SUPREME COURT OF QUEENSLAND

CITATION:	*R v Reid* [2013] QCA 190
PARTIES:	**R** **v** **REID, Laura Elizabeth** (applicant)
FILE NO/S:	CA No 284 of 2012 SC No 237 of 2012 SC No 484 of 2012
DIVISION:	Court of Appeal
PROCEEDING:	Sentence Application
ORIGINATING COURT:	Supreme Court at Brisbane
DELIVERED ON:	19 July 2013
DELIVERED AT:	Brisbane
HEARING DATE:	6 May 2013
JUDGES:	Muir and Gotterson JJA and Philippides J 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 applicant pleaded guilty to six drug related indictable offences including the offence of trafficking in a dangerous drug – where the trafficking offence attracted a period of imprisonment of five years and nine months with concurrent terms of imprisonment imposed for the remaining indictable offences – where applicant also pleaded guilty to seven summary offences for which convictions were recorded for all and one year imprisonment for the offence of driving without a licence whilst disqualified was imposed to be served cumulatively upon the sentence for the indictable offences – where a further five drug related s 189 offences with the summary offences were taken into account in the head sentence imposed – where the applicant headed a group of three drug traffickers to which she on-supplied drugs – where it was accepted that the applicant engaged in trafficking in order to finance, and to re-pay a significant debt incurred in, her own addiction – where the applicant was actively involved in sourcing the drugs in which she dealt – where the

trafficking period charged extended over a period of 52 days – where the applicant contends that there was an inflation of the head sentence taking into account the summary offences which was manifestly excessive – where there were marked differences in both culpability and circumstances between the applicant and her co-offender – whether the sentence imposed was in fact manifestly excessive

Criminal Code 1899 (Qld), s 408D, s 488, s 514
Drugs Misuse Act 1986 (Qld), s 5, s 9, s 10
Penalties and Sentences Act 1992 (Qld), s 189
Police Powers and Responsibilities Act 2000 (Qld), s 790
Transport Operations (Road Use Management) Act 1995 (Qld), s 78

R v Atkins [2007] QCA 309, cited
Postiglione v The Queen (1997) 189 CLR 295; [1997] HCA 26, cited
R v Taylor [2005] QCA 379, cited
R v Tout [2012] QCA 296, considered
R v Tytherleigh [2006] QCA 193, cited

COUNSEL: M Green for the applicant
G Cash for the respondent

SOLICITORS: Legal Aid Queensland for the applicant
Director of Public Prosecutions (Queensland) for the respondent

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

[2] **GOTTERSON JA**: On 8 October 2012, the applicant, Laura Reid, pleaded guilty in the Supreme Court at Brisbane on an indictment charging her on the following counts:

- Count 1 – between 30 March and 20 May 2011, trafficking in a dangerous drug (Methylamphetamine): s 5(a) *Drugs Misuse Act* 1986 ("DMA");
- Count 2 – on 19 May 2011, unlawfully possessing a dangerous drug (Alprazolam): s 9(d) DMA;
- Count 3 – on 19 May 2011, unlawfully possessing a relevant substance (1-4 Butanediol): s 9A(1) DMA;
- Count 4 – on 19 May 2011, unlawfully possessing a dangerous drug (Methylamphetamine) in a quantity in excess of 2 grams: s 9(b) (DMA);
- Count 5 – on 19 May 2011, unlawfully possessing a dangerous drug (Cocaine) in a quantity in excess of 2 grams: s 9(b) DMA;
- Count 6 – on 19 May 2011, possessing things used in connection with trafficking in a dangerous drug (scales, spoons and plastic cards): s 10(1)(b) DMA.

[3] At the same time, the applicant also pleaded guilty to a number of summary offences, namely:

- Between 8 May 2009 and 20 May 2011, forging and uttering a driver's licence: s 488(1) *Criminal Code*;
- Between 8 May 2009 and 20 May 2011, falsely representing herself (by a forged driver's licence) to be another person: s 514(1) *Criminal Code*;
- Between 8 May 2009 and 20 May 2011, dealing with the identity of another person (by use of a forged driver's licence), to commit an offence: s 408D(1) *Criminal Code*;
- On 19 May 2011, obstructing a police officer: s 790(1) *Police Powers and Responsibilities Act* 2000;
- On 19 May 2011, possessing pipes that had been used by her to smoke drugs (three glass pipes): s 10(2)(b) DMA;
- On 19 May 2011, possessing a pipe that had been used by her to smoke drugs (one glass pipe): s 10(2)(b) DMA;
- On 19 May 2011, driving without a licence whilst disqualified: s 78(1) *Transport Operations (Road Use Management) Act* 1995.

