SUPREME COURT OF QUEENSLAND

CITATION:	*R v Fares* [2012] QCA 13
PARTIES:	**R** **v** **FARES, Sandra Louise** (applicant/appellant)
FILE NO/S:	CA No 233 of 2011 DC No 91 of 2011
DIVISION:	Court of Appeal
PROCEEDING:	Appeal against Conviction & Sentence
ORIGINATING COURT:	District Court at Beenleigh
DELIVERED ON:	17 February 2012
DELIVERED AT:	Brisbane
HEARING DATE:	7 February 2012
JUDGES:	Chief Justice, Muir JA and Margaret Wilson AJA Separate reasons for judgment of each member of the Court, each concurring as to the orders made
ORDERS:	**1. Appeal against conviction dismissed.** **2. Application for leave to appeal against sentence refused**.
CATCHWORDS:	CRIMINAL LAW – APPEAL AND NEW TRIAL – APPEAL AGAINST CONVICTION RECORDED ON GUILTY PLEA – where the applicant was convicted after a plea of guilty of multiple counts of dishonesty offences, mainly fraud – where the applicant sought to withdraw plea at sentence – where the applicant submitted that there was a miscarriage of justice in that her plea of guilty deprived her of the opportunity to proceed to trial and argue defences available to her – whether there has been a miscarriage of justice CRIMINAL LAW – APPEAL AND NEW TRIAL – APPEAL AGAINST SENTENCE – GROUNDS FOR INTERFERENCE – SENTENCE MANIFESTLY EXCESSIVE OR INADEQUATE – where sentenced to six years imprisonment (head sentence) – where the value of fraud obtained was greater than $150,000 – where lengthy criminal history with respect to offences of dishonesty – whether the sentence imposed was manifestly excessive in all the circumstances *Corrective Services Act* 2006 (Qld), s 180 *Criminal Code* 1899 (Qld), s 16, s 408C, s 668E(1) *Penalties and Sentences Act* 1992 (Qld), s 13A, s 189

Meissner v The Queen (1995) 184 CLR 132; [1995] HCA 41, cited
Mill v The Queen (1988) 166 CLR 59; [1988] HCA 70, cited
Postiglione v The Queen (1997) 189 CLR 295; [1997] HCA 26, cited
R v Alexander [2004] QCA 11, cited
R v Norris [2006] QCA 376, cited
R v Power [1998] QCA 32, cited
R v Wade [2011] QCA 289, cited

COUNSEL: The applicant/appellant appeared on her own behalf
B Merrin for the respondent

SOLICITORS: The applicant/appellant appeared on her own behalf
Director of Public Prosecutions (Queensland) for the respondent

[1] **CHIEF JUSTICE**: I have had the advantage of reading the reasons for judgment of Margaret Wilson AJA. I agree with the orders proposed by Her Honour, and with her reasons.

[2] **MUIR JA**: I agree with the orders proposed by Wilson AJA for the reasons given by her Honour. The sentences were not excessive. The gravity of the appellant's offending conduct must be measured not only by the moneys fraudulently dealt with, but by the trail of human suffering left in such conduct's wake.

[3] **MARGARET WILSON AJA**: The appellant pleaded guilty to 22 offences –

1 x fraud in excess of $30,000
1 x fraud in excess of $5,000
16 x fraud
2 x stealing
2 x summary charges – (1) engaging in legal practice when not entitled to do so, and (2) representing that she was entitled to engage in legal practice when she was not entitled to do so.

The charges were contained in five indictments and two bench charge sheets.

[4] The offences were committed over more than five years (between October 2005 and March 2011). The total amount defrauded was in excess of $157,000. There were six complainants.

[5] The appellant was sentenced on 4 August 2011. The offence of fraud in excess of $30,000 attracted the head sentence of six years imprisonment. Lesser concurrent sentences were imposed for the other offences, including five years for the fraud in excess of $5,000. Pre-sentence custody of 571 days (approximately 18.5 months) was declared time already served under the sentence. Parole eligibility was set at 4 April 2012 (after approximately 26 months).

[6] The appellant has appealed against her conviction of the fraud in excess of $5,000, and she has sought leave to appeal against the sentences on the ground of manifest excessiveness.

