SUPREME COURT OF QUEENSLAND

CITATION:	*R v Quirey* [2004] QCA 321
PARTIES:	**R** **v** **QUIREY, Brendon John** (applicant)
FILE NO/S:	CA No 172 of 2004 DC No 907 of 2004
DIVISION:	Court of Appeal
PROCEEDING:	Sentence Application
ORIGINATING COURT:	District Court at Brisbane
DELIVERED EX TEMPORE ON:	3 September 2004
DELIVERED AT:	Brisbane
HEARING DATE:	3 September 2004
JUDGES:	McMurdo P and McPherson and Jerrard JJA Separate reasons for judgment of each member of the Court, each concurring as to the orders made
ORDERS:	**1. Grant the application for leave to appeal against sentence** **2. Allow the appeal against sentence** **3. Delete the recommendation for parole not earlier than 24 October 2006 and instead recommend that the applicant be eligible for post-prison community-based release on 10 July 2005**
CATCHWORDS:	CRIMINAL LAW – APPEAL AND NEW TRIAL AND INQUIRY AFTER CONVICTON – APPEAL AGAINST SENTENCE – APPEAL BY CONVICTED PERSONS – WHERE GRANTED – GENERALLY – where applicant pleaded guilty to fraud and forgery offences – where on parole at time of committing offences – where sentenced to two years imprisonment to be served cumulatively with remainder of original sentence – where prosecutor submitted to learned sentencing judge that fresh recommendation for parole had to be made and that it should be made at halfway mark of fresh sentence imposed and this acted upon – whether recommendation should have been made in respect of the whole period of imprisonment rather than fresh term of imprisonment – whether effective sentence manifestly

	excessive in all the circumstances
	Penalties and Sentences Act 1992 (Qld), s 157
COUNSEL:	The applicant appeared on his own behalf M R Byrne for the respondent
SOLICITORS:	The applicant appeared on his own behalf Director of Public Prosecutions (Queensland) for the respondent

THE PRESIDENT: The applicant, who is self represented on this application, pleaded guilty in the District Court on 10 June this year to two counts of fraud, one count of attempted fraud, 11 counts of forgery, four counts of uttering and one count of being in possession of equipment in preparation for forgery. In respect of the last offence, he was sentenced to two years imprisonment, and to lesser concurrent terms in respect of the remaining offences. All the sentences were ordered to be served cumulatively with the sentence he was already serving. It was recommended that he be eligible for post-prison community based release not earlier than 24 October 2006. He contends that the sentence is manifestly excessive and that in imposing the parole recommendation, the Judge required that he serve a total of six years nine months of a seven year four month sentence.

The applicant was 32 years old at the time of the offences and 33 at sentence. He had a significant criminal history for like offences in Queensland. In 1997 he was dealt with for possession of property suspected of being tainted and fined without conviction. In 1998 he was convicted of five counts of fraud and one count of stealing and placed on probation for

two years, ordered to do community service and to pay restitution of $600. In October 2000 he was convicted for the first time in the District Court on 24 counts of fraud, one count of unlawful possession of a motor vehicle, 18 counts of receiving, one count of attempted fraud, two counts of stealing, one count of entering a dwelling and committing an indictable offence and three counts of unlawful possession of a motor vehicle with a circumstance of aggravation and sentenced to an effective term of imprisonment of five years and four months. He was recommended for release on parole after serving two years and a declaration was made as to 62 days presentence custody. A few days later he was dealt with for breach of probation and an assortment of drugs and weapons charges and was sentenced to concurrent terms of imprisonment. In December 2000, he was convicted of further property offences and sentenced to further concurrent terms of imprisonment. In April 2003, he was convicted of stealing and fined $300 with no conviction recorded.

In New South Wales in 1997 he was fined $800 for obtaining a benefit by deception.

The applicant was on parole at the time he committed the offences the subject of this application. He was found in possession of 11 forged forms of identification and on four occasions he used the false identification including to obtain a mobile phone and to purchase a television. On another occasion he used false identification to attempt to purchase a

motor vehicle. He was found in possession of equipment used to prepare the false documents and identification.

