SUPREME COURT OF QUEENSLAND

CITATION:	*R v Tanerau* [2013] QCA 33
PARTIES:	**R** **v** **TANERAU, Tahu Ricky** (applicant)
FILE NO/S:	CA No 236 of 2012 DC No 328 of 2012
DIVISION:	Court of Appeal
PROCEEDING:	Sentence Application
ORIGINATING COURT:	District Court at Townsville
DELIVERED ON:	8 March 2013
DELIVERED AT:	Brisbane
HEARING DATE:	25 February 2013
JUDGE:	Muir JA and Atkinson and Martin JJ 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 numerous property and summary offences including receiving stolen property and burglary and stealing – where applicant sentenced to five years imprisonment – where 348 days declared time already served – where a parole eligibility date set after 20 months of custody – where applicant has a lengthy criminal history – where sentencing judge took into account the applicant's personal circumstances, including the applicant's drug addiction, family and community support and capability to engage in useful activity – where there was systematic offending over a significant period of time – whether sentence was manifestly excessive *R v Haddad* [2001] QCA 171, considered *R v Herricane* [1997] QCA 426, considered *R v Suey* [2009] QCA 261, considered *R v Williams* [2001] 2 Qd R 442; [2000] QCA 409, considered

COUNSEL:	M J Byrne QC, with G T Hansen, for the applicant S P Vasta for the respondent
SOLICITORS:	Lee Turnbull & Co for the applicant Director of Public Prosecutions (Queensland) for the respondent

[1] **MUIR JA**: I agree that the application for leave to appeal should be refused for the reasons given by Martin J.

[2] **ATKINSON J**: I agree with the reasons of Martin J and the order he proposes.

[3] **MARTIN J:** The applicant pleaded guilty in the District Court to:
(a) one count of receiving stolen property,
(b) one count of burglary and stealing,
(c) one count of stealing, and
(d) a number of summary offences.

[4] On each of the charges of receiving stolen property and burglary and stealing he was sentenced to imprisonment for five years. On the stealing charge he was sentenced to imprisonment for three months. Pre-sentence custody of 348 days was deemed to have been time already served under those sentences. A parole eligibility date was set at 30 April 2013 which means that he would be in custody for about 20 months before being eligible to apply for parole.

[5] The applicant seeks leave to appeal against those sentences, more particularly the sentences of five years imprisonment with a parole eligibility date after 20 months, on the ground that they are manifestly excessive. Counsel for the applicant contended that the appropriate sentence is one of four years with a parole eligibility date after 15 months, that is, 30 December 2012.

The offences

[6] All the sentences were to be served concurrently apart from two sentences of one month's imprisonment each for failing to appear. Only the facts concerning the receiving charge and the burglary charge are relevant to this application.

[7] As part of an operation conducted by police in Townsville in 2010 a number of residences were searched. Of those which are relevant to this case, six were associated with the applicant in some way. At these places property which had been obtained through no fewer than 28 separate burglaries was discovered. The total value of the property recovered was approximately $43,000.

[8] It was not disputed by the Crown that the various items had come into the applicant's possession over the 12 month period leading up to his arrest in August 2010.

[9] The burglary was committed by the accused entering a residence through a garage door and then forcing open an internal door from the garage to the house. Electronic equipment and other goods to the value of nearly $11,000 were stolen.

The applicant's circumstances

[10] The applicant was about 37 years old at the time of the indictable offences and 38 at the time of sentence. He has a lengthy criminal history which commenced in 1992.

From then until 2004 he was convicted on at least 11 occasions of drug related offences. In 2004 and 2005 he was convicted three times of receiving and once of stealing. From 2004 until he was sentenced in this case he was convicted of drug related offences a further four times. Before the learned sentencing judge, counsel for the applicant said that his client had had a serious drug habit "and as a consequence of him falling off the rails ... it seems to be that he commits very serious criminal offences."

[11] In 2007 and 2008 the applicant was enrolled as a student in the Bachelor of Science degree course conducted by the James Cook University. He was notably successful in the subjects he completed – he received two credits, two distinctions and two high distinctions.

