SUPREME COURT OF QUEENSLAND

CITATION:	*R v Lim* [2004] QCA 172
PARTIES:	**R** **v** **LIM, Reinhardt Winata** (applicant)
FILE NO/S:	CA No 16 of 2004 DC No 2727 of 2003
DIVISION:	Court of Appeal
PROCEEDING:	Sentence Application
ORIGINATING COURT:	District Court at Brisbane
DELIVERED EX TEMPORE ON:	21 May 2004
DELIVERED AT:	Brisbane
HEARING DATE:	21 May 2004
JUDGES:	Williams and Jerrard JJA and Chesterman 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 – APPEAL AND NEW TRIAL AND INQUIRY AFTER CONVICTION – APPEAL AGAINST SENTENCE – APPEAL BY CONVICTED PERSONS – APPLICATIONS TO REDUCE SENTENCE – where the applicant was convicted of twenty-two counts of fraud and dishonesty – whether the term of imprisonment imposed by the learned trial judge was manifestly excessive *R v Wheeler & Sorrensen* [2002] QCA 223; CA Nos 56 and 57 of 2002, 25 June 2002
COUNSEL:	A J Rafter QC for the applicant M J Copley for the respondent
SOLICITORS:	Legal Aid Queensland for the applicant Director of Public Prosecutions (Queensland) for the respondent

CHESTERMAN J: After a trial lasting five weeks, the applicant was, on 18 December 2003, convicted of 22 counts of fraud and dishonesty: there were two of false pretences, two of making a false statement as a director of a company, two of making fraudulent false accounts and 16 counts of fraud, with a circumstance of aggravation, that being in each case the value of the property obtained by fraud, was worth more than $5,000.

The applicant was sentenced to six years' imprisonment on each of the four counts of fraud and two years' imprisonment on a fifth count of fraud. On all other counts, he was sentenced to five years' imprisonment, the terms to be served concurrently. A declaration was made that 618 days spent in custody prior to sentence, was time already served under the sentences.

The dishonest conduct occurred over a period of almost two years, from April 1997 to February 1999. There was a similarity in the pattern of offending. The applicant pretended to be a successful and affluent developer, who induced a number of people to give him money to invest in the projects, or to provide services for them.

The applicant pretended that he had financial backing, to buy and refurbish a building at 320 Adelaide Street in Brisbane and to undertake an industrial subdivision at Morayfield, north of Brisbane.

He induced the victims of his fraud to advance him money on the basis that they would be investors in these projects. On some occasions, he induced professional firms to provide architectural and other services, to advance the projects in some way.

The Court has been given no details of the third project, but it seemed to involve the same course of deception. Assurances were given that the projects were financed and viable and money was obtained on that basis.

On occasions false accounts were created to corroborate the assertions that the applicant had access to funding, which would ensure the success of the projects. Those defrauded included the vendor of the land at Morayfield.

The material in the appeal record does not show what, if any, basis the applicant had for believing that the development projects might succeed.

It is clear from the verdict that the statements made to obtain money and services were deliberately false. The money obtained was dissipated by the applicant for his own purposes.

The total amount dishonestly obtained by the applicant was $353,000. In addition, services to a value of $168,686 were performed. The total value involved was therefore $521,686. $20,000 was recovered, meaning that the net loss was $500,000.

It should also be noted, that the applicant obtained a bank guarantee in the sum of $100,000 by false pretences, but the guarantee was not in fact called on and its provider suffered no loss.

The applicant is 55 years of age. He has no previous convictions, but was of mature years when he offended. The amounts involved are very substantial and the offending was persistent.

Over a period of almost two years, the applicant continued to make false assertions about his developments, lying to obtain money, which he dissipated. He has shown no remorse.

It was submitted by the Prosecutor, before the sentencing Judge, that the applicant's dishonesty had continued throughout the trial. I take that to be a reference to the applicant's own testimony, which must have been rejected by the jury.

It is apparent from a document prepared by the applicant himself, and supplied to the Court dated January this year, that he remains unrepentant and refuses to accept that he has done any wrong.

He claims that the projects involved "a commercial risk to all parties involved in the business". As I have said, it is impossible to know if the applicant had any basis for thinking

he could develop any of the projects, but it is clear that he lied about them to obtain money and services.

In passing sentence, the learned Judge noted that crimes of dishonesty are difficult to detect and involve long and expensive investigation. His Honour rightly pointed out the need for any sentence imposed on such offenders to deter others who might be tempted to cheat. The Judge noted also the applicant's lack of remorse and persistent dishonesty, which yielded him a substantial amount of money. His Honour also took into account the fact that the applicant's family had returned to Indonesia, so he would be deprived of their support during his imprisonment. He also accepted that prison would be more onerous for the applicant than for a prisoner who was fluent in English.

The applicant's counsel submits that the sentences imposed are manifestly excessive. Issue was taken principally with the term of six years. It is said that the appropriate term was five years, suspended after two, or that a recommendation for post prison community based release after two years should have been made.

This Court, in *R v Wheeler and Sorrensen* [2002] QCA 223, had occasion to review penalties for similar offences. In that case, the applicants had dishonestly misappropriated money that should have been paid to the vendors of motor vehicles, placed with them on consignment for sale. The money was taken to provide working capital for the applicant's business which

was failing, and in the vain hope, that it could be made to trade profitably. The money was not spent to provide an improved lifestyle, but to pay business debts and wages, though the applicants did benefit personally to some extent. The amount involved was about $600,000. The applicants were sentenced to six years' imprisonment, with a recommendation for parole after two years. Those sentences were upheld on appeal.

There was less criminality involved in that case than in this. There was not the persistence or the brazenness which the applicant demonstrated.

Wheeler and Sorrensen cooperated fully with the investigation and pleaded guilty to an *ex officio* indictment. They had in fact revealed their own misconduct, by calling in an administrator to their business.

The judgment in that case analysed a number of similar cases, which is not necessary to mention in more detail. They were summarised as showing that general deterrence is important in these kinds of cases and that sentences of six or seven years' imprisonment are common when large sums of money are involved. That case, and its analysis of the others, shows that the sentences imposed here, were appropriate. They certainly were not excessive. I would refuse the application.

WILLIAMS JA: I agree.

JERRARD JA: I agree.

WILLIAMS JA: The order of the Court is the application is refused.
