SUPREME COURT OF QUEENSLAND

CITATION:	*R v Taouk* [2012] QCA 211
PARTIES:	**R** **v** **TAOUK, John** (applicant)
FILE NO/S:	CA No 17 of 2012 DC No 86 of 2011
DIVISION:	Court of Appeal
PROCEEDING:	Sentence Application
ORIGINATING COURT:	District Court at Brisbane
DELIVERED ON:	17 August 2012
DELIVERED AT:	Brisbane
HEARING DATE:	2 August 2012
JUDGES:	Muir and White JJA and Douglas J Separate reasons for judgment of each member of the Court, each concurring as to the order made
ORDER:	**Application refused.**
CATCHWORDS:	CRIMINAL LAW – APPEAL AGAINST SENTENCE – GROUNDS FOR INTERFERENCE – SENTENCE MANIFESTLY EXCESSIVE – where applicant pleaded guilty to one count of extortion – where complainant was applicant's uncle – where applicant alleged complainant owed him money in relation to the development of an industrial unit complex – where two men were recruited to demand payment of monies from the complainant – where applicant sentenced to three years imprisonment suspended after one year with an operational period of four years – where applicant had one previous conviction for minor offence – where applicant submits sentencing judge placed too much weight on general deterrence and failed to give sufficient weight to mitigating factors – where applicant submits sentencing judge erred in concluding applicant did not show genuine remorse – whether sentence manifestly excessive *R v Carter* [2008] QCA 226, cited *R v Cifuentes* [2006] QCA 566, considered *R v Coleman* [1995] QCA 549, considered *R v Girardo & Michaelides* [2012] QCA 166, considered *R v Shambrook* [1997] QCA 356, considered

COUNSEL:	A J Kimmins, with D Walsh, for the applicant B J Power for the respondent
SOLICITORS:	Rostron Carlyle for the applicant Director of Public Prosecutions (Queensland) for the respondent

[1] **MUIR JA:** The applicant pleaded guilty to one count of extortion and was sentenced to three years imprisonment suspended after one year with an operational period of four years.

[2] The applicant was 33 at the time of offending and 36 when sentenced. He had one prior conviction for a relatively minor offence for which he had been sentenced to six months imprisonment with immediate release upon entering into a recognisance to be of good behaviour for one year. He seeks leave to appeal against sentence on grounds on that the sentencing judge erred in placing excessive weight on factors of general deterrence and failed to give sufficient weight to mitigating circumstances. He also appeals on the ground that the sentence was manifestly excessive.

[3] The applicant was the owner and manager of a construction company and a property development company. He had ten full-time employees and many consultants and sub-contractors. The businesses were engaged in five developments at the time of sentencing. The applicant was driven by financial hardship to commit the offence. Other matters relied on by the applicant at first instance and on appeal were: positive character references; his good work history; his support of his child and ex-partner; his contributions to the community; his determination not to cause physical harm to the complainant; the negative impact a period of actual custody would have on his business; the 13 days spent by him in pre-sentence custody; and the significant delay between the offending conduct and the sentencing.

[4] The following facts are extracted from the agreed statement of facts before the sentencing judge. The complainant, who was 59 at the time of the offence, was the applicant's uncle. Both were of Lebanese descent. The two men were involved in a dispute about money which the applicant alleged the complainant owed to him in relation to the development of an industrial unit complex at Darra, Brisbane. The applicant recruited T, a member of the Lebanese community, who in turn recruited M. T and M resided Sydney and it was arranged that they would come to Brisbane and demand payment of the monies allegedly owed and the transfer of an industrial unit in the Darra complex. T and M came to Brisbane and were given their assignment by the applicant. The applicant asked T how he was going to do the job and was told that he would "do anything to finish the job even hurting [the complainant], bashing him or telling [M] to bash him". The applicant said that the complainant had a heart problem and he did not "want that to happen".

[5] Under a pretext, T and M met the complainant at the Darra complex where they demanded the transfer of a unit and the money claimed by the applicant. The complainant was confined to an office in the premises after T and M threatened to kill the complainant and cause serious harm to his wife and daughters. The complainant promised to pay the money (at least $58,000) and to arrange for the transfer of the property. He was released after about two hours.

[6] The complainant was traumatised by his experience and has had to resort to psychiatric help and medication. His victim impact statement reveals that in

December 2009 he remained fearful for the safety of himself, his wife and his children. His wife and daughters were also rendered fearful by the experience. The family, which became isolated from the Lebanese community, moved to another residence with increased security.

[7] Counsel for the applicant contended that the appropriate sentence was one of two years imprisonment wholly suspended and that the imposition of a sentence requiring any period of actual custody to be served was manifestly excessive.

