

# SUPREME COURT OF QUEENSLAND

CITATION: *R v Dawson* [2004] QCA 438

PARTIES: **R**  
**v**  
**DAWSON, David Ashwell**  
(applicant)

FILE NO/S: CA No 270 of 2004  
DC No 118 of 2004  
DC No 1752 of 2004

DIVISION: Court of Appeal

PROCEEDING: Sentence Application

ORIGINATING COURT: District Court at Brisbane

DELIVERED EX TEMPORE ON: 15 November 2004

DELIVERED AT: Brisbane

HEARING DATE: 15 November 2004

JUDGES: McMurdo P, McPherson JA and Philippides J  
Separate reasons for judgment of each member of the Court, each concurring as to the order made

ORDER: **Application for leave to appeal against sentence refused**

CATCHWORDS: CRIMINAL LAW – JURISDICTION, PRACTICE AND PROCEDURE – JUDGMENT AND PUNISHMENT – SENTENCE – FACTORS TO BE TAKEN INTO ACCOUNT – CHARACTER OF OFFENCE – GENERALLY – applicant pleaded guilty to seven offences of burglary and stealing, five offences of armed robbery, one offence of armed robbery with personal violence and two offences of attempted robbery – offences committed during operational period of unserved sentence of imprisonment – sentenced to effective term of eight and a half years imprisonment – declared to be convicted of serious violent offences in respect of the robbery offences – whether declaration made sentence manifestly excessive in all the circumstances

*Penalties & Sentences Act* 1992 (Qld), Pt 9A

*R v Matthewson* [2001] QCA 4; CA No 226 of 2000, 30 January 2001, cited

*R v McDonald* [2001] QCA 238; CA No 46 of 2001, 22 June

2001, cited

COUNSEL: The applicant appeared on his own behalf  
D Meredith for the respondent

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

THE PRESIDENT: Mr Dawson pleaded guilty on 15 July 2004 to the following offences: one indictment charged him with seven offences of burglary and stealing, a second ex officio indictment charged him with five offences of armed robbery, one offence of armed robbery with personal violence and two offences of attempted armed robbery. These offences were committed during the operational period of an unserved sentence of imprisonment of 27 months.

The learned sentencing Judge decided to impose a significant head sentence on the most serious offences, those of robbery, to reflect Mr Dawson's overall criminality and to impose concurrent lesser terms of imprisonment on the remaining offences, including an order that the previously unserved suspended term of imprisonment be served concurrently.

The effect of the Judge's sentence was to order Dawson to serve eight and a half years imprisonment on each robbery offence, five years imprisonment for each burglary and stealing offence and to serve the 27 months imprisonment, being the unexpired term of the suspended sentence during which Mr Dawson committed further offences punishable by imprisonment, all concurrently. One hundred and thirty one

days pre-sentence custody was declared as time served under the sentence.

The learned sentencing Judge also declared Mr Dawson to be convicted of serious violent offences in respect of the robbery offences.

Mr Dawson, who appears for himself in this application, contends that the declaration that these offences were serious violent offences made the sentence manifestly excessive in all the circumstances.

He was 30 years old at sentence and 29 when he committed the offences. He had an extensive prior criminal history commencing in 1991 with unlawful assault for which he was placed on 12 months probation. In 1992 he breached that probation and was sentenced to a further two years probation for unlawful use of a motor vehicle, resisting police and stealing. In 1993 he was placed on a further 12 months probation order for a stealing offence and later that year was convicted and fined for possession of a dangerous drug and a fine option order was revoked. During 1994 and 1995 he was dealt with for a number of street offences. In June 1995 he appeared for the first time in the Brisbane District Court and was convicted and sentenced to six months imprisonment suspended for three years for breaking and entering a dwelling house with intent, stealing and false pretences. The next year he was sentenced to four years imprisonment with a recommendation for parole after 15 months for 16 counts of

house breaking and stealing, one count of break and enter a place with intent and 18 counts of stealing. In 2002 he was sentenced to three years imprisonment suspended after nine months for offences of entering or being in a dwelling with intent and using or threatening to use actual violence and break, assaults occasioning bodily harm, entering a dwelling and committing an indictable offence and two further counts of entering premises and committing an indictable offence.

