[2013] QCA 174

COURT OF APPEAL

HOLMES JA
GOTTERSON JA
DOUGLAS J

CA No 14 of 2013
DC No 66 of 2012

THE QUEEN

v

STEINMANN, Susanne Faye **Applicant**

BRISBANE

WEDNESDAY, 10 JULY 2013

JUDGMENT

HOLMES JA: I shall ask Douglas J to deliver his reasons first.

DOUGLAS J: Ms Steinmann pleaded guilty to one count of attempted fraud, to the value of $30,000 or more, on 20 December 2012, and was sentenced to 12 months imprisonment with a fixed parole release date of 20 March 2013. She has applied for leave to appeal against her sentence on the ground that it was manifestly excessive.

In June 2009, she applied for a loan from the Bank of Queensland, to be secured by a mortgage over property owned by her. That property was already subject to an existing mortgage with the National Australia Bank. The Bank of Queensland indicated that it was willing to approve a loan of 80 per cent of the value of the property, an amount of $414,000.

In order to advance her application, she provided the Bank of Queensland with two forged Australian Tax Office notices of assessment for the financial years ending 2007 and 2008. Those forged documents indicated that her taxable income in 2007 was $248,000, and in 2008, $301,000. The true position was that her taxable income in 2007 was nil, and in 2008, $13,000. Had the loan been successful, the money would have paid out the existing mortgage, leaving the Applicant with an amount of about $100,000. The Bank of Queensland would have then held a mortgage over the Applicant's property.

The facts revealed to the learned sentencing Judge were that the Applicant and a friend had devised the plan to extract money from the bank. Before the loan was advanced, the friend went to the bank and revealed that the notices of assessment were false. The Applicant initially denied knowing about the forged documents to police, and made partial admissions in a second interview. The plea was treated as a timely one. The Applicant had some older previous convictions for offences of dishonesty, including convictions on 18 counts of forgery and uttering in 1978 and a conviction of attempted false pretences and possessing property suspected of being stolen in 1985.

There were further offences of false pretences, and receiving, in 1985, and convictions in 2008 and 2011 of common assault, and assault occasioning bodily harm. She had never previously been sentenced to a term of imprisonment. The Applicant was well regarded, and supported by her partner and daughter, and had a reference from her superior in her job speaking well of her, and her involvement in charitable fundraising events. She was a mature woman, aged 53 at the time of the offence and 57 when sentenced. In concluding that a period of actual custody should be imposed, the learned sentencing Judge referred to the matter as a very serious example of dishonesty where a deterrent sentence was warranted to deter the Applicant from reoffending and others in the community from acting in the way that she had acted.

In the submissions for her below, it was emphasised that the bank was never likely to have been left out of pocket because of the security obtained over her home. Counsel for her

argued that a non-custodial sentence was appropriate by the imposition of a short period of imprisonment, wholly suspended or with an immediate parole release date. The prosecution, below, contended that the range of possible sentences was somewhere between 12 months and two years.

The authorities on which the parties relied were not particularly useful guides as to the appropriate sentence. The decisions to which we were referred by the Respondent on the hearing of the appeal could also only be regarded as providing some general guidance.

R v Van Le [2003] QCA 256 was a case of an attempt to defraud a bank by an application for a home loan, supported by false information. It seemed likely, however, that if the true information had been given to the bank the loan would have been available to the Applicant. That is not immediately obvious here, because of the amount of the advance, and the lack of means to repay the loan except by selling the secured property had the true situation of the Applicant been revealed to the bank. The issue on the appeal was whether a conviction should have been recorded, and that issue was decided against the Applicant. The sentence, otherwise, was a fine of $2,000, with four months to pay, where the maximum penalty was five years imprisonment. Here, the maximum penalty is six years imprisonment. In *Van Le*, the Applicant had otherwise been an exemplary citizen with no previous convictions. The learned sentencing Judge in this matter obviously regarded the original sentence in *Van Le* as light but the loan was for significantly less money than here, and Van Le had no previous criminal history.

Perhaps the most useful comparable decision is that in *R v Stephens* [2006] QCA 123, where there was an attempted fraud on an insurance company where the intended yield from the dishonesty was $23,000. The Applicant there was sentenced to 12 months imprisonment, wholly suspended for an operational period of three years and fined $20,000. He was 65 at the time of the offence, and 68 when sentenced, and had no prior convictions. In the appeal in Stephens, the fine imposed, at first instance of $20,000 was reduced to $10,000.

Here, where Ms Steinmann has a number of previous similar convictions, even although old, she was at an age and stage of life to know better, and having previously been through the criminal justice system for similar offences, should have known better. It was significant that she did not simply provide false information to the bank, but actually provided false copies of official documents in support of her application. Nor did the offence come to light through an action of hers. The bank would not have been aware of the attempted fraud without the intervention of her friend.

It was submitted for her that she had not offended for more than 20 years, was in financial difficulty and had fallen under the sway of the friend who had informed the bank eventually of the falsity of the notices of assessment. That friend was a migration agent who was said to have engaged in significant misconduct. It was submitted that the leaned sentencing Judge treated the Applicant as possessing some heightened degree of criminal knowledge because of her earlier convictions, which contributed to the severity of the sentence imposed. If that is the case, then it does not seem to me to be illegitimate for his Honour to have regarded those convictions as still possessing some relevance to the penalty that should have been imposed on the Applicant. Had she presented to the Court as person without previous convictions for dishonesty, the argument that no actual custody should have been ordered would have carried more weight.

It was also argued for her on this application that the learned sentencing Judge oversimplified the offence, because the value of the security offered would have protected the bank's position. It was submitted that there was no evidentiary basis for asserting that the bank would not have made the advance simply on the basis of the security offered, without taking into account the ability of the Applicant to repay. It seems to me, however, that, in these circumstances, it was a perfectly legitimate inference to draw, that the loan would not have been made if the Applicant's true income had been disclosed. Banks do not, in normal experience, run their businesses in the expectation that their customers will default in the repayment of their loans, necessitating the sale of secured property.

The Applicant argued that the sentencing Judge had failed to give proper attention to section 9(2)(a) of the *Penalties and Sentences Act* 1992 (Qld), which establishes the principle that imprisonment should only be imposed as a last resort. It was open to his Honour, however, to conclude that the factors to which I have referred took this matter out of that category. The three months of actual custody ordered by the learned sentencing Judge, in those circumstances, should not be regarded as manifestly excessive. Here, the dishonesty related to an amount of $414,000 where the applicant had previous similar convictions. In the circumstances, it does not appear to me to be a case where the sentence imposed below can be said to be manifestly excessive. Accordingly, I would dismiss the application.

HOLMES JA: I agree.

GOTTERSON JA: I agree.

HOLMES JA: The order is that the application for leave to appeal against sentence is refused.