SUPREME COURT OF QUEENSLAND

CITATION:	*R v Stroia* [2011] QCA 317
PARTIES:	**R** **v** **STROIA, Alexandru** (applicant)
FILE NO/S:	CA No 168 of 2011 DC No 1011 of 2011
DIVISION:	Court of Appeal
PROCEEDING:	Sentence Application
ORIGINATING COURT:	District Court at Brisbane
DELIVERED ON:	8 November 2011
DELIVERED AT:	Brisbane
HEARING DATE:	18 October 2011
JUDGES:	Margaret McMurdo P, Chesterman JA and Margaret Wilson AJA 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 – APPEAL AGAINST SENTENCE – GROUNDS FOR INTERFERENCE – SENTENCE MANIFESTLY EXCESSIVE OR INADEQUATE – where the applicant pleaded guilty to an ex officio indictment containing six counts of possessing a thing with intent to dishonestly obtain or deal in personal financial information; two counts of wilful damage; and one count of dealing in the proceeds of crime where the value of the money was $50,000 or more – where the applicant was sentenced to three years imprisonment with a non-parole period of 18 months – where his co-accused pleaded guilty to related offences in a separate 11 count indictment and was sentenced to four years imprisonment with a non-parole period of 14 months – where the applicant argued the sentencing judge placed insufficient weight on mitigating factors, including that he pleaded guilty at an early time to an *ex officio* indictment, cooperated with authorities and had good prospects of rehabilitation – whether the sentence was manifestly excessive *Du Randt v R* [2008] NSWCCA 121, considered *R v Darot*, Unreported, District Court Queensland, Noud DCJ, 2 March 2011, considered

R v Iftimia, Unreported, Supreme Court of Queensland, Boddice J, 7 December 2010, considered
R v Sea [2006] QCA 421, considered
Tomov v The Queen [2011] WASCA 189, considered

COUNSEL: M Byrne QC for the applicant
P C Floyd for the respondent

SOLICITORS: Jacobson Mahony Lawyers for the applicant
Commonwealth Director of Public Prosecutions for the respondent

[1] **MARGARET McMURDO P:** The applicant, Alexandru Stroia, pleaded guilty to an *ex officio* indictment in the Brisbane District Court on 3 June 2011 containing six counts of possessing a thing with intent to dishonestly obtain or deal in personal financial information (counts 1, 3, 4, 5, 6 and 8); two counts of wilful damage (counts 2 and 7); and one count of dealing in the proceeds of crime where the value of the money was $50,000 or more (count 9). His co-offender, Mircea Flutur, pleaded guilty to related offences in a separate 11 count indictment. Stroia was sentenced on count 9, to reflect the totality of his offending, to three years imprisonment with a non-parole period of 18 months; 304 days of pre-sentence custody was declared as time served under the sentence. Flutur was sentenced on count 11 (dealing in the proceeds of crime where the value of the money was $100,000 or more), to reflect the totality of his offending, to four years imprisonment with a non-parole period of 14 months. As there was no declaration in respect of Flutur's 304 days of pre-sentence custody, he will effectively serve 24 months before his release.

[2] Both Flutur and Stroia applied for leave to appeal against their sentences, contending first that they were manifestly excessive and second that the judge erred in law by failing to provide reasons. Flutur has abandoned his application for leave to appeal. Stroia's counsel argued only the first ground.

[3] The charges against Stroia and Flutur arose out of an investigation into a spate of offences concerning ATMs in south-east Queensland. Electronic skimming devices had been fitted to the card slots of ATMs and concealed camera components had been hidden behind false facias fitted to the tops of ATMs. The cameras read the pin number of cards as they were legitimately used at the ATMs. Generally, the skimming devices were fixed over the ATM card slots with superglue.

[4] CCTV footage captured Stroia and Flutur installing and removing some devices. As a result, on 4 August 2010, police began surveillance of their movements. Stroia and Flutur travelled together by car to a storage facility at Bundall where they removed a cordless drill and a tin of epoxy resin before returning to a flat in Mermaid Beach rented by Stroia from 9 July to 10 October 2010. Police executed a search warrant for the flat. They found partly built skimming devices and camera components; freshly painted false facias; computer equipment and mobile phone batteries; and $7,500 in $50 notes concealed in wardrobes. In the car, they found clothing worn by the protagonists when committing the offences captured on CCTV footage; tools used to install and remove the skimming devices; superglue; metal files, pliers, snippers and gloves. They also found a discrete "field kit" containing items for fitting and removing skimming devices.

