SUPREME COURT OF QUEENSLAND

CITATION:	*R v Versac* [2014] QCA 181
PARTIES:	**R** **v** **VERSAC, Alex Christian Paul** (applicant)
FILE NO/S:	CA No 293 of 2013 SC No 315 of 2010
DIVISION:	Court of Appeal
PROCEEDING:	Application for Extension (Sentence)
ORIGINATING COURT:	Supreme Court at Brisbane
DELIVERED ON:	5 August 2014
DELIVERED AT:	Brisbane
HEARING DATE:	23 June 2014
JUDGES:	Fraser and Morrison JJA and Philippides 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 AND NEW TRIAL – PROCEDURE – NOTICES OF APPEAL – TIME FOR APPEAL AND EXTENSION THEREOF – where the applicant, after having pleaded guilty to one count of possessing a dangerous drug, was found guilty after trial of one count of trafficking in a dangerous drug, one count of dangerous driving, and five other counts related to drug offending – where the applicant was sentenced in March 2011 and received a head sentence of ten years and six months imprisonment – where the primary judge did not declare as pre-sentence custody 20 months the applicant had already spent in custody – where the applicant pursued an unsuccessful appeal against conviction – where the applicant has filed an application for an extension of time within which to appeal against his sentence – whether good reason has been shown to account for the delay in filing his sentence appeal – where the applicant argues the primary judge made erroneous factual findings and imposed a manifestly excessive sentence – whether, considering the strength of the proposed appeal, it is in the interests of justice to grant the extension

Penalties and Sentences Act 1992 (Qld), s 161A

AB v The Queen (1999) 198 CLR 111; [1999] HCA 46, considered
Hili v The Queen (2010) 242 CLR 520; [2010] HCA 45, cited
R v Assurson (2007) 174 A Crim R 78; [2007] QCA 273, distinguished
R v Ergun, Morris, Phillips and Franco, unreported, Martin J, SC No 605 of 2011, 23 December 2011, distinguished
R v Falzon, unreported, Atkinson J, SC No 889 of 2008, 18 May 2009, considered
R v Le [2001] QCA 290, distinguished
R v Milos, unreported, Douglas J, SC No 817 of 2011, 10 May 2013, considered
R v Rodd; ex parte A-G (Qld) [2008] QCA 341, distinguished
R v Saunders [2007] QCA 93, considered
R v Tait [1999] 2 Qd R 667; [1998] QCA 304, applied
R v Tilley; ex parte A-G [1999] QCA 424, distinguished

COUNSEL: The applicant appeared on his own behalf
J A Wooldridge for the respondent

SOLICITORS: The applicant appeared on his own behalf
Director of Public Prosecutions (Queensland) for the respondent

[1] **FRASER JA:** The applicant seeks an extension of time within which to apply for leave to appeal against his sentences imposed for eight offences. He was convicted on a plea of guilty to count 7 and he was found guilty after a trial of the remaining counts. The sentence was imposed on 17 March 2011 in respect of convictions recorded on 20 December 2010. A short summary of the offences and the concurrent sentences imposed upon the applicant is as follows:-

(a) Count 1 – trafficking in heroin – 10 years and six months imprisonment;
(b) Count 2 – possession of heroin in excess of two grams – four years imprisonment;
(c) Count 3 – possession of implements – four years imprisonment;
(d) Count 4 – possession of a weapon – one year imprisonment;
(e) Count 5 – dangerous driving – 18 months imprisonment, and disqualification from holding or obtaining a driver's licence for six months;
(f) Count 6 – possession of heroin – six months imprisonment;
(g) Count 7 – possession of steroids – no penalty; and
(h) Count 8 – receiving proceeds of trafficking – five years imprisonment.

[2] The approach to be taken in this application, as set out in *R v Tait*,[1] is to consider whether any good reason has been shown to account for the delay, and whether it is in the interests of justice to grant the extension. That may involve some assessment of whether the appeal seems to be a viable one.[2]

Sentencing remarks

[3] The remarks of the sentencing judge reveal the essential nature of the offences and the circumstances of the applicant. In the record of interview the applicant gave

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1 *R v Tait* [1999] 2 Qd R 667 at 668 [5].
2 *R v Tait* [1999] 2 Qd R 667 at 668 [5]; *Craber v WorkCover Queensland* [2013] QCA 304 at [13].

police, he indicated that the trafficking offences were committed over a period of six or seven months, during which he was selling heroin every three days in quantities that sold for about $7,200 to $7,500. This would amount to a turnover in the order of $15,000 per week. However, evidence presented at trial of an analysis of the applicant's financial activities over a 12 month period showed transactions reflecting the applicant's possession of $180,000 from identifiable sources and $1.14 million from unidentifiable sources. At the time of his apprehension, he was in possession of $653,000 in cash.

