SUPREME COURT OF QUEENSLAND

CITATION:	*R v Boimah* [2017] QCA 50
PARTIES:	**R** **v** **BOIMAH, Isaac** (applicant)
FILE NO/S:	CA No 206 of 2016 SC No 405 of 2015
DIVISION:	Court of Appeal
PROCEEDING:	Sentence Application
ORIGINATING COURT:	Supreme Court at Brisbane – Date of Sentence: 11 July 2016
DELIVERED ON:	28 March 2017
DELIVERED AT:	Brisbane
HEARING DATE:	6 March 2017
JUDGES:	Philippides and McMurdo JJA and Boddice J Separate reasons for judgment of each member of the Court, each concurring as to the order made
ORDER:	**Application for leave to appeal against sentence refused.**
CATCHWORDS:	CRIMINAL LAW – APPEAL AND NEW TRIAL – APPEAL AGAINST CONVICTION RECORDED ON GUILTY PLEA – where a parcel from China containing 997.4 grams of methamphetamine was sent to the applicant's address – where the parcel was addressed to a 'Cug Warwick' at the applicant's address – where the applicant was found to be in possession of a false passport in the name of 'Guy Warwick' and depicting his photograph – where customs officers intercepted the parcel and a man claiming to be 'Guy Warwick' called the courier company for an explanation for the delay – where the applicant, at a police interview, admitted to possessing the false passport to receive money on a friend's behalf – where the applicant admitted that he had never used the false passport to receive money – where the applicant claimed that he used the name Guy Warwick as he was not sure what the parcel would contain – where the applicant denied contacting the courier company – where the applicant had nonetheless pleaded guilty to the offence of attempting to possess a controlled border drug and possession of a false travel document – where the applicant's trial counsel explained the plea of guilty as being on the basis of a belief that the package contained a border controlled drug without actual knowledge of what was in the package – where a belief

as to the quantity or type of the border controlled drug is not required under the *Criminal Code* (Cth) – where the applicant contended on appeal that what his counsel had submitted was inconsistent with his instructions and said that he had no knowledge about anything illegal being in the package – where the applicant had pleaded guilty in an exercise of free choice upon the factual premises explained by his trial counsel – whether the applicant had established that a miscarriage of justice had occurred

CRIMINAL LAW – APPEAL AND NEW TRIAL – APPEAL AGAINST SENTENCE – GROUNDS FOR INTERFERENCE – PARITY BETWEEN CO-OFFENDERS AND OTHER RELATED OFFENDERS – where the applicant's co-accused was convicted of the offence of importing a commercial quantity of a border controlled drug, whereas the applicant was sentenced for attempted possession of a border controlled drug – where the applicant received a sentence of eight years' imprisonment with a non-parole period of four years – where the co-accused was originally sentenced to seven years' imprisonment but this was increased on appeal to nine years – where the applicant's offending was described as premeditated and playing an 'essential role' in the importation as an 'intermediary' rather than a 'courier' – where the offender was aged 29 at the time of the offences and 31 at sentence and had no criminal history – where the applicant was born in Liberia and escaped the civil war to Ghana where he was in a refugee camp for seven years – where the applicant had entered a timely plea and had engaged in study and had a supportive family – whether the sentencing judge had failed to apply the principle of parity of sentences between co-offenders – whether the sentence was manifestly excessive

Criminal Code (Cth), s 11.1(1), s 307.5

Meissner v The Queen (1995) 184 CLR 132; [1995] HCA 41, applied
Nelson (a pseudonym) v Director of Public Prosecutions (Cth) (2014) 44 VR 461; [2014] VSCA 217, cited
R v Agboti (2014) 246 A Crim R 72; [2014] QCA 280, distinguished
R v Douglas (2014) 240 A Crim R 554; [2014] QCA 104, considered
R v Harris [2009] QCA 370, considered
R v Nikolovska (2010) 209 A Crim R 218; [2010] NSWCCA 169, considered
R v Onyebuchi; Ex parte Commonwealth Director of Public Prosecutions [2016] QCA 143, considered
R v Todoroski (2010) 267 ALR 593; [2010] NSWCCA 75, considered
Weng v The Queen (2013) 236 A Crim R 299; [2013]

VSCA 221, cited

COUNSEL: The applicant appeared on his own behalf
L K Crowley for the respondent

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

[1] **PHILIPPIDES JA:** I agree with the reasons given by McMurdo JA and with the order proposed.