The conduct

[7] **Fraud in excess of $5,000 –**

Offence: 3 October 2005
Indictment: 186/08

The complainant company traded as Q-Ford Springwood. Its administration manager, Andrew Feeney, received a telephone call from a woman who identified herself as Jackie Crow and claimed to be an employee of the ANZ Bank. The woman induced Feeney to transfer $40,345.00 into a bank account held by Paul McBride by representing that a transaction relating to him had been debited twice and asking Feeney to reverse the transaction. Feeney deposited the moneys as requested. "Jackie Crow" was in fact the appellant and McBride was her former de facto partner. He had nothing to do with the planning and execution of the scam, but realising he was not entitled to the money, he spent it nevertheless. The appellant did not personally obtain any benefit.

[8] **Fraud in excess of $30,000 –**

Offence: On divers dates between 31 August 2006 and 1 June 2007
Indictment: 91/11

The appellant rented a room from the complainant, Kenneth Wheatley. Over a nine month period she transferred a total of $107,109.00 from his bank account into her accounts by means of 79 transactions.

[9] **Fraud $1,100 –**

Offence: On divers dates between 19 March 2009 and 22 March 2009
Indictment: 90/11

The complainant, Berwyn Caisley, was in hospital where the appellant visited him. He gave her his bank ATM card and his PIN number. She made unauthorised withdrawals from his account totalling $1,100.00.

[10] **Fraud x 13, stealing x 1 –**

Offences: April and May 2009
Indictment: 92/11

In April and May 2009 the appellant used the debit card details of her friend and neighbour, Ms Zheng Cheng, on 13 occasions to purchase items including flights and clothing and to pay bills or loans without the complainant's permission. She also stole a watch from the complainant's house. The unauthorised transactions and the value of the watch totalled $3,273.22.

[11] **Fraud x 2, stealing x 1, engaging in legal practice when not entitled, representing she was entitled to engage in legal practice when she was not -**

Offences: Between 1 November 2010 and 12 March 2011
Indictment: 252/11
Summary
Charges: Bench Charge Sheets

Between November 2010 and January 2011 the appellant falsely represented that she was a lawyer and was engaged by the complainant, Graciela Rivas, to represent

her in matrimonial matters. At her behest Ms Rivas paid her $5,440.00 for such legal services.

In March 2011 the appellant stole a mobile phone from Morag Seymour and she falsely obtained a quantity of items valued at in excess of $400.00 from a homewares store, after indicating that she was a lawyer.

The appeal against conviction (Offence 3 October 2005)

[12] The appellant initially denied any involvement in the scam, but later participated in a record of interview in which she admitted impersonating a bank employee and making false representations.

[13] When the trial commenced on 27 September 2010, the appellant was legally represented. She pleaded not guilty. The prosecutor fully opened the case against her, and began to call evidence. On the third day, the trial was aborted on an application by the defence, and the jury was discharged. The appeal record does not include the transcript of the application to abort the trial, or any indication of why it was aborted.

[14] On 3 March 2011 the appellant was again arraigned on that charge. She pleaded guilty and the allocutus was administered.

[15] The matter was mentioned on 27 May 2011, when the appellant acknowledged having pleaded guilty and told the court she had "an issue" in relation to the charge. She admitted having an involvement in the scam, but said she was not a principal offender. She referred to a "communication breakdown", without elaboration.

[16] On 4 August 2011 the sentencing judge was in the course of receiving submissions on sentence in relation to all of the charges, when the appellant applied to withdraw her plea of guilty in relation to the offence on 3 October 2005. She acknowledged having pleaded guilty, and being of sound mind when she did so. But she said she had always argued her innocence and that she had entered the plea to save the Court time and to save her family time and heartache. She stressed that she had not profited from the fraud. She denied impersonating anybody. She claimed that the trial had been aborted because of a conflict of interest on the part of a solicitor and the trial judge, but that she had not learnt this until some time after 27 May 2011.

[17] The sentencing judge dismissed the application to withdraw the plea of guilty.

[18] His Honour said he was satisfied that the appellant had fully recognised that the acts alleged by the prosecution were committed by her.

[19] Section 668E(1) of the *Criminal Code* provides –

> "**668E Determination of appeal in ordinary cases**
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> (1) The Court on any such appeal against conviction shall allow the appeal if it is of opinion that the verdict of the jury should be set aside on the ground that it is unreasonable, or can not be supported having regard to the evidence, or that the judgment of the court of trial should be set aside on the ground of the wrong decision of any question of law, or that on any ground whatsoever there was a miscarriage of justice, and in any other case shall dismiss the appeal."

