SUPREME COURT OF QUEENSLAND

CITATION:	*R v P* [2004] QCA 365
PARTIES:	**R** **v** **P** (applicant)
FILE NO/S:	CA No 177 of 2004 SC No 36 of 2004
DIVISION:	Court of Appeal
PROCEEDING:	Sentence application
ORIGINATING COURT:	Supreme Court at Brisbane
DELIVERED ON:	8 October 2004
DELIVERED AT:	Brisbane
HEARING DATE:	23 September 2004
JUDGES:	McPherson JA, White J, Cullinane J Judgment of the Court
ORDER:	**1. Appeal allowed;** **2. Vary the sentence imposed on the applicant by reducing it from nine to six years imprisonment and recommending that he be considered for parole after serving two years and six months of that sentence.**
CATCHWORDS:	CRIMINAL LAW – DRUG OFFENCES – SENTENCING – whether sentence imposed on applicant for trafficking in Schedule 2 drugs manifestly excessive *R v Bradforth* [2003] QCA 183, considered *R v Christensen* [2002] QCA 113, considered *R v Corrigan* [2001] QCA 251, cited *R v Le; ex parte A-G* [2000] QCA 392, cited
COUNSEL:	A J Kimmins for the applicant R G Martin for the respondent
SOLICITORS:	Price & Roobottom for the applicant DPP (Qld) for the respondent

[1] **THE COURT:** On 17 March 2004, the applicant pleaded guilty in the Supreme Court at Brisbane to one count of trafficking in dangerous drugs (ecstasy and cannabis), four counts of supplying a dangerous drug, two counts of receiving or

possessing property obtained from trafficking, five counts of possessing a dangerous drugs, two of which had a circumstance of aggravation, and two counts of possessing things used in connection with trafficking in a dangerous drug. For count one, trafficking, the applicant was sentenced to nine years imprisonment with a recommendation for parole after four years. He was given lesser terms of imprisonment, all of which were to be served concurrently for the remaining offences. He now seeks leave to appeal against that sentence.

[2] The applicant pleaded guilty to trafficking in dangerous drugs over a six month period from August 2002 to February 2003. The principal evidence against the applicant was of four supplies of ecstasy by the applicant to an undercover police officer working on the Gold Coast (counts 3-6). It was the applicant who on 27 January 2003 initiated contact by sending a mobile phone message to the undercover police officer, which said "I'm a friend of Lisa, she said that you might need some. Give us a call and we can catch up". The next day the applicant and the police officer met at a coffee shop. During the course of their discussion, the applicant told the police officer that he earned $3,000 a week from dealing drugs including cannabis, ecstasy and speed. He further stated that he had sold 1,000 ecstasy pills over Christmas and that he regularly sold them at a nightclub in Broadbeach and at the Big Day Out, a concert that young people attend. He said that he had two suppliers above him in the chain of distribution, but that he also set up suppliers below him to sell drugs in exchange for his receiving a share of the profits. The applicant pointed out a white van which he used to distribute the drugs. Later that day, the applicant and the police officer went back to the applicant's residence and the applicant, after opening a number of white sealed clip bags said to contain drugs, supplied the police officer with a small quantity of speed as a "free sample".

[3] The applicant supplied considerable quantities of drugs to the undercover police officer on 3 more occasions (counts 4 -6). On 29 January 2003, at 10 pm in the car park of a surf club, he supplied the police officer with 100 ecstasy pills for a price of $2,400. The total weight of pills was 21.89 grams, which at 32.4% purity contained 7.09 grams of pure ecstasy. At that meeting, the applicant told the undercover officer that he had made $4,000 that day from selling drugs and that, including the undercover officer, he now had 21 permanent customers to sell drugs to.

[4] The next supply was on 6 February 2003. The undercover police officer visited the applicant's residence where the applicant sold him 100 ecstasy pills at a total price of $2,350. The total weight of the pills was 21.9 grams, at varying levels of purity, which when analysed were found to contain 7.084 grams of pure ecstasy. On this occasion the police officer said that he was looking for a larger purchase, of 1,000, 5,000 or even 10,000 ecstasy pills. The applicant replied that that amount would not be a problem and that "the sky's the limit". During this visit, he also showed the police officer a big screen TV, a lounge suite, and a double bed purchased from drug proceeds. The applicant stated that he earned $2,000 a day from selling drugs, that he kept $50,000 in a safe deposit box at a bank, and that he had 60 regular clients working for him, including 3 drug dealers working at a nightclub, who gave him a share of the profits. The undercover officer observed four supplies of various drugs to persons who visited the house on that day, and saw quantities of ecstasy in the fridge and a bundle of $20 and $50 notes.

[5] After discussions about the applicant's ability to supply a larger quantity of drugs, on 18 February 2003 the applicant confirmed that he could supply the undercover police officer with 10,000 ecstasy pills. He added that 200,000 pills would be arriving on the Gold Coast in the next two weeks, and that he would bring along the "main guy". Later that day, at a hotel, the police officer was introduced to R, who was located above the applicant in the chain of distribution. It was agreed that 10,000 pills would be sold to the applicant for $18 each, giving a total price of $180,000.

