

# SUPREME COURT OF QUEENSLAND

CITATION: *R v Suleman* [2015] QSC 5

PARTIES: **THE QUEEN**  
v  
**SULEMAN**  
(defendant)

FILE NO/S: BS433 of 2014

DIVISION: Trial Division

PROCEEDING: Sentence

ORIGINATING COURT: Brisbane

DELIVERED ON: 12 January 2015

DELIVERED AT: Brisbane

HEARING DATE: 12 January 2015

JUDGE: Byrne SJA

CATCHWORDS: CRIMINAL LAW – SENTENCE – INTERPRETATION OF SENTENCING PROVISIONS – where the Drugs Misuse Act was amended to require a person sentenced to imprisonment for trafficking drugs to serve 80% of the sentence before being released from imprisonment – where a transitional provision states that the amended section applies only if the act or omission constituting the offence occurred wholly on or after 13 August 2013 – where the defendant’s offending occurred before and after 13 August 2013 – whether the amended section applies to the defendant’s sentencing

COUNSEL: Ms S Hedge for the Crown  
Ms C Cuthbert for the defendant

SOLICITORS: Director of Public Prosecutions (Qld) for the Crown  
Legal Aid Queensland for the defendant

[1] Nathan Lucas Suleman intends to plead guilty to a charge of carrying on the business of unlawfully trafficking in the dangerous drug methylamphetamine between 20<sup>th</sup> February 2010 and 19<sup>th</sup> August 2013.

[2] The question is whether s 5(2) of the *Drugs Misuse Act* 1986 applies to his sentencing.

[3] By that provision:

*If a court sentences a person to a term of imprisonment for an offence against subsection (1), the court must make an order that the person must not be released from imprisonment until the person has served a minimum of 80 % of the prisoner's term of imprisonment for the offence.*

[4] Section 5(1) creates the offence, stipulating:

*A person who carries on the business of unlawfully trafficking in a dangerous drug is guilty of a crime.*

[5] By s 145 of the *Drugs Misuse Act*:

*Section 5(2) applies to an offence against that section only if the act or omission constituting the offence occurred wholly on or after 13 August 2013.*

[6] The offence charged is a “continuing offence”: *R v Ianculescu* [1999] QCA 439, [30]. And in the absence of a legislative provision which restricted the operation of s 5(2) to offences no part of which occurred after the provision commenced to operate, the subsection would impact on a sentence of imprisonment imposed for an offence where the business was carried on during a period which began before the operative date: cf *Ianculescu* at [44].

[7] Against this background, the purpose of s 145 appears to be to confine the operation of s 5(2) to instances where the business does not begin to be carried on until 13 August 2013.

[8] Section 145 has its peculiarities. For example, the carrying on of a business is unlikely to be constituted by an “act”; and it is most unlikely to be constituted by an omission. The use of these inappropriate references may be explained by the drafter’s consideration of s 11(2) of the *Criminal Code*, which provides:

*If the law in force when the act or omission occurred differs from that in force at the time of the conviction, the offender can not be punished to any greater extent than was authorised by the former law, or to any greater extent than is authorised by the latter law.*

- [9] However that may be, in the context of the continuing offence created by s 5, the transitional provision should be taken as meaning that s 5(2) applies only to an offence that occurs wholly on and after 13 August 2013.
- [10] This interpretation, as it happens, conforms with extrinsic materials.
- [11] The legislative amendments were accompanied by explanatory notes. One of them, under the heading “Consistency with Fundamental Legislative Principles”, informed the Legislative Assembly that:
- The new 80 % non-parole regime applies to drug traffickers serving a term of imprisonment for an offence committed after commencement; that is, for offences committed after 13 August 2013.*
- [12] In the second reading speech, the House was informed that the amendments would ensure that a stated “policy objective of the *prospective* application of this regime is realised ...” [emphasis added].
- [13] Amendments to the *Corrective Services Act 2006* were effected to complement the amendment to the *Drugs Misuse Act*. In an explanatory note which accompanied the Bill, under the heading “Consistency with Fundamental Legislative Principles”, this passage appears:
- ...the scheme operates prospectively and will only capture offenders who commit a relevant offence after the amendments commence.*
- [14] As the offence which Mr Suleman accepts he committed is alleged to have been committed between 20<sup>th</sup> February 2010 and a date after 13<sup>th</sup> August 2013, s 5(2) will not apply to any sentence of imprisonment imposed in respect of his offending.