SUPREME COURT OF QUEENSLAND

CITATION:	*R v Hall* [2004] QCA 112
PARTIES:	**R** **v** **HALL, Tracey** (applicant)
FILE NO/S:	CA No 381 of 2003 DC No 500 of 2003
DIVISION:	Court of Appeal
PROCEEDING:	Sentence Application
ORIGINATING COURT:	District Court at Southport
DELIVERED EX TEMPORE ON:	14 April 2004
DELIVERED AT:	Brisbane
HEARING DATE:	14 April 2004
JUDGES:	McPherson JA, Williams JA, and Holmes 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 – FRAUD – SENTENCING
COUNSEL:	The applicant appeared on her own behalf M J Copley for the respondent
SOLICITORS:	The applicant appeared on her own behalf Director of Public Prosecutions (Qld) for the respondent

McPHERSON JA: On 6 November 2003, the applicant was sentenced in the District Court at Southport, to a term of three years imprisonment with a recommendation for parole after 12 months. The applicant now applies for leave to appeal against that sentence.

There were three indictments before the sentencing Judge which contained 21 counts and involved a total of some $19,000 worth of property. The applicant pleaded guilty to all of the offences. On indictment 693 of 1999, she was sentenced for one count of unlawful use of a motor vehicle (12 months), and one count of stealing (three months).

On indictment 185 of 2003, the applicant was sentenced for five counts of unlawful use of a motor vehicle (12 months each), four counts of entering premises and stealing (six months each), one count of fraud (12 months), four counts of stealing (three months each), and one count of receiving (six months).

In addition, the applicant was sentenced on an ex officio indictment number 500 of 2003, for two counts of stealing (18 months and three months), one count of fraud with a circumstance of aggravation (three years), and one count of unlawful use of a motor vehicle (12 months). The applicant was further sentenced for two summary offences, namely, being in possession of tainted property (three months) and possession of cannabis (one month).

The sentencing judge ordered that all of these sentences be served concurrently and made a recommendation for parole after 12 months. He did not make a declaration in respect of 96 days of pre-sentence custody because that period in custody related to other matters as well as those before the court.

His Honour did, however, state that he took the pre-sentence custody into account in arriving at the sentence.

The head sentence of three years was imposed for the count of fraud with the circumstance of aggravation that over $5,000 worth of property was involved. In order to commit the offence, the applicant had befriended the complainant, one Clive Antony Blenkins, a 72 year old retiree. At some time between 1st August 2002 and 20th February 2003, the applicant stole seven cheques from him and deposited them in her bank account. The total value of the cheques was $17,800.

When the police questioned her about the cheques, she declined to be interviewed. Arising out of those facts, the applicant was later charged with counts 1 and 2 on the ex officio indictment. The applicant had committed fraud in similar circumstances which is the subject of count 2 of the indictment number 185 of 2003. She befriended the complainant Ethel Vera Mole at the Southport Workers Club. The applicant then asked her for money to pay for her to fly down to Sydney to see her dying father and to pay for funeral and other related expenses. The complainant gave her $850.

The complainant later discovered that the applicant's father was still alive. In an interview while in police custody on 19th March 2001, the applicant admitted that she had lied in order to obtain the money from Mrs Mole. Most of the other offences involved the applicant in unlawfully using a motor vehicle. Her modus operandi was to watch a car owner hide his

or her keys when going for a swim at the beach and then go and take the keys and use them to get into the car and drive off in it, taking property that she found in the car.

For example, on 30th June 2003, Rachel Leigh Kendrick and Car LeGros, who are the complainants in counts 3 and 4 of the ex officio indictment, left their car, a red Ford laser sedan, in Currumbin Valley car park, locked it and later returned to find it stolen. At 8.00 a.m. the following day, the police saw the applicant in the passenger seat of the car with her co-accused, driving along in it. The police attempted to intercept it but it sped away. The applicant and the co-accused abandoned the vehicle and were apprehended a short distance off.

