

# SUPREME COURT OF QUEENSLAND

CITATION: *R v Graveson* [2004] QCA 436

PARTIES: **R**  
**v**  
**GRAVESON, Shane Anthony**  
(applicant)

**R**  
**v**  
**GRAVESON, Mervyn Vincent**  
(applicant)

FILE NO/S: CA No 298 of 2004  
CA No 299 of 2004  
SC No 180 of 2004  
SC No 339 of 2004  
SC No 340 of 2004  
SC No 494 of 2004  
SC No 495 of 2004  
SC No 498 of 2004  
SC No 501 of 2004  
SC No 503 of 2004

DIVISION: Court of Appeal

PROCEEDING: Sentence Applications

ORIGINATING COURT: Supreme Court at Brisbane

DELIVERED EX TEMPORE ON: 16 November 2004

DELIVERED AT: Brisbane

HEARING DATE: 16 November 2004

JUDGES: Williams JA and Mackenzie and Philippides JJ  
Separate reasons for judgment of each member of the Court, each concurring as to the order made

ORDER: **Applications 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 both applicants convicted of weapons and drug offences – where one applicant also convicted of driving offences while he was subject to a suspended sentence – where applicants

pleaded guilty – whether pleas of guilty were adequately recognised by learned sentencing judge – whether sentences imposed manifestly excessive

COUNSEL: J D Griffiths for the applicants  
R Pointing for the respondent

SOLICITORS: The applicants appeared on their own behalf  
Director of Public Prosecutions (Queensland) for the respondent

WILLIAMS JA: Each of Shane Anthony Graveson and Mervyn Vincent Graveson has sought leave to appeal against sentences imposed on 3rd of August 2004 when each pleaded guilty to a variety of offences.

A number of the offences in question arise out of a search conducted by police on premises at Carbrook on the 20th of March 2002. Both applicants were then residing in those premises.

During the search police located a quantity of amphetamine and methylamphetamine and a great deal of paraphernalia associated with the production of those drugs.

The material located on that occasion is detailed in the record at pages 75 to 77 and I will not list all of that material now.

On that occasion the police also uncovered an arsenal of rifles, hand guns and ammunition in the house.

As a result of the search of the premises on that date the two applicants and other persons were charged with a variety of offences.

There was a hand-up committal and after a prosecutor was assigned to the case negotiations took place which resulted in each of the applicants pleading guilty to specific charges arising out of that particular search.

There were additional matters in relation to Shane Anthony Graveson and I will deal with them subsequently.

Mervyn Vincent Graveson pleaded guilty to the following charges arising out of the raid: possessing things used in connection with the production of a dangerous drug, possessing amphetamine with a circumstance of aggravation and possessing methylamphetamine with a circumstance of aggravation.

In addition he was charged with three weapons offences arising out of that raid.

In so far as amphetamine was concerned 75.868 grams of powder was located which contained 10.344 grams of pure amphetamine. A further 79.553 grams of powder was located which contained 3.428 grams of pure methylamphetamine.

The sentences imposed were three years for the possession of things used in connection with the production of a dangerous drug and four years on each of the possession of a dangerous

drug charges. A sentence of two years' imprisonment was imposed with respect to the weapons offences.

Though it was not the subject of any submission today, in addition he was given three months' cumulative for a breach of bail offence.

He had been in custody for 536 days prior to sentence and a direction was made that that be taken into account.

By way of personal details, Mervyn Vincent Graveson was born on the 19th of February 1977 making him 25 when the offences were committed and 27 at the time of sentence.

He had a relevant criminal history in that on the 23rd of September 1997 he had been convicted of three counts of supply of a dangerous drug and placed on probation for a period of two years.

In the course of his sentencing remarks the learned trial Judge concluded that the operation being carried out under the control of Mervyn Vincent Graveson was a commercial one. He also pointed to the fact that the drugs in question had a deleterious effect on users. He also justifiably observed that the arsenal of weapons was an adjunct to the applicant's drug dealing activities.

This was clearly a large scale sophisticated commercial operation. In those circumstances a head sentence of at least

five years' imprisonment would have been called for after a trial. Given all that was located at the premises on the 20th of March 2002 the overall criminality of the involvement of Mervyn Vincent Graveson in the production of amphetamine and methylamphetamine was such as to make the offences akin to trafficking in those particular drugs.

In imposing the head sentence of four years it is clear that the learned sentencing Judge recognised that the plea of guilty had been entered once there had been the opportunity of there being appropriate negotiations between the accused and a prosecuting counsel and was therefore a timely plea.

In my view, the sentence of four years' imprisonment as the head sentence reflects a reduction taking into account the plea of guilty; were it not for a plea a sentence of at least five years' imprisonment would have been called for given the overall criminality of the conduct in question.

Though the learned sentencing Judge did not specifically indicate his process of reasoning in giving credit for the plea of guilty nevertheless the head sentence of four years is an appropriate sentence having regard to the fact that this was a plea of guilty.

