SUPREME COURT OF QUEENSLAND

CITATION:	*R v Jeffers* [2003] QCA 362
PARTIES:	**R** **v** **JEFFERS, Darren Christopher** (applicant/appellant)
FILE NO/S:	CA No 231 of 2003 DC No 1236 of 2003
DIVISION:	Court of Appeal
PROCEEDING:	Sentence Application
ORIGINATING COURT:	District Court at Brisbane
DELIVERED EX TEMPORE ON:	25 August 2003
DELIVERED AT:	Brisbane
HEARING DATE:	25 August 2003
JUDGES:	McMurdo P, Jerrard JA and Philippides J Separate reasons for judgment of each member of the Court, each concurring as to the orders made
ORDERS:	**Application for leave to appeal against sentence granted. Appeal allowed. Instead of the sentence imposed at first instance on counts 1, 2, 6, 7 and 8 substitute a sentence of ten years imprisonment. Instead of the declaration under s 161 *Penalties and Sentences Act* 1992 (Qld), declare that 288 days has been spent in presentence custody between 28 August 2002 until 12 June 2003 and that that time be deemed time already served under the sentence.**
CATCHWORDS:	CRIMINAL LAW – JUDGMENT AND PUNISHMENT – SENTENCE – PARITY - CO-OFFENDERS – where applicant sentenced to 11 years imprisonment for robbery offences and lesser concurrent terms of imprisonment for property and assault charges – whether sentence fails to sufficiently take into account early plea of guilty and cooperation with authorities – whether sentence imposed upon co-offender lacked parity - whether sentence manifestly excessive *Penalties and Sentences Act* 1992 (Qld), s 161 *R v Haluzan* [2002] QCA 94; CA No 339 of 2001, 15 March

	2002, considered *R v Kapitano* [2002] QCA 496; CA No 196 of 2002, 11 November 2002, considered *R v Tilley; ex parte A-G (Qld)* [2002] QCA 144; CA No 27 of 2002, 19 April 2002, considered
COUNSEL:	The applicant appeared on his own behalf P F Rutledge for the respondent
SOLICITORS:	The applicant appeared on his own behalf Director of Public Prosecutions (Queensland) for the respondent

PRESIDENT: The applicant pleaded guilty on 12 June 2003 to two counts of armed robbery, four counts of armed robbery in company, one count of attempted armed robbery in company, two counts of unlawful use of a motor vehicle to facilitate an offence, one count of serious assault, three counts of break, enter and steal, and one count of possession of a shotgun.

He was sentenced on the robbery offences to eleven years imprisonment and to lesser concurrent terms of imprisonment for the remaining charges. He was declared to be convicted of serious violent offences in respect of the robbery charges and a declaration was made as to the time served under the sentence under s 161 *Penalties and Sentences Act* 1992 (Qld). I'll have more to say about that declaration later in these reasons.

The applicant, who represents himself on this application for leave to appeal against sentence, contends that it was

manifestly excessive in that it fails sufficiently to take into account his early guilty plea and cooperation and lacked parity with the sentence imposed upon his co-accused, Johnson.

The applicant was 36 at sentence. The majority of offences were committed when he was 34 years of age, but one offence was committed when he was 24 years old. He has a lengthy criminal history commencing in 1980 in the Brisbane Children's Court for offences of break, enter and steal. His criminal history continued before the Children's Court for offences of dishonesty and traffic offences through 1983 and 1984 when he was also convicted in the Brisbane District Court for offences of dishonesty and sentenced to an effective term of 3 years imprisonment. In 1985 he was sentenced to 6 months cumulative for the offence of assault occasioning bodily harm. In 1987 he was sentenced to terms of imprisonment for property offences. In 1989 he was convicted of further multiple property offences and drug offences and sentenced to an effective term of 15 months imprisonment. In 1991 he was convicted of escaping legal custody and sentenced to 8 months imprisonment. In 1992 he was convicted of armed robbery and other less serious charges and was sentenced to an effective term of imprisonment of five and a half years which was increased in an Attorney General's appeal to ten years imprisonment. This offence concerned the armed robbery in company of the Metway Bank, Noosa Heads. Jeffers was an

escapee from prison and drove the getaway car. He was armed and used his gun to frighten potential witnesses to the crime. He was convicted after a trial and demonstrated no remorse.