[2] **McMURDO JA:** On 11 July 2016 the applicant was arraigned on two counts, namely that:

(1) on or about 27 May 2014 he possessed a document knowing it was a false foreign travel document;

(2) on or about the same date, he attempted to possess a commercial quantity of an unlawfully imported border controlled drug being methamphetamine.

The first count was an alleged contravention of s 22(1) of the *Foreign Passports (Law Enforcement and Security) Act* 2005 (Cth). The second count was an alleged contravention of the *Criminal Code* (Cth) (the *Code*) by the combined operation of its s 11.1(1) and s 307.5(1).

[3] The applicant pleaded guilty to each count, the allocutus was administered and after submissions from the prosecutor and the applicant's then counsel, he was sentenced. Upon the first count he was sentenced to a term of three years' imprisonment. Upon the second count he was sentenced to a term of eight years, to be served concurrently with the other term and with a non-parole period of four years. A total of 776 days were declared to have been already served.

[4] The proceeding in this court was filed as an application for leave to appeal against those sentences, upon the grounds that "the sentence imposed" was manifestly excessive and that the sentence of eight years was too high in comparison with that imposed on a co-offender. However in his outline of submissions, the applicant, who is now without legal representation, challenges not only his sentence of eight years but also his convictions of that offence.

The challenge to the convictions

[5] The applicant argues that he was wrongly persuaded by his lawyers to plead guilty to the second count and that his counsel wrongly conceded facts which were critical to it. He claims that in truth he was unaware that a package which had been dispatched to his home address contained, or was meant to contain, any illegal drug.

[6] At the commencement of her submissions to the sentencing judge, the prosecutor tendered a statement of facts. There was no objection to that tender and, as I will discuss, the applicant's counsel agreed with it. From that statement the following facts appeared.

[7] On 17 May 2014, Customs officers intercepted a parcel which had been sent via DHL Express from Hong Kong to a "Cug Warwick" at Williamson Place, Redbank Plains. The parcel weighed approximately 25 kilograms and its contents were described on the outside of the parcel as "Plastic Chair Sample". When the officers opened the box, they found several packages, one of which was opened to reveal a substance which was subsequently found to be methamphetamine. The Customs officers transferred the parcel and its contents to the Australian Federal Police (AFP).

[8] Between 21 and 23 May 2014, the AFP left a number of messages with the contact telephone number which was on the parcel as that of the addressee. On 24 May 2014, a person claiming to be "Guy Warwick" called DHL and arranged for the parcel to be delivered to 1 Williamson Place, Redbank Plains on 27 May 2014.

[9] On that date, AFP officers went to that address and when one of them went to the front door, he was met by the applicant's wife. The officer told her that he had a parcel for Guy Warwick. The applicant came to the door and said that he was not Guy, but that he was to collect the parcel on Guy's behalf. The applicant was then arrested and a warrant for the search of the house was executed. During the search, police located a false Belgian passport in the name of Guy Neville Warwick, depicting a photograph of the applicant. The applicant's fingerprints were on the passport. Police also found a mobile telephone handset. Records showed that the SIM card for the phone number shown for the consignee on the DHL Express package had only ever been used in that handset.

[10] The applicant participated in an interview with police in which he admitted that he had a false passport in the name of Guy Warwick, which he claimed that he had received from a friend to be used by him to receive money transfers on the friend's behalf. But he said that as it happened, he had never used the name Guy Warwick for anything other than the receipt of this parcel. He said that he was taking delivery of the parcel on behalf of a friend called "Kachi", who had asked him to accept a parcel containing clothing and other items (for a business venture of Kachi's) because Kachi did not have a permanent address. Yet the applicant said that he had used the name Guy Warwick as he was not sure what the parcel would contain. He claimed to have no knowledge of the telephone number found on the parcel and denied having contacted DHL about it. He said that Kachi had borrowed his phone previously.