[4] The sentencing judge found that the jury's verdicts were inconsistent with acceptance of any alternative explanation but that the applicant's income came from a very substantial heroin trafficking business. The applicant was described as a "significant trafficker of drugs … considerably more significant than a person who operated only as a street level dealer".[3] The applicant did not establish that his offending was contributed to by a heroin addiction. The sentencing judge found that the "major, if not the sole, motivation for [the trafficking] was profit".[4] Further, whilst the applicant made admissions to the police in a record of interview, the learned sentencing judge did not regard them as being full and frank. There were at least three matters relevant to that finding: first, the applicant's case at trial was that his admissions to the police were untrue; secondly, there was a demonstrated attempt to understate the level of the trafficking and the financial benefit derived from it in the record of interviews; and thirdly, whilst the applicant had told the Magistrates Court and his psychologist that he was a heroin addict, no such submission formed part of the applicant's case when he was sentenced. The consequence was that the sentencing judge had difficulty inferring that the admissions reflected any significant remorse.

[5] At his trial the applicant denied the admissions made in the record of interview were true, alleging they were the result of duress. It was therefore necessary for extensive evidence to be given about the circumstances of the record of interview, consequently reducing or eliminating any significant saving to the administration of justice. Notwithstanding that, the sentencing judge allowed a modest recognition in his sentence to reflect the fact that the admissions were made. Some delay had occurred between the commission of the offences and the bringing of the matter to trial. That was not due to any fault on the part of the applicant, as was recognised by the sentencing judge. Even so his Honour took into account the delay as a minor factor in the context of the case as a whole.

[6] The major consideration in the sentencing process was the extent of the applicant's trafficking activity. The applicant was a mature person (being about 35 at the time of the offences and 40 at the time of sentencing) with a criminal history (including drug related offences) who had engaged in substantial trafficking for significant commercial advantage.

Delay

[7] Two years and 10 months have elapsed since the date of sentence. In that time the applicant's material reveals that he challenged his conviction by appeal which was heard in October 2011. He contends that his lawyers were instructed (at an unspecified time) to appeal his sentence, but did not do so because of a break down

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3 Sentencing Remarks at 1-8.

4 Sentencing Remarks at 1-9.

in communication. Further, the applicant apparently made a conscious decision to concentrate on the appeal against conviction, and to leave a challenge to sentence until some later time "as it would become immaterial if [the applicant] was acquitted of the major charges and become [sic] a waste of court time".[5] The applicant reveals that in the 12 months leading to April 2013 he had been engaged in other trials in other courts. He says:

> "It has always been the objective to deal with these offences then concentrate on my High Court appeal as the ground of contention is conviction based on legal grounds, and if that is successful it will be an acquittal of the major charges …".[6]

[8] In other words, the applicant made a conscious decision to focus on a challenge to the conviction in respect of these offences and to deal with other matters in other courts, rather than to bring an application for leave to appeal against sentence in a timely way. Apart from those matters, the applicant refers to the impact upon him, both emotionally and mentally, of having been sentenced and serving a period of imprisonment. He also refers to the fact that he was not granted legal aid after his appeal.

[9] Those explanations are not sufficient to show good reason to account for the lengthy delay. Clearly the applicant and his lawyers were conscious of the need to bring a timely application in respect of sentence, but chose not to do so. Instead challenges were made against conviction, and other litigation was dealt with, in preference to bringing this application.

Consideration

[10] The applicant contended that the sentencing judge erred in not allowing 30 months pre-sentence custody. In fact there were 20 months pre-sentence custody and the sentencing judge took that into account in imposing the concurrent sentences, the lengthiest of which is 10 years and six months. Allowing for that pre-sentence custody, the effective sentence may be described as a head sentence of 12 years and two months imprisonment (10 years and six months plus 20 months), with parole eligibility after he has served nearly 83 per cent (10 years and 24 days) of the effective head sentence.