[20] Courts approach applications to set aside or withdraw guilty pleas very cautiously. In *Meissner v The Queen*[1] Brennan, Toohey and McHugh JJ said –

> "A person charged with an offence is at liberty to plead guilty or not guilty to the charge, whether or not that person is in truth guilty or not guilty. An inducement to plead guilty does not necessarily have a tendency to pervert the course of justice, for the inducement may be offered simply to assist the person charged to make a free choice in that person's own interests. A court will act on a plea of guilty[2] when it is entered in open court by a person who is of full age and apparently of sound mind and understanding, provided the plea is entered in exercise of a free choice in the interests of the person entering the plea. There is no miscarriage of justice if a court does act on such a plea, even if the person entering it is not in truth guilty of the offence. The principle is stated by Lawton LJ in *R v Inns*:[3]
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> > 'The whole basis of a plea on arraignment is that in open court an accused freely says what he is going to do; and the law attaches so much importance to a plea of guilty in open court that no further proof is required of the accused's guilt. When the accused is making a plea of guilty under pressure and threats, he does not make a free plea and the trial starts without there being a proper plea at all. All that follows thereafter is, in our judgment, a nullity.'
>
> It may not be strictly accurate to describe what follows as a nullity, but it is certainly liable to be set aside and a new trial ordered. If a plea of guilty is entered by the person charged in purported exercise of a free choice to serve that person's own interests, but the plea is in fact procured by pressure and threats, there is a miscarriage of justice. In such a case, the court is falsely led to dispense with a trial on the faith of a defective plea. The course of justice is thus perverted."

[21] In *R v Wade*[4] Muir JA reviewed the relevant authorities and concluded[5] -

> "[51] As the above authorities demonstrate, before a court will go behind a guilty plea and entertain an appeal against conviction it must be satisfied that a miscarriage of justice has occurred.[6] A miscarriage of justice may be established in circumstances in which for example: in pleading guilty, the accused did not appreciate the nature of the charges or did not intend to admit guilt; on the admitted facts, the accused would not, in law, have been liable to conviction of the subject offences; the plea was not made freely and

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1 (1995) 184 CLR 132 at 141-142.

2 There was a practice of refusing a plea of guilty in capital cases and a discretion to refuse a plea of guilty still remains when the trial judge regards the charge as being of such seriousness that condign punishment should be imposed only if the charge is proved to the satisfaction of a jury.

3 (1974) 60 Cr App R 231 at 233.

4 [2011] QCA 289.

5 At [51].

6 *Hogue v The State of Western Australia* [2005] WASCA 102; *R v Chiron* [1980] 1 NSWLR 218 at 231; *Meissner v The Queen* (1995) 184 CLR 132 at 157.

> voluntarily, such as where it was obtained by an improper inducement or threat or it is shown that the plea was 'not really attributable to a genuine consciousness of guilt'. And, of course, it will normally be impossible to show a miscarriage of justice unless an arguable case or triable issue is also established."

[22] It is for the appellant to persuade this Court that it should go behind her plea of guilty.[7] She must satisfy the Court that a miscarriage of justice occurred. The appellant has submitted that there was a miscarriage of justice in that her plea of guilty deprived her of the opportunity to proceed to trial and argue defences available to her. Despite the prosecution having opened its case against her at the commencement of the trial in September 2010, she asserted that she was unaware of the prosecution case against her at the time she entered her plea. She asserted that it was only after the allocutus had been administered that she received from the prosecution further material which she had requested on 27 September 2010. She did not place this further material before the sentencing judge. If she wished this Court to consider it on her appeal against sentence, she ought to have made an application to adduce fresh evidence, and in support of that application she ought to have filed one or more affidavits, exhibiting the material, and explaining why it could not reasonably have been adduced when she asked the sentencing judge for leave to withdraw her plea of guilty. She ought then to have made submissions as to its relevance. She failed to do any of this.

[23] Further, the factual basis relied on by the prosecution in the sentence proceeding accorded with the facts opened by the prosecution on the first day of the aborted trial in September 2010.

[24] The appellant stressed that she did not profit from the scam. The charge against her was –

> "that on the third day of October, 2005 at Springwood or elsewhere in the State of Queensland, **SANDRA LOUISE FARES** dishonestly induced ANDREW FEENEY to deliver a sum of money to another. And the property was of a value of more than $5000, namely $40,345.00."

