SUPREME COURT OF QUEENSLAND

CITATION:	*R v Cameron* [2014] QCA 55
PARTIES:	**R** **v** **CAMERON, Bradley James** (applicant)
FILE NOS:	CA No 230 of 2013 SC No 5 of 2012
DIVISION:	Court of Appeal
PROCEEDING:	Sentence Application
ORIGINATING COURT:	Supreme Court at Maryborough
DELIVERED ON:	28 March 2014
DELIVERED AT:	Brisbane
HEARING DATE:	19 February 2014
JUDGES:	Holmes and Muir JJA and Mullins J Separate reasons for judgment of each member of the Court, each concurring as to the order made
ORDER:	**The application for leave to appeal is 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 one count of unlawfully trafficking in dangerous drugs: cocaine, 3,4-methylenedioxymethamphetamine (ecstasy), amphetamine, cannabis and growth hormone – where the trafficking period spanned four weeks – where the applicant was a high level wholesale trafficker – where the sentence imposed was eight and a half years imprisonment with a parole eligibility date set at two years and 10 months – where the applicant contended that his mitigating factors should have attracted an earlier eligibility date – whether the sentence was manifestly excessive CRIMINAL LAW – APPEAL AND NEW TRIAL – APPEAL AGAINST SENTENCE – GROUNDS FOR INTERFERENCE – PARITY BETWEEN CO-OFFENDERS – where the applicant pleaded guilty to one count of unlawfully trafficking in dangerous drugs: cocaine, 3,4-methylenedioxymethamphetamine (ecstasy), amphetamine, cannabis and growth hormone – where the sentencing judge reviewed the sentences of three other offenders involved in

the cocaine trafficking enterprise – where the applicant's substantial business was in trading methamphetamines – where the applicant and the three other offenders had varying levels of culpability and mitigating circumstances – whether the applicant's sentence lacks parity with sentences imposed on other offenders

R v Assurson (2007) 174 A Crim R 78; [2007] QCA 273, considered
R v Bradforth [2003] QCA 183, considered
R v Feakes [2009] QCA 376, considered

COUNSEL: M J Byrne QC for the applicant
P J McCarthy for the respondent

SOLICITORS: A W Bale and Son for the applicant
Director of Public Prosecutions (Queensland) for the respondent

[1] **HOLMES JA:** The applicant pleaded guilty to one count of unlawfully trafficking, between 11 November 2009 and 10 December 2009, in dangerous drugs – cocaine, 3,4-methylenedioxymethamphetamine (ecstasy), amphetamine, cannabis and growth hormone – and was sentenced to eight and a half years of imprisonment. A parole eligibility date was set two years and 10 months into that sentence and a period of 56 days spent in pre-sentence custody was declared as imprisonment already served. The applicant seeks leave to appeal against that sentence on the grounds that it is manifestly excessive and lacks parity with sentences imposed on other offenders engaged in the cocaine trafficking enterprise.

The trafficking offence

[2] According to a statement of facts tendered on sentence, the applicant's telephone calls were (lawfully) intercepted during the trafficking period. During that period, he supplied drugs, primarily amphetamines at $3,100 per ounce, to seven customers. He sometimes extended credit, as high as $12,000, to his customers. At one stage, he appeared to have a stockpile of eight ounces of amphetamine. Generally, the applicant did not himself engage in the mechanics of the transactions, using others, including some of his customers, to collect and deliver drugs for him and receive payment.

[3] On 17 November 2009, one of the applicant's customers/employees was arrested and informed the applicant that police were enquiring about him. The applicant contacted one of the investigating officers and assured him that he was not involved in any illegal activities. Meanwhile, he advised a number of contacts to stop using his current telephone number, warning them that he might have to "close shop" and would let them know his new contact details. He was also heard during telephone calls to instruct others not to disclose his location and home address.

[4] As well as selling amphetamines, the applicant took steps to deal in other drugs. He was heard in intercepted calls discussing the obtaining of 10 pounds of cannabis for $2,000 and asking a prospective supplier, Bradley Anderson, if he had a deal of cannabis ready for him. The response was that the cannabis would be available in a little over a week, but there was no evidence as to whether it was received or not.

On 24 November 2009, the applicant also discussed obtaining cocaine and enlisted an acquaintance to provide him with between five and 10 ounces of the drug per week because he had buyers for it. He asked that person to provide him with $100,000 worth of cocaine which he would sell for $150,000, sharing the profit with the supplier.

[5] On 26 November 2009, the applicant sought to obtain cocaine from Bradley Anderson for $6,800 per ounce. On another occasion, he engaged an associate to drive to the Gold Coast to obtain two ounces of cocaine for himself and two ounces for another associate, Adam McCrea. The courier was intercepted by police on his return journey and found to have in his possession four ounces of cocaine which was approximately 39 per cent pure. In early December, the applicant liaised with Anderson in relation to the supply by the latter of an ounce of cocaine, a transaction which took place on 5 December.