The offences concerning this Court occurred during the operational period imposed for those offences. On 4 August 2003 he was convicted and fined \$450 for unauthorised dealing with shop goods.

I turn now to the offences the subject of this application. The burglary offences related to breaking into homes in the Algester area between April and August 2003. Entry was usually gained by jemmying open a door or window. Property to the value of \$38,434 was stolen. None has been recovered. Mr Dawson tells us that many of these offences would not have been detected but for his admissions to the authorities.

The robbery offences occurred between October and December 2003 and were committed whilst he was on bail for the burglary offences. The circumstances are these. At about 9.10 am on 14 October 2003 he entered a 727 convenience store at Hillcrest and produced a knife with a 25 to 30 centimetre blade demanding money. He fled with \$550 after warning his victim not to call the police because he knew where he lived.

Clothing similar to that seen to be worn by the robber was found in nearby bushland close to Mr Dawson's family home. When later interviewed by police Mr Dawson made full admissions.

On Sunday 14 December 2003 at about 6.45 am he entered a service station and asked for a packet of cigarettes. As the female shop assistant turned to oblige him she saw he was holding a black serrated-edged knife in his right hand. He produced a plastic bag and demanded that she open the safe. She said she did not have access to the safe. He left with \$300 from the till. The incident was recorded on video. When Mr Dawson was subsequently arrested on 27 December 2003 in respect of another matter, he admitted his involvement in this offence which he said he committed because of his heroin addiction and to pay debts incurred in obtaining the drug. He expressed remorse at his actions.

At about 11.12 pm on 19 December 2003, Mr Dawson entered the Woolworths Petrol Plus store at Hillcrest. He again produced a knife and a plastic bag and demanded money from an employee. This time he left with \$300. His actions were again captured on video surveillance cameras. Police with the dog squad followed his trail but lost it in the vicinity of his family home.

On 21 December 2003 at about 4.25 pm he entered the Naughty But Nice store at Kelvin Grove wearing a red stocking over his head and wielding a carving knife which he waved at a female

employee while demanding money. He obtained \$600 cash and left. When he was arrested on 27 December he again made admissions to this offence.

On 22 December 2003 at about 12 pm he entered the Algester Post Office, produced a knife and demanded money. He filled a plastic bag with \$949 and left on a bicycle. He again made full admissions to this offence when later apprehended.

On 23 December 2003 at 1.30 pm he entered the Sunnybank South Post Office and demanded money but when another employee entered the store he left empty-handed, discarding the plastic bag. It was subsequently forensically examined and his fingerprints were found on it. It was those fingerprints which led to his apprehension and arrest on 27 December 2003 when he made full admission to this and the other offences.

Later on 23 December at about 4.15 pm, he went to Brumby's Bakery at Stafford, produced a knife and a plastic Myer bag and demanded money from a female employee who screamed. When a second employee appeared in answer to the scream he ran off empty handed. An unknown male pursued and apprehended him but he broke free and left by car. He again made full admissions in his later record of interview on 27 December.

At 11.45 pm that evening he committed his third offence of the day, this time with more criminal success. He entered Mr Toys Toyworld at Browns Plains wearing a balaclava, producing his customary knife and plastic bag and demanding money from the

employee who put \$375 in the bag. He left with those proceeds.

As noted when interviewed by police, he was co-operative and made full admissions and expressed remorse. The total property unrecovered in respect of both indictments is \$41,643. There was no realistic prospect of repayment.

The Prosecutor at sentence contended that, taking into account all the criminality and the fact that the offences were committed whilst he was subject to a suspended sentence, a term of imprisonment of 10 years for the robbery offences with lesser concurrent periods of imprisonment on the remaining matters was appropriate.

