SUPREME COURT OF QUEENSLAND

CITATION:	*R v Grant-Watson* [2004] QCA 77
PARTIES:	**R** **v** **GRANT-WATSON, Sharlene Vida** (applicant)
FILE NO/S:	CA No 360 of 2003 DC No 1984 of 2003
DIVISION:	Court of Appeal
PROCEEDING:	Sentence Application
ORIGINATING COURT:	District Court at Brisbane
DELIVERED EX TEMPORE ON:	16 March 2004
DELIVERED AT:	Brisbane
HEARING DATE:	16 March 2004
JUDGES:	Davies JA, McPherson JA and Williams JA Separate reasons for judgment of each member of the Court, each concurring as to the order made.
ORDER:	**Application for leave to appeal dismissed**
CATCHWORDS:	CRIMINAL LAW – PROPERTY OFFENCES – FRAUD – where applicant aged 37 pleaded guilty to two counts of fraud on employer and school committee with a total value of $27,995.59 – whether sentence manifestly excessive in light of personal circumstances of applicant and her offer to repay
COUNSEL:	P E Nolan for the applicant M J Copley for the respondent
SOLICITORS:	MacGillivrays for the applicant Director of Public Prosecutions (Queensland) for the respondent

McPHERSON JA: The applicant was sentenced on pleas of guilty in the District Court on two indictments, each charging a count of fraud under s 408C of the Code with circumstances of aggravation. The first charge was that during the year

2000/2001 she had dishonestly applied to her own use more than $5,000 held on account of her employer, Intergroup Shipping. The second was that between December 1999 and July 2001 she had applied to her own use cheques to the value of more than $5,000 belonging to a Parents and Friends school committee of which she was treasurer. She was sentenced on each charge to imprisonment for four years to be served concurrently and suspended after 18 months for a period of four and a half years. She now applies for leave to appeal against this sentence.

The applicant seems to have begun by writing in her favour cheques drawn on a Parents and Friends account on which she was one of two authorised signatories. She wrote 35 cheques in this way and forged the other signature required. According to the figures given to the sentencing Judge, from the total of these cheques she misappropriated an amount of $27,995.59. Of this a total of $19,698.49 was paid to her employer, Intergroup Shipping, from which she took cheques totalling $37,391.20, of which $7,605.56 was paid to the P and F committee.

After being confronted with these defalcations, she repaid $23,500 to the committee and $11,800 to the employer. This was said at sentencing to have left a balance outstanding of some $19,000. It may be that these amounts are understated because, on another view of the matter which has been debated before us, it would appear that she had misappropriated a total of $51,781. However, the Judge sentenced her on the

basis I have indicated and any increase in the amount can only militate against her application.

At sentencing she offered to repay the sum of $19,000 and to do so within 18 months. But, while accepting the bona fides of her offer to that effect, the learned sentencing Judge considered it beyond her capacity to fulfil such a promise and he rejected it. He was clearly justified in taking that view of the matter.

The applicant was 37 years old when sentenced and 36 to 37 at the time of offending. She is married with two school-going children and her husband is employed in an apparently responsible position with a Federal Government department, in which one would expect that he was not poorly paid. She was married once before but her husband died. She herself is described as being of high average intelligence.

Unfortunately she has a not inconsiderable criminal record of offences of dishonesty. In 1985 she was convicted in the District Court of seventeen charges of stealing as a servant, nine of stealing and seven or eight each of forgery and uttering. She was sentenced on that occasion to imprisonment for six months and admitted to parole for three years. In 1993 she was convicted in the Ipswich District Court of misappropriation with a circumstance of aggravation, and sentenced on that occasion to three years imprisonment suspended after six months for a period of four years. Then

in 1999 she was convicted of unauthorised dealing with shop goods and fined $200 in the Magistrates Court at Brisbane.

By ordinary standards there is clearly something very wrong, and over the years she has received psychiatric treatment from various specialists. Her current psychiatrist considers her to be suffering from an affective or depressive disorder approaching the level of mental illness. She has been taking prescribed antidepressants which have not effected a marked improvement in her condition, which has naturally been exacerbated by the pendency of these criminal proceedings.

She has some matters of complaint about her treatment as a child, and after she had undergone the process of giving birth to a child or children herself, she suffered from an over active thyroid gland (Graves Disease) which has since been stabilised. The cause of this latest series of offences which she has committed is said to have been family stresses associated with the feeling that she was not providing her teenage daughter with enough of the material benefits of life, and so, she thought, would be the target of criticism by others inside or outside the family circle.

In view of her criminal record and the considerable amounts of money which she has misappropriated on this and other occasions, there is no prospect of her escaping a prison term, and that is not contended for. No complaint is directed to the head sentence of four years that was imposed by the learned Judge. It is said, however, that the period of 18

months which she will serve before suspension of the sentence takes effect is excessive and that it should be reduced to six months. That would, to my mind, simply in effect duplicate the sentence imposed in 1985, and again in 1993, and altogether ignore the fact that on those two occasions the sentences were suspended.

At sentencing the Judge was pressed by the Crown to impose a head sentence of up to seven years; but his Honour considered that would be too severe and instead fixed it at four years suspended after eighteen months, having taken into account, as he clearly did, her pleas of guilty, her offer of compensation and her unhappy mental condition.

There is no doubt that a mental state like hers is something that justifies a reduction in the sentence, even if it falls short of excusing criminal responsibility altogether. No one doubts this; but it does not follow that, because of it, the accused is entitled to be treated leniently on every occasion on which she comes before the Court, having served a sentence which was designed to encourage her to mend her ways.

She is now not entitled to be returned to the position she occupied before the last series of offences was committed. Society may not be able to do very much for her, but it cannot tolerate her continuing commission of criminal offences like these. The sentence here was, in my view, if anything lenient compared with others in similar circumstances, and I do not

think that the sentence of the Judge can be criticised in that respect or at all.

If extensive medical treatment has failed, as it seems to have, to bring the applicant's offending tendencies under control, the Courts really have no alternative but to sentence her now to a somewhat longer period in custody than she has had on the last two occasions, and to hope that she may receive further treatment for her problem in an atmosphere removed from the family stresses which she claims she has been experiencing at home.

I do not consider that in sentencing the applicant the learned Judge failed to take account of any of these relevant factors, or to give them too little or, for that matter, too much weight. The application for leave to appeal should in my opinion be dismissed.

DAVIES JA: I agree.

WILLIAMS JA: I agree.