SUPREME COURT OF QUEENSLAND

CITATION:	*R v Suey* [2005] QCA 27
PARTIES:	**R** **v** **SUEY, Daniel Richard** (applicant/appellant)
FILE NO/S:	CA No 379 of 2004 DC No 441 of 2004
DIVISION:	Court of Appeal
PROCEEDING:	Sentence Application
ORIGINATING COURT:	District Court at Brisbane
DELIVERED EX TEMPORE ON:	14 February 2005
DELIVERED AT:	Brisbane
HEARING DATE:	14 February 2005
JUDGES:	McMurdo P, Mackenzie J, Chesterman J Separate reasons for judgment of each member of the Court, each concurring as to the orders made
ORDERS:	**1. Application for leave to appeal against sentence granted** **2. Appeal allowed** **3. Vary sentence imposed by substituting 15 months in lieu of 20 months**
CATCHWORDS:	CRIMINAL LAW – APPEAL AND NEW TRIAL AND INQUIRY AFTER CONVICTION – APPEAL AND NEW TRIAL – APPEAL BY CONVICTED PERSONS – APPLICATIONS TO REDUCE SENTENCE – WHEN GRANTED – GENERALLY – where applicant convicted of two counts of armed robbery – where applicant was addicted to heroin at the time of the offences – where applicant voluntarily underwent structured rehabilitation program – where exceptional success at rehabilitation – whether sentence manifestly excessive
COUNSEL:	The applicant/appellant appeared on his own behalf R G Martin SC for the respondent
SOLICITORS:	The applicant/appellant appeared on his own behalf Director of Public Prosecutions (Queensland) for the applicant

MACKENZIE J: The applicant pleaded guilty to two counts of armed robbery aggravated in respect of the first count by being armed with a box cutter and, in the case of the second, by pretending to be armed with a firearm. He was sentenced to five years' imprisonment suspended for five years after 20 months with 221 days of presentence custody to be taken into account as time already served. He claims that the sentence is manifestly excessive.

The two offences were committed within hours of each other and, in circumstances where he committed the second robbery almost immediately after the police had left his home after investigating him as a suspect for the first robbery.

Count 1 occurred at 11.35 p.m. on the 17th of January 2003 at a Shell Service Station near Dreamworld. The employee who was on duty alone unlocked the door and let the applicant, who was wearing a black jumper with the hood pulled up over his head and sunglasses, into the service station. The applicant demanded money which he said was needed to pay household bills and revealed a Stanley knife lodged in his waistband. The attendant handed over $365 and the applicant left. The police found him in a nearby street. He told them that he was on his way to a Mobil Service Station to get food. They found $100 in his pants. He agreed to go with them to his home at Mermaid Beach where they made further inquiries. The police finished their inquiries without arresting him at about 5.26 a.m. However, fingerprints left by the applicant at the service station later confirmed that he was the offender.

A matter of minutes after the police left he went to a service station at Mermaid Beach. While his face was obscured by a towel he asked the attendant to give him money. When the attendant, disbelieving that he was serious, said "no" the applicant said he was serious and that he had a piece in his pocket. The complainant, no doubt knowing the language of the streets, took that to mean that he had a firearm and gave him about $100. The police were called and the applicant was seen running north along the footpath of the Pacific Highway. When questioned he said he had been at the casino and was running back there to catch a bus. He produced money which he said he had won at the casino.

He was 29 at the time of the offences. He had a number of previous convictions for offences including burglaries, stealing and drugs. More significantly, on the 1st of December 2000, he was convicted in New South Wales of robbery and sentenced to one year 10 and a half months' imprisonment. Then on the 11th of September 2002 in Queensland he was sentenced to three months' imprisonment and two years' probation for breaking and entering premises with intent. He was therefore on probation at the time of the present offences.

He had a heroin addiction at the time which, between his release on bail and sentence, he had attempted to address with some optimism being expressed that it would be successful.

He had commenced work, following an injury, shortly before the sentence.

The learned sentencing Judge allowed the applicant to speak about his rehabilitation and his hopes for the future. The learned sentencing Judge observed in his sentencing remarks that one could only hope that the efforts at rehabilitation were bona fide and not a tactical ploy and that time would tell whether the rehabilitation had succeeded. He gave allowance for the plea of guilty and cooperation with the administration of justice. He also said that he made, to use his words, certain allowance for the seeming efforts at rehabilitation and the optimism that had been expressed.

The applicant had quite recently completed a sentence for an offence of robbery in New South Wales and was on probation for breaking and entering with intent committed after his release in New South Wales at the time of the commission of these offences. The offences of robbery, with implied threats of violence if the demands were not cooperated with, were made on lone employees in a vulnerable place and such offences have always been treated seriously by the Courts. The applicant does not complain about the five year head sentence which was, in fact, that asked for by the prosecution below and so was the 20 month non-release period.

In the present case, there was the additional brazen factor that notwithstanding that the police had just left after investigating the first offence the applicant went out and within minutes committed the second offence. It cannot be said in any way that a head sentence of five years for such offences committed in the circumstances and with the

offender's history was outside the exercise of proper sentencing discretion. However, matters in his favour reflected by a suspension after two-thirds of the time he would otherwise have to serve before being eligible to apply for community based release are, in my view, inadequately reflected in the particular circumstances of this case.

It may be accepted, as the learned sentencing Judge no doubt thought, that there are cases which are not infrequent where the quality of evidence of rehabilitation is open to question but in the present case, where it appears that its disposition was postponed for longer than would ordinarily be the case, the applicant voluntarily underwent a structured program designed to overcome his drug dependency and to develop mechanisms for coping with life better than he has in the past.

The reports are optimistic and do not seem as speculative as is often the case. He has informed us that his sponsors are in Court today, to give him further support.

In the circumstances of the particular case, which are very unusual, it is my view that an allowance over and above what the applicant was entitled to for a plea of guilty and cooperation was appropriate.

It is very much a matter of judgment for the sentencing Judge as to the quality of rehabilitation and the genuineness of prospects of success.

Having heard what has been said and read the record, including the reports, it seems to me that the appropriate disposition of this case is to vary the sentence below by substituting a suspension of the sentence after 15 months, rather than the 20 months which was imposed by the learned sentencing Judge.

The outcome of that, of course, means that the applicant is very much the master of his own destiny from this point onwards. If he does not live up to the expectations that he has told us about today, then it seems to me that it is almost certain that the sentencing Judge would impose the whole of the remainder of the sentence imposed initially.

I would therefore allow the appeal and vary the sentence below by substituting a suspension after 15 months in lieu of 20 months, imposed below.

THE PRESIDENT: I agree.

CHESTERMAN J: I agree. This case is exceptional because of the demonstrated success of the applicant's rehabilitation. The case goes well beyond what one ordinarily finds, which is an expression of contrition and of an intention to undergo a course of rehabilitation.

This applicant has got himself to a position where he obtained and held down a job. Such successful rehabilitation is unusual. When it occurs, it should be rewarded, both as a matter of justice to the applicant and for the better protection of society.

THE PRESIDENT: The orders are as proposed by Justice Mackenzie.
