SUPREME COURT OF QUEENSLAND

CITATION:	*R v Bliss* [2015] QCA 53
PARTIES:	**R** **v** **BLISS, Taylor Lee** (applicant)
FILE NO/S:	CA No 262 of 2014 DC No 269 of 2014
DIVISION:	Court of Appeal
PROCEEDING:	Sentence Application
ORIGINATING COURT:	District Court at Brisbane
DELIVERED ON:	14 April 2015
DELIVERED AT:	Brisbane
HEARING DATE:	12 February 2015
JUDGES:	Margaret McMurdo P and Holmes JA and Jackson 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 against sentence is refused.**
CATCHWORDS:	CRIMINAL LAW – APPEAL AND NEW TRIAL – APPEAL AGAINST SENTENCE – GROUNDS FOR INTERFERENCE – SENTENCE MANIFESTLY EXCESSIVE OR INADEQUATE – where the applicant was convicted and sentenced upon five offences to which he had plead guilty – where the first sentence for breaking and entering premises and stealing was for two years imprisonment – where the four other offences were concurrent and for eight months and fifteen days imprisonment, but cumulative on the first sentence – whether the sentence was manifestly excessive *Corrective Services Act* 2006 (Qld), s 209, s 211 *Penalties and Sentences Act* 2009 (Qld), s 160B(2) *Mill v The Queen* (1988) 166 CLR 59; [1988] HCA 70, cited *Postiglione v The Queen* (1997) 189 CLR 295; [1997] HCA 26, cited *R v Bryant* (2007) 173 A Crim R 88; [2007] QCA 247, referred to *R v MAK* (2006) 167 A Crim R 159; [2006] NSWCCA 381, cited *R v Maniadis* [1997] 1 Qd R 593; [1996] QCA 242, applied *R v Paton* [2011] QCA 34, referred to *R v Smith* [2013] QCA 397, applied *R v Weeding* [2007] QCA 311, applied

COUNSEL: The applicant appeared on his own behalf
B J Merrin for the respondent

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

[1] **MARGARET McMURDO P:** I agree with Jackson J's reasons for refusing this application for leave to appeal against sentence.

[2] This means the applicant is now eligible to apply for release on parole. He stated below and in this Court that he has no prospect of parole because of his poor history. It is, of course, a matter for the parole board to determine if and when he is released on parole. He is now 40 years old. He has a lengthy criminal history replete with recidivist drug-related offending. The offences with which this application is concerned are in that category. He failed to complete an intensive drug rehabilitation order in 2012. This all suggests he is at high risk of re-offending when released into the community. This was also the view of the psychologist whose 11 page report was tendered on the applicant's behalf at sentence.[1] This, however, does not mean he is necessarily an unsuitable candidate for parole.

[3] The sentence judge noted:

> "Your daughter is now 11, and from all of the material, including your own letter written and addressed to the Court, it's clear that that relationship, and, in particular, that child, represents a real hope for you to live a useful life. It seems you see the value in that relationship and the worth that you might feel and achieve as a person and the role you might play in your daughter's life. That's not the only positive prospective matter that I've been told about today. You've also taken a lot of steps to prepare for release from jail, including contacting organisations where you might undertake drug rehabilitation courses."[2]

[4] His Honour added:

> "The matter of your release on parole is one for the parole board, but the parole board is required to take into account all relevant considerations, and that will include, when you come before the parole board, the work you've done while in custody to prepare yourself for release and my remarks, which include my expectation that you will be released when eligible, because it is in the community's interests that you be released on parole so that you are supervised in the community.
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> …
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> And also, as a personal deterrent, you require the strength of knowing that if you put a foot wrong or don't do what you're required to do under a parole order, you'll simply be returned to custody. If you want to be available to your family, if you want to be able to take your daughter to sporting events or school, if you want to

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1 Exhibit 5, p 11, [45].
2 Reasons for Sentence, 10 September 2014, T2 lines 39-46.

