SUPREME COURT OF QUEENSLAND

CITATION:	*R v Anable* [2005] QCA 208
PARTIES:	**R** **v** **ANABLE, Adrian Alfred** (applicant)
FILE NO/S:	CA No 58 of 2005 SC No 5 of 2005
DIVISION:	Court of Appeal
PROCEEDING:	Sentence Application
ORIGINATING COURT:	Supreme Court at Townsville
DELIVERED EX TEMPORE ON:	9 June 2005
DELIVERED AT:	Brisbane
HEARING DATE:	9 June 2005
JUDGES:	de Jersey CJ, White and McMurdo JJ 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 – 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 – where applicant pleaded guilty on an *ex officio* indictment to drug offences – where applicant was sentenced to a head sentence of nine months imprisonment – where the sentencing judge observed that the only proper sentence was one of actual incarceration – where applicant had developed a drug addiction – where applicant had a largely irrelevant prior criminal history – whether the judge's sentencing discretion miscarried – whether the sentence was manifestly excessive
COUNSEL:	A W Moynihan for the applicant C Heaton for the respondent
SOLICITORS:	Legal Aid Queensland for the applicant Director of Public Prosecutions (Queensland) for the respondent

THE CHIEF JUSTICE: The applicant pleaded guilty to a number of drug offences, the most serious of which were two counts of supplying methylamphetamine. One involved the actual supply of one gram of powder to a police undercover agent for the sum of $300 at a shopping centre after she had contacted the applicant on his mobile phone.

The second was constituted by the applicant's agreement to supply the undercover agent with more of the drug the following weekend. The other counts concern material located at the applicant's residence, including electronic scales.

The matter was presented to the learned Judge on the basis the applicant was a drug addict who sold the drugs to finance that addiction. The offences occurred at Townsville.

At the time of committing the offences the applicant was 38 years old. He had no relevant prior criminal history. The learned Judge sentenced him to an effective nine months' imprisonment.

Mr Moynihan, who appeared for the applicant, rather challenged the learned Judge's observation that "the only proper sentence" was one of actual incarceration. But plainly the Judge was not thereby fettering his discretion, he was simply observing that as the matter stood before him he considered the appropriate sentence to be of that character.

The Judge spoke of the seriousness of offending in relation to schedule 1 drugs, although he reasonably designated this activity as falling at a low level. He said this:

> "The undercover police officer handed over $300 and received one gram of a drug. You were, however, prepared to continue supplying the drug the following weekend. It is your preparedness and readiness to supply on request or at least on these two requests from the undercover police officer that is, in a sense, the gravamen of your criminal conduct and what constitutes its seriousness."

Counsel for the applicant focussed on the applicant's having pleaded guilty upon an ex officio indictment, his largely irrelevant prior criminal history and his personal circumstances at the time of offending with the breakdown of his relationship and the development of the drug addiction. Counsel submitted in writing that with the applicant's having served more than three months' imprisonment to this point the rest of the term should be suspended forthwith.

I see no basis on which it could be concluded that his Honour's sentencing discretion miscarried. Also, there is no ground for thinking a penalty of imprisonment of nine months for two counts of supplying a schedule 1 drug was in these circumstances manifestly excessive. Deterrence is an especially important goal in this area. I would refuse the application.

WHITE J: This conduct was towards the bottom of the range of commercial supplies. However, the drug is a schedule 1 drug; it is regarded as particularly dangerous in its effects. With no relevant previous convictions another Judge might have

wholly suspended the sentence or, indeed, crafted some other sentence, but I cannot conclude that the sentence imposed by his Honour below constituted appealable error and I too would refuse the application.

McMURDO J: I agree with each of those judgments.

THE CHIEF JUSTICE: The application is refused.