[11] Further enquiries led the AFP to a man called Onyebuchi. He was found with several mobile telephones, one of which recorded as a "contact" number that which the applicant had told police was the applicant's true telephone number. It also showed as another contact number that which was on the DHL Express package.

[12] Onyebuchi was subsequently charged and convicted of importing, within this parcel, a commercial quantity of a border controlled drug contrary to s 307.1(1) of the *Code*. He was originally sentenced to seven years' imprisonment with a non-parole period fixed at three and a half years, but that sentence was increased by this court to one of nine years with a non-parole period of four and a half years.[1]

[13] An analysis of the contents of the parcel showed that it contained a total of 20 packages, each containing methamphetamine, the total weight of which was 997.4 grams.

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1 *R v Onyebuchi; Ex parte Commonwealth Director of Public Prosecutions* [2016] QCA 143.

With an average purity of 79.4 per cent, the weight of pure methamphetamine was therefore 791.9 grams. The estimated yield at street level was said to be within a range of $673,000 to $2.02 million.

[14] The prosecutor and defence counsel each provided written as well as oral submissions. The legal basis for the applicant's guilt upon this count was explained by his counsel's written submissions, by reference to relevant provisions of the *Code*. Section 307.5 of the *Code* provides as follows:

> "(1) A person commits an offence if:
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> (a) the person possesses a substance; and
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> (b) the substance was unlawfully imported; and
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> (c) the substance is a border controlled drug or border controlled plant; and
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> (d) the quantity is a commercial quantity.
>
> Penalty: Imprisonment for life or 7,500 penalty units, or both.
>
> (2) Absolute liability applies to paragraphs (1)(b) and (d).
>
> (3) The fault element for paragraph (1)(c) is recklessness.
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> (4) Subsection (1) does not apply if the person proves that he or she did not know that the border controlled drug or border controlled plant was unlawfully imported."

Section 11.1 of the *Code* relevantly provides:

> "(1) A person who attempts to commit an offence commits the offence of attempting to commit that offence and is punishable as if the offence attempted had been committed.
>
> (2) For the person to be guilty, the person's conduct must be more than merely preparatory to the commission of the offence. The question whether conduct is more than merely preparatory to the commission of the offence is one of fact.
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> (3) For the offence of attempting to commit an offence, intention and knowledge are fault elements in relation to each physical element of the offence attempted.
>
> Note: Under section 3.2, only one of the fault elements of intention or knowledge would need to be established in respect of each physical element of the offence attempted.
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> (3A) Subsection (3) has effect subject to subsection (6A).
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> …
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> (6A) Any special liability provisions that apply to an offence apply also to the offence of attempting to commit that offence."

[15] The prosecution case, which was admitted on the applicant's behalf, was that a quantity exceeding the commercial quantity of a border controlled drug had been unlawfully imported within the parcel. The prescribed[2] amount of a commercial

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2 *Criminal Code Regulations* 2002 (Cth) reg 5D, schedule 4.

quantity of methamphetamine is 750 grams and the quantity in the parcel was 791 grams. The applicant had attempted to possess the parcel and its contents. The prosecution had to prove that he had done so with the requisite state of mind.

[16] The requisite state of mind was explained in the written submissions by the applicant's counsel to the sentencing judge by reference to the *Code* as follows:

- A physical element[3] of the alleged offence was the circumstance that the substance was a border controlled drug.[4]
- The fault element[5] for that physical element was "intention" or "knowledge".[6]
- A person has an intention with respect to a circumstance if he or she believes that it exists or will exist.[7]
- Therefore, as the applicant's counsel submitted, "a defendant must know or believe the substance is a border controlled drug, but does not need to know the particular identity of the drug".[8]
- The applicant was pleading guilty "on the basis of a belief that the package contained a border controlled drug without actual knowledge of what was in the package."[9]