[6] The applicant also spoke with his customers and dealers about obtaining steroids, testosterone and human growth hormone. He undertook to a customer that he would obtain for $1,200 a quantity of "muscle-building shit" which the customer could sell. The applicant was heard to discuss retail prices for steroids and at one stage to say that he had $5,000 worth of steroids which he was willing to sell, on credit, to a customer for re-sale. He was also heard to discuss the obtaining of what were described as "water" and "hypo flakes" and their combination to produce methylamphetamine.

[7] The applicant was unemployed during the trafficking period. The statement of facts asserted rather vaguely that he "received a considerable financial yield, along with having large stockpiles of both money and dangerous drugs". (That submission seems to have been based on the drug amounts and purchase and sale prices discussed, as well as the reference to the amphetamine stockpile.) He reported to a psychologist whose report was tendered on his behalf that most of the proceeds of his drug trafficking were spent on "expensive hotel accommodation and other lifestyle expenses".

The applicant's antecedents

[8] At the time of his offending, the applicant was 31 years old; he was 34 years old at sentence. He was the father of two children and the step-father of another, and his de facto wife was expecting another child. According to the history given to the psychologist, he had had little contact with his father, while his mother was a heavy drinker and heroin addict. It was said that he had been born with foetal alcohol syndrome and had had learning difficulties which left him barely literate. His upbringing, until the age of 12 when he was sent to live with an aunt and uncle, was unsettled and he suffered some abuse from his mother's boyfriend. He had worked at a variety of jobs: in his relatives' hotel, in the trawling industry (for which he had obtained a Master's licence enabling him to skipper a boat) and in mining, as an underground miner.

[9] The applicant was said to have used cannabis during his teenage years and cocaine and methylamphetamine up until the time of his arrest. Once on bail, he had ceased to use drugs and had not re-offended. The psychologist's opinion was that he suffered ecstasy, cocaine and amphetamine dependency disorders, a post traumatic stress disorder as a result of childhood abuse and neglect, and symptoms of foetal alcohol syndrome; the last two had led to his "not thinking clearly about the consequences of his behaviour".

[10] The applicant had a criminal history which was not extensive but included a charge of supplying dangerous drugs (448 grams of cannabis at a price of $3,400) in 2003, for which he was placed on a nine month wholly suspended sentence of imprisonment, and further charges of possessing dangerous drugs (amphetamine and cannabis) and regulated drugs and utensils for which, collectively, he was fined $2,500. The trafficking count against him had originally related to a longer period than that to which he pleaded guilty. It had been the subject of a committal with cross-examination over two days. After the period covered by the count was shortened by amendment, the applicant indicated his willingness to plead guilty; the Crown accepted that his plea, in the circumstances, should be regarded as a timely one.

The sentencing remarks

[11] The sentencing judge, reviewing the facts, described the applicant as a "high level wholesale trafficker" whose conduct in response to the threat of police investigation indicated his determination to avoid detection and stay in business. He was carrying on a business operation of some intensity and organisation with underlings working for him. His Honour noted the applicant's dysfunctional background and the fact that he had overcome it to the extent of obtaining his Master's licence, working in the trawling industry, and becoming a valued employee as an underground miner.

[12] The sentencing judge accepted that the applicant was a drug user but described him as a "high functioning user". While some of the proceeds of his business might have gone to supply his habit, it was evident that most was spent on his own lifestyle. He had had the capacity to work but had chosen to derive his income from wholesaling drugs. It was in his favour that he had taken steps towards his rehabilitation, apparently committing no further offences on bail and ceasing drug use. The applicant was entitled to credit for a timely guilty plea. Sentences imposed on others who had been arrested in the same police operation – Bradley Anderson, Adam McCrea and Rosario Baffi (who supplied Anderson) – were taken into account.

[13] The sentencing judge referred to two decisions of this court, *R v Bradforth*[1] and *R v Feakes*.[2] In *R v Bradforth*, the applicant, who was a drug user, was a 26 year old who had trafficked in cocaine, ecstasy and methylamphetamine over a 12 month period. There was no evidence that he had accrued any measure of wealth. He had no previous drug-related convictions. His sentence at first instance, of 12 years imprisonment, was set aside and a sentence of 10 years imprisonment substituted in order to recognise his early plea of guilty and the fact that he had been on remand for nine months before he was sentenced.

