

SUPREME COURT OF QUEENSLAND

CITATION: *R v Murphy* [2004] QCA 56

PARTIES: **R**
v
MURPHY, Megan Jane
(applicant)

FILE NO/S: CA No 11 of 2004
DC No 3248 of 2003

DIVISION: Court of Appeal

PROCEEDING: Sentence Application

ORIGINATING COURT: District Court at Brisbane

DELIVERED EX TEMPORE ON: 8 March 2004

DELIVERED AT: Brisbane

HEARING DATE: 8 March 2004

JUDGES: Davies and Jerrard JJA and McMurdo 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 dismissed**

CATCHWORDS: CRIMINAL LAW - JURISDICTION, PRACTICE AND PROCEDURE - JUDGMENT AND PUNISHMENT - SENTENCE - FACTORS TO BE TAKEN INTO ACCOUNT - CIRCUMSTANCES OF OFFENCE - where applicant pleaded guilty to three counts of dishonesty - where applicant was sentenced to six months imprisonment - where applicant had heroin addiction - whether sentence was manifestly excessive

R v Vinson [2002] QCA 379; CA No 180 of 2002, 27 September 2002, cited
R v Pearse [2003] QCA 167; CA No 41 of 2003, 22 April 2003, cited

COUNSEL: Applicant appeared on her own behalf
D A Holliday for respondent

SOLICITORS: Applicant appeared on her own behalf
Director of Public Prosecutions (Queensland) for respondent

DAVIES JA: On 18 December 2003 the applicant pleaded guilty in the District Court to three counts of dishonesty. The first was that on divers dates between 4 June 2002 and 18 July 2002 she dishonestly obtained sums of money from Medibank Private totalling a little under \$6,000.

The second was that on dates between 31 July 2002 and 2 November 2002, she made a written statement knowing that that statement was false or misleading in a material particular and was capable of being used in connection with the claim for a benefit or payment under the *Health Insurance Act 1973*, and the third was that on various dates between 8 July 2002 and 16 September 2002 she dishonestly obtained sums of money from Medical Benefit Fund of Australia totalling, again, a little under \$7,000.

On each of the first and third of those offences she was sentenced to two years imprisonment suspended after serving six months with an operational period of three years. On the second, which was a Commonwealth offence, she was sentenced to two years imprisonment to be released after serving six months upon giving security by recognizance in the sum of \$1,000 conditional that she be of good behaviour for three years.

The total amount obtained in consequence of this fraudulent conduct was nearly \$18,000. It involved over 250 fraudulent claims for health services that had not been performed.

In various ways the applicant obtained details of persons and forged doctors' receipts for fictitious services to those persons. She then made a claim in each case as an agent for those persons.

The applicant was first interviewed by police in relation to some of these fraudulent claims on 17 August 2002. She then made full admissions to the police in respect of them. However she continued to offend which resulted in her being interviewed by police again on 3 November 2002 when she made further admissions and was charged with those offences.

The applicant is 31 years of age and was 29 or 30 when she committed these offences. She has a criminal history, some of it for soliciting for prostitution but there are a number of offences involving dishonesty including stealing in 1999 and 2002 and forgery and uttering committed after the subject offences were committed, in November 2003. She has not previously been sent to gaol.

The applicant had, and perhaps still has, a heroin addiction. As in so many other cases which we see it was her need for the drug or perhaps methadone which caused her to commit these crimes.

It is said in a written statement on her behalf that the applicant has not taken heroin for over a year and she has confirmed that to us this morning. She has been off her methadone program she says, for about a month. All of this

gives some cause to hope that she may overcome her addiction. However, experience has shown that one cannot be too optimistic about this. It also appears that she has attempted to rehabilitate herself by obtaining employment and she has produced a number of favourable references.

She has had a most unfortunate family upbringing. As the learned sentencing judge noted she has never known her natural father. She was brought up by a violent stepfather and she was abandoned by her family when she was 14. Nevertheless she obtained Austudy and put herself through school until senior standard.

This and her so far successful attempt to overcome her heroin addiction, gives some hope for her rehabilitation and her return to society as a useful member.

There can be no doubt in my opinion about the correctness of the learned sentencing judge's sentence of two years imprisonment. The crimes were serious, they were committed over a five month period and they involved over 250 separate transactions. Moreover her offending conduct continued after she had first been apprehended.

It is unnecessary to set out at length relevant comparable sentences, however, two relatively recent decisions of this Court, *R v Vinson*, CA No 180 of 2002 and *R v Pearse*, CA No 41 of 2003 show that that sentence was well within the appropriate range.

It is also plain it seems to me that the appellant's conduct in the light of her previous criminal history required that she serve a period of actual imprisonment. This Court has previously emphasised the importance of deterrence in cases of this kind, partly because of the difficulty in their detection.

Having reached that conclusion I find it impossible to conclude that the requirement that the period of actual custody should be six months was manifestly excessive.

However much we may sympathise with the applicant's personal condition and wish to support her efforts at overcoming her drug addiction and returning to society as a useful member, it cannot be accepted in my view that the requirement that she serve six months before being released was manifestly excessive.

I would therefore dismiss the application.

JERRARD JA: I agree.

McMURDO J: I agree.

DAVIES JA: The application is dismissed.