

SUPREME COURT OF QUEENSLAND

CITATION: R v Bagnall [2005] QCA 20

PARTIES: **R**
v
BAGNALL, Craig Matthew
(applicant)

FILE NO/S: CA No 10 of 2005
SC No 816 of 2004

DIVISION: Court of Appeal

PROCEEDING: Sentence Application

ORIGINATING COURT: Supreme Court at Brisbane

DELIVERED EX TEMPORE ON: 11 February 2005

DELIVERED AT: Brisbane

HEARING DATE: 11 February 2005

JUDGES: de Jersey CJ, Williams JA and Chesterman J
Separate reasons for judgment of each member of the Court, each concurring as to the order made

ORDER: **Application dismissed**

CATCHWORDS: CRIMINAL LAW – JURISDICTION, PRACTICE AND PROCEDURE – JUDGMENT AND PUNISHMENT – SENTENCE – FACTORS TO BE TAKEN INTO ACCOUNT – CIRCUMSTANCES OF OFFENCE – where the applicant was convicted on four counts of drug trafficking and unlawful possession – where the applicant was sentenced to three years’ imprisonment to be suspended after nine months with an operational period of five years – whether the sentence imposed was manifestly excessive

COUNSEL: J D Griffiths for the applicant
M R Byrne for the respondent

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

CHESTERMAN J: On 6 December last year the applicant pleaded guilty before Justice Holmes to an ex officio indictment charging him with:

1. Trafficking in MDMA and methylamphetamine between 1 June 2004 and 9 July 2004 at Alexandra Headland
 2. Unlawfully possessing cannabis sativa on 8 July 2004 at Alexandra Headland
 3. Unlawfully possessing methylamphetamine at the same date and the same place
- and
4. Unlawfully possessing two mobiles telephones, two spoons and one set of electronic scales used in connection with the commission of the offence in count 1.

The applicant was arrested during the course of a police investigation involving covert officers into the sale of drugs on the Sunshine Coast. The applicant was one of a group of people suspected of involvement in drug trafficking.

The suspicion was confirmed when the applicant sold MDMA tablets and methylamphetamine to a covert police officer. There were five sales in the 39 day period described in count 1. On only one of those occasions was methylamphetamine sold. On all five occasions ecstasy tablets were sold.

There was a sixth occasion when ecstasy was supplied. On this occasion only two tablets were handed over. They were intended to be part of a preceding transaction in which the applicant made short delivery. He made up for it by later supplying the additional two tablets.

Altogether the applicant supplied the covert police officer with 261 ecstasy tablets. The gross weight of the tablets was

56.809 grams. The weight of pure MDMA was 20.921 grams. On the one occasion when methylamphetamine was sold the applicant supplied 2.833 grams of powder. The weight of the pure drug was 1.382 grams.

The applicant was paid a total of \$8,780 for the five transactions. Of that sum \$540 was attributable to the sale of the methylamphetamine. This occurred on the occasion of the fourth sale.

It appears from conversations between the applicant and the covert police officer that the applicant was prepared to sell methylamphetamine but had difficulty in obtaining supplies of that drug. He had no difficulty in obtaining supplies of MDMA.

A search warrant was executed on the applicant's house on 8 July 2004. The applicant was at home but pretended he was not. When police entered they found the applicant and the drugs which are the subject of counts 2 and 3 and the equipment the subject of count 4.

In relation to count 2 police found a sealed plastic bag containing 427 grams of cannabis which the applicant had for his own use. In relation to count 3 the police also found the applicant in possession of two small plastic bags containing small amounts of methylamphetamine. Altogether there were 2.313 grams of powder. The pure weight of the drug was .82 of a gram.

The property the subject of count 4 was admitted by the applicant to be used by him to effect the sales of illegal drugs which constituted the offence in count 1. The applicant maintained that he made no profit from selling the drugs. His reward was said to be the receipt of ecstasy tablets for his own consumption. What that means, of course, is that with the proceeds of sale the applicant bought from his supplier a quantity of ecstasy tablets some only of which he sold. The remainder he consumed. The consequence is that he did profit from his transactions, but chose to spend the profits on drugs for his own use.

The applicant has a number of prior convictions for drug offences. In 1994 he was convicted of possessing cannabis and a pipe to smoke it. He was fined \$350. In December 1996 he was convicted of producing and possessing a dangerous drug and possessing a pipe. The drug was no doubt cannabis and he was fined \$1,000.

On the 13 March 2003 he was convicted of possessing a small amount of cannabis and was fined \$1500. On 7 July 2004 he was convicted of possessing cannabis and MDMA and was again fined \$1500.

The applicant was 29 years of age at the time of his arrest and sentence. In submissions made to Justice Holmes his counsel attributed his criminal behaviour to his becoming disillusioned with life because his partner, with whom he had

lived for some years and who had borne him three children, had left to reside in another city and prevented him from having any contact with his children.

He had a good work record as a builder but his employment had been interrupted by a serious injury to his left arm. The breakdown in his domestic relationship caused him stress for which he sought solace in alcohol. While frequenting hotels and met drug users and/or dealers and became involved in trafficking.

The learned Judge sentenced the applicant on count 1 to a term of three years' imprisonment to be suspended after serving nine months with an operational period of five years. Her Honour imposed no further penalty on counts 2, 3 and 4, though on each a conviction was recorded.

Her Honour took into account in deciding to suspend the imprisonment after a relatively short period the fact that the applicant had pleaded guilty at a very early time and proceeded by way of an ex officio indictment.

These facts indicated a degree of cooperation with the administration of justice, though it should be noted he did not identify his supplier in sufficient detail to allow his apprehension. Her Honour was also impressed by the applicant's references, which indicated that the applicant may have come to regret his criminal behaviour and had embarked upon a course of rehabilitation.

The applicant complains that the sentence is manifestly excessive, but it is impossible so to regard it. It was agreed between counsel that the appropriate range for an offence as serious as trafficking in MDMA and amphetamine was a term of imprisonment of between three and four years.

In my opinion a term of imprisonment of three years without any recommendation for early release or suspension would not have been excessive. In ordering that the sentence be suspended after nine months her Honour gave considerable weight to the factors in the applicant's favour. To ask for even more favourable treatment is, in my opinion, impudent.

Trafficking in ecstasy and amphetamine is a serious offence and should be so regarded. Both drugs are dangerous and cause serious disruption to the fabric of society. Ecstasy may not have the deleterious effects of methyamphetamine, but it has its own dangers for young people and its trade should be vigorously discouraged by the Courts.

I would dismiss the application.

THE CHIEF JUSTICE: I agree.

WILLIAMS JA: I agree.

THE CHIEF JUSTICE: The application is dismissed.
