SUPREME COURT OF QUEENSLAND

CITATION:	*R v Harding* [2005] QCA 101
PARTIES:	**R** **v** **HARDING, Jason Bradley** (applicant)
FILE NO/S:	CA No 9 of 2005 DC No 160 of 2000 DC No 420 of 2001 DC No 421 of 2001 DC No 422 of 2001 DC No 423 of 2001
DIVISION:	Court of Appeal
PROCEEDING:	Sentence Application
ORIGINATING COURT:	District Court at Southport
DELIVERED ON:	11 April 2005
DELIVERED AT:	Brisbane
HEARING DATE:	11 April 2005
JUDGES:	Williams and Keane JJA and Helman J Separate reasons 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 – APPEAL AND NEW TRIAL AND INQUIRY AFTER CONVICTION – APPEAL AND NEW TRIAL – APPEAL AGAINST SENTENCE – APPEAL BY CONVICTED PERSONS – APPLICATIONS TO REDUCE SENTENCE – WHEN REFUSED – PARTICULAR OFFENCES – PROPERTY OFFENCES – where applicant pleaded guilty and was convicted of 25 property offences, including burglary, stealing and housebreaking – where an additional 1218 offences were taken into account at sentence - sentenced to 9 years imprisonment with a recommendation for parole after serving 3 years – where applicant produced evidence showing that 28 out of the 1218 offences were committed whilst he had been in detention between 19 January and 28 January 1996 – whether the sentence is manifestly excessive *Juvenile Justice Act* 1992 (Qld)

	Penalties and Sentences Act 1992 (Qld), s188 (1)(c), s 189
COUNSEL:	The applicant appeared on his own behalf M J Copley for the respondent
SOLICITORS:	The applicant appeared on his own behalf Director of Public Prosecutions (Queensland) for the respondent

WILLIAMS JA: On the 5th of April 2001, on pleas of guilty, the applicant was sentenced to nine years' imprisonment, with a recommendation for parole after serving three years.

The offences in question were a very large number of property offences, including burglary, stealing, housebreaking. It appears that the offences were committed between January 1995 and August 1999.

The applicant was born on the 14th of July 1982, which means he was approximately 13 when the first of the offences were committed. He turned 17, and therefore became an adult on the 14th of July 1999.

The indictment presented on the 18th of November 1999, contained 25 property counts. Subsequently, there were discussions between legal representatives for the applicant and the prosecution, and at sentence, a schedule pursuant to section 189 of the Penalties and Sentences Act was submitted indicating the applicant's consent to having a further 1,218 property offences taken into account. It was on the basis of all that material that the sentences were in fact imposed.

The applicant lodged an application for an extension of time to appeal to the Court of Appeal against that sentence on the 24th of June 2003, but that was abandoned in the month of August 2003.

It appears that the applicant was not granted parole in accordance with the sentence because of breaches of prison regulations committed whilst in custody.

Then in December 2004, he made application to the District Court, pursuant to section 188 1(c) of the Penalties and Sentences Act for the reopening of the sentence on the basis that there had been a clear factual error of substance.

It appears that the matter relied on by the applicant as constituting that error of substance was the fact that some 28 of the offences out of the 1218 on the schedule were committed whilst he had been in detention between the 19th of January and the 28th of January 1996.

Looking at the schedule, it would appear that the offences numbered 122 to 150 inclusive were committed during that period. That was a period when the applicant was aged about 14 years, and it was very early in the course of his criminal escapade.

When rejecting the application to re-open, Judge Healy said:

> "Those offences had simply been taken into account at sentence and he was not being arraigned on them. The

> acceptance of such a possible error provides no error of substance sufficient to enliven the discretion of the Court to reopen proceedings."

I agree with that conclusion. 28 offences out of the total of 1,243 was a relatively insignificant factor in determining the overall sentence.

The applicant also complains that there was a delay after the presentation of the indictment in dealing with him, so that he lost the benefit of being dealt with as a child.

Nevertheless, at the time of imposing sentence, the Judge, pursuant to the provisions of the Juvenile Justice Act, was obliged to have regard to both the fact that some of the offences were committed when he was a child, and to the sentence that might have been imposed on him if he was still a child.

Pursuant to those statutory provisions, the applicant could not be sentenced to a term of imprisonment longer than the period of detention that could have been imposed on him if he had been sentenced as a child.

As counsel for the prosecution has pointed out, the maximum period of imprisonment for which the applicant could have been sentenced as a juvenile, was 10 years, and the sentence here is within that. So there has not been any breach of that statutory provision by the imposition of the sentence in question.

The application currently before the Court, on its face, is clearly an application for leave to appeal against the sentence originally imposed in 2001. The applicant has not formally sought an extension of time within which to lodge such an application. It appears that the applicant considered it was not necessary to obtain an extension of time because he was within time for appealing against the decision of Judge Healy.

Whether one has regard to the original sentence or the decision of Judge Healy on the application for reopening, I am of the view that there is no substance in any of the submissions advanced by the applicant such would enable the Court at this stage to review the sentence which was imposed on him.

In the circumstances, the only appropriate order is to dismiss the application.

KEANE JA: I agree.

HELMAN J: I agree.

WILLIAMS JA: Well the order of the Court is the application is dismissed.