On the 2nd of June 1994 he was sentenced for entering a dwelling house in the night time with intent and armed robbery with personal violence, each occurring in November, 1990, to eight years concurrent imprisonment with a recommendation for parole on the 30th of June, 1997.

The facts of the offences which concern this Court are as follows. On 2 October 1990, when he was 24 years old, he robbed a service station at Mt Gravatt whilst armed with a pump action shotgun and disguised with a beanie. He obtained $1,236. He had purchased the gun and cut off the stock and shortened the barrel adding a pistol grip with a view to committing the offence. The gun was not in working order, but he loaded it and showed the loaded gun to the console operator racking his shell into the Chamber. He used the money to buy drugs and alcohol and was addicted to Seropax and under it's influence at the time.

The remaining offences occurred between March and June 2001. He broke and entered the Noosa Retravision store on three occasions stealing items such as mobile phones and computers. He stole a white Commodore Station wagon from the Red Hill

area in Brisbane and used it to drive to the Sunshine Coast where he dumped it. On 27 April 2001 he robbed the Bank of Queensland at Morayfield disguised with a stocking over his face and carrying a double barrelled sawn off shotgun. He demanded money and told a customer to lie down, the proceeds of that crime were $13,456. He said he wanted the money to try and resurrect his life and gave all of it away to someone.

In May 2001, he and another entered the Stafford branch of the ANZ Bank. He pointed a sawn off shotgun at tellers and demanded money. He and his co-offender were disguised with stockings over their faces. He refused to name his co-offender. This time the proceeds were about $4,000. Later that month he and another male entered the Westpac Bank at Morayfield disguised with stockings over their faces. The applicant carried a shotgun and demanded money. He pushed a customer over, pointed the shotgun at him, and told him to stay there. Staff activated security screens and the accused and his co-offender left empty handed in a stolen vehicle taken earlier in the day from the Morayfield Shopping Centre. It was located nearby with some damage to the rear quarter glass and ignition.

A few days later, he and another male entered the ANZ Bank at Albany Creek. He was carrying a gun which he pointed at a teller and gave aggressive instructions not to move. The

offenders left with $4,372. Customers included an ll year old girl. The applicant was later identified in a photoboard line-up.

Ten days later, he and his accomplice robbed the Bank of Queensland at Arana Hills wearing baseball caps, sunglasses and gloves. The applicant carried a shotgun and bag and demanded money. They left with $650.

In early June 2001, he and Daniel Brooks robbed the Commonwealth Bank at Kallangur. He was wearing a balaclava and carrying a sawn-off double-barrelled shotgun. He told staff and customers, "Get on the fucking floor. I don't want to hurt you." He said to a teller, "Not you, cunt, give me the fucking money." The teller did not have access to any money but another teller filled a bag and two offenders left on foot with $4,125.

He also pleaded guilty to a summary charge of having in his possession a sawn-off double-barrelled shotgun.

A total of $38,339 worth of money and property was stolen or unrecovered in this spate of offences.

Statements tendered by victims gave some insight into the dreadful effect of the applicant's violent conduct on them and their lives.

The applicant pleaded guilty by way of ex officio indictment and other than for the last robbery offence, the authorities had insufficient evidence to charge him but for his admissions. He was therefore extremely cooperative with the police and gave very helpful off the record information actually identifying all his co-offenders.

He demonstrated his remorse by his full cooperation with the authorities including this off the record assistance. Whilst awaiting sentence on these matters, he completed various rehabilitative courses with an emphasis on drug addiction. It seems that when he was last released from prison, in an effort to stay off heroin to which he became addicted in prison, he began to use amphetamines. His involvement in these offences was connected with his abuse of those drugs.