[4] The applicant was sentenced for all of these offences on the same day on which she made the pleas of guilty. In the course of sentencing, a further five drug-related summary offences committed by her on 2 May 2012 were taken into account pursuant to s 189 of the *Penalties and Sentences Act* 1992. These offences, which were committed while the applicant was on bail for the Count 1 trafficking offence, are as follows:

- Unlawfully possessing a dangerous drug (Methylamphetamine): s 9 DMA;
- Unlawfully possessing relevant things (five reaction vessels): s 9A(1) DMA;
- Unlawfully possessing a relevant substance (Iodine): s 9A(1) DMA;
- Possessing a thing used in the commission of a crime (scales): s 10(1)(b) DMA;
- Possessing pipes that had been used by her to smoke drugs (two ice pipes): s 10(2)(b) DMA.

The sentencing

[5] For Count 1, the applicant was sentenced to a period of imprisonment of five years and nine months. It was declared that 303 days of pre-sentence custody be time already served under the sentence. A parole eligibility date at 1 March 2014 was fixed. Concurrent terms of imprisonment for Counts 2, 3 and 6 (two years) and Counts 4 and 5 (three years) were also imposed by way of sentence, subject to the same pre-sentence custody declaration and the same parole eligibility date.

[6] The learned sentencing judge stated that convictions would be recorded for the three forged driving licence, one obstruction and two drug-related possession summary offences to which the applicant had pleaded guilty but that no further penalty would be imposed for them since those offences were being taken into account in fixing the sentence for Count 1.[1]

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[1] AB 61 Sentencing Remarks 1-5 1.58-62 1-6 1.2.

[7] A conviction was also recorded for the summary offence of driving without a licence whilst disqualified for which a sentence of one year imprisonment to be served cumulatively with the sentence for Count 1, was imposed. It was further ordered that the applicant be disqualified from holding or obtaining a driver's licence for a period of five years from 8 October 2012.

[8] By an application filed on 29 October 2012, the applicant seeks leave to appeal against sentence.

Circumstances of the offending

[9] The applicant headed a group of three drug traffickers, the others being Rebecca Craft and Danielle Hogan. Their trafficking was detected through a police operation involving telephone intercepts which targeted the applicant. She had her own customers and also on-supplied drugs to Craft and Hogan which they trafficked. It was accepted at sentence that the applicant engaged in trafficking in order to finance, and to re-pay a significant debt incurred in, her own addiction.[2]

[10] The applicant was actively involved in sourcing the drugs in which she dealt. The trafficking period charged extended over a period of 52 days, terminating on 20 May 2011. During this period, she was in contact with approximately 14 customers on a daily basis. Some indication of the level of trafficking on the applicant's part is given by the facts that she was described as "dealing in high quality Methylamphetamine in '8 balls' (or 3.5 gram) quantities" and as having been able to make expensive gifts including a man's watch costing $30,000.[3] On the evening of 19 May 2011, the applicant was intercepted by police while she was driving her vehicle. She was observed to lean out of the car and empty a substance, later analysed as Methylamphetamine, on to the roadway. She was taken to her apartment. Upon approach, she attempted to break away from police and to warn an associate within to "flush it".[4] Discoveries made at the apartment of drugs, things used in connection with trafficking and glass pipes were the genesis of the other counts and of the summary drug-related possession offences. The driving licence and obstruction of a police officer summary offences also arose out of the interception of the applicant on this occasion.

The proposed ground of appeal

[11] The applicant applies for leave to appeal against sentence on the sole ground that it is manifestly excessive. In written submissions in support of the application, the applicant's counsel, who was not her counsel at sentence, contended that the appropriate sentence ought to be arrived at the following way:

> "8.1 The starting point is a head sentence of 5 years imprisonment. The s 189 offences could involve an additional imprisonment of up to 3 months. The disqualified driving offence could involve a cumulative sentence of 3 months (moderated by totality) or 6 months (should the head sentence then be moderated by totality).
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> 8.2 It is submitted that the total sentence would then be a head sentence of between 5 years 3 months to 5 years 6 months with parole eligibility after one third of the sentence."

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2 AB 58 Tr1-2 LL40-42.
3 AB 76.
4 AB 79.