[11] The applicant contended that the sentence was inappropriately comparable to that of a principal in the trafficking business. That complaint is hollow given the level of the trafficking, the substantial financial benefit established by the accounting evidence, the profit motivation, the lack of frankness, the absence of remorse, and the relevant criminal history.

[12] The applicant contended that the sentencing judge was in error in thinking that the $653,000 in cash found in the applicant's possession when he was apprehended was additional to the unexplained wealth of the $1.14 million. He referred to the sentencing remarks that "In addition, the sum of $653,000 was found by the police…". The $653,000 was one component of the calculated total expenditure of the applicant

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5 Applicant's "Notice of Application for Extention [sic] of Time within which to Appeal", filed 22 November 2013.

6 Applicant's "Notice of Application for Extention [sic] of Time within which to Appeal", filed 22 November 2013.

from which the unexplained expenditure of $1.14 million was derived. That is quite clear upon the face of the calculation of total expenditure between 1 April 2005 and 1 June 2006. The sentencing remarks demonstrate that the sentencing judge – who was the trial judge – reviewed that calculation. I am unable to accept that the sentencing judge, who was the trial judge, was unaware that the two amounts were not to be accumulated. Nor do the sentencing remarks suggest that his Honour did accumulate those sums. The purpose of the sentencing judge's reference to the calculation was to explain the inconsistency between the applicant's statements in a police record of interview that he had a turnover from trafficking activities of about $15,000 a week (roughly equivalent to a profit of about $3,000 a week) on the one hand and each of the total unexplained expenditure of $1.14 million and the applicant's possession of $653,000 in cash. The sentencing judge did not make a specific finding about the total turnover or profit from trafficking, but found that it was for a substantially longer period and at a level of activity which was substantially greater than appeared from the applicant's answers in the police record of interview, and that the applicant was a significant trafficker of drugs and considerably more significant than a street level dealer. The sentencing judge did not make the mistake of adding the $653,000 to the $1.14 million to determine the total turnover from the trafficking.

[13] The applicant pointed out that the jury were directed that they need not be satisfied that all of the $1.14 million came from heroin. But the primary judge's finding was not inconsistent with the jury's verdict: it was open to the sentencing judge and not in any sense inconsistent with the verdict to find that all of the $1.14 million was derived from heroin trafficking. The applicant sought to rely upon copies of financial records said to be relevant to this issue. Those incomplete and unproved copy documents do not establish any relevant fact. Judging by their dates, most of them were available to the applicant at the time of the sentence hearing. They should not be received in evidence.

[14] The applicant contended that the location by police in November 2005 of drugs in a storage shed leased in the applicant's name and the subsequent discovery by police in May 2006 of a small quantity of drugs and some money ($9,800) could have supported a charge of possession of dangerous drugs but that it was the applicant's admissions in the May 2006 police interview which led to the much more serious charge of trafficking. He contended that the sentencing judge should have afforded him "special leniency" because, but for his admissions made in a police record of interview in May 2006, he would not have been charged or convicted of trafficking. He explained his contention that the authorities had no other evidence of trafficking. The applicant invoked Hayne J's observations in *AB v The Queen* (1999) 198 CLR 111 at 155 [113] that "the offender who confesses to what was an unknown crime may properly be said to merit special leniency", that such a confession "may well be seen as not motivated by fear of discovery or acceptance of the likelihood of proof of guilt", and that it "will often be seen as exhibiting remorse and contrition." The applicant referred also to cases applying that principle, particularly *R v Wallace* [2008] QCA 135, *R v Holmes* [2008] QCA 259, *R v Byrnes; ex parte A-G (Qld)* [2011] QCA 40, and *R v Ellis* (1986) 6 NSWLR 603.

[15] That argument does not take into account the sentencing judge's findings that the admissions the applicant made in the record of interview were not full and frank, they did not reflect any significant remorse, and the applicant subsequently denied the truth of those admissions and alleged that they were the result of duress. The

sentencing judge accepted that the admissions were likely to have been influential in the trafficking verdict, but even if they reflected some limited remorse that remorse did not persist. The sentencing judge concluded that "quite differently to many other cases, there is in this case little reason to moderate your sentence because of your participation in the record of interview." There was no error in that approach. The principle expressed by Hayne J in *AB v The Queen* is said to be "generally" applicable. No doubt limited admissions may lead to some mitigation in a sentence, depending perhaps upon the particular circumstances, but no policy of the criminal law is served by affording "special leniency" on account of admissions which are designedly less than full and frank and which the convicted person repudiates when the authorities seek to rely upon them. It was open to the sentencing judge to find that this was not a case, such as was described by Hayne J in *AB v The Queen*, where the confession should be seen as exhibiting remorse or contrition of a kind which merited special leniency.

