SUPREME COURT OF QUEENSLAND

CITATION:	*R v Steedman* [2011] QCA 246
PARTIES:	**R** **v** **STEEDMAN, Michael Brian** (applicant)
FILE NO/S:	CA No 211 of 2011 DC No 308 of 2011
DIVISION:	Court of Appeal
PROCEEDING:	Application for Extension (Sentence)
ORIGINATING COURT:	District Court at Brisbane
DELIVERED EX TEMPORE ON:	21 September 2011
DELIVERED AT:	Brisbane
HEARING DATE:	21 September 2011
JUDGES:	Margaret McMurdo P and Muir and White JJA Separate reasons for judgment of each member of the Court, each concurring as to the orders made
ORDERS:	**Orders delivered ex tempore on 21 September 2011:** **1. Time is extended to apply for leave to appeal against sentence to 20 July 2011.** **2. The application for leave to appeal against sentence is granted.** **3. The appeal is allowed to the limited extent of setting aside the sentences on each count suspending the sentence after 12 months and substituting a suspension of six months.** **4. The sentence imposed at first instance is otherwise confirmed.**
CATCHWORDS:	CRIMINAL LAW – APPEAL AND NEW TRIAL – PROCEDURE – NOTICES OF APPEAL – TIME FOR APPEAL AND EXTENSION THEREOF – where the application for leave to appeal against sentence was filed about one month out of time – whether the application for an extension of time should be granted CRIMINAL LAW – APPEAL AND NEW TRIAL – APPEAL AGAINST SENTENCE – GROUNDS FOR INTERFERENCE – PARITY BETWEEN CO-OFFENDERS – where the applicant was sentenced to three and a half years imprisonment suspended after 12 months with an operational

period of four years – where the applicant argued he had a less serious role in the offending than his two co-accused – where the applicant contended he had a less significant criminal history than his two co-accused – whether the applicant has a justifiable sense of grievance in light of the sentence imposed on his co-accused – whether applicant's sentence accords with the need for parity of sentencing between co-offenders

R v Bryant (2007) 173 A Crim R 88; [2007] QCA 247, considered

COUNSEL:	The applicant appeared on his own behalf M B Lehane for the respondent
SOLICITORS:	The applicant appeared on his own behalf Director of Public Prosecutions (Queensland) for the respondent

THE PRESIDENT: The applicant, Michael Brian Steedman, pleaded guilty on 20 May 2011 to six counts of burglary and stealing and one count of burglary by breaking. All offences were committed between August and October 2008. On each count he was sentenced to three and a half years imprisonment with an order that those terms of imprisonment be suspended after 12 months with an operational period of four years. He did not file an application for leave to appeal against his sentence within time. Only on 19 July 2011 did he apply for an extension of time to apply for leave to appeal against his sentence, about one month late.

In his application he states as his reasons for not filing it within time: "Circumstances out of my control due to misleading legal advice. I was told an appeal would be lodged and found out it hasn't. It has taken this long to get to this stage." In his oral submissions, he emphasised that he was unaware of the 28 day time limit and that he had genuinely wanted to appeal but, because of the circumstances in his life at the time he was sent to prison, this was not possible. As Mr Lehane, counsel for respondent, fairly conceded, the delay has not been great and does not strongly militate against the granting of the application. In his oral submissions the applicant raised some matters concerning parity with co-offenders which suggested there was an issue which this Court should consider. The Court, for that

reason, granted his extension of time within which to apply for leave to appeal against sentence.

The applicant was 41 at the time of the offences and 44 when sentenced. He had a criminal history for like offences commencing when he was 18 years old but, as he has pointed out to this Court and which was not clear to the primary judge, those sentences were actually committed whilst he was a juvenile. Further, although his criminal history is some pages long he has not committed any offences of dishonesty since 1991 and has never before been sent to jail. He also rightly emphasised in his oral submissions that he was on bail for three years awaiting sentence and during that time did not commit any further offences.