> have a real role in other people's lives and a meaningful life outside your own concerns, you'll have the strength to conduct yourself properly in the community."[3]

[5] I agree with his honour's observations. The recommendations in the thoughtful psychological report[4] highlight the need for the applicant to be released into the community on a highly structured and supportive parole order, if he is to successfully rehabilitate. The report anticipates such an order might require an inpatient treatment program of the kind anticipated by the applicant with his approach to Breaking Through Transitional Services Ltd,[5] with supervised employment and assistance in broadening his social network. This goal is unquestionably as much in the public interest as it is in the interests of the applicant and his young daughter.

[6] The applicant, as Jackson J has explained in his reasons, has not demonstrated any error on the part of the sentencing judge. It follows that his proposed appeal against sentence has no prospects of success and his application for leave to appeal against sentence must be refused. I agree with the order proposed by Jackson J.

[6] **HOLMES JA:** I have read and agree with the reasons of Jackson J for refusing the application for leave to appeal against sentence. I agree also with the remarks of the President (and the sentencing judge) as to the desirability of the applicant's returning to the community on a parole order rather than simply being released at the end of his sentence without supervision.

[7] **JACKSON J:** Mr Bliss applies for leave to appeal and appeals against sentence. On 10 September 2014, he was convicted and sentenced upon five offences for which he had entered pleas of guilty on 2 July 2014. The table below sets out a summary of the offences and sentences:

Count	Date of Offence	Offence	Sentence imposed
1	19 May 2012	Breaking and entering premises and stealing	2 years imprisonment
2	29 October 2012	Enter premises with intent to commit an indictable offence	8 months 15 days imprisonment
3	16 November 2012	Breaking and entering premises and stealing	8 months 15 days imprisonment
4	28 November 2012	Enter premise and stealing	8 months 15 days imprisonment
5	26 November 2012	Breaking and entering premises and stealing	8 months 15 days imprisonment

[8] The terms of imprisonment imposed for counts 2 to 5 were concurrent with each other but cumulative on the term imposed for count 1. A period of eight days was declared as time spent in pre-sentence custody. A parole eligibility date was fixed at 2 March 2015, on all counts.

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3 Above, T4 lines 11-19.

4 Exhibit 5, p 11 [45].

5 Attached to the applicant's submissions in this Court.

[9] On 25 July 2012, the applicant had been sentenced in the Southport Drug Court on 14 charges. Two of them were charges of entering premises and committing an indictable offence, with the entry being by break. On each of those charges, he was sentenced to a term of imprisonment of three years. A period of 329 days was declared as time spent in pre-sentence custody. A parole release date for those and other charges and for an activated period of another earlier suspended sentence was set at 7 August 2012.

[10] On 10 September 2014, the learned sentencing judge did not fix a parole release date. That was because count 2, the offence of entering premises with intent to commit an indictable offence, was committed on 29 October 2012, whilst the applicant was serving a sentence for other earlier offences on parole. Under the *Corrective Services Act* 2006 (Qld), ss 209 and 211, the period between the date of commission of that offence (29 October 2012) and the cancellation of the applicant's parole order for the earlier offences (26 November 2012), that is 28 days, became time he was required to serve in prison, quite apart from any term of imprisonment ordered upon the sentences for counts 1 to 5.

[11] Further, because the applicant had a court ordered parole order cancelled under s 209 of the *Corrective Services Act* 2006 (Qld) *"during the offender's period of imprisonment"*, the sentencing judge was required to fix the date when the applicant would be eligible for parole: *Penalties and Sentences Act* 2009 (Qld), s 160B(2); *R v Smith*.[6]

[12] The consequence of the sentencing judge fixing a parole eligibility date is that the applicant became eligible for parole from 2 March 2015. Whether or not a parole order is made will depend on the applicant making an application for it and the exercise of the relevant discretionary power by a parole board under the provisions of the *Corrective Services Act* 2006 (Qld).