[16] The applicant argued that the sentencing judge incorrectly held that the applicant had previous supply convictions with a commercial element. This was a reference to the sentencing judge's remark that five offences of supply of dangerous drugs for which the applicant was sentenced to concurrent terms of two and a half years imprisonment included a commercial element. On the face of the applicant's own description of the offences and his acceptance that the Crown contended for a commercial element in those offences, the remark seems unexceptional. The applicant accepted that he was convicted of five charges of supplying a total of 30 ecstasy tablets, 50 panadeine capsules and 28 grams of salt. The applicant contended that this did not look like the actions of a commercial trafficker, but that is not what the sentencing judge found.[7]

[17] The applicant argued the prosecutor should not have referred the sentencing judge to outstanding drug offences because the applicant had pleaded not guilty to those offences and he has not since been found guilty of any of them. This is irrelevant; the sentencing judge did not refer to those matters. (Nor could the time taken to have those outstanding charges resolved explain the applicant's delay in bringing this application, if that was the applicant's purpose in referring to this matter.)

[18] The applicant also contended that his offences should not have been declared to be serious violent offences, but that was the inevitable consequence of s 161A of the *Penalties and Sentences Act* 1992 (Qld) upon the imposition of a sentence of at least 10 years' imprisonment for the trafficking offence.

[19] The applicant complained of an asserted conflict of interest by the applicant's barrister and solicitor. Nothing is identified to support that assertion. The same is true of an asserted break down in communication at the Court of Appeal hearing when the applicant appealed his conviction.

[20] The applicant contended that an incomplete psychological report was provided to the sentencing judge. That is not borne out by any acceptable evidence. The sentencing judge referred to the psychologist's report tendered on behalf of the applicant. There was no suggestion of any application to adduce further evidence from that psychologist, notwithstanding that some material sought by the psychologist

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7 The respondent informed the Court that the applicant was convicted under a pseudonym and that an appeal against the sentence is reported as *R v Monkman*, CA 90 of 1999, 4 June 1999. That judgment refers to the applicant as a "low level dealer" who supplied three times the scheduled amount.

was not able to be provided in time. That does not suggest an incomplete report, but simply that the psychologist wanted to see more material. There is no reason to conclude that any further material would have materially affected the opinion which was, in essence, that the applicant was a person "whose personality functions in an essentially normal way", though the applicant "might be affected by an adjustment disorder with mixed anxiety and depressed mood which seemed to be attributed to [the applicant's] current personal circumstances".[8]

[21] The applicant contended that the sentencing judge erred in finding that the applicant was not a heroin addict. This was not an error on the evidence and submissions before the sentencing judge. As the sentencing judge pointed out, the submission for the Crown was that the level of trafficking and the obvious commercial capacity associated with it was not consistent with a significant heroin addiction. The sentencing judge remarked that defence counsel did not submit that the applicant was a heroin addict at the time of the trafficking offences. Contrary to a submission by the applicant, defence counsel's submission that the applicant was a "regular user" of heroin was not a submission that he was an addict. The applicant sought to introduce new evidence on appeal – a letter dated 11 January 2011 from Mr Carson of Goori House, a rehabilitation centre – to show that he was a heroin addict. That was available to him at the time of the sentence hearing and his explanation that it was not then tendered "due to complications" was not persuasive. That document should not be received in evidence for that reason and because the significant point, which could not be challenged, is the sentencing judge's finding that heroin addiction could not provide any significant explanation for the trafficking in which the applicant had been found to be engaged; the extent of the trafficking strongly suggested that the major, if not sole, motivation for it was profit.

[22] The applicant contended that not enough weight was given to mitigating circumstances. The sentencing judge dealt at some length with the mitigating circumstances: the applicant's unfortunate childhood and limited education, his admissions, the existence or otherwise of remorse, the question of delay, the psychologist's report, personal references, and material tendered to show that the applicant had made attempts to use his time in prison usefully. In light of the grave seriousness of the trafficking offence and the applicant's relevant criminal history, it is not seriously arguable that the judge erred in giving comparatively little weight to these circumstances. The applicant referred to, but did not place any particular weight upon, a mitigating circumstance which was the subject of some restricted submissions before the sentencing judge on 17 March 2011. The sentencing judge was obviously familiar with that matter. His Honour took it into account when he sentenced the applicant on the following day, as one of "the other mitigating factors to which reference has been made in the course of the submissions."

