SUPREME COURT OF QUEENSLAND

CITATION:	*R v Burrows* [2004] QCA 306
PARTIES:	**R** **v** **BURROWS, Kenneth Patrick** (applicant)
FILE NO/S:	CA No 166 of 2004 SC No 208 of 2003 SC No 170 of 2004 SC No 247 of 2004 SC No 258 of 2004
DIVISION:	Court of Appeal
PROCEEDING:	Sentence application
ORIGINATING COURT:	Supreme Court at Brisbane
DELIVERED EX TEMPORE ON:	20 August 2004
DELIVERED AT:	Brisbane
HEARING DATE:	20 August 2004
JUDGES:	McPherson and Jerrard JJA and Dutney J Separate reasons for judgment of each member of the Court, each concurring as to the order made
ORDERS:	**Application dismissed**
CATCHWORDS:	CRIMINAL LAW – JUDGEMENT AND PUNISHMENT – SENTENCE – FACTORS TO BE TAKEN INTO ACCOUNT – CIRCUMSTANCES OF OFFENDER – where accused involved in the large scale trafficking of the dangerous drug methylamphetamine – whether the accused employed violence and weapons – where the learned sentencing Judge's starting point was eleven years imprisonment – whether a reduction in the head sentence to nine years with a serious violent offence declaration adequately reflected the accused's plea of guilty *Penalties & Sentences Act* 1992 (Qld) Part 9A *R v Geary* [2003] 1 Qd R 64, cited
COUNSEL:	S Lewis for the applicant M J Copley for the respondent
SOLICITORS:	AW Bale & Son for the applicant

Director of Public Prosecutions (Queensland) for respondent

DUTNEY J: On the 13th of May 2004, the applicant was sentenced in relation to a large number of mainly drug related offences. The most serious of these and the one which governed the effective sentence was an offence of trafficking in methylamphetamine over a period from the 8th of September 1998 until the 5th of September 2001.

In relation to the trafficking offence the applicant was sentenced to nine years imprisonment with a declaration that it was a serious violent offence. In arriving at the ultimate head sentence her Honour, the sentencing Judge, moderated what she said would have been a sentence of 11 years imprisonment to reflect the plea of guilty. Had a sentence of 11 years been imposed it would, of course, have been impossible to reflect the guilty plea by any recommendation for early release because of the provisions of part 9A of the Penalties and Sentences Act 1992. Thus the only way credit could have been given for the plea was by a reduction in the head sentence.

The applicant was born on 24th of March 1966. He was a user of both heroin and methylamphetamine. He received a good report from the Community Corrections officer who supervised the period of an intensive correction order to which I shall

shortly refer, although as will be clear he deceived the corrections officer as to his continuing offending behaviour.

The applicant was 32 when he commenced the offending behaviour with which we are concerned. Before that time he had a negligible criminal history. The only relevant offences were under the Weapons Act for collecting weapons while unlicensed.

The applicant was engaged in producing and trafficking methylamphetamine as a wholesaler over a period of approximately three years. As early as 1998 the applicant employed at least 10 persons to sell the drugs on his behalf and to assist in their production. There was evidence in the prosecution case that the applicant would arrange for people who owed him money or were speaking about him to be bashed or threatened with a bashing by a confederate.

The applicant's history of offending is relevant to the sentence her Honour imposed. On the 19th of May 2000 the applicant was sentenced to 12 months imprisonment to be served by way of intensive correction order for possession of heroin and methylamphetamine with a circumstance of aggravation in each case. These offences were committed on the 17th of February 1999 while the applicant was engaged in his drug trafficking operation. It appeared that, notwithstanding his

arrest on those charges and the imposition of the intensive correction order, the applicant continued producing and selling methylamphetamine unabated.

On the 18th of April 2000 after a high speed chase in which the applicant rammed the police vehicle, the applicant was apprehended by police in possession of 11 grams of methylamphetamine, scales and $2,405 in cash. Charges resulting from this were included in the indictment. The trafficking and production continued as before while the applicant was on bail for those offences.

On the 4th of September 2001 the applicant's operation was closed down by a raid on the applicant's principal place of residence where in addition to a quantity of over 3 grams of methylamphetamine the police found glassware, chemicals, a variety of weapons ready at hand for use and over $84,000 in cash. On the same day another property occupied by the applicant was raided and more glassware and chemicals were found together with over 19 grams of methylamphetamine.

The applicant obtained bail and was raided again on the 17th of June 2002. This raid was conducted at one of the same properties raided in September 2001. On this occasion 3.4 grams of methylamphetamine, a small quantity of ecstasy,

$18,000 in cash and scales were found. He was, of course, on bail for the charges arising from the events on the 18th of April 2000 and the 4th of September 2001.

Apart from the number of employees some indication of the scale of the operation can be gauged from the fact that one of the employees who gave a statement against the applicant spoke of seeing the applicant supply drugs on at least 50 occasions for amounts ranging from $3,000 to $5,000 at a time. There were, of course, a number of such agents.

While the sales of drugs to police undercover operatives were made through intermediaries, most of the notes handed over at the time of purchase were later found in the applicant's possession as part of the $84,000. The prosecution case was a strong one and the plea of guilty was late.

In my view, it is difficult, in the circumstances, to argue that the learned sentencing Judge's starting point of 11 years imprisonment was not within range. This was a major operation where the applicant was both manufacturer and wholesaler. The loyalty of confederates was achieved by paying them board and keep and paying their expenses when they were given terms of imprisonment. The applicant used actual or threatened violence as a normal adjunct to his commercial activity. His

offending was relentless even after being apprehended. *R v. Geary* [2003] 1 Qd R 64 supports the head sentence.

In my view her Honour was justified in concluding that the only way the applicant could be prevented from offending was by keeping him in prison. The reduction in the head sentence from 11 years to nine years, in my view, gives proper allowance for the plea of guilty in the circumstances of this case. The real complaint here is not in the length of the sentence but in the fact that her Honour declared the trafficking to be a serious violent offence.

If the starting point was 11 years the minimum non-release period would have been a little less than nine years. Reducing the sentence to nine years without a declaration would have resulted in a minium non-release period of 4.5 years or about half. The maximum sentence was reduced by about 20 per cent. Since the plea was late a reduction of more than 20 per cent in either the maximum or minimum sentence would have been generous. A reduction of 50 per cent in the minimum sentence would have been extremely generous.

Since the plea could only have been given effect to by reducing the head sentence, this alone seems to me to be a proper basis to maintain the serious violent offence

declaration to preserve a proper relativity between the sentence that would have been given and the reduced sentence to reflect the plea. When regard is had to the other factors, however, including particularly the use of actual or threatened violence, the possession of weapons and the dogged persistence in the operation I can see no error in the making of the declaration and I would refuse the application for leave to appeal against sentence.

McPHERSON JA: I agree.

JERRARD JA: I agree.

McPHERSON JA: The application for leave to appeal is dismissed.