[12] In oral submissions, the applicant's counsel claimed that there were three elements to the sentence which made it manifestly excessive. They were:

(a) an attribution by the learned sentencing judge of one year to the s 189 offences;
(b) disparity with the sentence imposed on the co-offender, Hogan; and
(c) an excessively high cumulative sentence for the driving while disqualified summary offence.

It is convenient to consider each of these elements separately.

Section 189 offences

[13] The applicant contends that the learned sentencing judge adopted a sentence of five years as appropriate for the Count 1 trafficking offence and then added one year to it for the s 189 offences to arrive at a sentence of six years which he adjusted to five years and nine months for the cumulative effect of the sentence on the summary conviction.[5] It was submitted that to have added one year was excessive in circumstances where the Court had not been given any information concerning the circumstances of the offending.

[14] Central to this element is the applicant's contention that his Honour began with a sentence of five years for the Count 1 offence. The applicant sought to draw from the transcript of the sentence hearing support for this contention.

[15] A review of the transcript reveals that the Crown Prosecutor submitted that the range for the Count 1 trafficking itself was five to six years imprisonment.[6] He referred to *R v Atkins*,[7] *R v Tytherleigh*[8] and *R v Taylor*.[9] The applicant's counsel told the Court that he did not cavil about that range.[10]

[16] Reference was then made to the summary offences and the following exchange between his Honour and the applicant's then counsel ensued:

> "HIS HONOUR: The difficulty with that is that your client has got quite a range of summary offence, not all of which are trivial.
>
> MR JAMES: Yes.
>
> HIS HONOUR: And some of which are unexplained. For example, the possession of the iodine, which is a very curious thing for someone who is merely involved in distribution.
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> MR JAMES: She resided with another person at that time and there were other people involved in drugs that came and went from the household, was my instructions.
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> HIS HONOUR: Well, that may be, she might have been doing it in conjunction with other people but she hasn't cooperated with the administration of justice by suggesting anyone else was involved in this.

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5 His Honour indicated that were he not imposing cumulative imprisonment, the sentence for Count 1 would have been six years: AB 62 Tr1-6 LL30-32.
6 AB 43 Tr1-26 LL35-45.
7 [2007] QCA 309.
8 [2006] QCA 193.
9 [2005] QCA 379.
10 AB 48 Tr1-31 LL8-9.

> MR JAMES: And hence the distinction. I'm not suggesting a head sentence of four years like Coleman. There is not that level of cooperation that was apparent in Coleman where significant admissions were made.
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> HIS HONOUR: What I thought - the way I was tentatively thinking was that the other offences in the certificate that you've asked be taken into account might be taken into account by inflating the head sentence to the top of the range rather than the bottom of the range.
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> MR JAMES: Yes. Yes. Certainly, I don't cavil with the need for some cumulative component given the disqualified driving-----
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> HIS HONOUR: No, no, I'm not talking about the driving offences.
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> MR JAMES: Yes.
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> HIS HONOUR: I'm talking about the other offences.
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> MR JAMES: Yes.
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> HIS HONOUR: The ones that are in the certificate.
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> MR JAMES: In that case, as I said, that'll be the top of the range. My range, I'd suggest, would be five to five and a half years. So I would suggest then, if your Honour was to take-----
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> HIS HONOUR: I thought you'd accepted five to six years.
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> MR JAMES: As a general range. But the circumstances of this particular matter when one looks at the level in Coleman, I suggest Atkins is the higher part of that five to six range. I'd suggest we're at five. Given your Honour's consideration of the schedule, that would bring it to five and a half. Then I concede that 12 months - nine to 12 months is something that would not be out of range in relation to disqualified driving given it's the 11th offence. I do have a District Court decision that supports what your Honour is suggesting but that would be an actual component of one-third, somewhere in the range of three to four months. So the end result would be five and a half years towards - plus another four months and then a parole eligibility set-----
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> HIS HONOUR: Well, on that theory what you'd do is give a head sentence five and a half years plus a year, and then a third of the total. It may come out to the same, I don't know."[11]

His Honour's reference to "the other offences in the certificate" is evidently a reference to the s 189 offences.