It therefore follows that there was no error in the sentencing process and the sentence is not manifestly excessive. The application for leave to appeal by Mervyn Vincent Graveson should be refused.

Shane Anthony Graveson ultimately pleaded guilty to possessing methylamphetamine in consequence of what the police located in the search on the 20th of March 2002. That related to 1.576 grams of powder containing .367 of a gram of pure methylamphetamine.

In the circumstances the learned sentencing Judge concluded that the possession of that quantity of drug was for the applicant's own use and he was sentenced on that basis. The sentence imposed was 12 months' imprisonment.

Shane Anthony Graveson also pleaded guilty to two weapons offences and one count of possession of suspect property arising out of the search on that day. He was sentenced to three months' imprisonment for those offences. There were also various other summary offences taken into account on which a conviction was recorded but no penalty imposed.

Shane Anthony Graveson was admitted to bail with respect to the charges arising out of the search on the 20th of March 2002.

Then on the 15th of November 2002, he pleaded guilty in the Magistrates Court to a variety of summary offences and was ordered to be imprisoned for six months, suspended for a period of three years.

So, in January 2003, Shane Anthony Graveson was on bail and subject to a suspended sentence. In that month he committed two serious dangerous driving offences to which he pleaded guilty. The first incident of dangerous driving occurred on the 18th of January 2003 and the second on the 27th of January 2003.

The details of the dangerous driving on each occasion are fully set out in the records. It is sufficient for present purposes to say that the offences occurred in a suburban area of Brisbane. The driving, as the learned sentencing Judge found, was exceptionally dangerous and posed a great threat to members of the public. It involved travelling at greatly excessive speed through red lights, on the wrong side of the road and on one occasion driving the wrong way in a one-way street.

Those two offences of dangerous driving called for a severe penalty because of the applicant's appalling traffic history. He had two convictions for driving under the influence of alcohol. The first on the 18th of June 1984 and the second on the 26th of September 1984. Then in 1986 and 1987, he had convictions for unlicensed driving. Then on the 18th of February 1997 he was convicted of two counts of dangerous driving; he was sentenced to imprisonment for two years and a recommendation for post prison community based release was made after nine months. His traffic history shows some seven major traffic offences, many for excessive speeding. That resulted in his licence being suspended. In fact, his licence

was suspended at the time of the dangerous driving incidents in January 2003.

In relation to his criminal history, reference should also be made to two drug related convictions. On the 27th of November 1992 he was convicted of being in possession of a dangerous drug and fined. Then on the 23rd of February 1998 he was convicted of trafficking in a dangerous drug; there were also 10 supply counts involved with that charge. The head sentence for those offences was four years imprisonment.

The applicant was born on the 25th of May 1967, making him aged between 34 and 36 when the offences were committed and aged 37 at sentence.

The learned sentencing Judge imposed a sentence of four years imprisonment on each of the dangerous driving offences committed in January 2003. Those sentences were made concurrent. He was disqualified absolutely from holding or obtaining a driver's licence and a direction was made that 553 days in pre-sentence custody were to be brought into account.

Again the main complaint is that the learned sentencing Judge made no allowance for the applicant's plea of guilty. Given his overall traffic history, the previous conviction for trafficking in a dangerous drug, and the fact that when the dangerous driving offences were committed, he was unlicensed, on bail and subject to a suspended sentence, significant custodial penalties were called for. In addition very serious

dangerous driving was involved in the commission of each of those offences. Indeed, the conduct was such that a cumulative sentence could have been imposed with respect to the second of the dangerous driving charges. Given the fact that he had already been subject to a two year sentence for dangerous driving, cumulative sentences could have been imposed resulting in the applicant being required to serve more than four years.

The learned sentencing Judge imposed, given the overall criminality of all the matters with which he was concerned, a relatively modest sentence of four years imprisonment. That sentence of four years imprisonment does contain an element of amelioration because of the timely plea of guilty. In the circumstances, the applicant has not satisfied me either that an error was made in the sentencing process or that the sentence in fact imposed was manifestly excessive. It follows that the application for leave to appeal should be refused.

I would therefore dismiss each application for leave to appeal against sentence.

MACKENZIE J: Yes. In each case I agree that the application should be dismissed for the reasons given by Williams J.

PHILIPPIDES J: While the learned sentencing Judge did not expressly state that the guilty pleas had been taken into account, it is clear from the exchange in the course of argument before the learned sentencing Judge, from what was

said by his Honour in the course of his sentencing remarks and from the sentences imposed, that the pleas were taken into account in moderating the sentences imposed.

In any event, even if it were appropriate to exercise a sentencing discretion afresh because of an error, the appropriate sentences in the present cases were, in my opinion, those imposed by the learned sentencing Judge. I would therefore dismiss the application.

WILLIAMS JA: The orders will be as I have indicated.

-----