

# SUPREME COURT OF QUEENSLAND

CITATION: *R v Zeremes & Zeremes* [2003] QCA 255

PARTIES: **R**  
v  
**ZEREMES, Dimitri**  
**ZEREMES, Tina**  
(applicants)

FILE NO/S: CA No 135 of 2003  
CA No 136 of 2003  
SC No 361 of 2002  
SC No 450 of 2002

DIVISION: Court of Appeal

PROCEEDING: Sentence Application

ORIGINATING COURT: Supreme Court at Brisbane

DELIVERED EX TEMPORE ON: 18 June 2003

DELIVERED AT: Brisbane

HEARING DATE: 18 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: **In each case, 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 - CIRCUMSTANCES OF OFFENCE - where applicants pleaded guilty to drug related offences - where neither applicant had substantial previous criminal history - where applicants produced methylamphetamine in sophisticated and commercial laboratory - where applicants trafficking in methylamphetamine while on bail - where applicants co-operated with police in search - whether sentence imposed was manifestly excessive

COUNSEL: A J Rafter for applicants  
S Bain for respondent

SOLICITORS: N R Barbi for applicants  
Director of Public Prosecutions (Queensland) for respondent

DAVIES JA: These are applications against sentences imposed on each of the applicants in the Supreme Court on 9 April this

year upon pleas of guilty by each of them. The applicant, Dimitri Zeremes pleaded guilty on two counts on one indictment, and one count on a second indictment. Count 1 was that between 1 January 2001 and 10 January 2001 he produced a dangerous drug, namely amphetamine. Count 2 was that between those dates he was in possession of things used in connection with producing that drug.

The count on the second indictment was that between 24 February 2001 and 9 August 2001, he trafficked in a dangerous drug which was also, as it turns out, amphetamine. On the offence of trafficking he was sentenced to seven years' imprisonment. On the production offence he was sentenced to three years' imprisonment. No further penalty was imposed in respect of the other offence. A recommendation for post prison community based release after three years was made, as also was a declaration that 606 days in custody from 10 August 2001 to 9 April 2003 was time already served under the sentence.

The applicant, Tina Zeremes was the first applicant's wife, pleaded guilty to each of the offences to which I have referred, and also to two offences of supplying a dangerous drug. On the trafficking offence she was sentenced to five years' imprisonment to be suspended after 18 months with an operational period of five years. She was not sentenced in respect of the other offences.

The applicant Dimitri is 34 years of age and the applicant Tina is 32. Neither has a substantial previous criminal history. Dimitri was sentenced for possession of a dangerous drug, possession of a pipe and some minor offences on 12 March 1997 and fined \$780. No conviction was recorded on that occasion. Then on 26 September 1997 he was sentenced in respect of offences which included possession of a dangerous drug, possession of a thing used in connection with smoking a dangerous drug, and supplying a dangerous drug in respect of which he was convicted and fined \$900.

The applicant Tina pleaded guilty to possession of dangerous drugs in September 1999 and was fined \$1,250. No conviction was recorded on that occasion. The evidence shows that the applicants were in the business of producing methylamphetamine. With their help, a search revealed a large number of vessels and other equipment used for the production of amphetamines. There were, for example, 19 vials and bottles actually containing methylamphetamine to some extent. There were also amounts of produced methylamphetamine. In addition the police found over 2,000 pseudoephedrine tablets in their possession, and cash totalling \$3,300.

There is no doubt as the learned sentencing judge concluded the applicants were producing this drug in a sophisticated and commercial laboratory. The male applicant was, it was said, the principal cook.

After they had been arrested and had obtained bail in respect of the production offence, the applicants were found to be trafficking in methylamphetamine between February and August 2001. These offences involved the sale of 39 grams of methylamphetamine for a total of \$9,000. The male applicant was also the male operator in the trafficking of the drug, Tina playing a lesser role, mainly involving communication with customers.