[6] On 19 February 2003, the applicant and R met the police officer at a hotel on the Gold Coast. After various shows of good faith, such as the police officer producing some of the cash he had on him to purchase the drug, they agreed to go to a room at a nearby hotel, the Marriott Hotel, where the deal was to take place. As they all left to go to the hotel, the applicant and R were apprehended by the police on the footpath. At the hotel room, which the applicant had rented, the police later found in a suitcase 2.205 kilograms of pills, which when analysed were found to contain 733.5 grams of pure ecstasy. This intended transaction was a supply within the extended definition of that term in the legislation. The police conducted further searches of the applicant's person, his residence, and his motor vehicle. They found, in total, $25,000 in cash, over 500 grams of cannabis, and small quantities of ecstasy, cocaine and LSD.

[7] The applicant, after his arrest, made full confessions to the police. He voluntarily admitted to trafficking in cannabis as well as ecstasy, the drug that he had supplied to the police officer. The conversations between the applicant and the police officer referred to above had been recorded electronically, but it appears that the applicant was not informed of this by the police before making his confessions. The applicant made a timely plea of guilty on 17 March 2004.

[8] The applicant does not have any prior convictions that are relevant for present purposes. He has one conviction for breach of bail, which relates to the offences now before the court.

[9] The applicant was born on 24 June 1972 in New South Wales. He moved to the Gold Coast, Queensland when he was 8, following the divorce of his parents. He has been employed more or less continuously up until shortly before the time of the offences, first as a plasterer for 7 years and then in various other occupations. He was in a de facto relationship for 10 years, which broke up in 2002, and he has 2 children aged 8 and 9. He was 31 years of age at the time of sentencing. It was not suggested that the motivation for his offending was anything other than commercial gain; but he seems to have been drawn into this criminal activity by being asked to take over a friend's trafficking business while the latter was absent elsewhere.

[10] In arriving at the head sentence imposed for trafficking the learned sentencing judge used as his starting point a head sentence of 12 years, which he then discounted by 25% to 9 years because of the applicant's co-operation with police (which is detailed elsewhere), and he recommended the applicant for parole after four years to take account of his plea of guilty. In adopting this approach his Honour relied on *R v Bradforth* [2003] QCA 183.

[11] We are persuaded that his Honour's starting point of 12 years was too high. The drugs in which the applicant traded were cannabis and 3,

4-methylenedioxymethylamphetamine (ecstasy) and not methylamphetamine (speed). The significance of the distinction is that both cannabis and ecstasy are Schedule 2 drugs and not Schedule 1 drugs, as speed now is. In the case of *Bradforth*, the offender was involved in trafficking in a range of drugs, which included cocaine and speed. He had previous convictions for various criminal offices, whereas the applicant here had none; in addition, Bradforth re-offended when released on bail. Even so, his sentence was reduced from 12 to 10 years, partly in recognition of his plea of guilty and because of a period of pre-sentence custody. Although admittedly a declaration was allowed to remain, there was apparently no such co-operation as we see here, and the period of trafficking by Bradforth was of much longer duration - over 12 months, as compared with six months in the instant case.

[12] Similar observations are apposite in the case of *R v Christensen* [2002] QCA 113. The applicant there was sentenced to 12 years reduced to 10 years for his plea of guilty. It should be noticed that the principal offender there had been producing on a large scale as well as trafficking for four years and had generated profits of the order of $500,000 during that period. Additionally, he had continued to carry on his criminal activities after being released on bail. It is true that this Court held that a higher penalty would have been justified in that case; but the starting point in fact adopted there was in consequence a good deal lower than it was here having regard to the serious exacerbating factors present in that case. *R v Le* [2000] QCA 392 is another instance in which a lower starting point of 10 years was adopted in a case of trafficking in heroin and over a much longer period than in the matter before us.

[13] There are also some other decisions, such as *R v Corrigan* [2001] QCA 251, that appear to bear out the applicant's proposition that his Honour's starting point of 12 years in this particular case was too high. We consider the sentencing process should begin at 10 years as the appropriate starting point here bearing in mind the comparatively short period during which the applicant was engaged in trafficking and the identity of the drugs involved.

[14] We are also of the view that the allowance for the statutory considerations for which the Penalties and Sentences Act provides was inadequate in this case. Our reasons for this appear elsewhere.

[15] There remains to be taken into account the Applicant's pleas of guilty and co-operation with the police in relation to his involvement in the matter. In our view the appropriate sentence to impose in this case is one of six years. In recognition of his plea of guilty, there should be a recommendation that the applicant be eligible for post prison community based release after 2 years and 6 months.

[16] We would therefore allow the appeal, and vary the sentence imposed by reducing it from nine to six years and by recommending that the applicant be considered for parole after he has served two years and six months of his sentence.