The circumstances of his offending were as follows. In July 2008 police were conducting an operation targeting Alonzo McAvoy in the North Brisbane and Gold Coast area in relation to a spate of home burglaries. Police placed a tracking device in McAvoy's car and found he was in areas at times when burglaries were occurring. He targeted new housing estates. The tracking device also traced him to the residences of his co-offenders at times shortly before the commission of break-ins. A man by the name of Lindsey was the receiver of at least the bulk of McAvoy's stolen property. McAvoy had enlisted as his partners in crime a person called Wheeler as well as the applicant. The first tracking device was destroyed when McAvoy's car was damaged in a police chase. The second tracking device was installed in McAvoy's replacement vehicle and a listening device and a video recorder were installed in Lindsey's garage.

The prosecution tendered a schedule particularising the applicant's offending. The video recording of events in Lindsey's garage showed the applicant, on occasions with Lindsey, carrying property out of McAvoy's car into Lindsey's garage. The total value of the property stolen or damaged as a result of the applicant's offending was almost $30,000. The applicant and McAvoy stole items they believed Lindsey wanted. They often

committed two or three burglaries a night. They would take pillow cases from the targeted homes and use them to carry away property including, on one occasion, a flat screen TV. Police found pillowcases in Lindsey's home and the complainants were able to identify the pillow cases and thereby link the offending to their properties. Usually entry was gained to the houses by smashing a glass window or door near a door latch and then opening the door, typically at the rear of the house. Often a cutting implement was used to cleanly cut the glass. There was no physical evidence linking the applicant or his co-offenders to the targeted houses. Neither the applicant nor his co-offenders made admissions to police.

The prosecutor, at sentence, submitted that McAvoy was the principal offender. He was sentenced for 59 burglary offences and for an offence of dangerous operation of a motor vehicle arising out of the police chase. The loss occasioned by his offending was in excess of $500,000. This criminal conduct took place over a period of about four months between June and October 2008. On 9 July 2010 Judge Bradley sentenced him to seven years imprisonment with a recommendation for parole eligibility after serving one third of that sentence.

Judge Bradley also sentenced Lindsey. He pleaded guilty to 10 counts of receiving and a further 11 counts of receiving were taken into account. His offending concerned some $50,000 worth of property, much of which had been returned to the owners. The judge described him as a mature man with an insignificant criminal history. He had a gambling addiction. A report from a psychologist painted a picture of him as an ordinary citizen who had otherwise led a blameless life but who had become involved in a criminal enterprise because of his gambling addiction. The judge noted he pleaded guilty at an early time, had a good employment history and that his offending was out of character. She sentenced him to three and a half years imprisonment with parole eligibility after serving one third of that time, that is, after 14 months.

Wheeler was sentenced for 14 counts of burglary and stealing and one count of burglary by breaking. His offending occurred over about two months between August and October 2008, as did the applicant's. The loss occasioned by Wheeler's conduct was about $180,000. He was also sentenced for two further property offences which he committed whilst on bail for the offences. Judge Ryrie sentenced Wheeler on 12 October 2010 to four and a half years imprisonment to be suspended after 18 months with an operational period of five years. The prosecutor conceded that Wheeler's criminal history was much worse than the applicant's and his criminality in respect of their common offending was also greater. That concession was rightly made.

The prosecutor stated that the applicant was at court when McAvoy was sentenced but the applicant's lawyers then informed the court that he denied involvement in the offences. As a result there was a further committal hearing in relation to other charges. The prosecutor at the applicant's sentence accepted, however, that the applicant should have the benefit of a timely guilty plea, even though it was not as early as it could have been. The prosecutor submitted that the applicant's dishonesty was professional and premeditated and it involved a considerable amount of property. The offences were committed in company. He should receive a sentence slightly less than that imposed on Wheeler. A sentence of four years imprisonment with an earlier than normal release date was appropriate.

The applicant's counsel at sentence made the following submissions. *R v Bryant* [2007] QCA 247 at [11] to [13] demonstrated that the appropriate head sentence was three to four years imprisonment. The appellant left school after grade 10 and worked in various unskilled occupations. At the time of his offending he was down on his luck, on the dole and struggling to meet his own financial commitments. McAvoy approached him to assist in his criminal activities. He succumbed to those approaches on four nights. He was usually paid about $300 a night and on one occasion $400. The evidence gained from the tracking device supported counsel's submission that on occasions the applicant resisted McAvoy's advances. The applicant was truly remorseful and ashamed of his behaviour.

