

# SUPREME COURT OF QUEENSLAND

CITATION: *Wright v Chief Executive Officer of Queensland* [2010] QSC 235

PARTIES: **LAWRENCE ERIC WRIGHT**  
(applicant)

v

**CHIEF EXECUTIVE OFFICER OF QUEENSLAND**  
(respondent)

FILE NO/S: BS 5567 of 2010

DIVISION: Trial

PROCEEDING: Application

ORIGINATING COURT: Supreme Court at Brisbane

DELIVERED ON: 21 June 2010

DELIVERED AT: Brisbane

HEARING DATE: 21 June 2010

JUDGE: Fryberg J

ORDERS: **Fix two years and nine months as the non-parole period in respect of the sentences imposed on the applicant in this Court on 15 March 2006.**

CATCHWORDS: Criminal law – Sentence – Sentencing orders – Non parole period or minimum term – Queensland – Federal offenders – State court sentencing federal offender – Sentence to be served in Queensland prison

Criminal law – Sentence – Post-custodial orders – Parole – Other matters – Relevant factors affecting fixing of non-parole period – Particular cases

Taxes and duties – Customs and excise – Penal provisions – Offences – Penalties – Other offences – Pecuniary penalties – Default periods of imprisonment – Non parole period not fixed at time of sentence – Application for reopening of order

*Crimes Act 1914* (Cth), s 19AH 1

*Bryce v Chief Executive Officer of Customs (No 2)* [2010]  
QSC 125, applied  
*R v Suarez-Mejia* (2002) 131 A Crim R 577; [2002] WASCA  
187, cited

COUNSEL: C W Heaton for the applicant 10  
C K Copley for the respondent

SOLICITORS: Legal Aid Queensland for the applicant  
Australian Government Solicitor for the respondent

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HIS HONOUR: I have before me an application by Lawrence Eric Wright for an order that the Court fix a non-parole period pursuant to s 19AH(1)(b) of the *Crimes Act 1914* (Cth).

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Mr Wright was convicted of a large number of customs offences on the 15th of March 2006. He was fined for those offences and imprisonment in default of payment was ordered in respect of them. The fines were not paid and Mr Wright was taken into custody on the 2nd of May 2007.

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The total period of default imprisonment that he was liable to serve was 1,657 days, and, to date, he has served three years, one month and 19 days.

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At the same time as Mr Wright was sentenced, I sentenced his co-offender, Mr Bryce. At that time neither offender raised any suggestion that a non-parole period should be imposed. However, the question has arisen since the time of sentencing and it has been held that it is necessary as a matter of law for such a period to be fixed. I fixed a period of two years and nine months in the case of Mr Bryce in proceedings entitled *Bryce v Chief Executive Officer of Customs (No 2)* (2010) QSC 125.

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At the time of original sentencing, I considered whether there should be a distinction drawn in the sentencing of Mr Bryce and Mr Wright. While I observed there were some minor differences between their positions, I held on the whole that no disparity was involved in sentencing them to the same

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period and I did so.

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The considerations which affect the fixing of a non-parole period are similar to the considerations which affect the determination of the original sentencing, although they may bear somewhat different weight in the former context (see *The Queen v Suarez-Mejia* [2002] WASCA 187 at para 48).

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In the present case there is a remarkable similarity between the two offenders. The circumstances of the offending were set out in my reasons for judgment in *Bryce* at paras 2 through to 10. It is unnecessary to repeat them. The evidence originally disclosed more of Mr Wright's involvement than of Mr Bryce's. It showed on that evidence Mr Wright had a greater level of activity in the offending than did Mr Bryce. However, I felt that Mr Bryce was happy to adopt his co-offender's conduct and consequently imposed the same period of default imprisonment.

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I interpolate that, as was said at the time, the imprisonment was imposed partly by way of punishment, a course which was subsequently upheld by the Court of Appeal's special leave to appeal was refused by the High Court of Australia.

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Mr Wright now submits that not only are his circumstances of offending indistinguishable from those of Mr Bryce, but that his personal circumstances are sufficiently similar as to make it appropriate to fix the same non-parole period.

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Mr Wright was born in 1947 in South Africa and obtained Australian citizenship in 1986. He has no criminal history. He is married. His wife earns a small income from part-time employment as a community worker or at least did so at the time of original sentencing. There is no material before me as to her present position or as to any impact which the sentence has had upon her.

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Mr Wright had been involved in community work and charity work and was well regarded by some who knew him. He is now 62 years of age, very similar to Mr Bryce. He has behaved well in custody and a very favourable Parole Board Assessment Report has been made in respect of him.

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Counsel for the Chief Executive has pointed to only three matters which, it is submitted, materially differentiate Mr Wright's position from that of Mr Bryce.

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First, it is submitted that Mr Bryce was in worse health than Mr Wright. Mr Bryce's health was referred to in his application. Since his incarceration, a heart operation had been delayed but it was not suggested that that had produced any adverse consequences to him. Mr Bryce also claimed that his memory had deteriorated but there was no medical evidence to support that. He alleged also that, for a relatively short period after his incarceration, he had been given incorrect medication but it was not suggested that any long-term consequence arose out of that. He required antidepressants.

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That medical history played a very minor part in the fixing of Mr Bryce's parole release date. I accept Mr Heaton's submission that it is an immaterial difference between the two of them in the present application.

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Second, Mr Copley submitted that Mr Wright appeared to have taken active steps to defeat recovery of his illicit gains. That submission referred to my finding in the original proceedings that Mr Wright had transferred his half interest in his matrimonial home to his wife shortly after the original proceedings began. I raised questions at that time as to the recoverability of any penalty by action against Mr Wright. In fact, the Chief Executive has taken no steps to recover any of the penalties and no evidence has been put before me to update the position which stood at the time that I imposed sentence. In those circumstances, I am not satisfied that, on the evidence, Mr Wright's conduct is sufficient to warrant a differential treatment of him as regards his non-parole period particularly when one has regard to the purpose of parole and the presumed fact that the ill-gotten gains were shared between the two offenders.

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Finally, Mr Copley submitted that it was found on sentence that the conduct of the defence involved systematic falsehood particularly on the part of Mr Wright. That is true. But Mr Bryce relied on and adopted Mr Wright's falsehoods. I do not think that it provides a sufficient basis for differentiating between them as regards a non-parole period.

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The Parole Board Assessment Report demonstrates clearly that the purposes of parole can be achieved in relation to Mr Wright and, in my judgment, his personal circumstances, as well as the circumstances of the offending, together with considerations of parity, dictate that he should have the same non-parole period as did Mr Bryce.

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The order of the Court is: fix two years and nine months as the non-parole period in respect of the sentences imposed on the applicant in this Court on 15 March 2006.

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Otherwise, the application is dismissed.

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