

# SUPREME COURT OF QUEENSLAND

CITATION: *R v Lennon* [2005] QCA 10

PARTIES: **R**  
**v**  
**LENNON, Terry Kevin**  
(applicant)

FILE NO/S: CA No 393 of 2004  
DC No 161 of 2004  
DC No 463 of 2004  
DC No 464 of 2004  
DC No 465 of 2004  
DC No 466 of 2004  
DC No 467 of 2004

DIVISION: Court of Appeal

PROCEEDING: Sentence Application

ORIGINATING COURT: District Court at Beenleigh

DELIVERED EX TEMPORE ON: 7 February 2005

DELIVERED AT: Brisbane

HEARING DATE: 7 February 2005

JUDGES: McMurdo P, McPherson JA and Jerrard JA  
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 – where applicant sentenced to a term of imprisonment with a recommendation for post-prison community based release four months less than the statutory eligibility date – where guilty plea entered on all offences – where applicant voluntarily informed authorities of involvement in offences that were not attributed to him – where applicant had a lengthy criminal history for like offences – where applicant committed a number of the offences whilst on bail – whether sentence manifestly excessive in all the circumstances – whether applicant given insufficient credit for mitigating matters

*Penalties and Sentences Act 1992 (Qld), s 13*

*R v Faramus [1999] QCA 167, CA No 30 of 1999, 11 May 1999, considered*

COUNSEL: A W Moynihan for the applicant  
M J Copley for the respondent

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

THE PRESIDENT: Mr Lennon pleaded guilty in the District Court at Beenleigh to counts of unlawful use of a motor vehicle to facilitate the commission of an indictable offence, break enter and steal, dangerous operation of a motor vehicle with a circumstance of aggravation, entering premises with intent to commit an indictable offence, unlawfully entering a motor vehicle with intent to commit an indictable offence in the night-time, four counts of burglary and fifteen counts of burglary and stealing. These 24 offences were contained in five indictments, four of which were presented ex officio. Mr Lennon was also dealt with for 11 summary offences for behaviour which included driving under the influence, unlicensed driving, failing to stop a vehicle, assaulting and obstructing police, breaching bail, failing to take reasonable care when disposing of a syringe and possession of tainted property, a bottle of perfume. He was sentenced to an effective term of four years imprisonment with a recommendation that he be eligible for post-prison community-based release after serving 20 months. Thirty-three days of pre-sentence custody was declared as time already served under the sentence and he was disqualified from holding a drivers license for three years. He contends that the effective

sentence imposed, four years imprisonment with a recommendation for parole after 20 months, was manifestly excessive.

The offences occurred between 9 May 2003 and 3 September 2004. He was charged with the commission of some offences in May of 2003 and released on bail on October 2003. He re-offended and was arrested again in July 2004. He was released on bail in August 2004 and continued to re-offend until his arrest in October that year. Sixteen of the indictable offences were committed between June and July 2004. The total property damaged or unrecovered in respect of all offences was \$17,537.

The most serious offences were the burglaries of suburban homes. On one occasion in July 2003 police attended a house in Inala in response to a complaint and interrupted Mr Lennon in the course of committing a burglary; police pursued him on foot and apprehended him after a struggle. During the commission of one burglary offence he disturbed an occupant and her child, causing them to run from their own home. Even after he committed this offence he continued to re-offend. On another occasion in July 2004 police disturbed him after he had broken into a house, apprehending him after a short pursuit on foot.

The offence of dangerous operation of a motor vehicle was also a serious example of its type. At about 2 a.m. on 22 May 2003 police approached Mr Lennon who was sitting in a vehicle which had been stolen a few hours earlier. He drove off and police

pursued him along Shaw Road and Beenleigh - Beaudesert Road for about five kilometres in the course of which he lost control of the vehicle from time to time, failed to stop at a stop sign, negotiated a roundabout on the wrong side and travelled at speeds in excess of 120 kilometres per hour. The vehicle was found abandoned on the wrong side of the road. Mr Lennon later surrendered and was charged with that offence. It was serious in that it concerned the dangerous driving of a stolen vehicle to avoid lawful detention and it took place over an extended period and involved excessive speed and recklessness.

