SUPREME COURT OF QUEENSLAND

CITATION:	*R v Reid* [2004] QCA 9
PARTIES:	**R** v **REID, Peter** (applicant/appellant)
FILE NO/S:	CA No 271 of 2003 SC No 209 of 2001
DIVISION:	Court of Appeal
PROCEEDING:	Sentence Application
ORIGINATING COURT:	Supreme Court at Brisbane
DELIVERED ON:	6 February 2004
DELIVERED AT:	Brisbane
HEARING DATE:	6 February 2004
JUDGES:	McMurdo P, Davies and McPherson JJA Separate reasons for judgment of each member of the Court, each concurring as to the orders made
ORDER:	**1. Application for leave to appeal against sentence granted** **2. Appeal against sentence allowed** **3. Set aside sentence imposed and in lieu impose a sentence of four and a half years imprisonment**
CATCHWORDS:	CRIMINAL LAW - JURISDICTION, PRACTICE AND PROCEDURE - JUDGMENT AND PUNISHMENT - SENTENCE - FACTORS TO BE TAKEN INTO ACCOUNT - CHARACTER OF OFFENCE - DRUG OFFENCES - where accused was convicted of supplying a dangerous drug - where accused was a police officer - where learned trial judge imposed a sentence of six years imprisonment - where applicant seeks leave to appeal against sentence - whether sentence manifestly excessive *R v Fingleton* [2003] QCA 266; CA No 177 of 2003, 26 June 2003, followed
COUNSEL:	P J Callaghan for applicant/appellant M J Copley for respondent
SOLICITORS:	Legal Aid Queensland for applicant/appellant Director of Public Prosecutions (Queensland) for respondent

DAVIES JA: The applicant was convicted after a trial in the Supreme Court on 28 July 2003 for supplying the dangerous drug methylamphetamine. On the same date he was sentenced to six years imprisonment. The maximum penalty for that offence at the time of the commission of the offence was 15 years. The offence occurred on 17 February 2000. He seeks leave to appeal against that sentence on the following substituted grounds:

1. the sentence is manifestly excessive;
2. her Honour, the learned sentencing judge, erred:

    (a) When she imposed sentence on the basis that the applicable range was between four to six years imprisonment;

    (b) By failing sufficiently to distinguish between the sentence to be imposed upon the applicant and the notional head sentence which would have been imposed on C; and

    (c) In the approach which she took to, and the emphasis she placed on the fact that the applicant was a serving police officer at the time of the offence.

Whether the sentence was manifestly excessive depends, it seems to me, on whether the applicant can establish as an error, one or more of the matters referred to in paragraphs 2 (a), (b) or (c) of the grounds of appeal.

It is convenient therefore to deal with those grounds first. Before doing so however, it is necessary to say something of the relevant facts.

Both the applicant and C, who was referred to in ground 2(b) of the notice of appeal, were police officers. C was deceived by an undercover police operative, T, into believing that the latter was himself a major drug dealer. T enlisted C to provide security at a meeting purportedly for the purpose of production of amphetamine and C assisted by counting money supposedly paid as consideration under an arrangement reached for that purpose.

T also paid $6,000 to C for "protection" for a period of some months during which, amongst other things, C agreed to use the police computer to obtain information for T. At T's request C approached the applicant and asked him for methylamphetamine.

The applicant apparently did not wish to supply the drug to T and C therefore told him a lie as to the identity of the person who was requesting the drug. The applicant then provided C with 500 tablets weighing a total of 112 grams. The total weight of methylamphetamine in this was 4.826 grams. For that the applicant received $12,000.

Because her Honour thought that the appropriate sentence in this case was that which would have been imposed on C but for the latter's cooperation with the police, including his giving

evidence in this case against the applicant, it is necessary to say something briefly about C's offences.

C was convicted on his own plea of several offences of supply but the total involved was about the same as that involved in a single supply by the applicant to C. However, C was also convicted of having received $6,000 for protecting an intended offender, T, from detection. I have mentioned the facts relating to this already. C, like the applicant, was motivated by greed but it also appears that he was drug dependent and suffering from post traumatic stress disorder after observing a horrifying death in the course of his police work.

The applicant's conduct therefore seems a little more cold and calculating than that of C. It is also clear that, as the learned sentencing judge concluded, the applicant was a person higher up the chain of supply than C, capable of supplying a large quantity of the drug at short notice. Nevertheless, the fact that C was convicted of another serious offence than that of supply is a relevant factor in comparing their sentences.

It is impossible to divorce the question of whether the applicable range was, as her Honour thought, between four and six years imprisonment from the third question: whether the fact that the applicant was a serving police officer committed to upholding the law entitled the learned sentencing judge to impose a higher sentence than if he were no more than a person involved in the dealing of drugs.

Mr Callaghan, for the applicant, in his submission, has contended, in effect, that the fact that the applicant was a serving police officer should have little effect on the sentence which was imposed on him. On the other hand, Mr Copley, for the respondent, has rightly referred this Court to its own decision in *Fingleton* (2003) QCA 266 in which this Court made the point that the offence in that case was exacerbated by the senior position which the applicant held in the judicial system.

The offence in that case was one of threatening harm to a witness because of his giving evidence in a judicial proceeding. This Court said that that offence was more serious because it was committed by a judicial officer whose duty it was to uphold the law and to protect witnesses against conduct of that kind. The Court said that the public must be entitled to rely on the integrity of its judicial officers.

Very much the same can be said about police officers. It is their duty to uphold the law and the public must be entitled to rely on their integrity. For a police officer sworn to uphold the law to himself engage in such serious criminal conduct as supplying the drug amphetamine makes the conduct more serious than if committed by some person other than one in such a position of public trust.

Turning to the more general question, Mr Callaghan submits that an examination of the cases reveals that the range of

sentence imposed for a single offence of supplying methylamphetamine is nothing like four to six years. It is true that the cases which he has cited - *Kunst*, CA No 120 of 2002; *Martin*, CA No 269 of 2002; and *Lau*, CA No 273 of 2002 - show sentences of three or four years for that and like offences. However, they do not establish a range for this offence. I should add that in these cases, as in this case, the offences were committed before 21 September 2001 when the *Drugs Misuse Regulation* 1987 was amended to make methylamphetamine a schedule 1 drug.

Whilst I am of the opinion that the applicant's position as a police officer justified the imposition of a sentence higher than that imposed in any of those cases I do not think it can justify a sentence as high as six years imprisonment. It remains to consider whether a comparison with C's sentence would justify a sentence of that length. As already mentioned, C was sentenced not only for the offence of supply, which was of about the same magnitude as the applicant's offence, but another offence which involved corruption as a police officer over a period of nearly a year.

Whilst it is true that the fact that the applicant was a person higher up the supply chain who appeared capable of obtaining a large quantity of methylamphetamine in a short time made his conduct of supply somewhat more serious than that of C, I do not think that C's sentence of six years imprisonment to reflect the seriousness of both of his offences justified a sentence of six years imprisonment upon

the applicant. Accordingly, it seems to me, that the sentence which was imposed was manifestly excessive and I would be inclined to substitute a sentence of four and a half years imprisonment. I would accordingly grant the application, allow the appeal, set aside the sentence imposed and, in lieu, sentence the applicant to four and a half years imprisonment.

THE PRESIDENT: I agree.

McPHERSON JA: I also agree.

THE PRESIDENT: The orders are as set out by Justice Davies.