SUPREME COURT OF QUEENSLAND

CITATION:	*R v French* [2004] QCA 263
PARTIES:	**R** v **FRENCH, Michael Andrew** (applicant)
FILE NO/S:	CA No 103 of 2004 DC No 102 of 2001 DC No 226 of 2003 DC No 110 of 2004
DIVISION:	Court of Appeal
PROCEEDING:	Sentence Application
ORIGINATING COURT:	District Court at Maroochydore
DELIVERED EX TEMPORE ON:	29 July 2004
DELIVERED AT:	Brisbane
HEARING DATE:	29 July 2004
JUDGES:	Davies and Jerrard JJA and Mullins 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 - JURISDICTION, PRACTICE AND PROCEDURE - JUDGMENT AND PUNISHMENT - SENTENCE - FACTORS TO BE TAKEN INTO ACCOUNT - CIRCUMSTANCES OF OFFENCE - where the applicant pleaded guilty to receiving items having reason to believe they had been stolen, to an offence of unlawfully using a motor vehicle without the consent of the lawful owner, and to attempting to pervert the course of justice by removing and destroying evidence - where the applicant also breached a partially suspended sentence which was re-activated - where the total sentences imposed were concurrent but ordered to be served cumulatively upon the activated two year sentence - where a recommendation for post-prison community based release was made after the applicant had served two years of the sentences - whether the sentences imposed were manifestly excessive in the circumstances
COUNSEL:	Applicant appeared on his own behalf M J Copley for respondent

SOLICITORS: Applicant appeared on his own behalf
Director of Public Prosecutions (Queensland) for respondent

DAVIES JA: On 22 January 2004 the applicant pleaded guilty in the District Court to an offence that on 25 November 2002 he received a quantity of soft drink, a sum of money and two CB radios and a battery which had been stolen, having reason to believe them to have been stolen. Then on 29 March 2004 he pleaded guilty to an offence that on a date unknown between 7 February 2003 and 16 February 2003 he received a quantity of stolen motor vehicle parts having reason to believe that they had been stolen, to an offence that on 15 February 2003 he unlawfully used a motor vehicle without the consent of the Commissioner of the Police Service, the person in lawful possession of it, and to an offence that on 15 February 2003 he attempted by removing and destroying evidence to pervert the course of justice. His plea to these offences was on the day of his trial.

On 29 March 2004 he was dealt with for all of these offences and for breaching a partially suspended sentence imposed on 5 March 2001. The sentence, which was one of three years, had been suspended after a year. It was activated.

On the first receiving count he was sentenced to 12 months imprisonment, on the second receiving count he was sentenced to 18 months imprisonment, on the offence of unlawful use of a motor vehicle he was sentenced to two and a half years imprisonment and on the offence of attempting to pervert the

course of justice he was sentenced to 12 months imprisonment. These sentences were concurrent but they were ordered to be served cumulatively upon the activated two year sentence. A recommendation for post prison community based release was made after the applicant had served two years "of the sentences". The respondent accepts that the learned sentencing judge intended that his recommendation take effect at the end of the activated period of two years.

The applicant submits that the totality of the sentences imposed were manifestly excessive. He points to his unfortunate upbringing, a post-traumatic stress disorder in consequence of his having been anally raped during an earlier period in prison resulting in fear of further imprisonment, his alcohol and drug addiction for which he has been undergoing rehabilitation with some prospects of success and his changed personal situation.

The first of the counts which I have described was committed on 25 November 2002, only four months after he had been dealt with for breaching the suspended sentence imposed on 5 March 2001, the learned judge on that occasion deciding not to activate it. The offence committed on 25 November 2002 was another offence constituting a breach of the conditions of the suspended sentence. The offence consisted of his stealing property from a council depot and driving off in a vehicle registered in the applicant's name. Within 20 minutes the police located the soft drink, money and two CB radios in the

applicant's house. The applicant declined to be interviewed, was charged and released on bail.

The remaining counts were all committed whilst the applicant was on bail in respect of the offence committed on 25 November and while still serving the suspended sentence. A motor vehicle was stolen on 8 February 2003 and was found stripped on 11 February 2003. On 14 February 2003 the owner saw a vehicle in the applicant's possession, parts of which were parts which came from the stolen vehicle. The vehicle in the applicant's possession was seized by police and conveyed to the Maroochydore Police Station. The applicant saw the police take this vehicle.