A schedule was tendered at sentence setting out the details of these offences. The false identification included a driver's licence and a police identification. He was found in possession of a Queensland Police Service badge. When first questioned by police, he used the name Craig Ferrari. He had completed a Telstra application form in the false name of Jason Graves. He was in possession of a stolen cheque book and had forged a cheque for $1799 to buy a colour TV advertised for sale in the *Trading Post*, but payment was stopped before the cheque was paid. The equipment used for forging the documents which were found in his possession included magnets, clear plastic pockets and cards, a health care card, Medicare card, library card, Bendigo Bank Card, a Queensland Driver's Licence in his name, a ruler and knife, plastic laminating sheets, cards and glossy paper, a laminator, a Canon printer and leads and a computer, plastic and plastic paper. He was also found in possession of a Cartier watch and a number of fraudulent items of identification in the names of Andrew J Ward, Robert P Barstow, Jason David Graves and Kevin J Croft, all containing his photograph. Fortunately, the applicant was detected early in his scheming and so was unsuccessful in depriving people of their property for any extended period of time.

The applicant declined to be interviewed, but he pleaded guilty at an early stage and the committal was entirely by way

of statements without cross-examination. The prosecution conceded the applicant should be given full credit for an early plea of guilty. His parole on the earlier five year and four month sentence was revoked when he was arrested on these offences on 23 June 2003, so that at sentence his then release date was 24 January 2006. The prosecution at sentence contended that a term of imprisonment between 18 months to two years cumulative was warranted. The prosecutor rightly reminded the judge that he must make a fresh recommendation for parole (see s 157, *Penalties & Sentences Act* 1992 (Qld) ("the Act")). The prosecutor also requested that the recommendation be at the halfway mark of the fresh sentence imposed.

The applicant's counsel at sentence explained that the applicant's antisocial behaviour was caused by drug abuse. He emphasised the timely plea of guilty, the cooperation with the administration of justice and that the applicant had made efforts at rehabilitation whilst in custody, completing many courses, and that he has been accepted into a residential program at Logan House Rehabilitation Centre upon his release from prison. A reference from a previous employer who is prepared to re-employ him when he is released from custody was tendered, together with a personal reference from a family friend, which appears to have been prepared for a job application rather than with knowledge of the applicant's offending behaviour. The applicant's counsel asked for a recommendation for parole which did not much further delay his

then full-time release date of 1 February 2006, a date slightly later than that suggested by the prosecution.

The applicant now contends that the effective sentence was crushing and excessive in that it gave insufficient weight to the totality principle. He submits it also gave insufficient weight to his early guilty plea and cooperation and contends that the effect of the sentence is that rather than recommending release on parole after serving half the *period* of imprisonment, which incorporates the combined earlier *term* of imprisonment and the newly imposed *term* of imprisonment, the sentence requires him to serve all of the first term of imprisonment and at least half the second term of imprisonment. He asks this Court to allow his appeal and substitute a sentence of two years concurrent imprisonment with a recommendation for parole after nine months from his sentence date on 10 June 2004.

Mr Byrne for the respondent very fairly concedes that the learned sentencing judge was inadvertently led into error by the prosecutor at sentence who stated that the fresh recommendation for parole had to be made only in respect of the new *term* of imprisonment and not for the *period* of imprisonment, which incorporates both terms of imprisonment.

The applicant has an extensive criminal history for committing fraud offences. He has shown himself to be a recidivist and has not taken advantage of the lenient community based orders made early in his criminal career. He committed these

offences whilst on bail. Despite the mitigating factors to which I will refer shortly, the sentence of two years cumulative imprisonment was not manifestly excessive.

Under s 157 of the Act, the learned sentencing judge was obliged to make a recommendation for parole relating to the *period* of imprisonment. As Mr Byrne concedes, the period of imprisonment here, at least as calculated by the Corrective Services Department at the moment, means that his full term discharge date is 22 January 2008. Were it not necessary to make a fresh recommendation for parole under s 157 of the Act, the statutory entitlement to parole would ordinarily arise at the halfway point of the period of imprisonment, that is, on or about 10 October 2005.

The offences had serious aspects. The forging of official documents for dishonest purposes is serious conduct indeed, but fortunately any property he obtained was recovered. In the end the applicant was largely unsuccessful in his criminal endeavours because of the early detection of his offending.

It seems that drug addiction is at the root of his offending. His cooperation with the administration of justice and his efforts at and prospects of drug rehabilitation warranted some further recognition in terms of an earlier recommendation for parole, but of course this leniency had to be balanced against his recidivist offending whilst on parole.

Appropriate recognition would be given to the mitigating factors consistent with the learned sentencing Judge's intention by recommending that he be eligible for post prison community based release three months earlier than otherwise, that is on 10 July 2005.

I would grant the application for leave to appeal against sentence, allow the appeal, delete the recommendation for parole not earlier than 24 October 2006 and instead recommend that the applicant be eligible for post-prison community-based release on 10 July 2005.

McPHERSON JA: I agree.

JERRARD JA: I agree.

THE PRESIDENT: That is the order of the Court.
