SUPREME COURT OF QUEENSLAND

CITATION:	*R v Anderson* [2015] QCA 17
PARTIES:	**R** **v** **ANDERSON, Stuart William** (applicant)
FILE NO/S:	CA No 247 of 2014 SC No 508 of 2014
DIVISION:	Court of Appeal
PROCEEDING:	Sentence Application
ORIGINATING COURT:	Supreme Court at Brisbane
DELIVERED ON:	24 February 2015
DELIVERED AT:	Brisbane
HEARING DATE:	5 February 2015
JUDGES:	Fraser and Gotterson JJA and Jackson J Separate reasons for judgment of each member of the Court, each concurring as to the orders made
ORDERS:	**1. Leave to appeal against sentence refused.** **2. The applicant is sentenced to a term of imprisonment of six months on Count 8 to be served concurrently with the sentences for Counts 7, 9 and 11.**
CATCHWORDS:	CRIMINAL LAW – APPEAL AND NEW TRIAL – APPEAL AGAINST SENTENCE – GROUNDS FOR INTERFERENCE – SENTENCE MANIFESTLY EXCESSIVE OR INADEQUATE – where the applicant pleaded guilty to eleven counts on an *ex officio* indictment – where the offences were producing a dangerous drug (Counts 1 & 2), possessing a dangerous drug in excess of two grams (Count 3), possessing a dangerous drug (Counts 4-6), possessing relevant substances (Count 7), possessing relevant things (Count 8), possessing things used in connection with producing a dangerous drug (Count 9), possessing instructions for producing a dangerous drug (Count 10) and possessing things for use in connection with producing a dangerous drug (Count 11) – where the applicant was sentenced for each of Counts 1, 2 and 10 to three years' imprisonment suspended after nine months for an operational period of four years, for each of Counts 3, 4, 5 and 6 to twelve months' imprisonment suspended after four months for an operational period of three years and for each of Counts 7, 9 and 11 to six months' imprisonment – where the application was that the sentence was manifestly

excessive considering the mitigating circumstances, including rehabilitation and the unlikelihood of re-offending

CRIMINAL LAW – APPEAL AND NEW TRIAL – APPEAL AGAINST SENTENCE – GROUNDS FOR INTERFERENCE – OTHER MATTERS – whether the primary judge erred by failing to sentence in accordance with the factual basis accepted by him in two significant aspects; the first concerned the complexity of the applicant's drug production and the second, the applicant's rehabilitation; and whether the primary judge gave proper weight to mitigating circumstances namely that the applicant had no prior convictions related to drug use and had been rehabilitated and abstained from drug use for a lengthy period prior to the sentence

CRIMINAL LAW – APPEAL AND NEW TRIAL – APPEAL AGAINST SENTENCE – GROUNDS FOR INTERFERENCE – OTHER MATTERS – whether adequate reasons were given for sentence namely that the primary judge failed to express reference to rehabilitation achieved up until sentence and that the recitation of the statutory list of sentencing factors did not amount to consideration of those factors

CRIMINAL LAW – APPEAL AND NEW TRIAL – APPEAL AGAINST SENTENCE – GROUNDS FOR INTERFERENCE – OTHER MATTERS – where the primary judge did not impose a sentence for Count 8, possessing relevant things – where the parties joined in submitting that an appropriate sentence for Count 8 was six months' imprisonment – whether a sentence of six months' imprisonment should be imposed

House v The King (1936) 55 CLR 499; [1936] HCA 40, cited
R v Hall [2002] QCA 438, considered
R v Inch [2011] QCA 353, considered
R v Johnson [2007] QCA 345, considered
R v Nixon, unreported, Mackenzie J, Supreme Court of Queensland, 9 October 2008, cited
R v Sabine [2007] QCA 220, considered
R v Turner [2007] QCA 70, considered

COUNSEL: P Davis QC for the applicant
B J Power for the respondent

SOLICITORS: Jacobson Mahony Lawyers for the applicant
Director of Public Prosecutions (Queensland) for the respondent

[1] **FRASER JA:** I agree with the reasons for judgment of Gotterson JA and the orders proposed by his Honour.