[17] In the course of his oral argument, the applicant's counsel was asked by her Honour to clarify what was being conceded to have been the applicant's state of mind when there was this exchange:

> "MR HAMLYN-HARRIS: Well, he's pleading on the basis that Kachi asked him to accept the parcel, that Kachi told him certain things – that it contained clothing – and that Kachi said it was because, when I say Kachi – Mr Onyebuchi, did not have a permanent address. And he agreed to do that. He agreed to the name Guy Warwick being supplied to use as the consignee details for the package.
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> HER HONOUR: But if he's pleading to this charge, he must have known what was in the package could be drugs, though he wouldn't know what necessarily they were - - -
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> MR HAMLYN-HARRIS: Effectively, that's right, your Honour. Yes. And that's something that I've tried to be specific about in my written outline. And that's why, your Honour, I've referred to those three authorities on the meaning of intention. Perhaps if I could just take your Honour to that. If I could take your Honour to paragraph 7 of my written submissions, under Commonwealth Law obviously there are physical elements and fault elements. One of the physical

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3 s 4.1(1) of the *Code*.
4 See *R v Douglas* [2014] QCA 104 at [48] per Muir JA (Gotterson JA and Mullins J agreeing).
5 s 5.1(1) of the *Code*.
6 s 11.1(3) of the *Code*.
7 s 5.2(2) of the *Code*.
8 Applicant's written submissions to the sentencing judge, para 7-9, citing *Weng v The Queen* [2013] VSCA 221.
9 Applicant's written submissions to the sentencing judge, para 8.

> elements of this particular offence, count 3, is what's referred to as a circumstance that the substance in question is a border controlled drug.
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> HER HONOUR: Yes.
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> MR HAMLYN-HARRIS: The fault element for that physical element is intention or knowledge, specifically that's what the Commonwealth Criminal Code states. And it also says a person has intention with respect to a circumstance if he or she believes that it exists or will exist. And so in summary, the defendant must know or believe that the substance is a border controlled drug or an illegal drug, but does not need to know the particular identity of the drug. *So, your Honour, my instructions are that he pleads guilty to count 3 on the basis of a belief that the package contained illegal drugs without actual knowledge of what was in the package*."
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> (Emphasis added).

[18] The legal analysis by the applicant's counsel within those submissions was correct. A belief that the package contained a border controlled drug was sufficient to constitute an intention to possess a border controlled drug. It was unnecessary for the belief to be more specific in identifying a particular drug. The offence was constituted by an act or acts with an intention to possess a border controlled drug in the package without that having to be an intention to possess methamphetamine.[10] And the applicant could be guilty although having no belief as to the quantity of the substance.[11]

[19] In the applicant's outline of argument in this court, he contends that what his counsel said of his state of mind was inconsistent with his instructions and that the applicant could not have held any "suspicion or knowledge about anything illegal in that package", because that "could have endangered my family and damage[d] my future studies". He says that had he suspected that there were drugs in the parcel, he "certainly would have contacted the authorities." He says that he argued with his lawyers and asked Legal Aid to appoint a different solicitor but to no avail. He says that he was not happy with his decision to plead guilty, but acted on their advice that it would be in his best interests to admit a belief that there were drugs in the parcel and plead guilty, because he could then expect to be sentenced "to a very lesser time to that of my co-offender [Onyebuchi]." In the same document he claims that what he did was just "a favour for a friend" and was not done for any financial reward.

[20] For the respondent it is argued that these assertions are irrelevant because there is no appeal against conviction, only a challenge to the sentence. It is argued that the applicant

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10 *R v Douglas* [2014] QCA 104 at [50]-[54]; *Weng v The Queen* [2013] VSCA 221 at [64]-[66]; *Nelson (a pseudonym) v Director of Public Prosecutions (Cth)* (2014) 44 VR 461 at [28]-[42].