He hand wrote a note to the judge in which he expressed his remorse and apologised to his victims. The applicant would have pleaded guilty at an earlier time but for a misunderstanding with the prosecution. Counsel was quickly able to clarify this matter once briefed. The judge should treat the matter as a timely plea of guilty. The applicant had not committed any property offences for 20 years. He was neither a recidivist nor the main offender. He was remorseful and his offending has had a profound effect. He was now determined to put his life right. To recognise these matters, counsel urged the judge to suspend or give a parole release date after six to 12 months in custody. A sentence of three years imprisonment with a parole release date after six or 12 months was appropriate.

The judge adjourned to consider the sentence. When his Honour returned the judge referred both to the mitigating features and the serious aspects of the applicant's offending. The offences were properly categorised as professional, the applicant stole to meet orders placed by the intended receiver, Lindsey. The applicant became involved because of financial difficulties. Although he received very little from his offending it caused losses totalling almost $30,000. The judge accepted that the applicant was remorseful and had pleaded guilty at an early time. McAvoy's offending was much more serious. Wheeler's offending was closer to the applicants but it was also considerably more serious. *Bryant* demonstrated that the applicant's offending at his age and with his prior like convictions warranted a head sentence in the range of three to five years imprisonment. Were it not for the sentence of four years imprisonment imposed on Wheeler, the judge would have imposed a four year sentence on the applicant. To maintain appropriate parity with Wheeler, his Honour determined that a head sentence of three and a half years imprisonment was appropriate, suspended after 12 months to reflect both the mitigating features and to maintain appropriate parity with Wheeler.

In his oral submissions to this Court the applicant emphasised that his criminal history was not as serious as the judge thought in that his only significant like offences were

committed when he was a juvenile, although not dealt with until he was 18. He also emphasised that he had not committed like offences for over 20 years and in particular had stayed out of trouble for the three years he was on bail. This was another distinguishing feature from Wheeler who committed offences whilst on bail. He submitted that, when his sentence was compared to Wheeler's and to the receiver, Lindsey (who had encouraged and instigated the offending) there was a justifiable feeling of grievance.

It must be recognised that Lindsey's sentence was for offences of receiving which have a maximum penalty of 14 years' imprisonment whereas the offences to which the applicant pleaded guilty were punishable by life imprisonment. It must also be recognised that Lindsey, a mature man, had no relevant criminal history whereas the applicant did have some criminal history for property offences, although nothing recent. That said, however, the sentence imposed on Lindsey as the receiver who ordered goods from McAvoy and his assistants does seem light when compared to the sentence imposed on the applicant.

It is unfortunate that the primary judge was not referred to Lindsey's sentence. The judge made a valiant effort to distinguish between the sentence imposed on Wheeler and this applicant but, in my view, the distinction was not sufficient to recognise the different aspects of their offending. Wheeler's criminal history was much more significant. He committed offences whilst on bail and his prospects of rehabilitation were less promising than those of this applicant. The offences involved much more criminal activity on his part and resulted in a much greater loss of property. The applicant personally received a comparatively small amount from his offending.

In my view, these matters mean that the application for leave to appeal against sentence should be granted and the appeal allowed to the extent of setting aside the suspended term of imprisonment after 12 months and, instead, substituting a suspended term of imprisonment after six months on each count. I would otherwise confirm the sentence imposed at first instance.

MUIR JA: I agree. The matters to which the prisoner refers justify a reduction in the applicant's sentence despite the sentence being generally within the range contended for by defence counsel.

WHITE JA: I agree with the President's reasons and also the additional reasons of Justice Muir.

THE PRESIDENT: The orders are:

1. Time is extended to apply for leave to appeal against sentence to 20 July 2011.
2. The application for leave to appeal against sentence is granted.
3. The appeal is allowed to the limited extent of setting aside the sentences on each count suspending the sentence after 12 months and substituting a suspension of six months.
4. The sentence imposed at first instance is otherwise confirmed.

Those are the orders of the Court.