SUPREME COURT OF QUEENSLAND

CITATION:	*R v Norman* [2011] QCA 267
PARTIES:	**R** **v** **NORMAN, Bronson Alexander John** (applicant)
FILE NO/S:	CA No 56 of 2011 DC No 81 of 2011 DC No 447 of 2010
DIVISION:	Court of Appeal
PROCEEDING:	Sentence Application
ORIGINATING COURT:	District Court at Townsville
DELIVERED EX TEMPORE ON:	5 October 2011
DELIVERED AT:	Brisbane
HEARING DATE:	5 October 2011
JUDGES:	Muir and Fraser JJA and Margaret Wilson AJA Separate reasons for judgment of each member of the Court, each concurring as to the order made
ORDER:	**Delivered ex tempore on 5 October 2011:** **Application for leave to appeal against sentence refused.**
CATCHWORDS:	CRIMINAL LAW – APPEAL AND NEW TRIAL – APPEAL AGAINST SENTENCE – GROUNDS FOR INTERFERENCE – SENTENCE MANIFESTLY EXCESSIVE OR INADEQUATE – where the applicant pleaded guilty to one count of breaking, entering and stealing, one count of escaping from lawful custody and one count of stealing a pair of police handcuffs – where the applicant was sentenced to two years imprisonment for the breaking, entering and stealing offence, to be served concurrently with one and three months sentences for the stealing and escape offences respectively – where the intoxicated 21 year old applicant used a knife to force entry into a stationary ice cream truck to steal money from the till – where the 13 year old complainant attempted to guard the money till – where the applicant stole $200 – where the applicant fled from police custody when he was being flown from Palm Island Aerodrome to serve a term of imprisonment – where the applicant had an extensive criminal history, including numerous dishonesty offences – where the sentencing judge took into account the applicant's youth, his attempts to

	rehabilitate and prospects of rehabilitation – whether the sentences imposed by the sentencing judge were manifestly excessive
	Crimes Act 1914 (Cth)
	R v Taylor and Leigep [1997] QCA 159, considered *R v Heath & Anor* [1995] QCA 170, considered
COUNSEL:	The applicant appeared on his own behalf V A Loury for the respondent
SOLICITORS:	The applicant appeared on his own behalf Director of Public Prosecutions (Queensland) for the respondent

MUIR JA: The applicant, who was 20 years of age at the time the offences were committed, pleaded guilty to one count of breaking, entering and stealing (count 1), one count of escaping from lawful custody (count 2) and one count of stealing a pair of police handcuffs (count 3). He was sentenced on 25 March 2011 in respect of: count 1, to two years imprisonment with a parole release date of 4 November 2011; count 2, to three months imprisonment and count 3, to one months imprisonment. All sentences were ordered to be served concurrently. The applicant was also fined $250 for an offence under the *Crimes Act* 1914 (Cth) of entering a security zone of a security controlled airport without permission of a responsible aviation industry participant. He seeks leave to appeal against his sentences on the grounds that they were manifestly excessive.

The subject offences were described in an undisputed schedule of facts in the following terms. Count 1 concerned the applicant's forcing an entry into a stationary ice cream truck left in the temporary care of the 13 year old complainant. The applicant, holding a knife and with a shirt wrapped around his head to hide his face, forced a locked side door of the truck and climbed into the back, where the complainant was sitting. She placed herself in front of the money till. He approached her with a knife in his hand and attempted to take the money from the till. The complainant pulled the shirt off the applicant's head. In order to free his right hand, the applicant threw the knife out of the back of the truck, took money from the till and jumped out of the truck. He then attempted to open the back of the truck and left when he was unable to do so. Approximately $200 was taken.

The count 2 offence was committed when the handcuffed applicant, who was at the Palm Island Aerodrome being flown to Townsville to serve a term of imprisonment, ran from an escorting police officer who had released his hold on the applicant. The applicant scaled the aerodrome's boundary fence and fled into nearby bushland. Despite searching for "numerous hours", police were unable to locate the applicant. He was arrested some 10 days later at a house on Palm Island when he, again, attempted to avoid being taken into custody.

Count 3 concerns the handcuffs the applicant was wearing when he escaped. When arrested, the applicant did not have the handcuffs in his possession and he refused to disclose their location.

The applicant had an extensive criminal history commencing with a conviction for wilful damage in April 2007. He was convicted of breaking and entering with intent to commit an indictable offence in February 2008, and of a similar offence in April 2009.

On 19 May 2010, the applicant was convicted of four counts of breaking and entering with intent to commit an indictable offence, and sentenced to nine months imprisonment. He was also convicted of four counts of unlawful use of a motor vehicle, one count of unlawful entry of a motor vehicle, one count of wilful damage, one count of burglary and three counts of assaulting or obstructing a police officer.

The applicant was educated to year 10. He resided on Palm Island and was employed at a snack bar at the time of the offence. He was drunk when the offence was committed. The applicant's counsel submitted that an appropriate head sentence was "in the vicinity of 12 to 18 months".

The sentencing judge noted that the applicant had "attempted some rehabilitation" by undertaking a program in jail about offending behaviour. He found that the applicant used

the knife to force entry and not to threaten the complainant. He found, however, that the applicant had persisted, despite the complainant's attempts to keep the applicant from the cashbox and that the applicant had attempted to re-enter the vehicle again.

The sentencing judge remarked that the escape involved a serious offence. He said, in effect, that the penalty to be imposed was to serve the purposes of personal and general deterrence and the denunciation of conduct of the type in question. The sentencing judge expressly took into account the applicant's youth, attempts at rehabilitation and his prospects of rehabilitation.

The maximum penalties for the count 1 and count 2 offences were life and seven years, respectively.

Counsel for the respondent submitted that *R v Taylor and Leigep* [1997] QCA 159 and *R v Heath & Anor* [1995] QCA 170 both supported the terms of imprisonment imposed by the sentencing judge.

In the former case, a sentence of two and a-half years imprisonment was imposed on *Leigep* on appeal for a single offence of break, enter and steal. *Leigep* had a significant criminal history and was 21 years of age at the time of offending.

In *Heath*, the applicant, who was 25 years of age, with a significant criminal history for dishonesty, had a sentence of two years imprisonment imposed on appeal with a parole recommendation after six months. The applicant had opportunistically broken into business premises at night with the intention of stealing. The sentences in both these cases support the respondent's submissions.

The sentences have not been shown to be manifestly excessive. It was open to the sentencing judge to impose a cumulative sentence for count 2, and the earlier parole

release date amply recognises the guilty plea and the other mitigating circumstances. I would, for these reasons, order that the application for leave to appeal against sentence be refused.

FRASER JA: I agree.

MARGARET WILSON AJA: I agree.