

SUPREME COURT OF QUEENSLAND

CITATION: *R v Williams* [2004] QCA 27

PARTIES: **R**
v
WILLIAMS, Gail Suzanne
(applicant)

FILE NO/S: CA No 2 of 2004
DC No 3204 of 2003
DC No 3294 of 2003

DIVISION: Court of Appeal

PROCEEDING: Sentence Application.

ORIGINATING COURT: District Court at Brisbane

DELIVERED EX TEMPORE ON: 16 February 2004

DELIVERED AT: Brisbane

HEARING DATE: 16 February 2004

JUDGES: McMurdo P, McPherson JA and Mackenzie J
Separate reasons for judgment of each member of the Court, McPherson JA and Mackenzie J agreeing as to the order made, McMurdo P dissenting

ORDER: **Application for leave to appeal against sentence refused**

CATCHWORDS: CRIMINAL LAW – PARTICULAR OFFENCES – PROPERTY OFFENCES – BURGLARY AND LIKE OFFENCES – SENTENCING – where applicant aged 44 pleaded guilty to eight counts including burglary, fraud, stealing, and unlawful use of a motor vehicle – applicant sentenced to 18 months imprisonment to be suspended after four months – whether sentence should have been wholly suspended in light of applicant’s personal circumstances

COUNSEL: A W Moynihan for the applicant
M J Copley for the respondent

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

McPHERSON JA: The applicant pleaded guilty in the District Court at Toowoomba in May last year to an indictment containing eight counts of (1) burglary in Brisbane in April 2002 and stealing a video camera and other items; (2) fraud in

April 2002 which occurred when she pawned the video camera in Toowoomba; (3) unlawful use when she took a car on 29th November 2002 from the place where Mr Bolin had parked it at Bretts Wharf, Hamilton; (4) stealing luggage, sunglasses and other items from the car; (5) on the same day she entered a Mr Wilcock's dwelling and stole money and credit cards; (6) then she saw Ms Butcher leaving her house to go to work at night-time and entered the house and stole money and a bank card. (7) she used the bank card or credit card to withdraw money from an ATM on Ms Butcher's account and so defraud Suncorp Metway of that money; finally (8) also on 29th November 2002 she entered the house of Mr Pollard at Narangba and was inside with another person when she was caught and restrained by him.

The applicant admitted count 8 to the police - she could hardly have done otherwise, saying that she was looking for property to steal to feed her drug habit. She did not at first confess to the other offences when charged and was granted bail on counts 3 to 8 which were the ones against her at the time.

While on bail in December 2002 she entered a house at Bridgeman Downs and took a Toyota Land Cruiser which she used for some 10 days before by chance being seen by the owner and

his son at a petrol station at Caloundra. They set off after her and she ran away but was identified from papers left in the car which came, it seems, from the Director of Prosecutions.

The delay in bringing her case on for sentence seems to have been due to the fact that she and her third husband Thompson are jointly charged on some much more serious charges which on 23rd December had not yet come to trial when she was sentenced for the 10 offences on the two indictments I have mentioned. A total of some \$7,000 worth of property was involved in the 10 offences.

These offences were the first on her record. His Honour sentenced her to imprisonment for 18 months suspended for three years after she had served four months. No complaint is or can be made against the duration of the head sentence of 18 months but it is said that the sentence should have been wholly suspended. Decisions of this Court in *R v. Chua* [2003] QCA 41, and *R v. Franklin* (CA No 313 of 1998, 28 October 1998) , are opposed to that submission.

The fact that the last two offences were committed while the applicant was on bail for six of the other offences is a factor that weighs against her in that respect. So is, to

some extent, the procedure she adopted of using information discovered in the stolen car to identify and then break into the house of the victim of the theft of that car.

It was said that at the time of this offending in November and December 2002 the applicant was in the grip of a drug addiction which caused her to carry out these offences. The learned Judge was somewhat sceptical about this hypothesis, taking the view that a degree of premeditation and planning was apparent in what the applicant had done and that if she had been seriously influenced by drugs she would not have been in a position to drive around as she had. He said that the offences were not committed on the spur of the moment.

I mentioned that these were the first offences on the applicant's criminal record. Her case is certainly an unusual one because she was 41 years old before she committed these crimes and 44 when sentenced. She comes from the Downs region and was educated to Grade 10 before marrying at the age of 18. She and her first husband had two sets of twins whom she brought up pretty well single-handed, at least for some time after the marriage broke down at a time when the children were only a few years old. She supported them by using her skills as a stenographer and later teaching at a business college for young people.

Then she met and married her second husband. Together they had three children and carried on a very successful electronics business. Tragically, however, her 18 month old daughter was drowned in the home swimming pool when someone left the gate unlatched. The marriage was, it seems, under stress when her husband was killed a little later through driving a car off the road into a tree.

She was placed on prescription drugs and thereby acquired an addiction when she was subsequently introduced to amphetamines. This was after she had met her third husband, Thompson, who was a convicted criminal then on parole. At sentencing she was awaiting trial jointly with him on some serious charges that have been mentioned earlier.

To make matters worse, at about this time her 12 or 13 year old daughter of the second marriage was the victim of a serious assault by a youth in an incident that appears to have occurred some one or two years or so ago. Thanks to her devoted efforts her family and her surviving children have shown great loyalty to her and have rallied to her support. They have made or are making a success of their lives, and, so far as they can, of what now remains of hers.

