SUPREME COURT OF QUEENSLAND

CITATION:	*R v Brown* [2004] QCA 229
PARTIES:	**R** **v** **BROWN, Sonja** (applicant)
FILE NO/S:	CA No 72 of 2004 SC No 51 of 2003
DIVISION:	Court of Appeal
PROCEEDING:	Sentence Application
ORIGINATING COURT:	Supreme Court at Brisbane
DELIVERED ON:	9 July 2004
DELIVERED AT:	Brisbane
HEARING DATE:	1 July 2004
JUDGES:	Davies, Williams and Jerrard JJA 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 - JUDGMENT AND PUNISHMENT - SENTENCE - FACTORS TO BE TAKEN INTO ACCOUNT - CIRCUMSTANCES OF OFFENDER - where applicant convicted on own plea of guilty to trafficking in cannabis sativa - where sentenced to seven years imprisonment with a recommendation for post prison community based release after serving three years - where trafficking at substantial level - whether sentence manifestly excessive - whether sufficient account taken of applicant's guilty plea and personal circumstances *R* v *D'Ortona* [1997] QCA 088; CA No 1 of 1997, 2 April 1997, considered *R v Parsons and Sanders* [1999] QCA 402; CA No 110 of 1999, CA No 129 of 1999, 24 September 1999, considered
COUNSEL:	S P Cousins for the applicant S G Bain for the respondent
SOLICITORS:	Jason Buckland for the applicant Director of Public Prosecutions (Queensland) for the respondent

[1] **DAVIES JA:** I agree with the reasons for judgment of Jerrard JA and with the order he proposes.

[2] **WILLIAMS JA:** I have had the advantage of reading the reasons for judgment of Jerrard JA and there is nothing I wish to add thereto. The application should be dismissed.

[3] **JERRARD JA:** On 1 March 2003 Mrs Sonja Brown pleaded guilty to one count of carrying on the business of unlawfully trafficking in the dangerous drug cannabis sativa, one count of unlawful possession of that drug, and one count of having in her possession a variety of nominated items used, or for use, in connection with the commission of the crime of trafficking. She was sentenced to seven years imprisonment and the learned sentencing judge recommended that she be eligible for consideration for release on parole after she had served three years of that sentence. She has applied for leave to appeal against the severity of those orders.

[4] The period of trafficking admitted by her plea was from 22 November 2000 to 24 January 2002. The information put before the court by the prosecution was that she and her husband had carried on that business together and were "equals in the sense that they are a married couple, equally willing participants in this venture and that there was no suggestion of duress or intimidation or overbearing or importuning of her to get involved in this enterprise and that is apparent by the fact she continues it for three months after he's in gaol."[1] The reference to that three months continuation is explained by the fact that Mr Brown was arrested and placed in custody in New South Wales on 11 August 2001. The sentencing judge was told that happened on 8 November 2001, but documents put before this court by the applicant on the hearing make clear he was refused bail on 11 August 2001, not 8 November. Mrs Brown continued trafficking until a police raid on their home on 23 January 2002, when a small amount of cannabis was found in her possession and a larger quantity of items used in connection with the trafficking.

[5] The learned judge was informed that Mr Brown had not yet been dealt with in Queensland for that trafficking, and that it appeared he would be spending some significant period of time in prison in New South Wales before being returned to Queensland and indicted for these offences. The sentencing judge was told that there were confiscation proceedings on foot against both the Browns in Queensland.

[6] The Crown explained to the learned judge that the matter of their trafficking came to the attention of authorities because Australia Post had noticed a large number of electronic money orders being sent from Post Offices on the Gold Coast by Mrs Brown to a variety of Post Offices around Adelaide. These were for amounts that were rarely less than $9,000.00 but never more than $10,000.00, thus avoiding the mandatory financial transactions reporting requirements. Exhibit 2 listed the 53 Australia Post express money orders sent by Mrs Brown to a Charles McGilveray in Adelaide, and for the period 26 May 2001 to 20 December 2001 these totalled $462,400.00. The last 11 were all sent after Mr Brown was remanded in custody in New South Wales, of which the final three were for smaller amounts. Two were for $1,000.00 each and one for $3,800.00.

[7] The Crown also provided the learned sentencing judge with a schedule listing money orders received by Mr and Mrs Brown through the Australia Post express.

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These were received from Goulburn North and Goulburn in New South Wales; Campsie in Sydney; Queanbeyan and Fyshwick in the ACT; and Illawarra and Bowral in New South Wales. The total amount received in the period 27 February 2001 through to 13 December 2001 was $212,940.00. The last 11 of those deposits were received after Mr Brown was placed in custody.