The applicants on this occasion were also found to be in possession of another laboratory in which amphetamines could be made. The commission of this further offence together with the possession of the equipment after the applicants had been admitted to bail is undoubtedly a serious aggravating factor.

Both applicants were addicted to the drug, but it is plain from the fact that they were carrying on a significant commercial operation of production and sale of it, that their purpose was not merely to feed their addiction but also to make a profit.

In favour of the applicants it was said, rightly, that they co-operated with the police in the search which the latter conducted, that both applicants made reasonably early pleas, that both were addicted to amphetamine and that each had done a good deal towards their rehabilitation in respect of their addiction. As to the latter, the male applicant had undergone a drug therapy course, participated in various programs and

undertaken TAFE studies since his imprisonment. And the female applicant had also undertaken drug counselling.

On the other hand, however, as has already been mentioned, this was a substantial and sophisticated operation of production and the business continued after they had been arrested and admitted to bail in respect of the first offence.

In support of his submission that the sentence imposed in each case was manifestly excessive, Mr Rafter, in addition to referring to some psychiatric reports obtained in respect of the applicants, relied on the decision of *Fry* [2000] QCA 89, CA No 397 of 1999 and [2000] QCA 35, CA No 17 of 2000. That case has some similarities with this. The applicants there were also husband and wife, they pleaded guilty to trafficking in methylamphetamine. The male applicant was sentenced to five years' imprisonment and the female, to three years' imprisonment. Their appeals against their sentences were dismissed by this Court. The pleas of guilty and their co-operation with the police was reflected in the sentences imposed, because there was no suspension or recommendation for parole.

The applicants in that case were somewhat younger than the applicants here, they were 27 and 22 respectively, and their only previous conviction was, in each case, for possession of a pipe. As in this case, neither had previously been to gaol. Like this case both applicants were addicts, but were also carrying on the business of trafficking for profit. An

aggravating circumstance in that case was that they were selling to truck drivers.

The sentences imposed in that case were, as in this, in respect of offences committed before 21 September 2001 when amphetamine and methylamphetamine became Schedule 1 drugs. That case is of some assistance here, but there are some distinguishing features. In this case the applicants were, as well, carrying on a sophisticated and commercial business of production, and more importantly, the offence continued after the applicants had been released on bail. This, as I've already said, undoubtedly adds to the seriousness of the offences here, and in my opinion distinguishes it from the case to which I've just referred. I don't think that the sentences which were imposed in that case or the unsuccessful appeal against those sentences, shows that the sentences imposed here were manifestly excessive.

Ms Bain, for the respondent, has referred in her written outline to two cases, both of which have some, at least, superficial similarity to this case, and I should at least mention them. One of them is *Harms* [2001] QCA 121, CA No 65 of 2001, where the offences were trafficking in methylamphetamine, production and possession of methylamphetamine. The offender there was sentenced to eight and a half years' imprisonment, and a serious violence offence declaration was imposed. The circumstances were, in that case briefly that police executed a number of searches on the

applicants premises, located some methylamphetamine and some equipment and chemicals used for its manufacture.

Like this case, Harms continued trafficking while on bail. Unlike this case, however, he was convicted after a trial and he had a substantial criminal record including for a wide range of offences. He was 50 years of age.

*Everett* is the other case to which Ms Bain referred, and that is [1999] QCA 14, CA No 311 of 1998. The offences there were trafficking in amphetamine, possession of amphetamine and some other offences. The effective sentence there was nine years' imprisonment with a recommendation for parole after three and a half years. There the applicant carried on the business of trafficking for some six months, and there were 31 particularised supplies totalling more than \$50,000. The Court remarked that in a case such as this for a man of his age with history and a commercial motive that the appropriate range was eight to ten years. The recommendation was made to reflect the plea and the co-operation in the circumstances of that case. He was a 33 year old man with a serious previous criminal history.

Those cases in my opinion, also show that the sentence which was imposed here was not manifestly excessive and accordingly I would dismiss the application.

WILLIAMS JA: I agree.

ATKINSON J: I agree.

DAVIES JA: The application is dismissed.

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