SUPREME COURT OF QUEENSLAND

CITATION:	*R v Jayasuria* [2004] QCA 238
PARTIES:	**R** **v** **JAYASURIA, Steven** (applicant)
FILE NO/S:	CA No 111 of 2004 DC No 154 of 2004 DC No 1035 of 2001
DIVISION:	Court of Appeal
PROCEEDING:	Sentence Application
ORIGINATING COURT:	District Court at Brisbane
DELIVERED EX TEMPORE ON:	19 July 2004
DELIVERED AT:	Brisbane
HEARING DATE:	19 July 2004
JUDGES:	de Jersey CJ, Williams JA and Mackenzie 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 AND NEW TRIAL – APPEAL AGAINST SENTENCE – APPEAL BY CONVICTED PERSONS – APPLICATIONS TO REDUCE SENTENCE – WHEN REFUSED – GENERALLY – where the applicant had an extensive prior criminal history – where the learned sentencing judge imposed a cumulative three year sentence for the attempted armed robbery and a cumulative six year sentence for the robbery with violence – whether the term imposed was manifestly excessive *R v Burton* [2001] QCA 124; CA No 31 of 1994, 28 March 1994, cited *R v McDonald* [2001] QCA 238; CA No 46 of 2001, 6 June 2001, cited *R v Tilley; ex parte Attorney-General of Queensland* [2002] QCA 144; CA No 27 of 2002, 19 April 2002, cited
COUNSEL:	M J Byrne QC for the applicant R G Martin for the respondent

SOLICITORS: Callaghan Lawyers for the applicant
Director of Public Prosecutions (Queensland) for the respondent

THE CHIEF JUSTICE: The applicant, when aged 22 to 23 years, committed a spate of offences between August 2001 and September 2002. They included three counts of wilful damage, entering premises and stealing, two counts of serious assault on police officers, an attempted armed robbery, the unlawful use of a motor vehicle with a circumstance of aggravation, entering with intent, breaking and entering and stealing, two counts of armed robbery, two counts of assault occasioning bodily harm while in company, common assault, entering a dwelling house with intent, threatening violence, robbery with personal violence, and nine summary offences. He pleaded guilty.

The learned sentencing Judge activated previously suspended sentences imposed in respect of entering premises and stealing, and the serious assault of a police officer, requiring the applicant to serve nine months' imprisonment. And he then imposed other terms of imprisonment in respect of the instant offences.

The material has concentrated on a cumulative three year term imposed for the attempted armed robbery, and a further cumulative six year term imposed for the robbery with violence. The overall effect of sentence is therefore nine years and nine months.

It was, in a sense, street type offending, but offending, nevertheless, of some gravity. One of the offences, for example, involved a ram raid using a stolen car to smash into a shopping centre and a jewellery store.

The attempted armed robbery, for which he was imprisoned for three years, involved his demanding property from a group of youths in the evening, threatening them with a screwdriver and punching the complainant. Another robbery with violence involved, again, his demanding property from a group of young people and punching the complainant and threatening him with a hammer. On that occasion, the applicant stole a mobile phone.

What was identified as the most serious, robbery with violence, which attracted the six year term, involved his use of an apparently real firearm to rob a fast food outlet, although the applicant claimed that he thought it was a replica.

The sentencing Judge was initially intending to sentence the applicant to an aggregate term of ten years and nine months' imprisonment, but did not wish to subject him to any possibility that the serious violent offender regime apply. That led the Judge to reduce the overall term to imprisonment for nine years and nine months.

The applicant's prior criminal history is significant. He has convictions for serious offences committed when aged between

13 and 16 years. At 19 years of age, he was sentenced to three years' imprisonment with parole after nine months for dishonesty offences. When aged 20 years, he was subjected to an intensive correction order for attempted armed robbery. In the year 2001, he received the wholly suspended sentences of nine months, which were activated, they being for entering premises and serious assault. He committed some of the instant offences while on bail for others. His record included three prior convictions for robbery or attempted robbery. He had previously been detained or imprisoned on seven occasions.

The learned Judge acknowledged the applicant's deprived upbringing, and that while on remand, he had made commendable efforts at rehabilitation, but felt constrained to impose the substantial terms which he did impose because of the applicant's prior criminal history and the need to protect the community. Mr Byrne QC, who appeared for the applicant before us, described him as, "A young person in the ongoing grip of drug addiction who commits unthought out and unstructured offences commensurate with the life he was then leading."

He described the applicant's recent attempts at rehabilitation as amounting to a watershed in his life, and submitted that what he termed the crushing effect of the nine year, nine month term imposed would likely destroy any reasonable prospect of further rehabilitation. Mr Byrne submitted that a global sentence of seven years' imprisonment without any

recommendation as to post prison community based release, should have been imposed.

Mr Martin, for the Crown, supported the penalties imposed and submitted the appropriate range was nine to 11 years' imprisonment.

The learned Judge's sentencing remarks disclose no error of principle. The only question which arises is, whether, in all the circumstances, the effect of term imposed was manifestly excessive.

Reference to other cases is not particularly helpful in a case like this, acknowledging the great extent of the offending, its gravity, and the applicant's appalling past criminal history. Nevertheless, *R v Burton* [1994] QCA 124, *R v McDonald* [2001] QCA 238, and *R v Tilley* [2002] QCA 144, provide some general guidance. Special deterrence and the need for community protection were significant features in this sentencing process.

While the effect of term imposed was obviously substantial, I am not persuaded that it is manifestly excessive, and I do not consider that the sad personal circumstances of the applicant, upon which Mr Byrne has focused, should, in this case, have necessitated the Judge’s taking a more moderate approach. Neither should have the applicant's rehabilitation while in custody. I would refuse the application.

WILLIAMS JA: I agree.

MACKENZIE J: My view of this matter is that the sentence as a whole would have been at the higher end of the range, but not beyond the proper exercise of judicial discretion. The repetitive offending and commission of serious offences, notwithstanding his arrest and release on bail, justified the imposition of cumulative sentences. Analyses of like sentences suggest that, in imposing the final cumulative six year term, there must have been some element of moderation in what the learned sentencing Judge did. I therefore agree with the order proposed by the Chief Justice.

THE CHIEF JUSTICE: The application is refused.