

SUPREME COURT OF QUEENSLAND

CITATION: *R v Moore* [2005] QCA 400

PARTIES: **R**
v
MOORE, Roger Kerry
(applicant)

FILE NO/S: CA No 215 of 2005
DC No 1843 of 2005

DIVISION: Court of Appeal

PROCEEDING: Sentence Application

ORIGINATING COURT: District Court at Brisbane

DELIVERED EX TEMPORE ON: 2 November 2005

DELIVERED AT: Brisbane

HEARING DATE: 2 November 2005

JUDGES: McMurdo P, Keane JA and Atkinson 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 refused**

CATCHWORDS: CRIMINAL LAW - APPEAL AND NEW TRIAL AND INQUIRY AFTER CONVICTION - APPEAL AGAINST SENTENCE - APPEAL BY CONVICTED PERSONS - APPLICATIONS TO REDUCE SENTENCE - WHEN REFUSED - applicant pleaded guilty to one count of receiving and one count of fraud - offences committed during operational period of suspended sentence - sentenced to 12 months imprisonment to be served by way of intensive correction order - operational period for suspended sentence extended for 12 months - offences committed whilst on bail for like offences - significant and relevant criminal history - previous breaches of probation and fine option orders - plea of guilty at early stage - co-operation with authorities - whether sentence manifestly excessive

COUNSEL: The applicant appeared on his own behalf
R G Martin SC for the respondent

SOLICITORS: The applicant appeared on his own behalf
Director of Public Prosecutions (Queensland) for the respondent

THE PRESIDENT: The applicant, Mr Moore, pleaded guilty on 10 August 2005 to one count of receiving and one count of fraud. Those offences were committed during the operational period of an eight month suspended sentence imposed in the Brisbane Magistrates Court on 1 October 2003. On the fraud and receiving charges, Mr Moore was sentenced to 12 months imprisonment to be served by way of an intensive correction order with the additional condition that he submit to medical psychiatric or psychological treatment including drug treatment programs and drug testing. The operational period for the suspended sentence imposed on 1 October 2003 was extended for 12 months. Mr Moore contends that the sentence was manifestly excessive.

He was 28 at the time he committed the offences and 30 at sentence. He has a significant and relevant criminal history commencing in 1994 when he was fined for possession of a dangerous drug. In May 1999 he was placed on 18 months probation for possessing a dangerous drug. The next month he was convicted and fined for possessing utensils or pipes used in connection with a dangerous drug. In August 1999 he was convicted and fined for breaching his probation order. In November 1999 he was placed on two years probation for possession of a dangerous drug. In February 2000 he was convicted and fined of breaching his probation order. In August 2000 he was convicted and fined for failing to properly dispose of a needle and syringe. Later that year he was dealt with for breaching a fine option order and breaching a probation order. His drug related offending continued in 2001

resulting in convictions and fines. In February 2002 he was dealt with for an assortment of property and drug offences for which he was convicted, placed on 18 months probation and ordered to pay restitution of \$640. Later in 2002 he was dealt with for further property offences which pre-dated his most recent probation order so that he was placed on further probation in respect of those offences. In November 2002 he breached his probation order by not paying the restitution. In March 2003 he was convicted and fined \$1,000 with restitution of \$735 for multiple offences of stealing and fraud, receiving and possession of dangerous drugs. In August 2003 he was convicted and fined \$400 for failing to take reasonable care and precaution in respect of a syringe or needle. In October 2003 he, again, breached his probation order and was resentenced to an effective term of eight months imprisonment suspended for two years. In July 2004 he was convicted and sentenced to nine months imprisonment to be served by way of an intensive correction order for a variety of property offences including receiving, fraud and entering a dwelling and committing an indictable offence.

Mr Moore committed the fraud and receiving count, the subject of this application, in late May 2004 when he pawned a mobile phone, which had been stolen earlier that day from a TAFE College at Brackenridge, at Cash Converters, Gaythorne, for \$50. He told police he had bought the phone outside the Embassy Hotel for \$20 and knew it was stolen. When police spoke to him in December 2004 he made full admissions saying he needed the money for drugs. Not only were these offences

committed during the operational period of a suspended sentence but Mr Moore was also on bail for like offences.

The Crown prosecutor at sentence reported that Mr Moore had successfully completed his nine month intensive correction order imposed last year, attending regularly and performing his community service. An allegation that he had cheated at a casino during the period of the intensive correction order had been referred to mediation and would not result in a conviction.

It was common ground that he had cooperated with the authorities. The committal was conducted by way of hand-up statements without cross-examination and he pleaded guilty at an early stage. His barrister at sentence tendered a report from psychologist, Ms Madonna Abella, who assessed Mr Moore on 11 February 2004 for about one hour and then had him complete a series of psychological tests. He commenced using alcohol and cannabis when he was 15 or 16 years old. When he was 17 he progressed to amphetamines. When he was 19 he began using heroin. By the time he was 25 years old he was using approximately half a gram of heroin a day at a cost of about \$100. He had lost employment for non-attendance at work because of his drug addiction. He has attended a number of drug detoxification programs but unfortunately the longest period of time he has abstained from heroin use has been three weeks. He was at the time of the report of February 2003 participating in the Subutex Drug Rehabilitation Program administered by Dr Reece. Ms Abella found that Mr Moore had

above average intellectual abilities but with drug dependence and was at moderate risk of recidivist offending. He was then living with his girlfriend who was supportive of his efforts of rehabilitation and was enrolled in a TAFE computer skills course.

A letter from the Roma Street Clinic of the Queensland Government's Alcohol and Drug Service dated 15 July 2004 recorded that Mr Moore had been participating for one and a half months in their drug rehabilitation program and had been stabilised on a low dose of buprenorphine.

His counsel at sentence in August 2005 stated that whilst Mr Moore had some relapses he had been on the methadone program since Christmas 2004 and had completed 300 hours community service at a nursing home at Sinnamon Park under his intensive correction order. He had not committed any further offences since May 2004.

The penalty imposed was in one sense a heavy one in that the offending was not a serious example of receiving and fraud and the applicant pleaded guilty and cooperated with the authorities. There were, however, aggravating factors.

Mr Moore has a shocking record for like offences. He had previously breached probation and fine option orders so that these sentencing options were not appropriate. The offences themselves constituted a breach of an eight month suspended sentence and were committed on bail. He is now a mature man. The reports tendered suggested that if he does not control his

heroin addiction he will continue to reoffend. Although he is making efforts at rehabilitation his prospects of successful rehabilitation could only be improved by the tightly structured sentence imposed by the learned sentencing judge. He, most recently, was sentenced to a nine month intensive correction order which he successfully completed.

I am not persuaded the sentence was in all the circumstances outside the appropriate range. I would refuse the application for leave to appeal against sentence.

KEANE JA: I agree.

ATKINSON J: I agree.

THE PRESIDENT: That is the order of the Court.

...

THE PRESIDENT: Having heard Mr Moore's submissions, I am not persuaded there is any reason to alter the reasons for judgment given in this matter earlier today or the order made refusing the application for leave to appeal against sentence.

KEANE JA: I agree.

ATKINSON J: I agree.