[8] In the period in which Mrs Brown admitted trafficking she made deposits of money to bank accounts conducted by Mr McGilveray in South Australia with the ANZ and NAB. Those deposits totalled $247,200.00. When those sums are added to the amount sent to Mr McGilveray through the Australia Post it appears that in the period of trafficking at least $700,000.00 was expended by Mr and Mrs Brown in procuring cannabis from South Australia for re-sale and distribution in Queensland and New South Wales.

[9] The information placed before the learned judge also included a record of the travel expenditure of Mr and Mrs Brown for the period 22 November 2000 to 24 January 2002. A total of $20,873.05 was spent by them on bus and air fares, undertaken by each of them. Mr Brown frequently used other names when travelling. There were many journeys after 11 August 2001, some apparently by a male accomplice and some by Mrs Brown.

[10] On 2 December 2000 South Australian Police found a bag at a bus depot in South Australia addressed to Mrs Brown containing 3.2kg of cannabis. A year later, 2 December 2001, cannabis was again found on a bus leaving Adelaide in which their accomplice Mr Hawkes was travelling, and the bag found by the sniffer dogs on that bus contained cannabis weighing 4.041kg. That bag was located when Mr Brown was in jail and during the period when Mrs Brown was trafficking by herself. The travel schedule presented by the Crown, referred to earlier, shows six trips undertaken by her after Mr Brown had been imprisoned.

[11] A feature of the trafficking was that it apparently involved sending the cannabis in motor vehicles transported by road carriers from South Australia to Queensland. Those motor vehicles would then be returned to South Australia. The Crown, by way of example, described a particular motor vehicle having been sent from South Australia on 9 November 2001 to Queensland, collected there at Darra on 13 November 2001, and that motor vehicle was returned to South Australia on 19 November 2001. Mrs Brown's counsel did not challenge in his submissions on sentence the contention by the Crown Prosecutor that what was occurring at that time (and when Mr Brown was already in custody) was the delivery of cannabis to Queensland in that car.

[12] Finally, regarding the size and nature of the business of trafficking being carried on, the learned judge was informed that officers from the National Crime Authority analysed all of the known sources of income of Mr and Mrs Brown, comparing those to their known expenditure, and concluded that in the period under analysis (that of the trafficking) Mr and Mrs Brown had expended an amount of $1.34 million from unexplained sources. That of course was, as the Crown correctly conceded, not a profit figure but rather an indication of a turnover or operating amount. It was common ground before the sentencing judge that there may have been some "doubling up" in the calculations resulting in that figure, but that this fact was unimportant in assessing the size of the trafficking venture. The Crown described the Browns' business of trafficking as a cross-border operation through

three States, with very significant sums of money coming in and out. The information placed before the sentencing court and not challenged in this one fully justifies the description by the learned judge that this was an extensive, sophisticated and lucrative operation which extended over a period of years.

[13] Mrs Brown had some prior criminal convictions. She was sentenced in the Waverley Local Court in October 1988 for two offences of stealing and one for obtaining a financial advantage by deception, and fines were imposed. On 2 February 1993 she was sentenced to an effective term of one month imprisonment in the Southport District Court for one offence of defrauding the Commonwealth, one of imposition, one of being knowingly concerned in the commission of an offence against the Commonwealth, and four offences of opening an account in a false name. On 14 May 1993 she was sentenced in the Kogarah Local Court for an offence of obtaining a financial advantage by a misleading statement and fined; and she was sentenced on 6 March 1996 at the Lyon Local Court for an offence of obtaining a benefit (presumably falsely). She was ordered to perform 160 hours of community service.

[14] At the time of her sentence she had been the sole carer for two children, since Mr Brown had been in custody in New South Wales by then for nearly two and a half years. At the date of sentence those children were aged nine and 14 years, with the eldest child experiencing learning difficulties. He had not coped at all well when advised that his mother would not be with him for some period of time. Other matters personal to her and relevant to mitigation of the penalty she could expect, described by her counsel, included that she had become involved in that trafficking as a result of her husband's activities and would not otherwise have embarked upon it. It was conceded that as time had passed her involvement had become greater and akin to his. Her counsel also submitted that her prior offending behaviour had occurred in part because of her husband's influencing her to commit those offences for money. She had been in a relationship with him since she was 18 years old. The learned judge was informed by her counsel that her husband came from a background of abuse and neglect, which had manifested itself in him in many and varied ways, and which had made her relationship with him more difficult.

[15] The applicant exhibited at the hearing, without objection, a transcript of three telephone conversations between Mr Brown, in custody in New South Wales, and Mrs Brown. Two were on 2 November 2001 and one on 7 November 2001. Those do reveal, as her counsel argued, that Mr Brown continued while incarcerated to give directions on the mechanics of the trafficking (routes to be taken by vehicles, stopping places and the like). They also reveal that she was wary of speaking on the telephone, but seemed quite relaxed about continuing to participate in trafficking. She also seemed to deal with him generally as an equal.