[2] **GOTTERSON JA:** On 22 August 2014 at the Supreme Court at Brisbane, the applicant, Stuart William Anderson, pleaded guilty to all counts on an 11 count *ex officio* indictment. Count 1 alleged unlawful production of the dangerous drug, 3,4–Methylenedioxy-methamphetamine (MDMA), at Shailer Park on a date unknown between 8 February 2011 and 9 July 2012 in contravention of s 8(c) of the *Drugs Misuse Act* 1986 (Qld) (DMA). Count 2 alleged unlawful production of the dangerous drug, Methylamphetamine, at Shailer Park on a date unknown between 19 October 2011 and 9 July 2012 in contravention of the same provision.

[3] The remaining counts alleged offences committed on 8 July 2012 at Shailer Park as follows:

- Count 3 – unlawful possession of MDMA exceeding two grams in contravention of s 9(b)(ii) DMA;
- Count 4 – unlawful possession of the dangerous drug, Psilocin, in contravention of s 4A and s 9(d) DMA;
- Counts 5 and 6 – unlawful possession of the dangerous drugs, 3,4–Methylenedioxyamphetamine (MDA) and Methylamphetamine respectively, in contravention of s 9(d) DMA;
- Count 7 – unlawful possession of relevant substances in contravention of s 9(d) DMA;
- Count 8 – unlawful possession of relevant things in contravention of s 9A(1) and (2)(c) DMA;
- Count 9 – unlawful possession of things that had been used in connection with the production of a dangerous drug in contravention of s 10(1)(b) DMA;
- Count 10 – unlawful possession of documents related to the production of a dangerous drug in contravention of s 8A(1)(a) DMA; and
- Count 11 – possession of things for use in connection with the production of a dangerous drug in contravention of s 10(1)(a) DMA.

[4] On the same day, the applicant was convicted of the offences and sentenced to the following terms of imprisonment, all to be served concurrently:

- Each of Counts 1, 2 and 10 – three years suspended after nine months for an operational period of four years;
- Each of Counts 3, 4, 5 and 6 – 12 months suspended after four months for an operational period of three years;
- Each of Counts 7, 9 and 11 – six months' imprisonment.[1]

Circumstances of the offending

[5] On 8 July 2012, police executed a search warrant at the applicant's residence at Shailer Park. Located in the basement were, chemicals, glassware and other laboratory equipment described in the Schedule of Facts[2] as a "clandestine laboratory" used to produce MDMA and Methylamphetamine. A number of

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1 By apparent oversight, no sentence was imposed for Count 8. At the hearing of the application the parties joined in submitting that an appropriate sentence for Count 8 was six months' imprisonment to be served concurrently.

2 Exhibit 3; AB44-50.

chemical solutions located were representative of intermediary stages in on-going drug production at the time when the warrant was executed.

[6] Documentation dated 9 February 2011 relating to the acquisition of mercuric chloride and P-Benzoquinonc which are capable of being used in the production of MDMA were found. The commencement date of the production alleged in Count 1 was fixed by reference to that date. Printed instructions for producing Methylamphetamine dated 20 October 2011 were also found. The commencement date for the production alleged in Count 2 was fixed by reference to that date.

[7] Police located 220 capsules containing MDMA in four clip seal bags and a quantity of powder also containing MDMA in another clip seal bag. A total amount of 7.884 grams of pure MDMA in 97.448 grams of substance was found (Count 3). The purity of the MDMA in two of the capsules was well over 50 per cent. The other 218 capsules contained a cutting agent. The MDMA in those capsules had been cut down to a 7 per cent purity. The purity of the MDMA in the powder was 58.9 per cent.

[8] A further clip seal bag contained 0.081 grams of a brown powder in which Psilocin (together with MDMA) was detected (Count 4).[3] Four capsules of MDMA with a total weight of .071 grams (8.8 per cent purity) were found in another clip seal bag in the applicant's bedroom (Count 5).