It was brought pursuant to s 408C(1)(c) and (2)(d) of the *Criminal Code*, which provided –

> "**408C Fraud**
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> (1) A person who dishonestly –
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> (a) applies to his or her own use or to the use of any person –
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> ...
>
> (c) induces any person to delivery property to any person; or
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> ...
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> commits the crime of fraud.

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7 *R v Wade* [2011] QCA 289 at [42].

(2) An offender guilty of the crime of fraud is liable to imprisonment for 5 years save in any of the following cases when the offender is liable to imprisonment for 10 years, that is to say –

...

(d) if the property, or the yield to the offender from the dishonesty, is of a value of $5000 or more."[8]

[25] It was not an element of the charge that she gained any benefit personally.

[26] I am unpersuaded that the conviction based on the appellant's plea of guilty resulted in a miscarriage of justice. I would dismiss the appeal against conviction.

Applications for leave to appeal against sentence

[27] The principal points made by the sentencing judge in his sentencing remarks were –

(a) the appellant was being sentenced for 22 offences committed over a period of five and a half years;
(b) she had previously been convicted of similar offences on a substantial number of occasions;
(c) there was a significant degree of criminality in the offences, which involved defrauding $157,000 from six complainants;
(d) the offending had an adverse impact on some of the complainants;
(e) greed, gambling and to some extent relationship problems led to the offending;
(f) the appellant was a recidivist offender, who had not demonstrated any prospects of rehabilitation;
(g) personal deterrence and punishment, as well as general deterrence, were significant elements of the sentence to be imposed;
(h) the pleas of guilty had not been entered at an early stage, and so while appellant was to be given some allowance for her pleas, the allowance would not be as great as it could have been for early pleas.

[28] In her application for leave to appeal against sentence, the appellant raised several issues: totality, parity, that her criminal history was incorrectly categorised as extensive, that she was not actually imprisoned in Victoria, that her co-operation with the authorities was not properly recognised, and that the sentence was in all the circumstances excessive.

Antecedents

[29] The applicant was born on 27 January 1975. She is the mother of twins, who were aged almost 14 and living with their father when she was sentenced.

[30] The sentencing judge was sceptical of her claim to hold degrees in arts and law from Sydney University and a Master of Laws [sic] from the University of Oxford. She did not produce degree certificates.

[31] She had a lengthy criminal history of offences of dishonesty. Criminal histories issued by Queensland, Victorian, New South Wales and Federal authorities were

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[8] Reprint 5A.

admitted in the sentence proceeding. The sentencing judge observed that she had twice been gaoled: once in Victoria in 1996 and once in Queensland in 2008.

[32] The Queensland history showed (inter alia) –

(a) that she was dealt with in the Holland Park Magistrates Court for two counts of fraud committed on or about 9 November 2006. On 1 February 2007 she was convicted of these offences and ordered to perform 100 hours community service. That order was revoked on 4 January 2008, when she was re-sentenced to six months imprisonment wholly suspended for an operational period of two years;

(b) that on 14 May 2008 she was dealt with in the District Court at Brisbane for offences of dishonesty committed between 29 November 2006 and 7 February 2007. She was convicted on all charges and sentenced to 12 months imprisonment, with an order that she be released on parole on 14 August 2008 (after three months).

[33] Some of the offences for which the appellant was sentenced on 4 August 2011 were committed within the operational period of the suspended sentence imposed by the Magistrates Court on 4 January 2008. Some were committed whilst the appellant was on parole pursuant to the order of the District Court made on 14 May 2008. Some were committed whilst she was on bail pursuant to an order of the Supreme Court made on 6 September 2010. It is not to the point that breach proceedings were not taken against her.

[34] Before the sentencing judge and before this Court, the appellant asserted that she had not been imprisoned in Victoria. That seems contrary to the Victorian criminal history, which seems to record that she was ordered to serve three months. The format of the Victorian history is different from that of the Queensland history, and it may be that his Honour misinterpreted it. I note that the District Court judge who sentenced her in May 2008 accepted that she had not been imprisoned in Victoria.[9] In the overall scheme of the appellant's criminal history, whether she was actually imprisoned makes little difference.