Before she was sentenced she was living with her ageing parents in Pittsworth and working there to sustain herself and to free herself from her addiction as well as the bad company she had been keeping. On any assessment she had until a few years ago a fine record as a mother of her children and upright citizen and it is clear that her children are making efforts to repay some of the care she has given them.

She has certainly been very unfortunate. Even the manner of her being caught with the Land Cruiser is testimony to that fact. It is not, however, the function of the sentencing process to try to iron out the inequalities of life. To attempt to use it for that purpose is bound to be unsuccessful because it is not a system that is directed to that end.

The sentencing Judge took into account her tragic personal life experiences, but he did not consider that they overwhelmed all other considerations that argued for a short period of imprisonment before sentence. Some others might have taken a more merciful approach. To have done so would not have been in law any more right or wrong than the course that was followed here. Having regard to the Court of Appeal decisions referred to, it is, in my opinion not possible to say that the sentencing Judge's discretion in requiring her to serve a short period of imprisonment involved a miscarriage of

his discretion or that the course he adopted was manifestly in error. At the level at which the duration of the custodial period of her sentence was pitched in this case, it does not seem to me that the sentence here was necessarily excessive or that a short term of actual imprisonment was outside the limits of a legitimate exercise of discretion.

In my opinion, regrettable as it is that she should go to gaol, there is nothing in this application that would enable us to intervene to set aside the sentence and impose some other form of punishment.

THE PRESIDENT: The facts of this matter have been set out by Mr Justice McPherson and I will repeat only those necessary to explain my reasons for reaching a different conclusion.

The applicant pleaded guilty by way of ex officio indictment to a number of serious property offences involving slightly less than \$8,000 worth of unrecovered property. She was sentenced to 18 months imprisonment suspended after four months with an operational period of three years. Some of the offences were committed whilst she was on bail.

She was a mature woman aged 43 at the time of the offences and 44 at sentence. Ordinarily a mature person who commits serious property offences, even as here with no previous

convictions, could expect to serve an actual period of imprisonment.

It was not disputed at sentence that this applicant has had more than her fair share of tragedy in her life, culminating in a drug addiction and the commission of these offences. Her first marriage was an abusive one and ended in divorce; she reared her four children, two sets of twins, who are now successful adults. Her happy second marriage produced three children and ended with the untimely death of her husband in a motor vehicle accident. During that marriage she also suffered the very great loss of a toddler to drowning. She then entered into what has proven to be a disastrous third marriage with a much convicted and notorious criminal.

Relatively recently and around about the time of this offending her 12 year old daughter was very seriously assaulted. A 16 year old youth was subsequently dealt with for that offence. The combination of these many great sadnesses led to an addiction to prescribed drugs, which, presumably in combination with her third husband's influence, was the triggering factor in her involvement in all these offences.

Her supportive adult children who are presently caring for her 13 and 11 year old children attended the sentence in Court and will continue to assist their mother on her release into the community. Her counsel at sentence submitted that she was making genuine efforts at rehabilitating herself from her drug problem and that she was physically separated from her third husband who has had his lengthy parole revoked and is presently awaiting trial on break and enter offences. I note that she contended that her present husband was not involved in the commission of these offences. It seems obvious that her successful rehabilitation will turn not only on her efforts to continue to be drug free but also on a continued separation from her third husband.

In all these unusually sad combination of circumstances, which explain why a mature woman without prior convictions came to commit these serious offences via the avenue of an addiction to prescribed drugs, I am satisfied she should have been given the opportunity to continue her efforts at rehabilitation in the community by way of a fully suspended sentence.

In my view his Honour placed insufficient weight on the unique mitigating circumstances here and the sentence was effectively manifestly excessive in requiring that she serve an actual period of imprisonment. That, of course, is not to set out

any sentencing principle, for this case turns purely on its unusual combination of circumstances.

I would have granted the application for leave to appeal and allowed the appeal to the extent of ordering that the sentence be suspended forthwith.

MACKENZIE J: I agree with the reasons given by Justice McPherson but in view of the division of the opinion on the Court I feel that I should make a few observations of my own.

It cannot be denied that the applicant has had to endure more tragedies in her life than average. It is impossible not to be sympathetic with her in that regard. That history may be thought to explain why she has descended to drug addiction and the commission of these kinds of offences after a life characterised to that point by a supportive role with regard to her family who seem to have made good lives for themselves.

However, the learned sentencing Judge observed that the offences displayed some cunning. The offences involving the car which was taken from a car park and from which information was used to locate the owner's residence and steal items and that where she observed a person leaving her residence and

then breaking, in presumably without great risk of being interrupted, are in that category.

The question that has to be answered in terms of principle is whether it was beyond a proper exercise of the sentencing discretion to impose a short term of imprisonment in all of the circumstances of the case. It was conceded that the 18 months head sentence was not manifestly excessive. It is undoubtedly a case where it might be thought that whether to imprison a person in the applicant's position or not was finely balanced. Different sentencing Judges may have approached that task in different ways.

If a fully suspended sentence had been given it would be difficult to regard it as manifestly inadequate. However, it may also be observed that offences of housebreaking are common features in cases involving drug addicted offenders but they are in this case more than petty.

Given those features as balanced against the applicant's very unfortunate background it seems to me that it is impossible to conclude, even making due allowance for all of the things in her favour, that a short term of imprisonment was manifestly excessive and I would therefore refuse the application.

THE PRESIDENT: The order is the application for leave to
appeal against sentence is refused.