[9] If sold in bulk the 224 capsules containing MDMA or MDA would yield $3,136.00 or $5,600.00 if sold individually. The MDMA in powder, if put into capsules, would yield $3,430.00 or $6,125.00 if sold individually.

[10] In the basement, police located a plastic container holding Methylamphetamine crystals (Count 6). The crystals contained .027 grams of pure Methylamphetamine (20.5 per cent purity).

[11] Various quantities of an array of substances used in the production of MDMA and Methylamphetamine were found (Count 7). These included 81.2 grams of mercuric chloride powder and 100.6 grams of iodine granules. As well, quantities of condensers, reaction vessels, distillation heads and a pill press were located (Count 8). So also, a wide range of other items of laboratory equipment, such as scales, a thermometer, pH testers, scales and clamps, that had been used in drug production (Count 9); and large glass vessels for use in drug production (Count 11). Documents were located which set out instructions for producing MDMA, MDA, Methylamphetamine and Amphetamine (Count 10).

[12] The applicant declined to participate in a formal recorded interview with police.

Sentencing remarks

[13] The learned sentencing judge commenced his sentencing remarks by stating that the most serious counts were Count 10 for which the maximum penalty is 25 years imprisonment and counts 1 and 2 for which it is either 20 or 25 years depending upon whether the offender was drug-dependant at the time of offending. His Honour outlined the circumstances of the offending broadly as set out above. He noted that

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[3] The weight of the pure MDMA in this powder was included in the 7.884 grams to which reference has been made.

he would sentence on the basis of the quantities of dangerous drugs actually found and not the quantities that were potentially capable of being produced from the precursor chemicals found at the premises.

[14] Extensive reference was made to aspects of the applicant's personal circumstances, life and work history, prior history of offending and illicit drug usage which were set out in a report of Dr J Yoxall, consultant psychologist, dated 20 August 2014.[4] His Honour said in his sentencing remarks:

> "Paragraph 2.1, the reporter notes your acceptance of full responsibility and remorse for your actions and notes the coincidence of your period of offending and emotional turmoil and poor judgment. You have been waiting for resolution of this matter for more than two years and have been reviewed by the psychologist twice in that period of time. Your personal circumstances at the time of offending were less stable than they are now. You now live with your partner of more than three and a half years and your one month old child in Toowoomba. You have stable employment with a concrete company and support of your family there. You were born west of Dalby and raised on a family grazing property, which was lost when your family separated when you were 10. Your mother – sorry, your father has repartnered for more than 20 years, but your mother has not. You had significant medical problems as a child which are ongoing, including trouble with your knees that has required extensive surgery, as well as the pain and suffering involved, and has limited your physical capabilities, including your ability to work – to complete a carpentry apprentice after you finished grade 12.
>
> I note your employment history is varied but suggestive of a strong work ethic and a capacity for business. You have effectively been self-employed since you were 25. You were first married when you were 20 for seven years, and it was the breakdown of that marriage – sorry, prior to the breakdown of that marriage you did not use illicit drugs. You have no personal psychiatric or psychological history or conviction. You have one previous criminal offence in your history, which was behaving in a disorderly manner, for which you were fined and not convicted.
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> The loss of your marriage in 2010 and resulting financial instability was the catalyst for your offending. Since being charged, you have abstained from any use of illicit drugs, which, as I said, is for more than two years, and you have produced urinalysis results to confirm that. You've continued to work despite a significant physical work injury in September 2013 which resulted in serous (sic) facial injuries. You resumed working earlier this year, and your employer is glowing in his assessment of you, both personally and as an employee. You have gradually reduced your debts from 140,000 as at 2010 to about $60,000 now.
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> The report at 4.4 indicates that your concern for being sentenced to a period of actual incarceration focuses on the impact it will have on

[4] Exhibit 6; AB53-74.