[5] More equipment of this kind was located at the storage facility, together with further false facias and card slots. Police also found magnetic stripe cards believed to be cloned cards containing compromised credit card data and a card writer which enabled compromised card data to be placed on cloned plastic cards.

[6] Flutur and Stroia both participated in formal police interviews and they were subsequently charged. Flutur's admissions resulted in the money laundering charges in count 9 (Stroia) and count 11 (Flutur). Flutur's offending occurred between April 2009 and August 2010 and Stroia's offending between January 2009 and July 2010.

[7] Stroia's offending can be summarised as follows. He attached electronic card skimming devices to four bank ATMs (counts 1, 3, 4 and 5) and damaged a further two bank ATMs (counts 2 and 7). The card skimming devices located at his home constituted count 6 and those located in the storage unit at Bundall constituted count 8. Between January 2009 and July 2010, he made 22 money transfers from a variety of foreign exchanges or money transfer outlets in Queensland, New South Wales and Victoria. In all, he transferred $88,372 from Australia to European countries, mainly Romania and the United Kingdom. On each occasion, he produced identification in his own name and signed documentation transferring money by providing cash for the nominated amount. Those funds were then electronically transferred to the chosen destination and converted to the domestic currency. These actions constituted count 9.

[8] Flutur's conduct constituting count 11 involved 78 transactions transferring $214,033 overseas and he was also found in possession of a further $5,970.

[9] Flutur was between 28 and 29 at the time of his offending and 30 at sentence with no prior convictions in Australia. He was, however, for some of the offending period an illegal immigrant, and he had some minor criminal history for drugs in Romania. Stroia was between 25 and 26 at the time of his offending and 27 at sentence. He had no criminal history.

[10] The prosecutor at sentence made the following submissions. Deterrence was an important consideration. Flutur's offending was a particularly serious example of money laundering. He routinely used false names and identifications to make the transactions. Although Stroia transferred a much lesser amount, his offending was still serious. Stroia, unlike Flutur, was charged with offences of wilful damage to the ATMs, demonstrating his hands-on role in the installation and removal of the card skimming devices. He was paid in cash to place the devices on the ATMs, usually between $1,000 and $2,000 on each occasion. In their favour, they both made admissions and entered early pleas of guilty to *ex officio* indictments. No sentence other than a term of imprisonment was appropriate. Sentences should be imposed on Stroia for count 9 and on Flutur for count 11 which reflect their overall criminality as these counts span the entire period covered by all the offending and carry the heaviest maximum penalty (seven years in Stroia's case and 10 years in Flutur's case). Stroia should be sentenced to between three and three and a half years imprisonment, and serve between 14 and 18 months in actual custody. Flutur should be sentenced to four to four and a half years imprisonment and serve between 20 and 24 months. In support of that submission, she referred to *Du Randt v R*;[1] *R v Iftimia*[2] and *R v Darot*.[3]

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1 [2008] NSWCCA 121.

2 Unreported, Supreme Court of Queensland, Boddice J, 7 December 2010.

3 Unreported, District Court Queensland, Noud DCJ, 2 March 2011.

[11] Defence counsel tendered a psychology report prepared by Ms Jacqui Yoxall in respect of each of Stroia and Flutur. Flutur's report contained the following information. He completed his education in Romania to grade 12. There were few employment opportunities and he moved to London in 2000 where he worked as a construction window fixer. He married, predominantly for immigration purposes. He was still married but he had no children. He sent money to his 55 year old divorced mother who was living in poverty in Romania. He was frustrated and stressed in prison. He longed to return to London and his friends. With hindsight, he realised he should not have trusted the Romanians whom he met in Sydney and should not have been tempted by the illusion of easy money. He now realised the extent of the criminal operation he joined and the impact of card skimming offences on Australian society. There was no indication of any significant psychological factors that may have contributed to his offending. He seemed motivated to serve his sentence so that he could leave Australia and get on with his life.

