

# SUPREME COURT OF QUEENSLAND

CITATION: *R v Adams* [2009] QCA 56

PARTIES: **R**  
**v**  
**ADAMS, Scott Nathan**  
(applicant)

FILE NO/S: CA No 150 of 2007  
SC No 394 of 2007

DIVISION: Court of Appeal

PROCEEDING: Sentence Application

ORIGINATING COURT: Supreme Court at Brisbane

DELIVERED ON: 20 March 2009

DELIVERED AT: Brisbane

HEARING DATE: 2 March 2009

JUDGES: McMurdo P, Chesterman JA and Daubney J  
Separate reasons for judgment of each member of the Court, each concurring as to the order made

ORDER: **The application for leave to appeal against sentence is refused**

CATCHWORDS: CRIMINAL LAW – SENTENCE – RELEVANT FACTORS – NATURE AND CIRCUMSTANCES OF OFFENCE – CIRCUMSTANCES OF OFFENCE – applicant convicted of trafficking in methylamphetamine and sentenced to 10 and a half years imprisonment – applicant had favourable references – applicant submits that mitigating factors including guilty plea and rehabilitative prospects were not given adequate consideration – whether the sentence was manifestly excessive

CRIMINAL LAW – SENTENCE – RELEVANT FACTORS – PARITY BETWEEN CO-OFFENDERS – GENERAL PRINCIPLES – applicant and co-offender convicted of trafficking in methylamphetamine – co-offender was head of trafficking operation – co-offender was convicted of trafficking for a period 10 months longer than applicant – co-offender received 13 and a half years imprisonment and applicant received 10 and a half years – whether applicant's sentence lacked parity

*Lowe v The Queen* (1984) 154 CLR 606; [1984] HCA 46, cited

*R v Bradforth* [\[2003\] QCA 183](#), considered

*R v Filippa* [2008] QSC 039, considered  
*R v Fischer* [2007] QCA 105, considered  
*R v Lowe* [2004] QCA 398, considered  
*R v Nabhan; R v Kostopoulos* [2007] QCA 266, considered  
*R v Tran* (2006) 162 A Crim R 188; [2006] QCA 174,  
 considered

COUNSEL: M J Byrne QC and J R Hunter SC for the applicant  
 P F Rutledge for the respondent

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

- [1] **McMURDO P:** Scott Nathan Adams pleaded guilty on 4 May 2007 to one count of trafficking in a dangerous drug, methylamphetamine, between 12 November 2003 and 9 December 2004. He was sentenced on 8 June 2007 to 10 and a half years imprisonment. A co-offender, Christopher John Plaszewski, who was charged on a separate indictment with one count of trafficking in methylamphetamine between 9 September 2003 and 9 December 2004, was also sentenced that day to 11 years imprisonment, having pleaded guilty on 10 May 2007. Both Adams and Plaszewski applied for leave to appeal against their sentences contending that they were manifestly excessive. Plaszewski subsequently abandoned his application. After a three week contested sentencing hearing, another co-offender, Todd Sean Filippa, was sentenced on 7 March 2008 for trafficking in methylamphetamine between 1 January 2003 and 9 December 2004 to 13 and a half years imprisonment. Mr M J Byrne QC who appears with Mr J R Hunter SC for Adams, contends that Adams's sentence is either manifestly excessive or that, when compared to the sentence imposed on Filippa, it lacks parity.
- [2] Adams was 37 years old at sentence, and 32 and 33 years old at the time of his offending. The prosecutor at sentence described Adams's criminal history as "minor". In 1991, he was convicted and fined for wilful damage to property. In 2002, he was convicted and fined for possessing dangerous drugs. During 2005, he was convicted and fined for weapons offences and was fined without conviction for further drug offences committed during the course of the present trafficking. He was convicted and fined \$1,000 later in 2005 for breaching bail conditions and in 2006 he was convicted and fined for committing a public nuisance.
- [3] The facts relied on by the prosecution to establish Adams's present offence were set out in a tendered schedule of facts. His counsel stated that this was not an agreed statement of facts but "primarily most of it is factually accepted".
- [4] The Queensland Police Service and the Australian Crime Commission conducted a joint investigation using physical and electronic surveillance, the principal target of which was Filippa, also known as Bellino. Linked to Filippa as principals in the syndicate were Antonio Lalli-Cafini, Warren Bourke, Plaszewski and Adams. From about November 2003, these syndicate members provided cold and flu tablets for a "cook" producing methylamphetamine. The syndicate produced at least five kilograms of pure methylamphetamine on approximately 10 occasions between 12 November 2003 and 9 December 2004. The activities of the syndicate members frequently centred around nightclubs in Fortitude Valley, including one run by Filippa. The methylamphetamine produced by the syndicate was sold at about