> your partner and your daughter, because you are the sole income earner, you have always been a good provider, and you will be unable to continue to support them emotionally and practically.
>
> You did not use illicit drugs until the age of 25, when, as I've said, your marriage deteriorated and finally ended. As at April 2013 you had ceased all use of amphetamines and you had completed three out of six sessions of the Back in Control Relapse Prevention program. In the August 14, 2014 review, you acknowledged that at the time of the offending your judgment was severely compromised by drug use and described your amphetamine at that time as being "out of control", and that this, combined with your depression and coping difficulties, all contributed to your decision to engage in criminal offending. After your marriage break up, you fell into a pattern of frequent binge drinking and experimentation with drugs such as ecstasy, cocaine, and amphetamines. The amphetamines and cocaine gave you energy, confidence, and motivation. Over time, your use of amphetamine increased. So did the cost, which was one of the major reasons that you decided to make your own.
>
> Another consideration was to avoid any risk with poor quality methylamphetamines bought off the street or from someone else. You taught yourself how to produce methylamphetamines by downloading the information from the internet, which is the subject of count 10, and you used the basement of the home that you were renting as a laboratory."[5]

[15] His Honour referred to nine character references which all described the applicant "as a hard worker, conscientious, helpful, a person of previous good character, community-minded, remorseful, in the process of rehabilitation, a good parent, highly motivated and reliable".[6] These, his Honour remarked, "are good qualities that will help you rehabilitate".[7] The applicant's early plea indicated at committal was noted by the learned sentencing judge who stated that it was reflected in the calculation of the head sentence.[8] His Honour referred to the fact that mandatory sentencing factors are set out legislatively and then continued saying:

> "I take into account the maximum penalties for the offences, the nature and seriousness of the offending, the degree of criminality and nature of your role, aggravating and mitigating factors, the level of compliance with previous community based orders, your prospects for rehabilitation and submission to treatment and other interventions already, your previous criminal history and relevant personal circumstances. The purpose of punishment is to – sorry. The purpose of sentencing is to punish, to help rehabilitate you, to deter you and others from committing crime, and to protect the community and express its disapproval with criminal conduct."[9]

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5 AB30, l1-AB31, l10.
6 AB31, ll13-16.
7 AB31, l16.
8 AB31, ll31-32.
9 AB31, ll36-43.

[16] The learned sentencing judge referred to the circumstances of the offending and sentences imposed in some six cases, all of which had been referred to him by the prosecutor. No reference was made to three other cases referred to by the defence counsel.[10]

[17] The sentencing remarks concluded as follows:

> "I find that you were drug dependent at the time of committing this offence, but that, nonetheless, you were operating a well established and resourced, sophisticated production laboratory. I sentence you on the basis that there was no evidence of commerciality, that you were the sole producer of the drugs, and, as I said, I've taken into account your early plea. On counts 1, 2 and 10, you will be sentenced, in respect of each, to three years imprisonment, suspended after nine months for an operational period of four years. Counts 3 to 6, in respect of each, you'll be sentenced to 12 months period – sorry – you will be sentenced to concurrent 12-month period of imprisonment, suspended after four months for an operational period of three years. For counts 7, 9 and 11, you are sentenced to six months imprisonment on each count concurrently with each other and the other sentences I've imposed."[11]

Grounds of Appeal

[18] The application for leave to appeal sets out the following grounds of appeal:

1. The sentence was manifestly excessive.
2. The learned sentencing judge erred by failing to:
   (a) sentence in accordance with the factual basis accepted by him; and
   (b) give proper weight to mitigating circumstances.[12]

[19] During the hearing of the application, leave was granted to add an additional ground, namely, that inadequate reasons were given for the sentence. It is convenient to record at this point that several propositions were advanced for the applicant in oral submissions which relate principally to the additional ground but also to the other grounds. They concern the structure of the sentencing remarks.