[35] His Honour fairly described her in these terms –

> "I accept that you are a recidivist offender. You have been engaging in dishonest conduct for most of your adult life. It seems that this is approximately the 14th time that you've appeared in Court throughout Australia to plead guilty to or to be found guilty of committing criminal offences involving dishonesty. It is a shameful and disgraceful record for anyone, let alone someone who has studied law."

Totality

[36] In *Mill v The Queen*[10] the High Court said –

> "The totality principle is a recognized principle of sentencing formulated to assist a court when sentencing an offender for

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9 At 110 – 111.

10 (1988) 166 CLR 59 at 62-63.

a number of offences. It is described succinctly in Thomas, *Principles of Sentencing*, 2nd ed (1979), pp 56-7, as follows (omitting references):

> 'The effect of the totality principle is to require a sentencer who has passed a series of sentences, each properly calculated in relation to the offence for which it is imposed and each properly made consecutive in accordance with the principles governing consecutive sentences, to review the aggregate sentence and consider whether the aggregate is 'just and appropriate'. The principle has been stated many times in various forms: 'when a number of offences are being dealt with and specific punishments in respect of them are being totted up to make a total, it is always necessary for the court to take a last look at the total just to see whether it looks wrong'; 'when … cases of multiplicity of offences come before the court, the court must not content itself by doing the arithmetic and passing the sentence which the arithmetic produces. It must look at the totality of the criminal behaviour and ask itself what is the appropriate sentence for all the offences'.

See also Ruby, *Sentencing*, 3rd ed (1987), pp 38-41. Where the principle falls to be applied in relation to sentences of imprisonment imposed by a single sentencing court, an appropriate result may be achieved either by making sentences wholly or partially concurrent or by lowering the individual sentences below what would otherwise be appropriate in order to reflect the fact that a number of sentences are being imposed. Where practicable, the former is to be preferred."

And in *Postiglione v The Queen*[11] McHugh J said –

> "The totality principle of sentencing requires a judge who is sentencing an offender for a number of offences to ensure that the aggregation of the sentences appropriate for each offence is a just and appropriate measure of the total criminality involved.[12] In *Kelly v The Queen*[13] O'Loughlin J, sitting in the Full Court of the Federal Court of Australia, applied the following unreported remarks of King CJ in *R v Rossi*:[14]
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> > 'There is a principle of sentencing known as the principle of totality, which enables a court to mitigate what strict justice would otherwise indicate, where the total effect of the sentences merited by the individual crimes becomes so crushing as to call for the merciful intervention of the court by way of reducing the total effect.'"

[37] The sentencing judge did not make any express reference to the totality principle.

[38] The appellant's submission about totality seemed to be this. The offences for which she was sentenced by the Magistrates Court in February 2007 and January 2008 and

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11 (1997) 189 CLR 295 at 307 – 308.

12 See *Mill v The Queen* (1988) 166 CLR 59 at 63; 83 ALR 1.

13 (1992) 33 FCR 536 at 541.

14 CCA(SA), 20 April 1988, unreported.

those for which she was sentenced by the District Court in May 2008 were committed after the fraud on Q-Ford Springwood (3 October 2005). In assessing her criminality, the sentencing judge ought to have taken account of that offending and the sentences imposed, particularly the District Court sentence of 12 months imprisonment (not just the three months she was required to served before being released on parole). Taking that time into account, she will be required to serve in excess of three years imprisonment before being eligible for parole.

[39] But as counsel for the respondent submitted, the offences dealt with on 4 August 2011 were distinct factually and separate in time from those previously dealt with. They persisted over more than five years with the intervention of police, the Courts and incarceration spattered throughout the offending. Even taking into account those sentences imposed in 2007 and 2008, the sentence imposed in August 2011 was "a just and appropriate measure of the total criminality involved."

Parity

[40] Paul McBride was charged with an offence associated with the scam on Q-Ford Springwood - dishonestly obtaining a sum of money exceeding $5,000 (namely $40,345).[15] It was a different offence from that of which the appellant was convicted. He pleaded guilty on the basis he had nothing to do with the planning and execution of the scam, but that he dealt with the money once it was in his account. It was the appellant who had, through quite a sophisticated ruse, caused the money to be paid into his account. He had no relevant criminal history.

[41] Initially McBride declined to participate in an interview with police. A few days before he was to be sentenced, he gave a statement to police, and he provided a sworn undertaking to give evidence against the appellant in accordance with the statement.