[23] The applicant contended that the sentence was "crushing". The sentence is certainly severe and must have a very serious impact upon the applicant's life and the lives of those close to him, but the offence was a very serious one, it called for a severe sentence, and such sentences inevitably must have substantial, adverse affects on offenders and their families. The applicant argued that the sentence was seen to be manifestly excessive when regard was had to comparable sentences. He argued that a sentence of 11 years after a trial was fair but he was given an effective sentence of 13 years. (The reference to 13 years, rather than 12 years and two months, reflected

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[8] Sentencing Remarks at 1-11 – 1-12.

the applicant's submission, which I have not accepted, that he was entitled to have 30 months, rather than 20 months, of pre-sentence custody taken into account.) The sentencing judge referred to a number of cases in which sentences of between eight and 18 years' imprisonment had been imposed for trafficking offences.[9] It is not necessary here to reprise all of these decisions. Manifest excess in the applicant's effective sentence was not indicated by the circumstances that the Court did not find less severe sentences to be manifestly excessive in cases to which the applicant referred. For example, *Assurson* had a lower sentence but that was a case where the trafficking was during a shorter period and there was a plea of guilty. *Le*, which was one of the decisions cited by the sentencing judge upon which the applicant relied in support of a sentence of 11 years imprisonment, was sentenced to nine years imprisonment without a serious violent offence declaration, but he was only 23 years old, he had no substantial criminal history, he pleaded guilty, and the period of his trafficking was only three months and, so far as the report goes, the volume of heroin trafficked was much less than that which the applicant must have trafficked.

[24] The applicant referred also to the sentences imposed in *R v Falzon*[10] (10 years), *R v Tilley; ex parte A-G*[11] (nine years), *R v Morris*[12] (9 years 6 months[13]), *R v Milos*[14] (13 years), *R v Rodd; ex parte A-G (Qld)*[15] (10 years), *R v Saunders*[16] (eight years). The circumstance that 10 years imprisonment was imposed at first instance for a more serious example of the offence in *Falzon* (where the trafficking occupied four and a half years and it was proved that the offender made a profit of at least $1.5 million) should be taken into account in considering the applicant's contention, but it does not demonstrate that the applicant's sentence was manifestly excessive: see *Hili v The Queen*.[17] Decisions of the Court of Appeal illustrate that *Falzon* cannot be regarded as confining the range of available sentences to 10 years imprisonment. *R v Rodd; ex parte A-G (Qld)* is an example. It was a more serious case for a number of reasons – particularly because of the violence attending the commission of the production and trafficking offences for which that offender was sentenced, the lengthier period of trafficking (more than two years), and his offending on bail – but the sentence of 10 years imprisonment in *Rodd* was imposed upon a plea of guilty and the Court did not increase the sentence above 10 years imprisonment only because that was the sentence for which the Attorney-General contended on appeal. For present purposes the relevance of the case is that the Court regarded 10 years imprisonment as being at the bottom of the range of available sentences after allowing for the guilty plea and considered that a sentence after the guilty plea

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9 *R v Markovski* [2009] QCA 299; *R v Chen* [2007] QSC 380 and [2008] QCA 332; *R v Ly; R v Kyrpianou* [2008] QCA 149; *R v Assurson* (2007) 174 A Crim R 78; *R v Le* [2001] QCA 290 (the sentencing judge cited [2001] QCA 238, but that is a different case); *R v Truong & Nguyen* [2001] QCA 98; *R v Tilley* [1999] QCA 424; *R v Saunders* [2007] QCA 93; *R v Rodd* [2008] QCA 341.

10 Atkinson J, SC No 889 of 2008, 18 May 2009. An application for leave to appeal against this sentence was not pursued: see [2009] QCA 393.

11 [1999] QCA 424.