The psychological report tendered at sentence set out the applicant's dysfunctional upbringing, abuse of alcohol, and of the prescription and non-prescription drugs which were responsible for his deteriorating mental state including paranoid delusions as at the date of the report 30 June 2002. The report made clear that these matters may have also been present at the time of his offending.

The applicant accepts that in respect of most of his co-offenders there was proper reason for distinguishing between the sentence imposed on him and on them. But he contends that in respect of his co-offender Johnson, the sentence imposed of seven years' imprisonment leaves him with

a justifiable sense of grievance warranting the intervention of this Court.

Johnson was sentenced on 30 May 2002 after pleading guilty by way of an ex officio indictment to two armed robberies and one attempted robbery, committed jointly with this applicant. It is true that Johnson did not take quite as an aggressive a role in the commission of the robberies as this offender. There is no doubt that he was equally culpable and only very slightly less blameworthy. Johnson too had a lengthy criminal history commencing in 1989 for drug offences and property offences in 1990. He had been sentenced to probation for 12 months but breached that order with further property offences and was sentenced to a short term of imprisonment. In 1991, he committed further property offences and was sentenced to further probation which he again breached by committing a series of armed robberies in company for which he was sentenced to an effective term of nine years' imprisonment with a recommendation for parole after serving three years. In 1995, he was sentenced to 12 months' cumulative imprisonment for escaping legal custody. He therefore committed the robbery offences with this applicant whilst he was on parole and on bail for other offences to which he subsequently also pleaded guilty. Johnson was sentenced to seven years' imprisonment cumulative on the remainder of his 1993 sentence of which there must have been very little if any left to serve. Whilst Jeffers' criminal history is perhaps longer than Johnson's, Johnson appears to have had more previous convictions for serious offences of armed robbery.

The comparable sentences to which her Honour was referred and to which this Court has again been referred, at one level suggest that the sentence imposed here was not manifestly excessive: see *R v Kapitano* [2002] QCA 496; CA No 196 of 2002, 11 November 2002; *R v Tilley; ex parte Attorney-General* [2002[QCA 144; CA No 27 of 2002, 19 April 2002 and *R v Haluzan* [2002] QCA 94; CA No 331 of 2001, 15 March 2002. But when one looks at the seven year sentence imposed on his co-offender Johnson, it is hard not to agree with the applicant's contention of a justifiable sense of grievance. The lesser number of offences to which Johnson pleaded guilty on this occasion did warrant a real distinction between the sentence imposed on Johnson and the sentence imposed here, but their serious criminal histories and aggravating factors were similar. After carefully considering all the matters placed before the Court by counsel for the respondent, I am persuaded that the applicant does have a justifiable sense of grievance when his sentence is compared to that of his co-offender Johnson.

Bearing in mind all the relevant factors and in particular questions of parity with Johnson, the applicant's plea of guilty, his very extensive cooperation with the authorities, the fact that but for his cooperation he would not have been able to be charged with nearly all of these offences and that he had been in custody for about two years prior to his sentence, I am satisfied that the appropriate sentence to

impose on the robbery offences was a sentence of 10 years' imprisonment rather than 11 years' imprisonment.

There is a further matter that needs to be corrected in this sentence and that relates to the declaration. Material placed before the Court today indicates that her Honour wrongly included in the declaration under s 161 *Penalties and Sentences* Act 1992 (Qld) a period as time served under this sentence when in fact it was required to be served under the earlier 10 year sentence. For that reason the declaration made will have to be amended.

I propose the following orders. I would grant the application for leave to appeal against sentence and allow the appeal. Instead of the sentence imposed at first instance on counts 1, 2, 6, 7 and 8, I would substitute a sentence of 10 years' imprisonment. And instead of the declaration under s 161 *Penalties and Sentences Act* 1992 (Qld) I would declare that 288 days has been spent in presentence custody between 28 August 2002 until 12 June 2003 and that that time be deemed time already served under the sentence.

JERRARD JA: I agree with the orders proposed by the President and with her reasons.

PHILIPPIDES J: I also agree with the reasons and the order proposed by the President.

THE PRESIDENT: The orders are as I have set out.