[42] On 20 April 2009 he was sentenced to 12 months imprisonment, wholly suspended for an operational period of two years, and ordered to pay restitution amounting to half of the amount dishonestly obtained. The sentencing judge reduced the sentence he would otherwise have imposed pursuant to s 13A of the *Penalties and Sentences Act* 1992 (Qld). His Honour said that, but for the undertaking, he would have imposed a head sentence of 18 months imprisonment, suspended after six months.

[43] The appellant was also charged with arson of a dwelling house, allegedly committed in March 2006. In the submissions made at the McBride sentence hearing on 20 April 2009, there was mention of his being promised a letter of comfort from police in relation to evidence he was to give at the arson trial. However, there is nothing to suggest that the judge who sentenced him took that into account in fixing the level of his sentence. McBride gave evidence at the appellant's arson trial in July 2010. She was found not guilty.

[44] The appellant was the perpetrator of the scam, which was comparatively sophisticated and well-executed, although she did not personally benefit from it. She had a long history of offences of dishonesty. She committed a large number of offences over more than five years, whereas McBride committed only one.

[45] In the circumstances, neither the head sentence nor the concurrent sentence for the Q-Ford scam is impeachable because of lack of parity with that imposed on McBride.

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15 Indictment 186/08.

Co-operation

[46] The appellant gave police a statement connecting McBride with receipt of the moneys fraudulently obtained from Q-Ford.

[47] A plea of guilty must be taken into account in imposing a sentence.[16] Credit is usually given for a timely plea. This is frequently done by fixing parole eligibility at one third rather than one half of the term of imprisonment. Sometimes it is reflected in a reduced term of imprisonment. Sometimes there is a combination of a reduced term and early parole eligibility.

[48] The sentencing judge observed that the appellant was to be given some allowance for her pleas of guilty. His Honour said that because the pleas were not at any early stage, he would not give her the significant discount which usually followed from early pleas. His Honour fixed parole eligibility at a date about 26 months into a six year term.

[49] His Honour's approach was entirely orthodox, and did not involve any error.

Other matters

[50] The appellant sought to invoke s 16 of the *Criminal Code* 1899 (Qld) and s 189 of the *Penalties and Sentences Act* 1992 (Qld). Neither of these provisions is applicable.

[51] Section 16 of the *Criminal Code* provides that a person cannot be punished twice for the same act or omission. The appellant argued that there was an element of double punishment arising out of McBride's having been ordered to pay restitution of only half of the amount obtained from Q-Ford while she was sentenced for having defrauded the business of the full amount. The argument was misconceived. They were charged with different offences arising out of different conduct by each. She was not punished twice for the same act or omission.

[52] By s 189 of the *Penalties and Sentences Act* a Court may, in certain circumstances, take outstanding offences into account when imposing sentence. It has no application to the present case.

[53] Section 180 of the *Corrective Services Act* 2006 (Qld) provides –

> **"180 Applying for parole order etc.**
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> (1) A prisoner may apply for a parole order if the prisoner has reached the prisoner's parole eligibility date in relation to the prisoner's period of imprisonment.
>
> (2) However, a prisoner can not apply for a parole order—
>
> (a) if a previous application for a parole order made in relation to the period of imprisonment was refused—
>
> (i) until the end of the period decided by the parole board that refused the previous application; or

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16 *Penalties and Sentences Act* 1992 (Qld) s 13.

(ii) unless a parole board consents; or

(b) if an appeal has been made to a court against the conviction or sentence to which the period of imprisonment relates—until the appeal is decided; or

(c) otherwise—more than 180 days before the prisoner's parole eligibility date.

(3) The application must be made—

(a) in the approved form; and

(b) to the parole board that may, under section 187, hear and decide the application.

(4) A parole order for a prisoner may start on or after the prisoner's parole eligibility date."

[54] The sentencing judge fixed the appellant's parole eligibility date as 4 April 2012. But for this appeal and application for leave to appeal against sentence, she might have made an application for parole (no more than 180 days before her parole eligibility date) in anticipation of its being dealt with by the Parole Board on or soon after 4 April 2012. It may be that the volume of applications before the board is such that it would be necessary to make an application at an early date and so "secure a place in the queue" of applications if there were to be a realistic prospect of its being dealt with on or soon after the parole eligibility date. The legislative scheme is such that this is not possible where an appeal (which should be taken to include an application for leave to appeal against sentence) is undecided. Against that legislative background, the appellant chose to appeal. In the circumstances the operation of the legislation cannot be said to make her sentence manifestly excessive.

