

SUPREME COURT OF QUEENSLAND

CITATION: *R v York* [2004] QCA 386

PARTIES: **R**
v
YORK, Gloria Jeanette
(applicant)

FILE NO/S: CA No 210 of 2004
SC No 102 of 2003

DIVISION: Court of Appeal

PROCEEDING: Application for Stay of Execution

ORIGINATING COURT: Supreme Court at Brisbane

DELIVERED EX TEMPORE ON: 15 October 2004

DELIVERED AT: Brisbane

HEARING DATE: 15 October 2004

JUDGES: McMurdo P

ORDER: **The bench warrant for the arrest of Gloria Jeannette York is to lie in the registry until the outcome of the application for an expedited hearing for special leave in the High Court**

CATCHWORDS: CRIMINAL LAW – JUDGMENT AND PUNISHMENT – SENTENCE – FACTORS TO BE TAKEN INTO ACCOUNT – MISCELLANEOUS MATTERS – INFORMERS – where applicant pleaded guilty to a charge that she unlawfully carried on the business of trafficking dangerous drugs and pleaded guilty to a number of counts of possessing dangerous drugs – where the applicant gave extensive and prolonged co-operation to prosecuting authorities to secure a murder conviction – where evidence placed before the court indicating that the applicant's life would be at real risk if she was sent to prison – where the applicant was sentenced to five years imprisonment wholly suspended because of that risk – where Attorney-General successfully appealed against sentence and applicant sentenced to five years imprisonment suspended after two years – where applicant appealing the decision of the Court of Appeal to the High Court of Australia – whether the execution of the judgment should be stayed until the outcome of the special leave application is known

COUNSEL: A J Kimmins for the applicant
 M J Copley for the respondent

SOLICITORS: Ryan & Bosscher for the applicant
 Director of Public Prosecutions (Queensland) for the
 respondent

THE PRESIDENT: I order that the affidavit of Gloria Jeanette York filed in this matter on 14 October 2004 and all copies thereof be placed in a sealed envelope on the file with an order that it only be opened by order of a Judge.

The applicant, Ms York, applies for an order that the bench warrant issued for her arrest last Friday, 8 October 2004, be varied so that it lie in the Registry until the date of her application for special leave to appeal to the High Court is determined or withdrawn or not proceeded with or until further order.

On 18 June 2004, Ms York was sentenced to five years imprisonment wholly suspended for an operational period of five years for trafficking in dangerous drugs, heroin, methylamphetamine and cannabis between 1 November 1999 and 27 May 2000; one count of possession of methylamphetamine on 26 May 2000 and two counts of possession of dangerous drugs, cannabis and methylamphetamine on 12 April 2001. The Attorney-General successfully appealed to this Court against that sentence on the ground of its inadequacy. This Court by majority allowed the appeal, set aside the sentence imposed at first instance and instead sentenced Ms York to five years imprisonment to be suspended after serving two years with an

operational period of five years. A warrant was issued for her arrest which was to lie in the Registry until Monday.

The applicant was 57 at sentence. She has not reoffended since committing these offences, although she had a bad criminal history commencing in 1985 for offences of dishonesty and assault. She was not a user of drugs and trafficked in them purely for commercial reasons.

The offences concerned the purchase by a covert police officer of \$51,400 worth of drugs, including 317.706 grams of powder of which of 97.903 grams was pure methylamphetamine, 25.001 grams of powder containing 46 to 48 per cent pure heroin giving 13.13 grams of pure heroin and 51.9 grams of cannabis. She also sold 175 tabs of what she claimed to be LSD but which did not contain LSD.

The learned sentencing Judge determined that a head sentence of 10 to 12 years would have been appropriate but for Ms York's efforts at rehabilitation and her great assistance to the police and the justice system in the prosecution of a person charged with murder, involving an execution-style killing by an enforcer who was a major drug dealer. She gave evidence against this person at the committal proceedings. She was then visited by a disguised and armed man who threatened to shoot her if she gave evidence at the trial. Despite those threats she then gave evidence at the trial. She received more threats from the accused person's associates, including his girlfriend, an inmate at Brisbane

Women's Prison. She continued to be threatened by associates of the convicted murderer. He subsequently successfully appealed his conviction. She again gave evidence at his re-trial, this time under the protection of police officers.

