

SUPREME COURT OF QUEENSLAND

CITATION: *R v Brown* [2003] QCA 372

PARTIES: **R**
v
BROWN, Darby Patrick
(applicant)

FILE NO/S: CA No 209 of 2003
DC No 1145 of 2003

DIVISION: Court of Appeal

PROCEEDING: Sentence Application

ORIGINATING COURT: District Court at Brisbane

DELIVERED EX TEMPORE ON: 28 August 2003

DELIVERED AT: Brisbane

HEARING DATE: 28 August 2003

JUDGES: Williams and Jerrard JJA and Philippides 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 refused**

CATCHWORDS: CRIMINAL LAW – JURISDICTION, PRACTICE AND PROCEDURE – JUDGMENT AND PUNISHMENT – SENTENCE – FACTORS TO BE TAKEN INTO ACCOUNT – CIRCUMSTANCES OF OFFENDER – where applicant convicted of eight counts of armed robbery – where sentenced to nine years imprisonment – where applicant had extensive criminal history – where applicant had written a letter to a newspaper apologising for the crimes – where other unusual circumstances existed which motivated the crimes – whether sentence imposed was manifestly excessive

R v Faulkner [1997] QCA 181; CA No 113 of 1997, 30 May 1997, cited
R v Kapitano [2002] QCA 496; CA No 196 of 2002, 11 November 2002, cited
R v McDonald [2001] QCA 238; CA No 46 of 2001, 22 June 2001, cited
R v Matheson [2001] QCA 4; CA No 226 of 2000, 30 January 2001, cited
R v Onley [1994] QCA 199; CA No 72 of 1994, 18 May

1994, distinguished

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

WILLIAMS JA: The applicant pleaded guilty on the 26th of May 2003 to an ex officio indictment charging him with eight counts of armed robbery.

He was sentenced to nine years imprisonment and a declaration was made that he had served some 272 days in presentence custody. He seeks leave to appeal against the sentence.

Seven of the eight robberies were committed on financial institutions and the remaining one involved the armed robbery of a Flight Centre outlet in George Street, Brisbane.

On each occasion, the offender was not disguised and presented, usually to a female, a note saying variously, "I have a firearm." "Do not alert anyone." "Give me \$10,000 or someone will die."

On at least four occasions, the applicant showed the person from whom the demand was made, a gun. But on the occasion of the robbery of Flight Centre, the travel consultant involved saw what she believed to be a knife or syringe pointing towards her.

Three of the persons who were victims of the robberies provided victim impact statements and they demonstrate the significant trauma which was caused to the victims of the robberies.

In the eight robberies, the applicant obtained a total of \$37,520.95.

He was born in July 1964 which made him aged about 37 when the offences were committed and now aged 38. He has an extensive criminal history commencing in 1982. It contains numerous offences of dishonesty, including larceny, break enter and steal, stealing from a dwelling, and obtaining benefit by deception.

There are also convictions for illegal use of a motor vehicle, one for assault and one for assault occasioning actual bodily harm. He served short periods of imprisonment in 1984 and 1986 and periodic detention in 1995.

There are some unusual features about the offences in question. A number of the institutions which were the subject of the robberies were located on the Gold Coast and that led to publicity in the Gold Coast Bulletin. The applicant wrote a letter to the editor of that newspaper on the 12th of June, 2002 expressing regret for committing the robberies, apparently providing an apology, but also

making the observation that he had a firearm and no one should be alerted. One does not know really what to make of that letter.

The other unusual circumstance is that late in 2000 when the applicant was resident in Western Australia he apparently became aware of the activities of a man named Kaye who was recruiting people to go on sex tours to Thailand.

The applicant informed the police of what he had ascertained in relation to the activities of the man, Kaye, and that ultimately resulted in Kaye being arrested. A letter was placed before the sentencing Judge from a police officer in Western Australia confirming the important role that the applicant had played in the arrest of Kaye.

However, as I have said, those events occurred in late 2000 early 2001. The reason given by the applicant to police on arrest, and also presented by his counsel to the sentencing Judge, as the reason for committing these offences was that in some way he wanted the commission of these offences to result in his returning to Western Australia so that he could kill Kaye.

There is a lot of illogicality about the story and it is difficult to give it full credence. In my view, some credit must be given to the applicant for the part that he

played in the apprehension of Kaye but that must be balanced against the nature of the offences and also his extensive criminal history.

This Court has seen recent cases in which sentences of 12 years imprisonment have been upheld for the commission of a number of armed robberies. The range can probably be said to be from nine years, the very bottom of the range, to at least 12 years. Of course, any sentence of 10 years or more would carry with it the automatic declaration that the offence was a serious violent one with the consequent impact on the period that the offender would have to serve in actual custody.

Here the experienced learned sentencing Judge recognised that the offences could carry a serious violent offence declaration but because of the personal factors of the applicant to which I have referred, she concluded she should be as lenient as she could by fixing the head sentence at nine years. The learned sentencing judge specifically noted that did not carry an automatic serious violent offence declaration and decided, in the exercise of her discretion, that in the circumstances, that declaration was not warranted.

In my view, when regard is had to the authorities, and in particular the cases to which the learned sentencing Judge was referred of *Matheson* CA 226 of 2000, *McDonald* CA 46 of 2001, *Faulkner* CA 113 of 1997 and *Kapitano* CA 196 of 2002,

the sentence that was imposed was towards the bottom of the range and really reflected all of the factors in the applicant's favour.

Counsel for the applicant in this Court referred to the decision or the sentence imposed on *Onley* CA 72 of 1994, but in my view that case can be distinguished. It was of course before the serious violent offence amendments and also it was complicated because of the other sentences that the offender was serving. The Court had to balance the sentence to be imposed for the eight offences of armed robbery against the earlier sentences that had been imposed on the offender.

In all the circumstances, I am not persuaded that a sentence of nine years imprisonment was outside of the permissible range. In essence the only amelioration asked by counsel for the applicant was that this Court should add a recommendation that the applicant be released after serving three years of that sentence; but in my view, to do so would make the sentence so lenient that it was not appropriate given the overall circumstances in which these eight offences were committed.

In my view, the application for leave to appeal against sentence should be refused.

JERRARD JA: I agree.

PHILIPPIDES J: I agree. The applicant's offending was serious and committed against the background of a substantial criminal history. It is to be acknowledged that there are significant factors of mitigation including the pleas to the ex-officio indictment and the expressed remorse and in particular the applicant's commendable conduct in alerting police to the activities of the paedophile Kaye and assisting in his prosecution. However, I am satisfied that the learned sentencing Judge did give sufficient weight to these matters of mitigation.

WILLIAMS JA: So the order of the Court is that the application is refused.