[12] Stroia's report contained the following information. He was born and raised in Bucharest, Romania. He was fond of his mother but his father was an aggressive man who believed in "tough love". His parents divorced when he was 18 years old. He completed school in Bucharest and gained university entrance and completed two years of a degree in International Relations and Political Studies. At age 20 he left for London where he lived and worked for nine years and obtained permanent residency status. He became the general manager for a group of organic cafes and shops and worked closely with the business owner. He married in 2008 after living with his wife for nearly seven years. They had no children. His motivation for joining in the offences was to raise between $20,000 and $30,000 for his mother's neurosurgery for several cancerous tumours. He first travelled to Australia on a three month holiday and returned on two further occasions to conduct market research for his London employer who was looking for business opportunities in Australia following the global financial crisis. He agreed to take part in this scheme to make quick money to assist his mother. He was introduced to Flutur without realising the extent of the overall operation. He was struggling in prison and missed his wife and mother. Talking to them by telephone was expensive and difficult. His mother had undergone interim surgery to address her immediate medical concerns but remained in very poor health in Bucharest. He had employment available at a Gold Coast restaurant and he hoped his wife would join him in Australia. He was motivated to demonstrate his capacity to be a productive, law abiding member of society in the hope of obtaining permanent Australian residency. While he did not appreciate it at the time, he now understood the impact of his crimes on the public. There was no indication of any significant psychological factors that may have contributed to his offending other than his concern about his mother's health. He exercised poor judgment in committing the offences. He was now remorseful and ashamed and appeared to have some insight into their impact. His risk of re-offending was minimal as there was no on-going urgent need for money and his experience of incarceration had been a significant disincentive.

[13] Defence counsel tendered a reference from Stroia's prospective Australian employer who stated that the offences were out of character, and confirmed an offer of future employment. Counsel also tendered a reference from the former London employer who stated he was aware of the offences which were out of character. Another referee also considered the offences out of character and described how Stroia had assisted the needy by taking part in a charity run. Stroia's mother wrote to the court explaining that her health did not permit her to travel to Australia to be present at

the sentence. She stated that her son had had a good and moral upbringing and that the offences were out of character; he regretted committing them and now understood their impact on the community. Stroia's wife also wrote to the court about his many positive attributes.

[14] Defence counsel made the following submissions. Neither Flutur nor Stroia were significant members of the criminal enterprise of which their offending was part. They were "foot soldiers, minnows". Stroia would have received no more than $30,000 from his offending and Flutur no more than $50,000. They used the money to assist their families in dire circumstances in Europe. They were both very cooperative with the authorities. The fault element in both counts 9 and 11 was recklessness rather than knowledge or intent. They had each pleaded guilty to an *ex officio* indictment saving the justice system time and money. They had each spent significant time on remand which had been particularly difficult for them in circumstances where they were a long way from home. *R v Sea*[4] and *Iftimia* supported, in Flutur's case, a head sentence of three years imprisonment with a non-parole period of about 12 months and in Stroia's case, which was less serious, a two and a half year term of imprisonment with a recognisance release order after 304 days. As Stroia had already served this period in custody he should be released forthwith.

[15] After briefly referring to the facts of the offending, the learned primary judge made the following sentencing observations. The offences were perpetrated over a significant period of time and involved a degree of planning and sophistication. Both offenders were visitors to Australia and in Flutur's case he was an unlawful visitor at the time of the offences. The judge treated them both as having no criminal convictions. They had been in custody for a long period in circumstances where this was difficult. But in cases such as these, great weight could not be given to that hardship. His Honour noted Stroia's references. They both cooperated with the authorities insofar as their own offending was concerned and pleaded guilty at an early stage to an *ex officio* indictment. Their offending was reckless rather than with knowledge or intent.