On 15 February the applicant then unlawfully removed the vehicle from the rear car park of the police station. When interviewed by police he lied, denying that any parts of the vehicle were stolen or that he took it from the station. Later that day the vehicle was found burnt out at Beerwah. The applicant was again interviewed. On this occasion he said that he knew the parts were stolen. He admitted taking it from the police station and dumping it in bushland and said that he told his girlfriend and co-accused, Jensen, to "deal with it - get rid of the stolen parts." It was only after a charge of arson against the applicant was withdrawn that he pleaded guilty to these offences.

The applicant has an unenviable criminal history, having been dealt with on 17 occasions since 1990, to be sentenced for

property related offences. The more serious of these were an order for 75 hours community service in December 1992 for housebreaking; two years probation and a hundred hours community service in January 1993 for three offences of unlawful use of a motor vehicle; nine months imprisonment suspended after three months for a period of three years in July 1993 for one count of unlawful use of a motor vehicle; eight months imprisonment in October 1993 for five offences of unlawful use of a motor vehicle; 27 months imprisonment in June 1995 for one offence of housebreaking, three of breaking, entering and stealing, seven of wilful damage, five of stealing and one of unlawful use of a motor vehicle; 18 months imprisonment cumulative in July 1996 for one offence of unlawful use of a motor vehicle and one of attempted unlawful use of a motor vehicle, both committed whilst the applicant was on parole; two years imprisonment in September 1996 for two counts of breaking and entering and one of unlawful use of a motor vehicle; six months imprisonment together with three years probation in August 1999 for three offences of unlawful use of a motor vehicle, three offences of stealing, two of entering premises and committing an indictable offence, one of receiving, two of fraud and one of attempted entering premises; three years imprisonment suspended after one year for five years on 5 March 2001 for one offence of unlawful use of a motor vehicle, three of entering a dwelling with intent, five of stealing, six of entering premises and stealing and one of attempted entering of premises; and on 19 July 2002 a sentence to the rising of the court for one count of disorderly behaviour and one of obstructing police on 9 June

2003 which were in breach of the conditions of the suspended sentence just referred to.

As already mentioned the first of the subject offences was committed only four months after being dealt with for breaching the suspended sentence and also constitutes a breach of its conditions and the other counts were all committed whilst the applicant was on bail for this offence and also in breach of the conditions of the suspended sentence.

The effect of the totality of the orders made by the learned sentencing judge was that the applicant was required to serve the two years which had been previously been suspended and that he was sentenced to an additional term of two and a half years imprisonment with a recommendation for post prison community based release at the commencement of that term. The question is whether the totality of those orders was manifestly excessive.

There can be no doubt that the learned sentencing judge was entitled to require the applicant to serve the balance of the suspended sentence. Indeed it seems to me that his Honour had no other option. The applicant had already been given one chance in respect of the suspended sentence and he had committed four further serious offences in breach of the conditions of that sentence. The last offence of unlawful use of a motor vehicle was the most serious because it involved his re-taking it from police custody for the purpose of its disposal. Moreover his Honour was plainly right in ordering

the sentences which he imposed be made cumulative upon the suspended sentence which he ordered to be served.

The applicant does not appear to take issue with the seriousness of these offences or the sentences which ought ordinarily to be imposed for them but submits that his personal factors justified his not being required to serve any term of actual imprisonment.

As I have already mentioned there are a number of relevant personal factors; his unfortunate upbringing, his having been raped in prison and its no doubt serious psychological consequences and his efforts at rehabilitation from his alcohol and drug addiction. He's also undertaken family responsibility, his defacto wife having given birth to a son. However his constant history of offending and the fact that on 3 August 1999 and 5 March 2001 other judges had taken into consideration what they thought were the applicant's prospects of overcoming his drug addiction relying also it seems on a report from the same psychologist caused one to have some doubts about the applicant's prospects of rehabilitation.

When the seriousness of these offences and the applicant's previous criminal history are weighed against his personal factors I do not think it can be said that the sentences are, as a whole, manifestly excessive.

I would therefore dismiss the application.

JERRARD JA: I agree.

MULLINS J: I agree.

DAVIES JA: The application is dismissed.