[13] The ground of the application is that the sentences imposed are manifestly excessive in all of the circumstances. The applicant's outline of argument is treated by the respondent as having raised four questions, namely that the sentencing judge erred in not fixing a parole release date, that considerations of totality were not sufficiently taken into account, that the applicant will not be released on parole and that the applicant's prospects of rehabilitation are improved by fresh evidence that he has been accepted into a drug rehabilitation course.

Not fixing a parole release date

[14] As is shown by the reasons for judgment of Morrison JA in *R v Smith*,[7] although the full time discharge date for the sentences imposed on 25 July 2012 was 1 September 2014, the effect of the sentences of 14 September 2014 was to cancel the applicant's parole on the 25 July 2012 sentences retrospectively to 29 October 2012. Accordingly, the 28 day period between 29 October 2012 and 26 November 2012 when the applicant had been released on parole for those sentences became time he was required to serve in prison. That time period became part of the applicant's period of imprisonment within the meaning of s 160B(2) of the *Penalties and Sentences Act* 1992 (Qld). That subsection required the court to fix a parole eligibility date on 14 September 2014. There was no error by the sentencing judge in not fixing a parole release date.

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6 [2013] QCA 397.

7 [2013] QCA 397.

Totality

[15] The principle of totality serves the purpose of not crushing an offender by the period of an extremely long total sentence in cases of multiple offending.[8] The applicant sought to engage the principle by submitting that count 1 of the charges dealt with on 10 September 2014 might have been dealt with when the applicant was sentenced on the 14 other charges on 25 July 2012. The point sought to be advanced is that if count 1 had been dealt with along with the other 14 offences on 25 July 2012 it would not have resulted in a cumulative sentence of two years imprisonment on the sentences for those offences, which is submitted to be the effect of the sentence imposed on count 1.

[16] The respondent makes three responsive points. First, count 1 was committed nearly 12 months after the last of the earlier 14 offences for which the applicant was sentenced on 25 July 2012. Secondly, count 1 was committed whilst the applicant was the subject of an intensive drug rehabilitation order. Thirdly, the sentencing judge was mindful of the impact of the sentence he was to impose as operating cumulatively and therefore reasoned to reduce it. His Honour said in argument that:

> "[M]y impression was … that the sentence should be in the order of about four years but since that it was, in effect, cumulative, and he has already served so much, that could be reduced to about three …".

[17] The parole eligibility date that was fixed, 2 March 2015, requires that the applicant must serve less than 20 per cent of the term of two years imposed for count 1.

[18] In my view, those considerations show that the learned sentencing judge did not fail to have regard to the cumulative effect of imposing the sentence for count 1 and that his exercise of discretion did not err because of that effect upon the sentences imposed on 14 September 2012. It is not necessary to go further in the circumstances of this case.

The applicant will not be released on parole

[19] The applicant is concerned that he will not be released on parole either on the date on which he becomes eligible or afterwards. However, that is not a proper basis upon which to challenge the sentence: *R v Weeding*.[9] The legislation confers the discretionary power to make a parole order on a parole board, not on this Court.

Fresh evidence

[20] It is encouraging for the applicant to have been accepted into the Breaking Through transitional program. However, it does not show that the sentence imposed was manifestly excessive: *R v Maniadis*.[10]

Conclusion

[21] None of the individual matters raised by the applicant is a basis for granting leave to appeal against sentence or an appeal against sentence. As well, the sentences imposed on

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8 See *Postiglione v The Queen* (1997) 189 CLR 295, 304, 307-309, 340-342; *Mill v The Queen* (1988) 166 CLR 59, 62-63; *R v MAK* (2006) 167 A Crim R 159, [17]-[18].

9 [2007] QCA 311, [13].

10 [1997] 1 Qd R 593, 596-97.

the applicant compare to other similar sentences: *R v Bryant*[11] and *R v Paton*[12]. There is neither a specific ground to show error in the sentencing judge's discretion, nor is the sentence imposed such that without identifying a specific ground some error can be inferred.

[22] Accordingly, in my view, the application for leave to appeal against sentence should be refused.

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11 [2007] QCA 247.
12 [2011] QCA 34.