

SUPREME COURT OF QUEENSLAND

CITATION: *R v Trimble* [2004] QCA 464

PARTIES: **R**
v
TRIMBLE, Graham Leslie
(applicant)

FILE NO/S: CA No 335 of 2004
SC No 217 of 2004

DIVISION: Court of Appeal

PROCEEDING: Sentence Application

ORIGINATING COURT: Supreme Court at Brisbane

DELIVERED ON: 3 December 2004

DELIVERED AT: Brisbane

HEARING DATE: 22 November 2004

JUDGES: McMurdo P, Williams JA and Mackenzie 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 dismissed**

CATCHWORDS: CRIMINAL LAW – JURISDICTION, PRACTICE AND
PROCEDURE – JUDGMENT AND PUNISHMENT –
SENTENCE – FACTORS TO BE TAKEN INTO
ACCOUNT – CIRCUMSTANCES OF OFFENDER – where
applicant convicted of one count of trafficking in the
dangerous drug heroin, four counts of supplying that drug and
two further counts of supplying that drug – where sentenced
to eight and a half years imprisonment cumulative on another
term of imprisonment being served by the applicant – where
plea of guilty – where applicant co-operated with police –
where extensive criminal record – whether sentence imposed
manifestly excessive

R v Booth [2001] 1 Qd R 393, cited
R v Irving [2001] QCA 472; CA No 199 of 2001, 2
November 2001, cited
R v Shillingsworth [2001] QCA 172; CA No 337 of 2000, 11
May 2001, cited

COUNSEL: M Green for the applicant
D L Meredith for the respondent

SOLICITORS: Legal Aid Queensland for the applicant
Director of Public Prosecutions (Queensland) for the

respondent

- [1] **McMURDO P:** I agree the application for leave to appeal should be refused for the reasons given by Williams JA.
- [2] **WILLIAMS JA:** The applicant pleaded guilty on 25 August 2004 to one count of trafficking in the dangerous drug heroin, four counts of supplying the dangerous drug heroin and two further counts of supplying the dangerous drug heroin. He was sentenced on 27 August 2004 to eight and a half years imprisonment on the trafficking charge; convictions were recorded but no separate sentences imposed with respect to the supply counts. The sentence of eight and a half years imprisonment was made cumulative upon another term of imprisonment being served by the applicant. It was accepted on the hearing in this court that the cumulative sentence would expire in October 2015. The principal submission by counsel for the applicant was that the learned sentencing judge made insufficient allowance for the plea of guilty and the applicant's co-operation with the administration of justice and that, particularly bearing in mind that the sentence had to be made cumulative, eight and a half years imprisonment was manifestly excessive.
- [3] The material discloses that police commenced surveillance of the applicant on 14 May 2003. The following summary was put to the learned sentencing judge:
"They followed his vehicle to various locations on the Sunshine Coast and they noticed when he stopped he was approached by various people who went to the prisoner's driver's side where he was sitting at the window and they then observed these people to leave him, go and get in their cars and drive off.

He would then drive off and go to another location where a similar thing would happen. That happened, they observed, to a couple of males and a couple of females. On the 10th of June 2003, at the Eumundi Noosa Road, they stopped his vehicle and searched it. In a seat cover under the driver's seat there was an uncapped syringe and under the driver's visor they found an envelope which had the \$4,430 in cash."
- [4] A subsequent search of the applicant's residence did not reveal any drugs. But whilst the police were at the house the telephone rang and the police spoke to three people all of whom were seeking to obtain drugs from the applicant. One of those persons indicated to police that she had purchased heroin from the applicant once in December 2002, and then on a weekly basis from January 2003. Another indicated he had known the applicant for about four years and had purchased low grade heroin from him on about five occasions in the two weeks prior to the applicant's being intercepted by the police.
- [5] The applicant admitted to investigating police that he had begun supplying heroin to others about eight months after his release from imprisonment and supplied heroin to probably five or six people. He specifically admitted to supplying four persons with heroin on 9 June 2003 and two persons on 10 June 2003.
- [6] That was in essence the evidence against the applicant. Apart from the money found in his motor vehicle there was little to indicate the extent of the trafficking.

No heroin was located for testing, and in consequence there was nothing before the court to indicate the purity of the heroin the applicant was supplying.