\$1,200 per ounce, netting about \$215,000 per "cook" and over \$2 million in total. Filippa received one-third of the profits from each "cook" for financing the production, including purchasing properties where the "cook" occurred. One-third was used to pay the syndicate's expenses, such as workers' wages, generators, and the cost of ingredients, like hypophosphorous acid, toluene and pseudoephedrine tablets. The remaining one-third of profit was distributed as either cash or product on a pro rata basis to syndicate members in accordance with the number or amount of pseudoephedrine tablets each supplied. Adams probably received about \$200,000 in either methylamphetamine or cash from his involvement in the syndicate over the period. Most of the methylamphetamine appears to have been on-sold to "Western Australia bikies". Adams paid tens of thousands of dollars on a weekly basis to "pseudo-runners" who supplied him with pseudoephedrine purchased by them from retailers. Filippa was arrested on 27 August 2004, but Adams and most of his co-offenders continued to operate the syndicate to produce and distribute methylamphetamine. The operation was closed down on 8 December 2004. Police searched Adams's residence at Kippa-Ring and found a single barrel shotgun, nine vials of steroids and syringes, two silver pipes, a set of silver knuckle dusters, cannabis, a smoking utensil, several syringes and 16 pink kangaroo-shaped ecstasy tablets. Police also found lists of names and contact numbers for the sourcing of cold and flu tablets, customers and monetary amounts. Adams declined to be interviewed and was charged with this offence.

- [5] The prosecutor at sentence made the following submissions. Deterrence was an important principle in sentencing large-scale drug traffickers. Adams continued to traffick in methylamphetamine after Filippa and Bourke were arrested in August 2004. The delay in presenting an indictment was simply because of the complexity of the prosecution case. Had Adams been convicted after a trial, a sentence of 16 years imprisonment would have been appropriate. Were Filippa convicted after a trial, he would receive a sentence of 20 years or more. Because of Adams's timely plea of guilty, he should receive a sentence of 12 years imprisonment.
- [6] Adams's counsel at sentence emphasised the following matters. Adams was not involved on a profit-share basis in this business. He was paid at an agreed rate for the amount of pseudoephedrine tablets he supplied. Adams has forfeited property to the Crown to the value of \$20,000; he was not found to be in possession of vast sums of money and property. This suggested that he was not a major beneficiary of the syndicate. Although Adams was recorded as boasting about drug production, sourcing cold and flu tablets and selling methylamphetamine, his actual involvement was in arranging the supply of cold and flu tablets. He was not involved in the production process itself. He was a user of illicit drugs during the period of the trafficking.
- [7] Defence counsel tendered a psychological report from Mr Luke Hatzipetrou which contained the following information. Adams had a dysfunctional upbringing. He had subsequently fathered three children to three different partners and had been actively involved in raising all three children. Adams said that he used illicit drugs, including cocaine and ecstasy, during the period of the trafficking. Mr Hatzipetrou considered Adams's actions were likely to be influenced by his excessive and intense consumption of illicit drugs at this time as well as by his polysubstance dependence, mental health problems and lack of functional social supports. His rehabilitation, Mr Hatzipetrou considered, would be assisted through undertaking

structured drug and alcohol programs, and programs to enhance social and interpersonal skills.