[16] The fact that their marriage relationship was difficult, and the other matters raised by her counsel, were relevant to penalty but were specifically taken into account by the learned judge, who also took into account that the applicant had pleaded guilty, but only after a full committal hearing taking up some four days. The judge also had reference to other sentences imposed, in what are conceded to have been comparable cases. One was a matter of *R v Abboud and Belbe* SC No 436 of 2002, a sentence imposed on 17 February 2003, in which the offender Belbe was sentenced to eight years imprisonment for trafficking in cannabis, with parole recommended after three years. Mr Belbe had no criminal convictions and there

had been a "full" hand up committal. His trafficking activities had also come to light when he was noticed to be sending large amounts of money from the Gold Coast to South Australia by express money order. Some $486,000.00 had been sent through that method. The money orders were collected in Adelaide and the drugs were being sent to Queensland. He was found with growing plants when the police raided his home on the Gold Coast, and he had also acquired an old nursery at Mudgeeraba and started growing plants there as well. When his motor vehicle was intercepted at Goondiwindi some 3.7kg of cannabis were found hidden in its doors, and at the Mudgeeraba nursery 28.3kg of the growing plant were found.

[17] That sentence was imposed in the Trial Division of this court but was accepted by the sentencing judge, and is accepted by this court, as an appropriate sentencing guide. An analysis of that offender's assets had indicated unexplained sources of funds for expenditure of about half a million dollars; so while that offender was producing cannabis in Queensland as well as importing it, his apparent financial benefit was less than this applicant's.

[18] The learned judge in this matter was also referred to the decision of this court in the matter of *R v Parsons and Sanders* [1999] QCA 402. The relevant sentence was that imposed on Mr Parsons. He was sentenced after a plea of guilty to eight years imprisonment for trafficking in cannabis, with parole recommended after three and a half years; his application for leave to appeal that sentence was unsuccessful. He was described as the head of a chain of distribution of cannabis, with substantial quantities of that drug being brought from people who were importing it from Papua New Guinea, and Mr Parsons was selling it in Queensland. He had a number of prior convictions for offences relating to property, but had not been sent to jail since 1973. He had agreed to sell $100,000.00 worth of cannabis to an under-cover agent in a car park and had undertaken to be able to produce that much for sale on a monthly basis to that agent. Telephone conversations were recorded in which he had said he could obtain 10kg of cannabis for $40,000.00. That offender's prior history was worse than Mrs Brown's. It would be speculation whether he was trafficking on a larger scale.

[19] The learned judge was also referred to the matter of *R v D'Ortona* [1997] QCA 088. Mr D'Ortona had been sentenced to eight years imprisonment for trafficking in cannabis, he having pleaded guilty, and he was unsuccessful in his application to set that sentence aside. His co-offenders had acquired a property in rural Queensland and grown cannabis, with over 6,000 plants being produced. The gross return to the undertaking was $1.2 million. Mr D'Ortona was 64, with a substantial criminal history extending over 30 years for offences of dishonesty. He was to receive $200,000.00 from the proceeds of the sale.

[20] It is conceded on this application that each of those other sentences is relevant and the learned sentencing judge took particular notice of the two decisions of this court, remarking that had it not been for the criminal history of the defendants in those two cases the learned judge would have considered imposing a higher sentence than the seven years ordered. Counsel for the applicant had informed the learned judge that the applicant Parsons had been sent to prison on nine separate occasions between 1967 and 1973, with the longest term being three years imposed in 1972. Mrs Brown's counsel had conceded that the sentence in *Belbe* was probably the most appropriate sentence for comparative purposes.

[21] The essential submission made in this court is that the learned judge ought to have made a recommendation for post prison community based release at an earlier stage, perhaps after 18 months and if not most certainly after two years and four months. That period was selected because it is one third of a seven year sentence. The applicant relies on the plea of guilty, Mrs Brown's limited criminal history, the fact that she had been the sole parent of two children who will now be cared for by their grandparents in New South Wales and unlikely to be able to visit their mother in custody in Queensland, the fact that she became involved in trafficking by reason of her husband's conduct, and because she has some health problems. These include a 30% reduction of hearing in one ear.

[22] The learned judge was referred to all of those matters before imposing sentence, and while a recommendation for an earlier parole consideration would not have been unduly lenient, Mrs Brown was being sentenced for trafficking in cannabis at the very substantial level described. As Ms Bain submitted for the respondent, the comparative sentences to which the learned judge and this court were referred were all ones in which pleas of guilty had been entered and in which the sentences imposed reflected those pleas. The applicant has not demonstrated that her sentence was manifestly excessive, and I would dismiss the application.