SUPREME COURT OF QUEENSLAND

CITATION:	*R v Taylor* [2005] QCA 379
PARTIES:	**R** **v** **TAYLOR, Dylan** (applicant)
FILE NO/S:	CA No 192 of 2005 SC No 528 of 2005
DIVISION:	Court of Appeal
PROCEEDING:	Sentence Application
ORIGINATING COURT:	Supreme Court at Brisbane
DELIVERED ON:	14 October 2005
DELIVERED AT:	Brisbane
HEARING DATE:	3 October 2005
JUDGES:	McMurdo P, Jerrard JA and Douglas J 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 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 – applicant convicted on his own pleas of guilty to drug trafficking and various other drug-related offences – for drug trafficking the applicant was sentenced to five years imprisonment suspended after two years for an operational period of five years – concurrent sentences of up to two years imprisonment imposed on the other offences – applicant trafficked speed and ecstasy for a three month period – applicant made confession of trafficking to police when searched – applicant was not a drug user – applicant's counsel conceded that the five year sentence was within range – whether suspending the sentence after two years was manifestly excessive *R v Bellino* [1999] QCA 106; (1999) 105 A Crim R 137, considered *R v McMahon* [2003] QCA 369; CA No 199 of 2003, 27 August 2003, considered *R v Rizk* [2004] QCA 382; CA No 224 of 2004, 15 October 2004, considered

R v Christopher Taylor, unreported, Supreme Court of Queensland, de Jersey CJ, 1 March 2005, considered

COUNSEL: M J Byrne QC for the applicant
M J Copley for the respondent

SOLICITORS: Ryan & Bosscher for the applicant
Director of Public Prosecutions (Queensland) for the respondent

[1] **McMURDO P:** I agree with Jerrard JA's reasons for refusing the application for leave to appeal against sentence.

[2] **JERRARD JA:** On 12 July 2005 Dylan Taylor pleaded guilty to one count of carrying on the business of unlawfully trafficking in dangerous drugs, two counts of unlawfully supplying a dangerous drug to another, two counts of possession of a dangerous drug, one count of possession of a dangerous drug with a circumstance of aggravation, and one count of possession of things used in connection with the commission of the crime of trafficking. He was sentenced to five years imprisonment, suspended after two years for an operational period of five years, on the count of trafficking; to two years imprisonment concurrent on the two counts of supplying, on the count of possession with the circumstance of aggravation, and on one of the counts of possession; to six months imprisonment concurrent on the other count of possession, and to twelve months concurrent on the count of possession of things used. He has applied for leave to appeal against those sentences, contending they are manifestly excessive, and his counsel's written outline of argument submits that the five year sentence for trafficking should be suspended after Mr Taylor has served between 15 and 20 months of that offence, and the other sentences of two years imprisonment should each be varied to sentences of 18 months imprisonment.

[3] The dangerous drugs in which Mr Taylor admitted trafficking were methylamphetamine and 3,4-methylenedioxymethamphetamine (MDMA). Methylamphetamine is a schedule 1 dangerous drug and MDMA a schedule 2 drug. That trafficking was carried on between 31 October 2003 and 31 January 2004 at the Gold Coast. Mr Taylor by his pleas also admitted supplying MDMA to another person on 30 January 2004 on two separate occasions, and by his pleas he admitted possession of methylamphetamine, ketamine, and MDMA in excess of 2 grams, all those offences occurring on 30 January 2004. Finally, he admitted possession on 30 January 2004 of a set of scales and a mobile phone used in commission with his trafficking. His offending came to light that day when police pulled over a car in Labrador, on the Gold Coast, being driven by one Cameron Bremner, and as a result of what they found on Mr Bremner, the occupants of that car accompanied those police back to a residence near Southport which was searched for drugs. Mr Taylor was one of a number of young men located at the residence, and he was searched. The police found a clip-seal plastic bag in his wallet containing white powder, which Mr Taylor admitted was ketamine, a schedule 2 drug and an anaesthetic. It is occasionally mixed with methylamphetamine for unlawful consumption.