In respect of many offences he took part in a recorded interview and made full admissions. As noted, on one occasion police disturbed him after he had broken into a house and apprehended him after a short pursuit on foot. Some offences were discovered by the identification of Mr Lennon's DNA or fingerprints at various crime scenes. But for his admissions, 14 burglary offences would not have been attributed to him.

Mr Lennon was 27 at sentence and has a lengthy criminal history for like offences commencing in 1994. He was placed on probation for two years for property offences in December that year. In 1995 he was convicted and fined for relatively minor drug offences, street offences and dangerous driving. Later that year he was imprisoned for nine months cumulative upon a four month sentence for two counts of dangerous driving and street offences including breaches of the *Bail Act 1980* (Qld). In July 1995 he was dealt with for breach of

community-based orders and sentenced to two years imprisonment with a recommendation for parole after six months. The next year he was sentenced to seven months imprisonment for dangerous driving. In March 2000 he was sentenced for a large number of property offences to three months imprisonment and three years probation on some counts and 13 months imprisonment suspended after serving three months with an operational period of two years and nine months. In April 2000 he was sentenced to 18 months imprisonment suspended for three years after serving 10 weeks imprisonment. In September 2001 he was sentenced to three months imprisonment for wilful damage, two short concurrent terms of imprisonment for street offences and for breaching the suspended sentence imposed in April 2000 to six months imprisonment. In 2003 he was convicted of more property and drug offences and sentenced to comparatively short terms of imprisonment. He has a number of convictions over the years for failing to properly dispose of needles and syringes.

His counsel at sentence emphasised that Mr Lennon has had a lengthy drug addiction commencing with his use of speed as a 14 year-old schoolboy and progressing to heroin at 16. This addiction was the cause of his offending behaviour. He was co-operative with the authorities and many of the offences would have been unsolved but for his admissions. A letter from Mr Lennon's mother was placed before the trial judge emphasising his dysfunctional background and that his father and his present partner were drug users.

Mr Lennon's counsel does not contend that the head sentence of four years' imprisonment is manifestly excessive but submits that he was given insufficient credit for mitigating matters in the recommendation for consideration for early parole and emphasises the provisions of s 13 *Penalties and Sentences Act* 1992 (Qld). This submission is based on the premise that the judge gave recognition to Mr Lennon's very extensive assistance with the administration of justice only by giving him a recommendation four months earlier than he would have otherwise been entitled.

Mr Lennon at 27 years of age cannot expect the leniency given to youthful first offenders. His criminal history for like offences was extensive. He has not taken advantage of the many lenient sentences he has been given in the past and he has previously been sentenced to substantial terms of imprisonment. The offences for which he was sentenced to four years imprisonment were serious, numerous and various. Importantly, he continued to offend after his many grants of bail. But for his extensive co-operation with the administration of justice a much more substantial head sentence than four years imprisonment could have been expected. See, for example, *R v Faramus* [1999] QCA 167, CA No 30 of 1999, 11 May 1999.

In my view, the learned trial judge gave Mr Lennon credit for the relevant and important mitigating factors in this case not only in the recommendation for early release and parole but also in moderating the head sentence. I do not regard the

sentence imposed as manifestly excessive. I would refuse the application for leave to appeal against sentence.

McPHERSON JA: I agree.

JERRARD JA: I agree. Mr Moynihan argues that the learned sentencing judge did not sufficiently take into consideration Mr Lennon's co-operation with the police. That is an important matter but that co-operation did assist Mr Lennon to obtain bail it would appear.

Mr Lennon was being sentenced, on my count, 21 offences of breaking and entering other people's homes and either stealing from those or attempting to steal from them. Most of those offences were actually committed when he was on bail. He was also sentenced for a serious offence of dangerous operation of a motor vehicle when escaping from a police pursuit.

The sentence which was imposed makes it possible that Mr Lennon will be released from custody on post-prison community-based release after he has served 20 months. That possibility means that that sentence for that conduct is not a manifestly excessive one.

THE PRESIDENT: The order is the application for leave to appeal against sentence is refused.

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