- [8] Adams's counsel also tendered a number of very favourable references praising Adams's efforts at rehabilitation; he now worked in a factory constructing garage doors and had, it was said, learned the pleasure of earning an honest week's pay for an honest week's work. He also submitted that a sentence of less than 10 years imprisonment should be imposed and that the judge should not declare the offence to be a serious violent offence.
- [9] The primary judge made the following observations in her sentencing remarks. Adams was purchasing large quantities of cold and flu tablets for the syndicate, often with his own funds, and in return received cash and methylamphetamine. Adams was keen for another "cook" to take place after Filippa's arrest. In anticipation, Adams had 800 boxes of cold and flu tablets. He was also involved in procuring the difficult-to-obtain hypophosphorous acid. Filippa was at the top of the organisational ladder in the syndicate, but Plaszewski and Adams were very close to Filippa in running the business. Adams was using cocaine during the trafficking period but this did not affect the business acumen he demonstrated in carrying out his role in the trafficking. Both Adams and Plaszewski were primarily motivated by commercial considerations rather than their addictions. The delay in their sentencing was not a mitigating factor: it was the result of the complex case against them. They had pleaded guilty at an early stage and should obtain benefit for that. Deterrence was an important factor in sentencing for this serious offence of trafficking. After referring to *R v Bradforth*,<sup>1</sup> *R v Lowe*<sup>2</sup> and *R v Tran*,<sup>3</sup> the judge stated that, had they been convicted after a trial, Plaszewski would have faced a sentence of about 15 years and Adams 14 years. The judge imposed a 10 and a half year term of imprisonment on Adams. She imposed an 11 year term of imprisonment on Plaszewski to reflect his worse criminal history.
- [10] Mr Byrne submits the sentencing judge erred in identifying 14 years as an appropriate sentence for Adams if convicted after a trial. He argues that, in any case, the reduction of the head sentence by a mere three and a half years does not adequately reflect the mitigating matters in his favour. Had Adams been convicted after a trial, he submits that a sentence of between 10 and 12 years imprisonment should have been imposed. This notional sentence should have been discounted to eight years imprisonment to take into account the mitigating features of the guilty plea and rehabilitative prospects. He argues that the sentence imposed in *R v Fischer*<sup>4</sup> supports this submission, even though it concerned methylamphetamine trafficking when methylamphetamine was a Sch 2 drug.
- [11] Alternatively, Mr Byrne submits that the sentence imposed on Adams now causes him a justifiable sense of grievance when compared to the sentence subsequently imposed on Filippa. Filippa pleaded guilty to trafficking in methylamphetamine between 1 January 2003 and 9 December 2004, over 10 months longer than the period of Adams's trafficking. Mr Byrne submits that a difference of only three years between the sentences imposed on Filippa and Adams does not properly reflect Adams's lesser involvement in the trafficking. He submits that the application of the parity principle requires that a sentence of eight years

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<sup>1</sup> [2003] QCA 183.

<sup>2</sup> [2004] QCA 398.

<sup>3</sup> [2006] QCA 174.

<sup>4</sup> [2007] QCA 105.

imprisonment, without any declaration that the offence is a serious violent offence, should be substituted in Adams's case.

- [12] Filippa pleaded guilty but his case proceeded as a three-week contested sentencing hearing in February 2007. He alleged that his involvement was limited to a single "cook" on 22 August 2004 and that he was not involved before or after that date in trafficking in methylamphetamine. The judge, in a 26-page judgment delivered on 6 March 2007,<sup>5</sup> found the following. Filippa was the principal of a group involved in the production and distribution of methylamphetamine from January 2003 to December 2004. He had access to and knowledge of a large quantity of precursor chemicals, glassware and instruction manuals found by police in a storage shed at Albion. During the trafficking period, he was closely associated and actively involved with a group of people who obtained large quantities of pseudoephedrine-based tablets. Filippa was a major organiser of the production of methylamphetamine on a regular basis and sometimes financed the purchase of tablets and other precursor chemicals and equipment. He was regularly and actively involved in "cooking" large quantities of methylamphetamine during the two-year period of his trafficking. He received a large percentage of the extracted product. "Cooks" occurred regularly over the period of the trafficking whenever there were precursor chemicals available. Filippa was involved in at least five "cooks" during the period but there were additional "cooks" during this period. The "cooks" were highly organised, sophisticated and required intensive labour over a number of days. The profits of the business were substantial with the final "cook" producing methylamphetamine valued at over \$250,000, and probably as much as \$400,000. Filippa had contributed to the setup, including financing the purchase of chemicals, a property, a car and a generator. The business was highly organised and commercial. Filippa, who was running nightclubs at the time, considered that he was supplying a product for which there was a demand. He was motivated entirely by profit and had disdain for those who took drugs. It was difficult to identify the extent of his profits from drug-trafficking but it was substantial.<sup>6</sup>
- [13] The judge, in sentencing Filippa the following day, made these additional observations. Had the matter proceeded to trial, the trial would have lasted about two months. Filippa, therefore, had significantly assisted the administration of justice through his guilty plea. The prosecution submitted that a period of 15 years imprisonment was appropriate, relying on *R v Nabhan*; *R v Kostopoulos*.<sup>7</sup> Kostopoulos's trafficking was an even more serious example: his sentence of 15 years imprisonment cumulative on a 20 month period of imprisonment following from an activated suspended sentence, was not disturbed on appeal. Nabhan, who received a sentence of 13 years imprisonment in recognition of his lesser involvement in trafficking over a shorter period, was also unsuccessful on appeal. The sentencing judge referred to the need for parity with co-offenders, including Adams. The judge considered the sentencing range for Filippa's offending after a trial was 14 to 16 years imprisonment. He deserved a sentence at the high end of that range. He would have received a sentence of 16 years imprisonment after a trial. Filippa was 45 at sentence and 41 when he offended. He had a minor criminal history which included a sentence of imprisonment when he was a young man, but he had no drug convictions and the judge did not consider his criminal history was relevant. The judge took into account "the delay caused by the misbehaviour of

