[2014] QCA 311

COURT OF APPEAL

GOTTERSON JA
MORRISON JA
DALTON J

CA No 167 of 2014
DC No 241 of 2014

THE QUEEN

v

RACKHAM, Janelle **Applicant**

BRISBANE

FRIDAY, 28 NOVEMBER 2014

JUDGMENT

DALTON J: In this matter the applicant seeks leave to appeal from a sentence imposed on 26 June 2014 in the District Court. She was sentenced on seven counts of supplying a schedule 1 drug, ecstasy. The sentence in relation to each of those counts of supply was 12 months imprisonment, to be suspended after serving four months imprisonment, with an operational period of 18 months. The other count before the primary court was one of possessing a thing used for supply. In that respect the applicant was convicted and the conviction was recorded, but there was no further punishment.

The applicant was 49 years of age at the time of offending. She was a single mother. She had sole care of two teenage children. Both of them had medical problems which made their care more difficult. She was self-employed. She had her own business. She had recently

experienced a marriage break-up and was in a period of emotional turmoil. This apparently accounted for her resort to the use of drugs.

The supplies were really of the lowest level. They occurred over nine months and consisted of the supply of one tablet or, in some instances, two tablets to friends. There were two friends. One of those was, in fact, her supplier who happened to be her hairdresser. It was accepted that no money changed hands in consideration for the supply, that it was entirely gratuitous, in other words.

When these circumstances are considered, it can be seen that the sentence imposed by the primary judge is manifestly excessive in the sense used in *House v The King*, that is, that in some way there has been a failure to exercise the sentencing discretion because, when the facts here are compared with the sentence, it can be seen that the discretion has miscarried. This lady ought not to have been sentenced to a term of actual imprisonment.

As I say, the facts giving rise to these supplies are at the very lowest end of the scale. The definitions of "supply" and "trafficking" in the *Drugs Misuse Act* are very broad and, because of that, encompass a multitude of sins. No doubt it is right to observe, as the primary judge did, that principles of general deterrence are important in sentencing for the supply of a schedule 1 drug. Nonetheless, the conduct here, together with the antecedents of the applicant, are such that she ought not to have been sentenced to a term of actual imprisonment.

I think I failed to mention that also before the primary judge was evidence that she had fully cooperated with authorities and entered a plea.

When the sentences imposed are compared to sentences imposed in cases such as *Gabbert* [2010] QCA 133 or *Anable* [2005] QCA 208, it can be seen that the sentences are out of line with comparable authorities.

The applicant was granted appeal bail on 2 July 2014. Prior to that she served eight days imprisonment pursuant to the sentence imposed by the primary judge. My view is that I would allow the application for leave to appeal against sentence, allow the appeal against

sentence, substitute for the sentences on the supply charges below a term of imprisonment of nine months, suspended after serving eight days, with an operational period of 12 months. I would not interfere with the recording of the conviction on the possessing a thing used charge and I would declare a period of eight days served between 25 June 2014 and 2 July 2014 time served pursuant to the new sentence.

GOTTERSON JA: I agree.

MORRISON JA: I also agree.

GOTTERSON JA: The orders and declaration of the court are those proposed by Justice Dalton.