[4] The investigating police also found $3,165 in cash in Mr Taylor's wallet, and he admitted that a green Holden vehicle parked on the lawn was his, and that there were drugs in it. The car was searched and methylamphetamine (or "speed") was found in it, and MDMA (or "ecstasy"). A knife and electronic scales, and another

$160, were also found. In total in the car there were 102 tablets containing MDMA, totalling 29.006 grams, and 9.385 grams of MDMA in white powder form. The tablets were predominantly packed in groups of 10, with various logos on them, suggesting that they had come from different batches of that drug.

[5] In addition to the MDMA, there were 35 tablets and some crystal powder in the car, all containing methylamphetamine, in an amount totalling 0.465 grams of that drug. Count 6, a count of possession with the circumstance of aggravation that the quantity exceeded 2 grams, related to the possession of the MDMA found in Mr Taylor's car. Count 4 was the possession of the methylamphetamine in his car, and count 5 the ketamine in his wallet. Methylamphetamine was also detected on the knife found in the car, and a number of empty clip-seal plastic bags were found there too. A trace of cocaine was detected in one of them. Mr Taylor at first said that the money in his wallet was from the sale of a car, but then admitted that the drugs found in his vehicle were "bagged up" in the way in which they were because he had been selling both speed and ecstasy for a couple of months. He admitted that the $3,165 was from a recent drug sale, and he also admitted having sold two ecstasy pills that evening to Cameron Bremner, the person who had originally been pulled over by the police. That supply count to Mr Bremner was count 3 on the indictment.

[6] When formally interviewed, Mr Taylor told the police that the ketamine was for personal use, and that he had been selling drugs for the prior two months, although he would not name his supplier. Regarding MDMA, he said he would sell that on Friday or Saturday nights, usually selling between two to 10 tablets at a time for $30 each, which netted him a profit of $7 per tablet. He estimated he had sold 1000 tablets during the prior two months. He also admitted trafficking in methylamphetamine although on a smaller scale, and said he had about a dozen regular customers. He admitted selling some methylamphetamine to Mr Bremner that night, as well as the ecstasy. He said he would usually buy either a gram of methylamphetamine for between $180 to $200, or else an eighth of an ounce ("an eight-ball") of it for between $400 to $500; he would then sell "points" of that drug (0.1 gram) for $20 to $25. He admitted that the $160 in the car had come from another sale of drugs that same evening, when he sold five tablets (of MDMA) for $160. That admitted sale was count 2.

[7] Mr Taylor was an apprentice plumber at the time, who did not use ecstasy himself. He admitted he was selling the drugs to make money.

[8] His counsel, Mr M Byrne QC, relied on the sentences imposed in the matter of *R v Rizk* [2004] QCA 382, and the sentence imposed at first instance in *R v Christopher Taylor* on 1 March 2005, to support the submission that the unsuspended part of the five year sentence was manifestly excessive in length. Mr Byrne also reminded this Court that the applicant was only 20 years old at the time of his offending, had no prior convictions, frankly admitted his involvement to the police, had a full hand up committal without any cross-examination, and had pleaded guilty at the first available opportunity. He had also supplied a handwritten apology and further confession to the learned sentencing judge, in which the applicant explained how he had begun taking the drug ecstasy at nightclubs with friends, which soon became a weekly usage costing him between $200 and $250 per week. Soon enough, at the suggestion of a drug dealer, he agreed to bulk buy and sell to his friends, so that he could have ecstasy for free and some spare cash on the side. That seemed a good

idea and he simply did not grasp how serious the offences were that he was committing, until the uniformed police arrived at the residence. He had been entirely honest and cooperative with them. Additionally, he had excellent references from his TAFE Institute through which he was doing his apprenticeship in plumbing, and from his employer and supervisor. His own letter to the learned sentencing judge expressed both disgust and remorse at what he had done, and the damage to his life and to those who had previously trusted him.