12 The applicant gave the citation "Morris (ca2012)" and the date on which she was sentenced as 23 September 2011, but I have not found any Court of Appeal sentencing decision for "Morris" in 2012 and the person whose full name the applicant mentioned in submissions (Transcript, 23 June 2014, at 1-33), Michelle Catherine Morris, was sentenced in the Trial Division on 23 December 2011: *R v Ergun, Morris, Phillips and Franco*, Martin J, SC No 605 of 2011, 23 December 2011.

13 The applicant incorrectly submitted that the sentence was 9 years imprisonment.

14 Douglas J, SC No 817 of 2011, 10 May 2013.

15 [2008] QCA 341.

16 [2007] QCA 93.

17 (2010) 242 CLR 520 at 537, 538 – 539.

as high as 13 years imprisonment would have been appropriate at first instance (see [23] – [25], [28], [30]). In light of that analysis, *Rodd* supports the respondent's contention that manifest excess cannot be discerned in the applicant's effective sentence after a trial.

[25] *Morris* and a co-offender, Ergun, had unexplained income after trafficking in heroin for two years of less than $500,000, as compared with the total unexplained expenditure of $1.14 million proved against the applicant. Although, as the applicant emphasised, the prosecution was able to prove that they had supplied heroin to very large numbers of people, the supplies were in small amounts; the sentencing judge observed that Morris and her co-offender were "at the bottom of the trafficking chain". She offended whilst on parole and probation, but in addition to the less serious nature of her offending her personal circumstances were more compelling than the applicant's: in addition to having a very disturbed childhood and an early addiction to drugs (the applicant too had an unfortunate childhood), Morris's motivation in offending was found in part to be to feed her own heroin addiction, she was 24 to 26 years old when she offended, and she entered an early plea of guilty. In those circumstances, the sentence of nine years and six months imposed on *Morris* after a plea of guilty is readily reconcilable with the applicant's effective sentence of 12 years and two months after a trial.

[26] In *Tilley*, the Court varied a sentence of nine years imprisonment for trafficking in heroin and methylamphetamines by adding a declaration that the conviction was of a serious violent offence. That offending might have been regarded as more serious than in the present case, but she entered an early plea of guilty, the Chief Justice described the sentence at first instance as involving "marked leniency in the overall result", and the Court adopted the then prevailing "circumspection with which the Court approaches Attorney's appeals…". Accordingly *Tilley* supplies no support for a conclusion that the applicant's sentence after a trial is too severe.

[27] The sentencing judge considered that the sentence of eight years imprisonment in *Saunders* provided the greatest support for the submission made for the applicant at the sentence hearing, but regarded it as case in which the trafficking activity was at a lower level than in the applicant's case and also as an example of a relatively lenient approach. I agree and would add that *Saunders'* offence was trafficking in a schedule 2 drug and he pleaded guilty. The sentence of 13 years imprisonment in *R v Milos* for broadly comparable offending was attributable in part to the circumstances that the offender had a significant criminal history, including for trafficking, and that very soon after he was charged with trafficking and given bail he resumed that illegal occupation. That sentence does not suggest manifest excess in the less severe sentence imposed upon the applicant, who had an extensive criminal history, including drug related offences.

[28] The effective sentence imposed upon the applicant is a severe one, especially in the deferment of parole eligibility beyond 80 per cent of the total period of imprisonment (see [10] of these reasons). However, the applicant's minimum custodial period is four months less than the minimum custodial period of 10 years, four months and 24 days (80 per cent of 13 years) which would have been attracted by a head sentence of 13 years imprisonment, which I consider would have been within the sentencing discretion after the trial in the serious circumstances of this case. General deterrence must feature prominently in sentences for substantial trafficking in heroin for profit by a mature adult with a relevant criminal record. In circumstances in

which the applicant was unable to invoke the mitigating effect of a plea of guilty with attendant remorse and the utilitarian benefit of avoiding a trial, the relatively small percentage increase in the effective minimum custodial period above the statutory minimum of 80 per cent does not justify a conclusion that the applicant's sentence is manifestly excessive.

Disposition

[29] The applicant's explanation for the delay in applying for leave to appeal against sentence is wholly unsatisfactory and he has not established that the sentence was manifestly excessive. It is therefore not in the interests of justice to grant the extension of time.

[30] I would refuse the application.

[31] **MORRISON JA:** I have had the advantage of reading the reasons of Fraser JA and I agree with his Honour's reasons that the application should be refused.

[32] **PHILIPPIDES J:** I agree for the reasons given by Fraser JA that the application should be refused.