At the police station, the complainants asked about two pairs of missing glasses and sunglasses. The accused indicated that the missing pairs of glasses were in her handbag and they were recovered.

Personal details of the applicant are that she was born in Britain on 13th June 1964 and she was therefore some 39 years old when sentenced in November 2003. As a very young child, she emigrated to New Zealand with her parents; but it seems that at the age of about four she was adopted out to another family. Her life there was not a happy one; there was violence and she is said to have been raped at the age of 13, giving birth to a daughter who is, I understand, now grown up and living in Western Australia.

Considerably later, she married. It was a turbulent relationship and, again, there were episodes of violence but she claims to have felt a real affection for her husband as one of the few people who ever really loved her. Unfortunately, he died suddenly in 1996, which set her off on a career of taking drugs. In the end, the only child of that marriage was removed from her care as she was unable to look after her properly herself.

The applicant has worked in various jobs. Some have been managerial or responsible positions; but she has taken to a life of crime, mainly of a relatively minor but repeated kind. She has a record of convictions starting in New Zealand in about 1982 and continued in New South Wales in 1994 and thereafter in Queensland. It covers several pages even allowing for the fact that the format of the criminal records used in New South Wales is rather different from our own. Most of the many recorded convictions - against almost all of which she has appealed without success - are for fraud or their local equivalent, receiving stolen property, stealing, unlawful use of motor vehicles (which seems to be one of the applicant's specialties), driving dangerously or while disqualified, together with occasional break and enter offences, and, I think, also at least one assault.

She has been given the benefit of various rehabilitative measures of different kinds, such as community service, periods of probation and the like, most or all of which she

has failed to perform satisfactorily. As well, she has been sentenced at times to prison terms of varying duration. She has submitted to treatment at a rehabilitation centre for her drug addiction but with not a great deal of lasting success.

Speaking generally, it is right to say that she has consistently failed to perform conditions on which she has been released. She has commonly failed to honour the conditions of her bail or to report or to appear in Court when required and so on. She says now she wishes to return to Odyssey House for further treatment for her addiction and is determined to start life afresh. I found her a person who is articulate and speaks with some persuasion about her plans for the future.

Unfortunately, she has, by her past conduct, shown herself a threat to society by her persistent depredations on ordinary law-abiding members of the community for whose rights she has shown no concern in the past. It is evident from the offences against Mr Blenkins and Mrs Moule that she has recently graduated to more serious forms of offence or of the forms of offence that she has been hitherto committing. She has, in those two incidents, taken advantage of the generosity and good nature of two people who, one surmises, can ill afford to lose money in the amounts that those two victims have suffered.

It is tragic that the applicant should have squandered her abilities and her own happiness in taking to this life of

crime; but I am afraid a stage has now been reached at which her prospects of more caring forms of treatment have to be postponed until she has served an appropriate term of imprisonment for her repeated offences, some of which were dealt with on this occasion.

The two frauds to which I have referred would, by themselves, probably have justified the penalty imposed in this case. Taken with the applicant's extensive record of offending, the term of imprisonment ordered here cannot be regarded as excessive, coupled as it is with the recommendations for parole after 12 months. It cannot, in my opinion, be said that the overall sentence for this considerable series of offences involved any miscarriage of the sentencing discretion in her case.

What the applicant specifically asked for was a suspension of the sentence and a chance instead to go to rehabilitation early. I am afraid it is not within the power of the Court properly to grant such an application. Our powers are limited to reviewing the sentence that has been imposed below and, examining it for error. I find no such error and I do not think that, even if we were sentencing again, I would be inclined to say that the applicant can escape a sentence of the dimensions imposed here.

I would only add that I wish her well with her studies and the efforts that she is now making to find or move her life in a different direction. With all that, I have to say that the

application for leave to appeal against sentence should, in my opinion, be dismissed.

WILLIAMS JA: I agree that the application for leave to appeal against sentence should be dismissed.

HOLMES J: I agree also.

McPHERSON JA: That is the order of the Court.