[17] In my view, this exchange does not support the applicant's contention. The learned sentencing judge had in mind that an appropriate range for the Count 1 trafficking was five to six years imprisonment – a range in which both counsel had concurred. He was also minded to fix a sentence for count 1 that took into account, as well, both the summary offences (other than the driving while disqualified offence) and the five s 189 summary offences. Taking all those into account, he fixed a notional

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[11] AB 48 Tr1-31 L39 – AB 49 Tr1-32 L49.

sentence for Count 1 of six years. He did not start from a "bottom of the range" notional sentence of five years and then add one year to it for the s 189 offences alone.

[18] Despite the concurrence with a range of five to six years imprisonment at sentence, the applicant's counsel submitted that the decision of this Court in *R v Tout*[12] indicated that "a starting head sentence of six years in the present case is excessive". In that case, a sentence of six years for a non-addicted male who was caught trafficking over a six to seven month period, was held not to be manifestly excessive. To some degree, that offender's trafficking conduct can be seen as more culpable than that of the applicant. However, against that, his trafficking sentence did not allow for as many charged summary offences or for any s 189 offences, as the applicant's did. In my view, the contrast which the applicant seeks to make, is not a persuasive one.

Parity

[19] At the same time, Danielle Hogan pleaded guilty to one count of trafficking in Methylamphetamine, one count of possessing scales used in connection with trafficking, and a summary offence of possessing utensils. She was sentenced to imprisonment for four years on the trafficking count and to concurrent terms of two years and of six months for the possession count and the summary offence respectively. A parole eligibility date of 20 January 2014 was set for her.

[20] Hogan was about five years older than the applicant. By 26 years of age, she had a serious drug habit. She had become pregnant eight months prior to sentence, at which point she stopped using drugs. In passing sentence, the learned sentencing judge remarked:

> "You played a more limited role in the offending than did Reid, apparently acting as some sort of book keeper but also, on occasions, conducting actual deals. Police searched your home the day after Reid's arrest and located the scales. You had no time in presentence custody, although you are presently completing a sentence of three months' imprisonment for an unrelated matter. You have 19 days left of that sentence to serve.
>
> There is little material in support of you and I am more concerned at your ability to rehabilitate yourself because of that absence of material. However, you are pregnant and about to have a child and I hope you will be able to devote yourself to that child. That you've been able to ween yourself from drugs now is a good sign. …"[13]

[21] In reflecting upon the parity principle, Dawson and Gaudron JJ in *Postiglione v The Queen*[14] observed:

> "The parity principle upon which the argument in this Court was mainly based is an aspect of equal justice. Equal justice requires that like should be treated alike but that, if there are relevant differences, due allowance should be made for them. In the case of co-offenders, different sentences may reflect different degrees of culpability or

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12 [2012] QCA 296.

13 AB 64 Sentencing Remarks 1-8 LL27-55.

14 (1997) 189 CLR 295.

> their different circumstances. If so, the notion of equal justice is not violated."[15]

[22] There were marked differences in both culpability and circumstances between the applicant and Hogan. They consist of the following:

1. The applicant's role in the trafficking enterprise was greater than that of Hogan. The applicant was in charge of it and she profited from it. She dealt in large quantities of drugs.

2. When intercepted in her car, the applicant tipped out the Methylamphetamine in her possession and attempted to warn an associate to dispose of drugs.

3. The applicant's sentence on Count 1 took into account the six summary offences and the s 189 offences.

4. The applicant's s 189 offences were committed while she was on bail for the Count 1 trafficking offence.

[23] Together these differences well justified a longer sentence for the applicant for Count 1 than the sentence imposed on Hogan for the trafficking count.

Driving while disqualified summary offence

[24] Prior to her interception on 19 May 2011, the applicant had accumulated an appalling traffic record consisting of numerous driving and other offences committed since August 2004. At the time of interception, she was using her car for the purpose of carrying out a drug transaction.

[25] Against that background, her counsel at the sentence hearing conceded, not unsurprisingly, that a concurrent sentence of nine to twelve months imprisonment was not "out of the range" for this summary offence.[16] The imposition of a substantial period of imprisonment of that order was warranted for this offence. The impact of the cumulative sentence was adequately accommodated by the reduction, by three months, of the Count 1 sentence.

Disposition

[26] For these reasons, I consider that none of the elements on which the applicant would rely to contend that her sentence is manifestly excessive, has merit. An appeal on that ground would not succeed.

Order

[27] I would propose the following order:

1. Application for leave to appeal against sentence refused.

[28] **PHILIPPIDES J**: I agree with the reasons for judgment of Gotterson JA and the order proposed.

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15 At 301-302.

16 AB 49 Tr1-32 LL38-40.