[9] In the matter of *R v Rizk* that applicant pleaded guilty to one count of trafficking in MDMA and one count of possession of it in a quantity exceeding 2 grams. That offender worked under his co-offender Raciti, and was involved in obtaining large quantities of ecstasy from numerous suppliers at Raciti's direction and distributing that ecstasy to others below them in a chain of distribution. Mr Rizk pleaded guilty to trafficking in ecstasy between 5 June 2002 and 26 August 2002, a period of between two and a half to three months. His activities were revealed in an investigation conducted by the Australian Crime Commission, which had involved intercepting a telephone conversation on 6 June 2002 when he contacted Raciti to discuss buying 1000 ecstasy pills at $22 per tablet. Mr Rizk was found in possession of 5063 tablets on 24 August 2002 of 31.7 per cent purity, in an amount totalling 445.188 grams of pure ecstasy, for which he had paid a supplier $87,500. He was 25 years old during the period of his drug trafficking, had a supportive family and good upbringing, and had been in consistent employment. He was addicted to ecstasy, having been introduced to the drug at the age of 21. He had no relevant prior convictions, and this Court reduced his sentence to one of six years imprisonment, with parole recommended after Mr Rizk had served two years of his sentence. Mr Rizk was trafficking in a much greater quantity of MDMA than this applicant was, although Dylan Taylor admitted trafficking in two different drugs.

[10] In *R v Christopher Taylor*, sentenced on 1 March 2005, that offender admitted trafficking in both MDMA and "speed" over a period of 10 months in the year 2003 in Toowoomba. In that period he had recruited two others as sales people, and the prosecution described Christopher Taylor as one step up from a street level trafficker. That offender also admitted possession of some remnants of speed, possession of 86 ecstasy tablets containing a pure weight of 5.047 grams, possession of a small amount of cannabis and of the drug ketamine, and one count of supplying MDMA to his girlfriend. That applicant pleaded guilty, had a good work history, a supportive family background, and had taken serious steps towards rehabilitation. He was 19 years old when he offended. His offending, being over a longer period, was more serious than this applicant's, and this applicant was not shown to have advanced above the level of street trafficking. This applicant can fairly complain that his sentence should have been less than Christopher Taylor's; the prosecution suggested on this application that Christopher Taylor's sentence may have been lenient, as the learned sentencing judge remarked when sentencing Dylan Taylor.

[11] Christopher Taylor was sentenced to five years imprisonment suspended after two years, for an operational period of five years, the same sentence as was imposed on Dylan Taylor. The learned judge sentencing Christopher Taylor remarked that it was the latter's age, 19 when offending, that warranted departure from the six year level which that judge considered was shown to be appropriate by the sentences approved in *Rizk* and *R v Bellino* (1999) 105 A Crim R 137. The Attorney-General did not appeal the sentence imposed on Christopher Taylor.

[12] Mr M Copley, for the respondent in this application, principally relied on the sentence imposed in *Bellino* to support this one. In *Bellino* the 29 year old applicant, with no relevant prior convictions, had pleaded guilty to trafficking ecstasy over a two month period, and to four counts of supplying ecstasy and one of supplying heroin. He was sentenced to eight years imprisonment on the trafficking count and to concurrent terms of two years imprisonment on the counts of supplying ecstasy, and to three years on the count of supplying heroin. In addition there was a pecuniary penalty order made of $22,400, that being the total amount of money paid to him by an undercover agent in respect of all counts.

[13] That applicant, when first approached by the undercover agent, had supplied the agent with 100 tablets of ecstasy for $3,600, and after some 11 further telephone calls or approaches made by undercover police, supplied a further quantity of ecstasy. This Court remarked on his application that Mr Bellino seemed to have been a person with relatively little control and towards the lower end of the chain of supply, and that as far as the supply of heroin was concerned, that either seemed to have been a gift or something thrown in with another dealing. Mr Bellino told the undercover policeman that he did not know what it was, and suggested that it be cut down with something else, and to be careful. It turned out to contain 0.069 grams of heroin.

[14] That applicant sold a total of 600 ecstasy tablets to the police over the two month period, for a total of $22,400. It was submitted on his behalf that his profit was $2 per tablet, which is considerably less than the profit Dylan Taylor admitted.