Matters taken into account on sentence

[12] The learned sentencing judge took the following matters, among others, into account:

(a) It was clear that the applicant was capable of useful activity;

(b) His life had been dogged by drug addiction;

(c) He had significant family and community support;

(d) He had made an early plea to the charges;

(e) The receiving charge was very serious because it involved the proceeds of no fewer than 28 different burglaries and the applicant was found in possession of more than $40,000 worth of property;

(f) It was the sort of receiving of stolen property that encourages burglary;

(g) There was systematic offending over a significant period;

(h) The offending continued to occur while he was on bail and while he was on a suspended sentence.

[13] His Honour was referred to a number of authorities and held that *R v Suey* [2009] QCA 261 provided the most appropriate indication of the penalty applicable to this case.

The applicant's arguments

[14] Two major points were advanced. First, that the receiving was "far from professional" and only involved stockpiling goods at various places. Secondly, that apart from his drug addiction the applicant is capable of being a positive and constructive member of society.

[15] In support of the latter argument the applicant's university results, two personal references, and a letter from the applicant to the learned sentencing judge were called in aid. In that letter the applicant expressed remorse, explained that as a result of some personal setbacks he fell back into drug use at the relevant time, and outlined a structure to support his rehabilitation after release.

[16] It was submitted that the learned sentencing judge had erred in characterising the applicant's offending as systematic and being of a kind that encourages burglars. Further, it was argued that this case was not as serious as some others because the

applicant was neither purchasing the goods nor "fencing" them. It was, the submission went, conduct which was distinguishable from cases of professional receiving such as *R v Suey*.

Consideration

[17] In *R v Suey* the offender was found with property of a value of more than $15,000. Although there had been 12 burglaries in which property worth about $300,000 had been stolen the learned trial judge considered that he could sentence the applicant only on the basis that he had received the stolen property, and only in respect of the property found in his possession. The applicant in that case had problems with both prescription drugs and other drugs. The burglaries which occurred in that case extended over a period of about two years. The offender was said to be "a receiver on a substantial scale, one might also say arguably a professional receiver". The offender also had a lengthy criminal history which involved stealing. The Court of Appeal considered other authorities including: *R v Herricane* [1997] QCA 426, *R v Haddad* [2001] QCA 171 and *R v Williams* [2001] 2 Qd R 442. Suey's sentence of five and a half years imprisonment was not disturbed.

[18] *R v Herricane* involved a relatively youthful offender (24 years old) who had been convicted of receiving property which was the product of ten different housebreakings in a period of less than two months. The value of the property was $35,000. He had an extensive criminal history and the receiving was part of a well-organised enterprise conducted on commercial lines. A sentence of five years imprisonment was held not to be excessive.

[19] The description of the applicant's activities as being amateurish, as put on behalf of the applicant, does not stand scrutiny. The applicant accepts in his letter to the learned sentencing judge that he was known to those who possessed stolen property as someone who could store it for them and he did that over a period of about 12 months. He stored it in six different locations, moving from one to the other when the persons who owned or controlled the premises required him to leave. This was not a case of a single instance in which, in order to satisfy some perceived obligation, accommodation was provided for stolen goods. It was done in a determined and organised way. I agree with the learned sentencing judge that the kind of activity in which the applicant engaged was one which does encourage burglars and that the applicant was a person who could be used as a means of storing stolen property.

[20] The applicant was a mature man at the relevant time and had a lengthy criminal history which included previous convictions for receiving. The offences the subject of this application were committed while he was both on bail and on a suspended sentence.

[21] It is correct to say that his contentions in the letter to the learned sentencing judge appear to demonstrate a resolution to mend his ways, but his criminal history is littered with failures to take advantage of opportunities afforded him by way, for example, of intensive drug rehabilitation orders.

[22] The sentence imposed in this case was one which was within the range which has been established and was not in the circumstances manifestly excessive. I would order that the application for leave to appeal be refused.