[8] It was further contended that the sentencing judge erred in:

1. placing excessive weight on the need for deterrence;

2. concluding that the applicant did not show genuine remorse, given his unwillingness to participate in a record of interview; and

3. failing to have due regard to the mitigating factors referred to above and, in particular, the early plea of guilty.

[9] The submission that the appropriate sentence was two years imprisonment with immediate suspension encounters the difficulty that defence counsel accepted that the appropriate sentencing range was two to three years.[1] He contended, however, that a sentence of two years was appropriate to take into account mitigating circumstances, in particular, the time between the offending conduct and sentencing. Those submissions are quite inconsistent with the contention now advanced that no actual custody should have been ordered. The sentencing judge took the plea of guilty into account in the conventional way by ordering the sentence to be suspended after 12 months.

[10] Even though there was a dispute between the defence and prosecution about the use of a firearm, the applicant did not promptly plead guilty and contest only the fact that the co-offenders had used a firearm in the course of the offending conduct. The sentencing judge was entitled, as he put it, to have "some misgivings about accepting [the applicant's] plea… as a genuine expression of remorse" as the applicant also refused to participate in a police interview. Significantly, defence counsel did not submit that his client had demonstrated remorse. There is thus no substance in the submission based on the observation in respect of remorse.

[11] The sentencing judge expressly took the delay between the offending conduct and sentencing into account. After a review of comparable sentences and a consideration of the seriousness of the offending conduct, the sentencing judge observed that "…but for the issues associated with delay in this matter, a head sentence of four years might have been appropriate". The matters to which the sentencing judge expressly had regard in relation to the seriousness of the offending conduct were:

1. the threats of personal violence;

2. the fact that the demands persisted for about two hours despite it being apparent that the complainant was "agitated, scared and distressed";

3. the offending involved "planning and organisation";

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1 See *R v Carter* [2008] QCA 226 at [19].

4. the amount and property demanded were substantial; and

5. the threats included threats to innocent members of the complainant's family.

[12] These matters reveal the seriousness of the applicant's offending. It may be accepted that the applicant instructed T and M, in effect, that he did not want the complainant harmed physically. However, he expected that the complainant would be dealt with in such a way as to induce him to be sufficiently fearful to part with a substantial sum of money and to transfer title to a parcel of real property. He was aware of the complainant's heart problem and equally aware that he would be placing the complainant under extreme stress.

[13] In *R v Coleman*,[2] Macrossan CJ, Fitzgerald P and Mackenzie J agreeing, referring to death threats made to extort payment of a judgment debt of some $17,000, remarked that adequate deterrence played an important role in respect of such behaviour. His Honour further said in that regard:[3]

> "It is extremely important from society's point of view that extortion of this kind be seen to be very appropriately dealt with by a proper sentence which would have the effect of discouraging others who might be similarly inclined."

[14] In that case, a sentence of five years imprisonment with a recommendation for parole eligibility after two years was said not be manifestly excessive. That, as counsel for the respondent submitted, provides some support for the subject sentence.

[15] So too does *R v Shambrook* [4] in which the sentence of three years imposed for each of six counts of extortion was not interfered with. A person retained the appellant to recover money from the complainant. The appellant made threatening phone calls to the victim, the details of which do not emerge in the reasons for judgment, and also procured another person to make such calls.

[16] Counsel for the respondent placed particular reliance on *R v Girardo & Michaelides*,[5] in which Girardo's application for leave to appeal against sentences of concurrent terms of imprisonment of four and a half years for each of two counts of extortion imposed after a trial was refused. The complainant was tricked into going to a remote location where the applicant and another threatened him with a gun. Threats were also made against his children. The applicant had prior convictions for dishonesty offences.

[17] Another decision which supports the subject sentences is *R v Cifuentes*.[6] In that case, an application for leave to appeal against a sentence of three and a half years imprisonment was refused. The applicant was a police officer who threatened the complainant that unless he paid him $15,000, the applicant or his "boss" would search the complainant's home, his parent's home, confiscate his assets and remove his children from his care and place them in the custody of the State. The

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2 [1995] QCA 549.
3 At 4.
4 [1997] QCA 356.
5 [2012] QCA 166.
6 [2006] QCA 566.

sentencing judge remarked that without mitigating circumstances such as the difficulties the applicant would face in prison as a result of his being a police officer, a sentence of about four and a half years imprisonment would have been appropriate.

[18] No authority was referred to by counsel for the applicant to support the sentence for which he contended or which demonstrated that the sentence imposed was outside the range of an exercise of a proper sentencing discretion.

[19] I would refuse the application for leave to appeal against sentence.

[20] **WHITE JA:** I have read the reasons for judgment of Muir JA and I agree with his Honour's reasons and the orders which he proposes.

[21] **DOUGLAS J:** I agree with Muir JA's reasons and the order proposed by his Honour.