Comparable sentences

[55] In *R v Alexander*[17] Williams JA said –

> "A review of the decisions to which the court was referred indicates that there are a number of factors which have been regarded as relevant in determining the appropriate sentence where dishonesty is involved. On some occasions the critical factor has been the amount of money lost by victims of the fraud, on other occasions the decisive factor has been the persistent and systematic offending. One cannot say that either one of those factors is generally more significant than the other. Each case has to be considered in the light of its own peculiar facts; all one can say is that the amount of money lost and the regularity of offending will always be relevant considerations."

[56] Alexander pleaded guilty to 18 charges - six of aggravated fraud, eight of fraud, three of attempted fraud and one of stealing. A schedule outlining 32 other offences of dishonesty was put before the sentencing judge. In all, the fraud charges involved over $125,000 and the attempted fraud charges over $67,000. He was a recidivist offender, with a lengthy criminal history of offences of dishonesty. The

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17 [2004] QCA 11 at [24].

sentencing judge took account of nearly 18 months spent on remand, and imposed a head sentence of three and a half years imprisonment. In other words, for comparative purposes, the sentence can properly be viewed as one of five years. In dismissing an application for leave to appeal against sentence, Williams JA identified the appropriate range as five to six years.

[57] In *R v Power*[18] the offender was charged with misappropriation with circumstances of aggravation under s 408C of the *Criminal Code*. She pleaded not guilty, but changed her plea to guilty after the trial began and evidence was given against her. Over about 15 months she misappropriated cheques or the proceeds of cheques belonging to her employer to the value of almost $108,000. She had previously been sentenced to two years imprisonment with a recommendation for parole eligibility after six months for wilfully setting fire to a building in what appeared to have arisen out of an act to conceal property she had misappropriated to the value of $367,000. She applied for leave to appeal against her sentence of six years imprisonment with a recommendation for parole eligibility after two and a half years. She was the mother of four children and pregnant at the time her application was heard. The application was dismissed.

[58] In *R v Norris*[19] the applicant pleaded guilty to 17 counts of fraud, three counts of fraud in excess of $5,000, one count of entering premises and committing an offence, one count of attempted fraud, three counts of impersonation, six counts of forgery, six counts of uttering and one count of possession of a dangerous drug. He had a long criminal history of similar offending. The sentencing judge imposed a head sentence of five years, after taking into account six months spent on remand and his co-operation with police which extended to confessing offences otherwise unknown to police. An application for leave to appeal against sentence was dismissed, Jerrard JA observing that a notional head sentence of six years would have been within the range described in *Alexander*, and that had been reduced by six months for time spent on remand and a further six months for volunteering information. In the result the sentence was not manifestly excessive.

Conclusion on sentence

[59] The maximum penalty which might have been imposed for the offence which attracted the head sentence (the fraud in excess of $30,000) was 12 years. Before the sentencing judge, the prosecutor submitted that a head sentence of six years imprisonment with parole eligibility after two years and three months would be appropriate.[20] The appellant submitted that a sentence of five years imprisonment suspended after the time served (ie after almost one-third) would be appropriate.[21] On appeal she asked this Court to substitute a sentence of between four and five years imprisonment, suspended after the time already served, or at the half way point, for an operational period of four or five years.[22]

[60] His Honour adopted an orthodox approach in imposing the head sentence for the most serious offence and imposing lesser concurrent sentences for the other offences.

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18 [1998] QCA 32.
19 [2006] QCA 376.
20 AR 77.
21 AR 91-92.
22 Written submissions p28.

[61] The appellant's offending was persistent – 22 offences over more than five years. It involved a substantial amount of money – in excess of $157,000. There were six complainants. She had a lengthy criminal history of dishonesty offences, although she had served only one (or possibly two) quite short period of actual imprisonment. As the sentencing judge observed, personal deterrence and punishment, as well as general deterrence, were significant factors in arriving at the appropriate sentence.

[62] The sentence imposed was within the range described in *Alexander*. Time spent on remand was taken into account by the declaration that it be time already served under the sentence. The appellant has not shown that his Honour made any error of principle. In my view the sentence was not manifestly excessive.

[63] The application for leave to appeal against sentence should be refused.

Orders

[64] I would make the following orders –

1. appeal against conviction dismissed;
2. application for leave to appeal against sentence refused.