Because she feared for her safety she left Brisbane in 2003. She formed a new relationship with a man who, the learned sentencing Judge found, appeared to be an upstanding member of the community. Material from police officers was tendered at sentence, demonstrating the high level of her assistance to police and her determination to continue with that assistance, despite serious and continual threats to her safety and the safety of her family members.

As a result of evidence of a conversation between Ms York's solicitor and a person employed by the Department of Corrective Services Intelligence Unit, the learned sentencing Judge found that if Ms York were to be imprisoned she would face the very real danger of being killed.

The learned sentencing Judge indicated she would reduce the sentence by 60 per cent for the very significant co-operation with the administration of justice but felt that a head sentence of five years was more appropriate because of the seriousness of the offending; in the remarkable circumstances of the case the sentence should be fully suspended with an operational period of five years.

At the appeal before this Court Mr Noel Taylor, Acting Executive Director, Custodial Corrections, was called to give evidence. He confirmed that the applicant would be at risk and that that risk would be assessed if she were sentenced to a term of imprisonment. She could be placed either in a protection unit at the Brisbane Women's Correctional Centre or accommodated at the Townsville Prison. Other material before the Court supported the latter option. Mr Taylor said that Ms York would probably be sent to Townsville, a mainstream women's prison which did not offer protective custody.

The majority judgment in the Court of Appeal concluded that it was wrong to find that in the circumstances Ms York's safety was so much at risk that she ought not to be sent to prison because such a finding would undermine the criminal justice system and effectively make the Courts bow to pressure from criminals. Judges must have confidence that the administration of prisons will ensure the physical safety of those persons placed in their responsibility.

Ms York has applied for special leave to appeal the decision of the Court of Appeal on these grounds -

- "1. There has been a miscarriage of Justice in that the Court of Appeal failed to identify a discernible error in the Learned Sentencing Judges approach to sentence.
2. The Court of Appeal erred in that it allowed the Attorney Generals appeal on the basis of a policy consideration."

Applications for special leave to appeal in sentencing matters are rarely given. This case appears to raise a matter of policy of considerable potential importance, namely whether, and if so to what extent, a Court is entitled to take into account the risk to an offender's safety whilst serving a term of imprisonment, especially in circumstances where the offender has cooperated with the administration of justice and that cooperation is the reason for the risk to the offender's safety. On the other hand, as Mr Copley, for the respondent, rightly points out, there are usually only the remotest prospects of success on an application for special leave to appeal against a sentence.

I am not, however, satisfied that the application is entirely without prospects.

Information placed before this Court indicates that the application for special leave will not be heard this year and between six and 12 months could pass before it is heard.

The material placed before the learned trial Judge and before this Court suggests there is a very real and great danger that if Ms York is imprisoned she could be seriously harmed or killed whilst serving that term of imprisonment.

Unfortunately, many years have already passed since she committed the offences for which, according to this Court's order, she must now serve two years imprisonment. It would be in the ordinary course some further years before any appeal to

the High Court would be heard and determined even were she granted special leave to appeal. It would be no kindness to her to delay what may be the inevitable consequences of her having to serve that term of imprisonment even further.

In the circumstances there is some prospect, although not great, that she may be successful in obtaining an expedited hearing of her special leave application. The result of the special leave application would be a significant matter for this Court's consideration in determining any future stay. Counsel for the applicant, Mr Kimmins, has agreed to commence pursuing an application for an expedited hearing of the special leave application forthwith, should a stay of the order for a bench warrant be granted.

In the unusual circumstances of this case I am prepared to order that the bench warrant for the arrest of Gloria Jeannette York lie in the Registry until the outcome of the application for an expedited hearing for special leave which Ms York's legal representatives have undertaken to pursue immediately and with expedition.

That is the order of the Court.