[14] The applicant in *Feakes* was charged with trafficking in cocaine, ecstasy and another drug related to ecstasy, the last two being at that time Schedule II drugs. The evidence against him arose from his supply of drugs to covert police operatives. He was said to have obtained at least $56,000 with a turnover of at least $115,000. The trafficking period charged was over six months, but the supplies relied upon occurred mostly during a two month period. Like the applicant here, *Feakes* had a dysfunctional upbringing. He was 30 years old with a minor history of drug offences. At the beginning of the trafficking period, he was still on a four month

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1 [2003] QCA 183.
2 [2009] QCA 376.

good behaviour bond for a minor drug charge. His plea of guilty was timely. Having regard to the fact that he had trafficked at a high level in such close proximity to his being on a good behaviour bond and the fact that he was not a youthful first offender, the court concluded that the sentence imposed, of 10 years imprisonment (with the attendant consequences for his parole of a serious violence offence), was not manifestly excessive.

[15] Having regard to the sentences imposed on the applicant's associates, the relative brevity of his period of trafficking and the mitigating circumstances, his Honour imposed the sentence of eight years and six months. The applicant's timely plea and steps towards rehabilitation were reflected in the parole eligibility date set at one third of that sentence.

The "manifestly excessive" ground

[16] The applicant did not point to any comparable authority which would suggest that his sentence was manifestly excessive. The Crown relied on *Feakes* and *R v Assurson*.[3] The latter case involved an offender engaged in trafficking methylamphetamine, cocaine and ecstasy over five to six weeks during which he received some $30,000, and there was discussion of a transaction which would, had it been carried out, have involved a prospective profit of $200,000. The court regarded as of particular significance a threat by the applicant to assault a customer who owed him money. The applicant was 23 years old at the time of his offending, had a relatively minor criminal history and entered a late plea of guilty. He was sentenced to nine years imprisonment with a declaration that he was convicted of a serious violence offence. This court, concluding that the sentencing judge had erred in failing to consider whether the circumstances of the offence warranted the making of the declaration, upheld the sentence of nine years imprisonment but deleted the declaration and set eligibility for parole after five and a half years so as to recognise the mitigating factor of the guilty plea.

[17] The applicant's sole argument as to why the sentence was manifestly excessive was that the mitigating factors – his dysfunctional childhood, his work record, his drug dependency, his timely plea and his rehabilitation during the long period between arrest and sentence, while the prospect of sentencing was hanging over him – should have attracted an eligibility date earlier than at one third of the sentence. There was simply the bald assertion that this was so. No attempt was made to identify any error in the way that his Honour went about the exercise of discretion; it was not suggested that he had overlooked any of those factors.

[18] I am unable to see why the submission that that combination of factors must have led to earlier eligibility should be accepted. It assumes that a guilty plea will automatically produce a setting of the custodial component at one third of the sentence, with any additional mitigatory aspects resulting in a further reduction of that fraction. As this court has made clear on many occasions, there is no such thing as a rigid one-third rule; there is rather a general and flexible practice, and the proper exercise of discretion may produce many variants of it. The setting of the eligibility date at the one-third point in this case seems to me unremarkable and adequate to reflect those factors in the applicant's favour (which were by no means overwhelming). The sentence was not manifestly excessive by reason of its custodial component, or (as the results in *Feakes*, *Assurson* and *Bradforth* demonstrate) more generally.

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[3] (2007) 174 A Crim R 78.

The parity argument

[19] The learned sentencing judge devoted considerable time to reviewing the sentences of Bradley Anderson, Rosario Baffi and Adam McCrea and to considering how parity ought to be achieved in the present case. Anderson pleaded guilty to trafficking in cocaine in a total amount of 24.5 ounces between 30 September 2009 and 19 March 2010, and to possessing some 22.5 grams of the same drug. His supplies to the applicant on three occasions were part of the factual basis of his sentencing. The value of the total amount of cocaine he had sold was put at $175,200, with a profit of $12,250. He was said to have sold mostly at wholesale level. His business had failed, leaving him in financial difficulties, and he had developed a cocaine addiction in order to support which he became a conduit for the supply of cocaine between Baffi, the applicant and McCrea. In addition, over a period of some three weeks, he had undertaken the supply of Baffi's customers when the latter was on holidays, supplying two ounces on his behalf and receiving $9,000. Anderson was 46 years old at the time of the offending and had no relevant criminal history. The charges against him had proceeded by way of full hand-up committal with a timely plea of guilty. He was sentenced to eight and a half years imprisonment with a parole eligibility date set after two years and 10 months.

