

SUPREME COURT OF QUEENSLAND

CITATION: *R v Bajramovic* [2004] QCA 465

PARTIES: **R**
v
BAJRAMOVIC, Grace Mary Theodora
(applicant)

FILE NO/S: CA No 247 of 2004
DC No 519 of 2003

DIVISION: Court of Appeal

PROCEEDING: Sentence Application

ORIGINATING COURT: District Court at Cairns

DELIVERED ON: 3 December 2004

DELIVERED AT: Brisbane

HEARING DATE: 18 November 2004

JUDGES: McPherson and Williams JJA 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 dismissed**

CATCHWORDS: CRIMINAL LAW – JURISDICTION, PRACTICE AND
PROCEDURE – JUDGMENT AND PUNISHMENT –
SENTENCE – where applicant sentenced for aggravated
fraud to 18 months imprisonment suspended after 9 months
for an operational period of 3 years – where significant
mitigating factors noted by sentencing judge – where
applicant distressed and suffers from ill health – whether
custodial sentence required – whether sentence manifestly
excessive

R v Cox (1995) 85 A Crim R 1, cited
R v Ferguson [1995] QCA 554; CA No 381 of 1995, 12
December 1995, cited
R v Geertz [1995] QCA 240; CA No 121 of 1995, 26 April
1995, cited
R v Jacob [1997] QCA 149; CA No 46 of 1997, 12 May
1997, cited
R v Mara; ex parte A-G (Qld) [1999] QCA 308; CA No 170
of 1999, 6 August 1999, distinguished
R v Rees [2002] QCA 469; CA No 205 of 2002, 4 November
2002, cited
R v Riesenweber; ex parte A-G (Qld) [1996] QCA 504; CA
No 430 of 1996, 15 November 1996, distinguished

R v Sigley [2002] QCA 11; CA No 297 of 2001, 4 February 2002, cited

COUNSEL: A J Rafter SC for the applicant
R G Martin for the respondent

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

- [1] **McPHERSON JA:** I agree with the reasons of Philippides J. The application for leave to appeal against sentence is dismissed.
- [2] **WILLIAMS JA:** I have had the advantage of reading the reasons for judgment of Philippides J and there is nothing I wish to add.
- [3] **PHILIPPIDES J:** The applicant was convicted after a trial of fraud with circumstances of aggravation and sentenced on 11 June 2004 to 18 months' imprisonment, suspended after 9 months for an operational period of 3 years. She now brings an application for leave to appeal against sentence. An appeal against conviction was abandoned at the hearing before this Court.
- [4] The ground upon which the application is made is that the sentence imposed was manifestly excessive. It is submitted that the sentence which should have been imposed was one of 18 months' imprisonment, suspended immediately, for an operational period of 3 years.
- [5] The applicant was 55 to 58 years of age at the time of the offence, 64 at sentencing and is currently 65 years of age. She has no prior criminal history.
- [6] The circumstances surrounding the commission of the offence are that the applicant became friendly with the complainant, with whom she developed a close relationship. The applicant and the complainant lived together for some time, but the exact nature of the relationship remained unclear. She became a bookkeeper for the complainant's business, performing this task both during and after residing with the complainant. As a result of her position, she became a signatory to the complainant's cheque account. For over a three year period, the applicant took advantage of her position of personal and commercial trust to write cheques to cash (for the most part) with herself as the beneficiary. There were a total of 179 such cheques totalling \$42,986. Her activities were detected when the complainant discovered discrepancies. At trial, the applicant gave evidence attacking the integrity of the complainant.
- [7] In imposing sentence, his Honour took into account the seriousness of the offence, the absence of any demonstrated remorse and the fact that the applicant did not have the benefit of a plea. The learned sentencing judge took the view that a starting point of 3 years' imprisonment was appropriate, given the comparative cases placed before him. His Honour gave effect to the significant matters of mitigation present, by both reducing the head sentence and partially suspending that sentence. The matters of mitigation to which his Honour had regard included the applicant's extremely disrupted childhood, the tragic loss of family members,

her very difficult life and her previous good behaviour. His Honour also accepted that the applicant suffered from ill health and was fearful of imprisonment.

- [8] On behalf of the applicant reliance was placed on *R v Riesenweber; ex parte Attorney-General* [1996] QCA 504 and *R v Mara; ex parte Attorney-General* [1999] QCA 308, in which non custodial sentences were imposed. However, both those cases involved pleas of guilty and had special features which justified the imposition of a non-custodial sentence. In *Riesenweber*, the Court of Appeal observed that even with the plea, the case was a difficult, marginal one. The fact of the offender having sustained a substantial injury was regarded as tipping the balance in favour of the non-custodial sentence imposed. In *Mara*, the offender, who it was accepted was genuinely remorseful, had been subjected to cultural pressures to distribute money and other assets of her employer. I accept the respondent's submission that those cases do not indicate that the sentence imposed here was manifestly excessive. Furthermore, authorities such as *R v Jacob* [1997] QCA 149, *R v Rees* [2002] QCA 469, *R v Ferguson* [1995] QCA 554, *R v Sigley* [2002] QCA 11, *R v Cox* (1995) 85 A Crim R 1 and *R v Geertz* [1995] QCA 240 support the sentence imposed as well within range.
- [9] Contrary to the applicant's submissions, it is clear that his Honour had careful regard to what he recognised as "significant mitigating features" present in this case. In my view, the approach taken by the learned sentencing judge, in both reducing the head sentence he would otherwise have imposed and in partially suspending the sentence, was an appropriate exercise of the sentencing discretion and adequately reflected the matters of mitigation.
- [10] In oral submissions before the court, counsel on behalf of the applicant raised a further matter concerning the possible consequences of the sentence imposed in terms of the applicant's "resident and return visa" being revoked. However, such matters cannot influence this Court to set aside a sentence clearly within the sentencing discretion.
- [11] Accordingly, I would dismiss the application.