[20] First, it was proposed that the totality of the reasons for the sentence are those contained in the conclusion to the sentencing remarks set out in paragraph 17 of these reasons. Thus, it was said, the sole factors taken into account by way of mitigation were that the applicant was drug dependent at the time of committing the offences and the early pleas. In light of the absence of any express reference to rehabilitation at that point, it was submitted that his Honour must not have taken any account of it as a mitigating factor.[13] In my view, this proposition is not soundly based. It involves an unrealistic detachment of the conclusion from all that preceded it in the sentencing remarks. His Honour's recitation of the circumstances

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10 They were *R v Turner* [2007] QCA 70; *R v Nixon* 9 October 2008 per Mackenzie J and *R v Johnson* [2007] QCA 345. After the sentencing remarks had concluded, defence counsel drew to his Honour's attention the fact that he had not referred to those cases. His Honour said that he did read them: AB34, ll3-13.

11 AB33, ll31-41.

12 AB95.

13 Transcript 1–4, l42 – 1–5, l10.

of the offending, his extraction of matters reported by Dr Yoxall and his drawing upon the references all set out factors which he evidently did take account in fixing the sentences. These all formed part of the reasons for the sentence.

[21] Next, a somewhat similar proposition was advanced referable to sentencing factors. The relevant part of the sentencing remarks is set out at paragraph 15 of these reasons. It was proposed for the applicant that his Honour there was doing no more than reciting from the statutory list of sentencing factors. In my view, his Honour is to be understood as stating that he was taking those factors into account as they had been elaborated by him in the sentencing remarks that he had to that point made. I am unpersuaded that the applicant has established either of the propositions advanced as to the structure of the sentencing remarks.

[22] I now turn to consider the grounds of appeal. It is convenient to consider Ground 2 first.

Ground 2(a)

[23] On the applicant's case, there was a discordance between the facts as accepted by his Honour and the factual basis on which he sentenced. This was said to have occurred in two significant respects. The first concerned the complexity of the applicant's drug production and the second, the applicant's rehabilitation.

[24] As to the former respect, it was submitted that to sentence on the basis that the applicant "was operating a well-established and resourced, sophisticated production laboratory" inaccurately described the applicant's production facilities. They were, it was said, "small and unsophisticated". In my view, the facts fairly justified description of the facilities as a production laboratory. It was well-established in that it had evidently been operated by the applicant for many months. The chemicals and equipment discovered justified the description "well-resourced". Further, the adjective "sophisticated" was apt to describe a facility used to produce two types of dangerous drugs from precursor chemicals to capsule form. Neither that word nor any of the other descriptions used by his Honour implied commerciality in the production in the sense of cooperation with others in a drug production enterprise or in the sense of production of dangerous drugs for distribution and sale. His Honour expressly sentenced on the basis of an absence of evidence of commerciality.

[25] I mention at this point that the applicant advanced an allied submission that the cases to which his Honour referred all involved production of Amphetamine "with an element of commerciality". The submission invited the drawing of an inference that the learned sentencing judge must have sentenced on a basis of some commerciality in the applicant's activities notwithstanding his Honour's express statement to the contrary.

[26] I accept that it is legitimate to query why it was that, without explanation, reference was made only to cases which the prosecutor had cited. However, I doubt that the suggested inference is one that can soundly be drawn. The applicant's counsel at sentence had submitted that a head sentence "of three, possibly three and a half" years' imprisonment was warranted.[14] That submission was made on a footing that there was no commerciality involved. Further, as explained later in these reasons,

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[14] AB21, Tr1-15, ll4-7; AB23, Tr1-17, ll35-40.

the sentence actually imposed is one that was open for offending at the level in which the applicant engaged.

[27] As to the latter respect, the submission for the applicant fixed upon the statement by the learned sentencing judge that "good qualities" that the applicant has "will help [him] rehabilitate". This statement, it was suggested, implied that his Honour was sentencing on a factual basis that the applicant had yet to rehabilitate himself.

[28] The statement needs to be understood in context. It was made after his Honour had referred to the applicant's stabilised domestic situation, his stable employment and his abstension for more than two years from illicit drug use. His Honour mentioned that "in the process of rehabilitation", the applicant had shown himself to be a conscientious hard worker, remorseful, and a good parent, highly motivated and reliable. This context indicated that his Honour accepted that the applicant had substantially rehabilitated himself. His use of the future tense in the statement relied on by the applicant merely reflected the well-understood notion that rehabilitation and maintenance of a rehabilitated state are on-going processes. I understand his Honour's statement to be one that was directed towards maintenance in the future.