[20] McCrea pleaded guilty, not to trafficking, but to possession and supply of drugs. Separate counts of possession related to drugs found during a police raid on his property: ecstasy (about 30 grams, approximately 24.5 per cent pure) and small amounts of testosterone, midazolam and cannabis (about 15 grams). About $8,000 in cash was found on his premises during that raid. He was also charged with possessing 14 $^{2}/_{3}$ ounces of cocaine of unspecified purity (which he had purchased in a number of transactions at about $6,800 per ounce); supply of four ounces of cocaine, arising from the incident in which McCrea and the applicant arranged for Anderson to provide the drugs to a courier with the intention that McCrea would receive two ounces of it; supply on the basis that he, McCrea, had made arrangements for the supply to himself of two ounces of cocaine (45 per cent pure); and possession of cocaine when police intercepted him and found that he had about six grams of powder, which was 34 per cent pure cocaine. A search of McCrea's house on that occasion found $9,000 and some steroids in a safe on his property. He had endeavoured, unsuccessfully, to have an associate remove the money and drugs before the police search.

[21] McCrea's sentence was contested as to whether or not his possession of drugs was commercial; the sentencing judge found that it was. He was between 43 and 44 years of age when he offended and had a criminal history which included a number of drug offences (mostly involving cannabis) dealt with in the Magistrates Court. While on bail for a period of over two years, he had not re-offended, had established a business and had married, all of which the sentencing judge regarded as promising signs of rehabilitation. The head sentence imposed, in respect of the supply of cocaine, was seven years imprisonment with lesser sentences imposed on the other charges; the parole eligibility date was set one third of the way through that period. It is to be noted that the judge made allowance in arriving at that sentence for seven months which McCrea had spent in pre-sentence custody and which could not be declared.

[22] Rosario Baffi pleaded guilty to trafficking in cocaine and other drugs over a seven month period. He was described as a wholesaler, dealing in the main in one or half

ounce quantities. He was under surveillance for four months during which he was seen to distribute at least 46 ounces of cocaine, some of it supplied to the applicant here through Anderson. A police search of his property found not only some 44 grams of pure cocaine, but also 20 grams of heroin, about 30 per cent pure. Telephone calls indicated an intention to deal in that drug, although no particular supply could be identified. Baffi was 60 years old and had no previous criminal history. He had worked in various activities until an unsuccessful property development venture left him bankrupt. He became a cocaine addict and began supplying the drug to support his increasingly severe addiction. He was sentenced to nine years and six months imprisonment with a parole eligibility date set after a third.

[23] Baffi obtained his drugs from a man named Riscutta. The applicant argued that he was at the bottom of the supply chain, with Riscutta at its head and Baffi and Anderson at successively lower levels of involvement. He contended that Baffi and Anderson had trafficked for longer periods in much larger quantities than he. His sentence was out of proportion with theirs, particularly that imposed on Bradley Anderson, given what was said to be the greater extent of the latter's offending. It was conceded that there was some difficulty making any comparison between McCrea's sentence and the applicant's because the former was not sentenced for trafficking. Nonetheless, it was pointed out he was older than the applicant and had some criminal history.

[24] I do not regard this argument as having any substance. The attempt to characterise the applicant's position as at the bottom of a line of dealers is unconvincing. He received cocaine (and possibly cannabis) from the Baffi/Anderson supply chain, it is true, but his activities extended well beyond it. His substantial business was trading in amphetamines. Where Anderson appears to have been effectively a go-between, supporting his addiction by acting as the middle-man between Baffi and the applicant, the latter, in contrast, was in command of his own business operation and seeking to expand it. His motivation was commercial, rather than the imperative of supporting an addiction. He has no cause for complaint in having received the same sentence as Anderson. Indeed, as counsel for the respondent observed, Anderson would have cause for grievance were the applicant's sentence reduced below his.

[25] Nor is there any obvious disproportion with McCrea's sentence, set at a lower level. The difference between his age (43) and the applicant's (31) is relatively inconsequential: both were mature men. Nor does his criminal history as set out in sentencing remarks seem significantly more serious, although it was somewhat more extensive; there is no suggestion, for example, of any commercial drug supply. McCrea was not, as the applicant acknowledged, charged with trafficking, and in context his offences appear to have been of a lesser degree of gravity than the applicant's.

[26] Baffi's trafficking period was certainly longer than the applicant's but it was not extensive: less than six months. He seems to have trafficked in larger amounts than the applicant, but he was an addict and at the age of 60 had no criminal history. Like the applicant, he had spent over three years on bail without re-offending. His higher sentence, nine years and six months, appropriately reflected the difference in gravity between his level of offending and that of the applicant.

[27] In my view, the sentencing judge achieved a proper parity between the applicant and the three other offenders, reflecting their respective levels of culpability and mitigating circumstances. The applicant can have no legitimate sense of grievance arising out of their sentences.

Order

[28] I would refuse the application for leave to appeal.

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

[30] **MULLINS J:** I agree with Holmes JA.