- [7] It was accepted by both counsel that the applicant was granted work release from his earlier custody in June 2001, home detention in November 2001 and parole in March 2002. The applicant's admission to the police was that he began supplying heroin again about eight months after his release; it is not clear whether he was referring to work release, home detention or parole. But in any event it is clear that by about mid to late 2002 he was again supplying heroin on a regular basis. The trafficking charge to which he pleaded guilty alleged the trafficking occurred between 1 June 2001 and 11 June 2003.
- [8] The applicant was born on 6 December 1957 and was aged 46 when apprehended with respect to the charges in question. It is the applicant's criminal history, which the learned sentencing judge described as "terrible", which is of real significance when it comes to determining the appropriate sentence.
- [9] The applicant was dealt with in the Noosa Magistrates Court on 25 September 1992 for one count of entering a dwelling house with intent and placed on probation for six months and ordered to perform 40 hours community service. He was then dealt with in the Supreme Court on 18 October 1993 on 10 charges of supplying a dangerous drug, three charges of possessing a dangerous drug, and one count of production of a dangerous drug. What is of some significance is that the majority of those offences were committed whilst he was subject to the probation order. The head sentence imposed on 18 October 1993 was six months imprisonment suspended for a period of two years.
- [10] He was then convicted in the Noosa Magistrates Court on 23 March 1995 of one count of possessing a dangerous drug on 3 August 1994. He was convicted and fined \$800.00. The record does not indicate that that conviction was treated as a breach of the suspended sentence imposed on 18 October 1993.
- [11] Then in the Supreme Court on 18 July 1997 he was convicted of two counts of supplying a dangerous drug and one count of possessing a thing used in connection with the commission of a crime. He was sentenced to imprisonment for two years six months and a recommendation was made that he be considered for parole after serving nine months.
- [12] On 2 July 1997, that is about two weeks before appearing in the Supreme Court on those drug related charges, he committed the offence of stealing with actual violence whilst armed with a dangerous weapon and in company. One can assume that he must have been on bail with respect to the drug charges when that offence was committed. For that armed robbery offence he was initially sentenced in the District Court on 19 January 1998 to six years imprisonment to be served concurrently, but the Court of Appeal, on an Attorney's Appeal, ordered on 17 April 1998 that the term of six years imprisonment be imposed cumulatively upon the other term being served. The Court of Appeal made a recommendation that the applicant be eligible for parole on 18 October 2000.
- [13] In the interval the applicant was also convicted in the Maroochydore Magistrates Court on 9 February 1998 on some 19 drug related charges committed during 1997; he was sentenced to four months imprisonment to be served concurrently on that occasion.

- [14] Finally in the Supreme Court on 14 July 1998 he was also sentenced with respect to another five drug related charges committed during 1997. On that occasion he was sentenced to 12 months imprisonment to be served cumulatively on the other sentences; a new parole date of 20 December 2000 was fixed.
- [15] All the drug related convictions, other than the first in 1993, related to the Schedule 1 drug, heroin.
- [16] Because the applicant was on parole when the offences with which this court is now concerned were committed he was required to serve the balance of that earlier term. The court was told that that term would expire in April 2007, and it is then that eight and a half year term would begin.
- [17] From the criminal history it appears that, with the exception of a short period at the end of 1995 and the beginning of 1996, the applicant since September 1992 was either subject to a sentence or committing drug offences. In the circumstances it is not surprising that police officers became suspicious of the applicant's activities in May 2003 and placed him under surveillance.
- [18] It can be assumed that the applicant is addicted to heroin and was at best for him a low level street dealer. There is some evidence that, although the applicant was unemployed and receiving a pension, he was living beyond his means. That would indicate that the level of his dealing was such that it went beyond merely what was necessary in order to feed his own addiction.
- [19] The learned sentencing judge did recognise that the applicant was entitled to credit for pleading guilty; although he did indicate that more credit would have been granted if the plea had been entered earlier, an allowance was made. It is correct to say that the plea was somewhat late in that it was recorded after the matter had been listed for trial.
- [20] Of somewhat greater significance is the extent of the applicant's co-operation once apprehended. It appears that he readily admitted to investigating police, once they had spoken to persons to whom he supplied heroin, that in fact he had been doing so for a significant period of time.
- [21] This sentence had to be cumulative on the remainder of the existing sentence: s 156A of the *Penalties and Sentences Act* 1992. This court in *Booth* [2001] 1 Qd R 393, *Shillingsworth* [2001] QCA 172 and *Irving* [2001] QCA 472 has considered the proper approach to sentencing in those circumstances. As Thomas JA noted in *Shillingsworth* the sentence imposed might be ameliorated because it is to be cumulative, but nevertheless it must be in the appropriate range for the criminality in question. That approach was acknowledged by the learned sentencing judge here in the course of argument.
- [22] As the learned sentencing judge noted in the course of submissions an offender convicted of trafficking in heroin with a record comparable to that of the appellant could reasonably expect to receive a head sentence of at least 10 years imprisonment which would carry with it automatically a serious violent offence declaration requiring the offender to spend 80 per cent of that period prior to release into the community. A perusal of the schedule submitted by counsel for the respondent with respect to trafficking in heroin shows that since 1999 sentences of

10 years or more have consistently been imposed on persons convicted of that offence.

- [23] In those circumstances a sentence of eight and a half years imprisonment does reflect an allowance for the plea of guilty, the co-operation with the administration of justice and the fact that the sentence has to be served cumulatively.
- [24] Given all of that a sentence of eight and a half years imprisonment, even to be served cumulatively, is not manifestly excessive. If nothing else, the applicant's criminal history demands that a sentence of that order be imposed.
- [25] For those reasons the application for leave to appeal against sentence should be dismissed.
- [26] **MACKENZIE J:** I agree that the application for leave to appeal against sentence should be refused for the reasons given by Williams JA.