[15] After reviewing a number of its earlier decisions, this Court concluded in *Bellino* that the eight year sentence was out of line with those, and that having regard to the gravity of the circumstances the appropriate sentence should be one of six years for trafficking in ecstasy, and that the concurrent sentence on the count of supplying heroin should be reduced to one of two years. Mr Copley made the point that that sentence was an example of this Court exercising its own sentencing discretion regarding a trafficker in ecstasy.

[16] In *R v McMahon* [2003] QCA 369 that offender pleaded guilty to trafficking in both methylamphetamine and cannabis sativa, and was sentenced to five years imprisonment suspended after two years, for an operational period of five years. He was 40 years old when sentenced, and while he had a criminal history for prior drug offences and offences of dishonesty, he had not been imprisoned before; but he was on probation at the time of his offending by trafficking. The judgment on the appeal does not reveal the period covered by the trafficking charge, but it must have been at least as long as Dylan Taylor's, and probably longer.

[17] That charge of trafficking was based mainly on documents found in his possession when his home was searched by police in November 2001, which included a list of debts owed to him from 17 people for amounts ranging between $22 to $550. One list totalled $2,475 and another $1,900. One of his clients was a 17 year old youth, who swapped a camera for 1 gram of methylamphetamine, and who on three or four other occasions exchanged cannabis sativa for methylamphetamine, and who on yet another occasion committed a house breaking and stole jewellery, which he swapped with Mr McMahon for $20, 2½ grams of cannabis, and 2 grams of methylamphetamine. Mr McMahon and the youth also agreed that the supply of that jewellery cleared a debt of $140 the youth owed.

[18] The facts on which Mr McMahon was sentenced also included that a 22 year old man described being supplied with methylamphetamine by Mr McMahon on 18 to 19 occasions, paying $50 for two "points", and that a third person told the police that Mr McMahon had supplied that person on some 24 separate occasions with methylamphetamine. Mr McMahon admitted that every few weeks he would purchase about $2,000 worth of speed and cannabis, some for his own use, and he sold the remainder to pay for his own purchases on credit and to make a small profit. He suffered earlier in his life from a heroin addiction, which began after he had been dismissed from the West Australia Police Force, and after he had subsequently completed a Bachelor of Arts Degree and a Social Science Degree at the Curtin University of Technology in Western Australia. He had weaned himself off heroin by participating in a methadone program, but had continued drug usage, by moving to amphetamines. A number of outstanding references were tendered on his behalf. He had not used drugs for over 12 months prior to his sentence.

[19] Despite those significant mitigating factors and the fact that his trafficking was undertaken because of his own drug addiction, and to supply his partner who was also addicted, this Court held that his sentence was not manifestly excessive. His criminal history and his age prima facie made a heavier sentence appropriate in his case than was imposed on Dylan Taylor, who received the same sentence; but Mr McMahon had in his favour what the sentencing judge described as a genuine case of rehabilitation, a view apparently accepted by this Court. Further, his trafficking reflected more his own addiction and was less for profit than was Dylan Taylor's trafficking.

[20] This applicant's counsel conceded that the five year head sentence was within the range of an appropriate sentencing discretion and was not manifestly excessive, and that submission is supported by the cases to which the learned sentencing judge and this Court were referred. That made the only issue whether or not the suspension of that five year term after two years could be said to be manifestly excessive. The sentencing judge would have been amply justified in suspending the sentence after, say, 18-20 months had been served, reflecting the relatively short period of the trafficking and the other mitigating circumstances, including the plea of guilty and ready confession to the police. The sentence imposed showed only a small reduction of the minimum period to be served which could reflect the plea of guilty, and other co-operation with investigating authorities; but the result was not shown to be manifestly excessive, when compared to sentences other than that imposed on Christopher Taylor. Accordingly, I would dismiss the application.

[21] **DOUGLAS J**: I have had the advantage of reading the reasons for judgment of Jerrard JA, agree with them and with the order proposed by his Honour.