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<sup>5</sup> *R v Filippa* [2008] QSC 39.

<sup>6</sup> *R v Filippa* [2008] QSC 39 at [147]-[156].

<sup>7</sup> [2007] QCA 266.

[Filippa's] previous legal representatives" and ultimately determined to impose a sentence of 13 and a half years imprisonment.

- [14] Adams's offending was unquestionably a grave example of trafficking in methylamphetamine over an 11 month period. He was involved at a very high level in a large-scale, efficiently organised, commercial production of a total of about five kilograms of pure methylamphetamine, a Sch 1 drug. The maximum penalty is 25 years imprisonment. Adams was a mature man with some criminal history. He was charged with drug possession during the period of his trafficking. He continued to traffick after being charged with that offence and after Filippa had been arrested for his involvement in this offence. Although a user of illicit drugs during the period of his trafficking, his motivation for involving himself in this evil business was undoubtedly commercial. His 10 and a half year sentence of imprisonment is lengthy, but rightly so, even taking into account the mitigating factors of his timely guilty plea and promising rehabilitative prospects. Courts anticipate that heavy penalties like this will deter other avaricious criminals from the temptation of apparently easy pickings from the nefarious business of methylamphetamine production and distribution. Such people should understand that the high risk of detection and the consequential heavy punishment imposed by courts make these businesses unviably risky. Adams's offending was at a higher level than the Sch 1 drug trafficking in *Bradforth* and *Tran*. The sentences imposed in *Bradforth*, *Tran* and *Lowe* support the sentence imposed here. Once it is understood that *Fischer* involved trafficking in methylamphetamine when it was a Sch 2 drug with a maximum penalty of 20 years imprisonment rather than the 25 years imprisonment applicable in the present case, *Fischer* also supports Adams's sentence. I am not persuaded that the difference in sentences imposed upon Filippa and Adams should cause Adams a justifiable sense of grievance.
- [15] Even where a sentence is not manifestly excessive, an appellate court will allow an appeal and re-sentence within the available range to correct a justifiable sense of grievance that one co-offender may have when comparing his sentence to the sentence of another. The High Court recognised this in *Lowe v The Queen*.<sup>8</sup> The sentences imposed on Filippa and Adams appropriately reflect the seriousness of the offending of each, and adequately recognised that Filippa was more culpable than Adams. Each is required to serve 80 per cent of his sentence before becoming eligible for parole. Filippa will have served 10.8 years in custody and Adams 8.4 years in custody before parole eligibility. The distinction between their sentences of at least 2.4 years of actual custody is entirely appropriate in the circumstances. It reflects the involvement of each in a grave example of offending which is rightly regarded by the community and the courts as extremely anti-social, requiring the imposition of a substantial deterrent sentence. Each has received a salutary penalty which is less than it would have been but for the mitigating features in each case. Adams's 10 and a half year sentence was not manifestly excessive.
- [16] The sentence imposed on Adams is neither manifestly excessive nor does it give rise to a justifiable sense of grievance when compared to that imposed on Filippa. The application for leave to appeal against sentence should be refused.
- [17] **CHESTERMAN JA:** I agree entirely with the reasons of McMurdo P and that the application for leave to appeal against sentence should be refused.
- [18] **DAUBNEY J:** I respectfully agree with the reasons of McMurdo P, and would order that the application for leave to appeal against sentence be refused.

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<sup>8</sup> (1984) 154 CLR 606 at 610, 613, 616 and 623.