[29] In my view, for these reasons, this ground of appeal cannot succeed.

Ground 2(b)

[30] At the hearing of the application, counsel for the applicant acknowledged that a ground cast in terms of not giving "proper weight" to mitigating circumstances could not found a reviewable sentencing error of the kind described in *House v The King*.[15] A contrast may be made with a legitimate ground such as failure to have regard for a relevant mitigating circumstance.

[31] A failure to give proper weight to mitigating circumstances is, nevertheless, an oversight which may lead to a sentence which is manifestly excessive in a particular case. I now turn to consider that ground of appeal.

Ground 1

[32] At sentence, the applicant's counsel submitted that for the mitigating circumstances, including rehabilitation and unlikelihood of re-offending, there should be an immediate parole release order.[16] The theme of that submission was renewed at the hearing of the application coupled with the observation that at the date of the hearing, the applicant had served about five and a half months in prison.

[33] For the applicant, it was argued that support for a sentence involving no actual time in custody was given by the three cases noted at footnote 10 to paragraph 16 of these reasons. In *Turner*, this Court rejected an argument that a sentence of nine months' imprisonment with a parole release date fixed as the date of sentence was manifestly excessive because parole, rather than a full suspension of sentence, was ordered. The offending is not detailed in the reasons of the Court but was apparently accepted as being "a not terribly large or consequential production of Methylamphetamine". This absence of detail limits the utility of this decision as a

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15 [1936] HCA 40; (1936) 55 CLR 499 at 505.

16 AB21, Tr1-15, ll7-8.

comparator as does the factor that parity with the sentence imposed on a co-offender was also involved.

[34] In *Johnson*, the applicant's complaint was against the recording of convictions for production and possession offences. Convictions were recorded on pleas of guilty and the offender was sentenced to 12 months' probation with a condition that he submit to drug testing. That application did not require a reconsideration of the sentence imposed. *Nixon* is a sentence at first instance where a term of three years' imprisonment with immediate parole was imposed on a plea of guilty to a single offence of producing Methylamphetamine. The charge was described by the sentencing judge as unusual in that it was based on the extended definition of "production". The offender would surreptitiously put drugs aside at his workplace for another person to collect for use in drug production. That sentence was not reviewed by this Court.

[35] These cases do not suggest any norm in sentencing that where production of dangerous drugs is non-commercial and the offender has progressed well with rehabilitation, then no actual time in custody is to be served. Other cases contain instances of sentences where actual time was required to be served in reasonably comparable circumstances.

[36] In *R v Sabine*,[17] only one type of drug was produced and the offender was not the operator of the laboratory. There was no commercial aspect to the production. The offender had a poor criminal history but had never been previously imprisoned. Speaking of that case, Fraser JA observed in *R v Inch*:[18]

> "The applicant's offence was objectively much less serious than the offence in *R v Sabine*, in which the Court dismissed an application for leave to appeal against a sentence of three years imprisonment with parole fixed after serving 16 months. That offender pleaded guilty to one count of producing methylamphetamine over a two month period, whereas the applicant had produced only a minimal amount of drug on one occasion. Although that offender was the owner of the house in which the drug had been produced and it was not alleged that he was the "cook", he had provided a co-offender with accommodation and food in return for the co-offender purchasing precursor drugs. There was no similar aggravating circumstance in the applicant's offence. Although there was also no commercial element in the production of the drug by that offender, it was for the use both of the offender and other occupants of the house. Furthermore, that offender did not cooperate with the authorities, he was older than the applicant, at 40 years of age, and he had a more serious criminal history including a number of convictions for drug offences. Williams JA remarked that while the sentence could be regarded as towards the top of the range, it was not manifestly excessive. *R v Sabine* is not a comparable decision which requires the conclusion that the sentence in this case was within range."[19]

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17 [2007] QCA 220.
18 [2011] QCA 353.
19 At [16].