Defence counsel at sentence tendered a psychiatric report from Dr Fama who noted that Mr Dawson was opioid dependant and gave the following opinion:

"Sadly, the most effective long-term treatment is imprisonment in that it secures protracted abstinence. The more protracted the abstinence, the less the risk of relapse. Reasonably, however, a moderate term of imprisonment can be coupled with a period of residential drug rehabilitation in an approved agency. I cannot predict the eventual chance of success for [Mr Dawson]. His outlook generally seems poor, on his existent record. On the other hand, he seems genuinely motivated to succeed at abstinence.

. . . It would be unrealistic to envisage other than a substantial sentence of imprisonment. I believe that [Mr Dawson] would tolerate that, provided he can envisage his eventual release. He does have good support from his mother and his girlfriend.

. . . Should [Mr Dawson] resume drug-taking, he would be certain to reoffend. That risk is high at present but would be considerably reduced by the passage of time and by [Mr Dawson's] taking part in drug rehabilitation programmes. [Mr Dawson] does express remorse about his criminal behaviour, and a wish to adopt a normal life."

Defence counsel at sentence emphasised that some consideration had been given to dealing with the burglary offences in the Ipswich District Drug Court and a pre-sentence report indicating that he was a suitable candidate for drug rehabilitation was prepared. It seems the Drug Court decided that it could not deal with him, apparently because of the seriousness of the offences and his criminal history. Mr Dawson then became despondent and relapsed into a downward spiral of drug abuse culminating in the commission of the serious robbery offences. The pre-sentence report prepared by the Drug Court noted that Mr Dawson is Hepatitis C positive but otherwise physically well. His parents divorced when he was eight years old with his mother moving to Brisbane to escape his violent alcoholic father. He gets on well with his mother and whilst he initially hated his step-father, who entered his life when he was 13 years old, he now respects him. He has two older siblings, none of whom have a criminal or drug abuse history. His supportive girlfriend, whom he hopes to marry, is also drug free. A number of references attesting to his good work attitude were tendered at sentence. Defence counsel at sentence urged the Court to impose a sentence of about eight years imprisonment with no declaration under Part 9A *Penalties and Sentences Act 1992* (Qld) ("the Act"), so that a recommendation for parole a little earlier

than the half way mark could be made so as to assist with his rehabilitation.

The learned sentencing Judge was understandably concerned with the need for general and personal deterrence in the light of Mr Dawson's bad prior history and the seriousness of the offences, especially those of armed robbery. The learned Judge carefully considered whether he should make the declaration under the Act and was conscious that if made, it would require Mr Dawson to serve a period of 6.8 years before he became eligible to be released on parole. Is this a manifestly excessive sentence?

In Mr Dawson's favour was his co-operation with the authorities, remorse and early plea by way of ex officio indictment. On the other hand, the offences were extremely serious, especially those of armed robbery which involved the use of a knife. No doubt they caused terror to the victims of the robbery offences even though no impact statements were tendered below. Mr Dawson is now a mature man who has been treated leniently by the Court in the past and been given every opportunity to reform. Plainly the insidious nature of heroin addiction is the reason for his lack of success despite his efforts. He committed these offences during the operational period of a suspended sentence and the most serious of them, the robberies, whilst on bail. All the offences, including the invoking of the suspended sentence, were concurrent with each other. In those circumstances it cannot be said that the sentence of eight and a half years

imprisonment with a declaration that the offences on which that penalty was imposed were serious violent offences did not adequately reflect the mitigating factors and was manifestly excessive. The sentence is supported by *R v Matthewson* [2001] QCA 4; CA No 226 of 2000, 30 January 2001 and *R v McDonald* [2001] QCA 238; CA No 46 of 2001, 22 June 2001.

The application for leave to appeal should, in my view, be refused.

McPHERSON JA: I agree.

PHILLIPIDES J: I also agree.

THE PRESIDENT: That is the order of the Court.

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