[16] Stroia's counsel in this application rightly did not pursue the contention that the judge failed to provide reasons. Although more extensive reasons would ordinarily be expected when sentencing first offenders to prison for offences of this kind, the sentencing remarks suggest the judge considered the essential relevant exacerbating and mitigating features. The issue in this case is whether the sentence is manifestly excessive. Stroia's counsel made the following submissions. The judge did not give sufficient weight to the very early indications of an intention to plead guilty and the fact that the pleas were entered to an *ex officio* indictment. *Sea* was a more serious example of fraudulent conduct than the present and without any of the mitigating features. Sea was older; it was a late plea and the maximum penalty was 10 years, not seven as in Stroia's case. Similarly, *Iftimia*, where the greater maximum penalty of 15 years imprisonment applied, did not support Stroia's sentence. The recent decision of *Tomov v The Queen*,[5] relied upon by the respondent in this appeal was also distinguishable on its facts and did not support Stroia's sentence. The maximum penalty applicable in that case was 12 years. The application for leave to appeal should be granted, the appeal allowed and a sentence of two and a half years

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4 [2006] QCA 421.

5 [2011] WASCA 189.

imprisonment with release after 435 days (the time served at the hearing of this application) should be substituted.

Conclusion

[17] Neither *Sea*, *Du Randt*, *Iftima*, *Darot* nor *Tomov* to which counsel have referred us in considerable detail, are closely comparable to this case. The charges, the circumstances of the offending, and the mitigating and personal circumstances in all those cases differ from Stroia's case. I do not find them of assistance in determining the precise sentencing range in Stroia's case. But they do not compel a conclusion that a three year sentence for Stroia with release after 18 months is manifestly excessive.

[18] True it is, as Stroia's counsel emphasises, the maximum penalty for count 9 was only seven years imprisonment and involved a mental element of recklessness rather than one of intentional dishonesty. The three year sentence imposed on count 9 with release after serving 18 months was a significant penalty. But that sentence also reflected Stroia's involvement in the remaining eight counts. Counts 1, 3, 4, 5, 6 and 8 were each punishable by a maximum of three years imprisonment and counts 2 and 7 by a maximum of five years imprisonment. It is true that Stroia had no criminal history and was well thought of by the many who knew him closely and provided references and letters of support. He committed the offences when aged 25 and 26 and was 27 at sentence. While still young enough to rehabilitate, he was not in the category of very youthful offenders to whom courts tend to grant particular leniency. And he was cooperative, at least as far as his own involvement went, and pleaded guilty at an early time to an *ex officio* indictment.

[19] But deterrence was a particularly important consideration in this case. Stroia was part of an organised international professional criminal organisation. Whilst he may have been a lowly foot soldier in that sinister cartel, if the criminal masterminds were unable to recruit people like him their unlawful schemes would flounder. He received about $30,000 for his part in the crimes, none of which has been repaid. Stroia's offending struck at the integrity of and public confidence in the use of ATMs, the Australian banking system's mode of providing convenient services to customers. The misuse of credit card information had the potential to undermine public confidence in credit and savings card use, practical and much-used tools of modern commerce and banking. The sending of over $80,000 of stolen Australian money overseas was also a significant crime against the Australian public. Stroia's illegal conduct continued over 18 months during three separate visits to Australia when, according to one of his own referees, he could have obtained gainful, honest employment for which he was well qualified. His offending was carefully and professionally planned. A substantial penalty involving a significant period of actual custody had to be imposed to deter him and others. People like Stroia and Flutur who are tempted to make easy money through sophisticated criminal enterprises like this one, even if only to help family members in straightened circumstances, must appreciate that they are likely to be caught and sentenced to a significant prison term. The promise of quick money for joining in an international criminal enterprise is not worth the risk.

[20] On the other hand, there were significant mitigating features. Stroia had no prior criminal history and was well thought of by employers and others in the community. He had the support of his wife and his mother and is still a young man. His

prospects of rehabilitation are therefore better than many. The psychological report tendered on his behalf does not suggest otherwise. Importantly, he made admissions and cooperated with the authorities, at least to some extent, and he pleaded guilty at a very early time to an *ex officio* indictment. But for those features a significantly longer head sentence and period of actual custody would have been imposed.

[21] The sentence of three years imprisonment to serve 18 months appropriately balanced the aggravating and mitigating features. It was not manifestly excessive. It follows that the application for leave to appeal should be refused.

[22] **CHESTERMAN JA:** I agree with the President.

[23] **MARGARET WILSON AJA:** The application for leave to appeal against sentence should be refused for the reasons given by the President.