictable offence. He was sentenced to nine months' imprisonment, to be suspended for 12 months after

having served a period of imprisonment of three months. He committed a breach of that suspended sentence on the very day he was released from custody. Her Honour therefore sentenced him to six months' imprisonment, being the rest of that sentence. The suspended sentences which were imposed, were ordered to be served concurrently.

In sentencing, her Honour took account of his criminal history. On 13 July 2001, the applicant had been convicted of possession of a knife in a public place. Prior to that offence, the applicant had been convicted of unlawful assault on 10 March 1995. Prior to that, the applicant had an almost extraordinarily extensive criminal history in Victoria, New South Wales and the ACT, extending over some 40 years.

His criminal history included offences of stealing, break and enter and dozens of burglaries, wilful damage, handling stolen goods and receiving, assaults, including an assault occasioning bodily harm, theft of motor vehicles and unlawful use of a motor vehicle, fraud offences, as well as drug offences. In addition, many times he had warrants issued for his arrest, was in breach of bail and was also in breach of his parole. The offences for which he was sentenced were committed while he was subject to a suspended sentence order.

In this case, the learned sentencing judge took into account all the mitigating factors in the applicant's favour and imposed a sentence which was within the range contended for by his counsel. His breaches of suspended sentences meant that

it was not appropriate to suspend his sentence on this occasion. The recommendation which her Honour made was an appropriate amelioration of the sentence for the applicant's plea of guilty. The sentence was within the proper range of sentencing discretion and in my view should not be interfered with. The application for leave to appeal against sentence should be refused.

DAVIES JA: I agree.

WILLIAMS JA: I agree.

DAVIES JA: The application for leave to appeal against sentence is dismissed.