[37] In *R v Hall*,[20] the production of one type of drug also was involved. The applicable maximum penalty at the time was 15 years' imprisonment, less than that which currently prevails. That case was also discussed by Fraser JA in *Inch*. His Honour said of it:

> "In *R v Hall*, the offender was sentenced on his plea of guilty to two years imprisonment suspended after 12 months for an operational period of three years for one count of producing a dangerous drug. (There was also one count of possessing instructions for producing a dangerous drug which is not relevant for present purposes). The charges arose following a police raid on the offender's premises where they found equipment associated with methylamphetamine production together with a vessel containing pure methylamphetamine. There was 8.16 grams of pure methylamphetamine which, once cut with glucose, would give about 20 grams. The sentencing judge found that the drug had been produced for probable supply to others but without any commercial purpose. The offender was 45 years of age at the time of the offences, and at the time of sentence he was supporting his wife and two children, with another child expected. He had some prior convictions for drug offences dating back to some 30 years before the offences under consideration, the most serious offence being selling heroin for which he was sentenced to six months imprisonment coupled with probation. The Court allowed the appeal against sentence, primarily on the basis that the sentencing judge erred in considering the offender's plea of guilty to be a late plea. Holmes J (as her Honour then was) held (McPherson JA and Cullinane J agreeing) that while the offender had not cooperated with authorities and there had been a committal, the offender was nonetheless entitled to some credit for an early plea. The Court varied the sentence on the production count to two years imprisonment suspended after eight months for an operational period of three years. Although methylamphetamine was then a Schedule 2 drug and it has since become a Schedule 1 drug, the offending in *R v Hall* was more serious, particularly because that offender produced a greater quantity of the drug with the intention of supplying it to others, and because he had a more significant criminal history which included a sentence of imprisonment and probation. In light of the less serious objective facts and more compelling personal circumstances of this case, *R v Hall* does not support the respondent's submission."[21]

[38] In *Inch*, the offending was constituted by the production of Methylamphetamine on a very small scale and possession of it and Cannabis in minimal quantities. The offender participated in an interview with police where he made relevant admissions. His sentence of 21 months' imprisonment with parole after five months was considered by this Court to be manifestly excessive. It was varied by substituting a sentence of 15 months' imprisonment with a parole release date at three and a half months.

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20 [2002] QCA 438.

21 At [17].

[39] Notwithstanding the absence of commerciality, the applicant's offending here was significant in duration and scale. It was considerably more serious in those dimensions than the offending in *Inch* and of comparable seriousness with the offending in *Sabine*_and *Hall*. The applicant's offending warranted a sentence which required actual time in custody. Here, that time is one-quarter of the length of the sentence. The mitigating circumstances in the applicant's case are impressive. In my view, they are sufficiently and appropriately taken into account in the suspension of the sentence at the nine months mark. The sentence is not manifestly excessive. This ground of appeal is not made out.

Additional ground of appeal

[40] I have considered and rejected two propositions going to the structure of the sentencing remarks which the applicant advanced in support of the additional ground that insufficient reasons were given for the sentence. A third proposition put is related to a submission considered in discussion of Ground 2(a), namely, that the learned sentencing judge must have sentenced on the basis of some commerciality in the drug production. The proposition is that the reasons are inadequate in that they do not disclose why the applicant was sentenced on such a basis when no commerciality was involved. In the course of considering that submission, I indicated that I did not accept it for the reasons then given. Nor do I accept the proposition based upon it. This ground of appeal also is not made out.

Disposition

[41] As none of the grounds of appeal has succeeded, it is appropriate that leave to appeal be refused. As both parties submitted (see footnote 1 to paragraph 4 of these reasons), the applicant should be sentenced on Count 8 to six months' imprisonment to be served concurrently with the sentences for Counts 7, 9 and 11.

Orders

[42] I would proposed the following orders:

1. Leave to appeal against sentence refused.

2. The applicant is sentenced to a term of imprisonment of six months on Count 8 to be served concurrently with the sentences for Counts 7, 9 and 11.

[43] **JACKSON J:** I agree with the reasons and orders given by Gotterson JA.