

# SUPREME COURT OF QUEENSLAND

CITATION: *R v Poole* [2010] QCA 324

PARTIES: **R**  
**v**  
**POOLE, Samuel Thomas**  
(applicant)

FILE NO/S: CA No 173 of 2010  
DC No 229 of 2010

DIVISION: Court of Appeal

PROCEEDING: Sentence Application

ORIGINATING COURT: District Court at Southport

DELIVERED EX TEMPORE ON: 22 November 2010

DELIVERED AT: Brisbane

HEARING DATE: 22 November 2010

JUDGES: Margaret McMurdo P, Muir and Fraser JJA  
Separate reasons for judgment of each member of the court, each concurring as to the orders made

ORDERS: **1. The application for leave to appeal be granted.**  
**2. The appeal be allowed but only to the extent of substituting for the parole eligibility date of 25 May 2012 the date 26 November 2011.**

CATCHWORDS: CRIMINAL LAW – APPEAL AND NEW TRIAL – APPEAL AGAINST SENTENCE – GROUNDS FOR INTERFERENCE – SENTENCE MANIFESTLY EXCESSIVE OR INADEQUATE – applicant pleaded guilty to 17 offences involving burglary and stealing, breaking and entering, and unlawful use of a motor vehicle – applicant sentenced to 17 concurrent terms of imprisonment of four years – sentences made cumulative on sentences already being served by the applicant – applicant committed subject offences while on parole for similar offences – applicant with psychological and drug-related problems – applicant submitted sentences manifestly excessive having regard to the totality principle and mitigating factors including applicant’s age, guilty plea, and extensive cooperation with authorities – whether sentences manifestly excessive

COUNSEL: D C Shepherd for the applicant  
D L Meredith for the respondent

**SOLICITORS:** Legal Aid Queensland for the applicant  
Director of Public Prosecutions (Queensland) for the  
respondent

**MARGARET McMURDO P:** Justice Muir will deliver his reasons first.

**MUIR JA:** The applicant pleaded guilty to 17 offences and was sentenced on 22 June 2010 to 17 concurrent terms of imprisonment of four years. The sentences were made cumulative on sentences then being served by the applicant under which his current release date was 26 November 2010. A parole eligibility date of 25 May 2012, being the date 18 months from 26 November 2010, was fixed.

The subject offences were committed between 12 April 2007 and 23 August 2007 when the applicant broke into and entered a number of homes from which he stole property having a total value of approximately \$50,000. In order to facilitate his offences he stole vehicles, which he damaged in various ways, and from which he also stole property. Count 3 was the most serious of the offences. In that case he smashed a window in a dwelling permitting him to open a sliding door. Having gained entry, the applicant stole goods valued at in excess of \$29,000.

All of the subject offences were committed while the applicant was on parole in respect of sentences imposed on him on 12 October 2005 after pleas of guilty to: five counts of burglary and stealing and one count of attempted fraud on one indictment; three counts of burglary and one count of wilful damage on an ex officio indictment and 17 counts of burglary and stealing, four counts of unlawfully using a motor vehicle, one count of arson, one count of stealing, one count of attempted burglary by breaking and one count of breaking and entering premises on a second ex officio indictment. A further 150 offences of dishonesty were taken into account.

The sentences imposed for the offences were concurrent, the longest terms being six years on each of 17 counts of burglary and stealing. The 16 month balance of the suspended sentence imposed on 25 August 2003 was activated. The sentencing Judge recommended that the applicant be released on post-prison community based release after 16 months.

The applicant was born in December 1984. He was sentenced on 22 and 25 August 2003 in the Southport Magistrates Court for numerous dishonesty offences in relation to motor vehicles and dwelling houses. The higher sentence imposed in respect of these offences was 22 months imprisonment suspended after six months.

The applicant is not without psychological problems and his offending was connected with his abuse of dangerous drugs. Counsel for the applicant accepted that concurrent sentences of four years were within the range of the exercise of a sound sentencing discretion, particularly as the offences were numerous and committed while the applicant was on parole. Also, at first instance the applicant's then counsel conceded that a four year sentence was within range.

Counsel for the applicant, however, argues that, by application of the totality principle, the four year term of imprisonment should have been either suspended from 26 December 2010 for an operational period of five years, or a parole eligibility date of 26 December 2010 should have been set. Reliance was placed also on the applicant's plea of guilty, his age, and his extensive cooperation with authorities.

It was contended that, having regard to the parole eligibility date of 12 May 2010, when the sentences imposed on him in 2005 and 2006 are taken into account, the applicant's subject sentences were equivalent to 10 year sentence with a parole eligibility date after seven and a half years.

It is no doubt true that at the expiration of the sentences imposed the applicant will have spent a lengthy period in prison, but that is largely the product of his repeat offending while subject to suspended sentences or whilst on parole.

Counsel for the respondent conceded that it may be appropriate to make some allowance to ameliorate the applicant's sentences by setting an earlier eligibility date. He submitted that the sentences which should have been imposed were that which the sentencing Judge imposed, but with a parole eligibility date of 12 to 16 months into the new sentences.

In my view, the applicant's plea of guilty, extensive cooperation with the authorities and the application of the totality principle should, having regard to the applicant's age and attempts at rehabilitation, be reflected by fixing 26 November 2011 as the date on which the applicant will be eligible to apply for parole. That would appear also to give effect to the intention of the sentencing Judge to give the applicant recognition for the mitigating circumstances mentioned by him. His order failed to do so appropriately.

Accordingly, I would grant leave to appeal and vary the sentences only to the extent of substituting 26 November 2011 for 25 May 2012 as the parole eligibility date.

**THE PRESIDENT:** I agree.

**FRASER JA:** I agree.

**THE PRESIDENT:** The orders are the application for leave to appeal is granted. The appeal is allowed but only to the extent of substituting for the parole eligibility date of 25 May 2012 the date 26 November 2011.