11 The circumstance that "the quantity possessed is a commercial quantity" is prescribed by paragraph 1(d) of s 307.5. By s 307.5(2) of the *Code*, "absolute liability" applies to paragraphs 1(b) and (d). Therefore no fault element is required for that circumstance for an offence of possession to be committed against s 307.5. In the Dictionary of the *Code*, the term "special liability provision" is defined to include a provision that absolute liability applies to a physical element of an offence. By s 11.1(6A), a special liability provision that applies to an offence applies also to the offence of attempting to commit that offence. Therefore no fault element was required for the circumstance that the quantity of the unlawfully imported substance was a commercial quantity.

ought not to be permitted to challenge his conviction because he has not made any attempt to demonstrate, *by evidence*, why a miscarriage of justice has occurred. In an appeal against conviction, it would be for the applicant to establish that a miscarriage of justice took place when the sentencing judge accepted and acted on his guilty plea.[12]

[21] In *Meissner v The Queen*, Brennan, Toohey and McHugh JJ said:[13]

> "A person charged with an offence is at liberty to plead guilty or not guilty to the charge, whether or not that person is in truth guilty or not guilty. An inducement to plead guilty does not necessarily have a tendency to pervert the course of justice, for the inducement may be offered simply to assist the person charged to make a free choice in that person's own interests. A court will act on a plea of guilty when it is entered in open court by a person who is of full age and apparently of sound mind and understanding, provided the plea is entered in exercise of a free choice in the interests of the person entering the plea. There is no miscarriage of justice if a court does act on such a plea, even if the person entering it is not in truth guilty of the offence."

In the same case Dawson J said:[14]

> "It is true that a person may plead guilty upon grounds which extend beyond that person's belief in his guilt. He may do so for all manner of reasons: for example, to avoid worry, inconvenience or expense; to avoid publicity; to protect his family or friends; or in the hope of obtaining a more lenient sentence than he would if convicted after a plea of not guilty. The entry of a plea of guilty upon grounds such as these nevertheless constitutes an admission of all the elements of the offence and a conviction entered upon the basis of such a plea will not be set aside on appeal unless it can be shown that a miscarriage of justice has occurred. Ordinarily that will only be where the accused did not understand the nature of the charge or did not intend to admit he was guilty of it or if upon the facts admitted by the plea he could not in law have been guilty of the offence. But the accused may show that a miscarriage of justice occurred in other ways and so be allowed to withdraw his plea of guilty and have his conviction set aside. For example, he may show that his plea was induced by intimidation of one kind or another, or by an improper inducement or by fraud."

[22] The applicant's submissions do not suggest that at the sentencing hearing, he misunderstood what his counsel was submitting to the sentencing judge. In particular, he does not claim to have misunderstood the admissions which were being made on his behalf. Even on his present contentions, he agreed to plead guilty upon the factual premises explained by his counsel to the court, with an understanding of the nature of the charge and in the hope of obtaining a more lenient sentence. It does not appear that his plea of guilty was entered other than in

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12 *R v EJ* [2009] QCA 378 at [19] (per Muir JA, McMurdo P and Daubney J agreeing).

13 (1995) 184 CLR 132 at 141 (footnote omitted).

14 Ibid at 157 (footnote omitted).

the exercise of a free choice. He does not claim, for example, that his lawyers had refused to appear for him unless he pleaded guilty.[15]

[23] At one point in his written argument, the applicant repeats his claim, made during his interview by police, that he believed that the package would contain not drugs, but clothes to be used in Onyebuchi's business. The difficulty with that case, had it been argued to a jury, would have been that it required an explanation of why the applicant had allowed the fictitious name Guy Warwick to be used for the receipt of the parcel. He had told police that he had provided this name "as he was not sure what the parcel would contain." Yet that suggests at least a suspicion that the parcel would contain something which could not be legally imported, rather than a belief that the package contained clothing. More generally, the available evidence against the applicant presented a strong case that the applicant had meant to possess, by this parcel, illegally imported drugs and was guilty of the offence charged.

[24] Even treating the applicant's submissions as if they were evidence, the applicant could not discharge the onus upon him to prove a miscarriage of justice. His case does not go so far as to allege that his plea was "induced by intimidation of one kind or another, or by an improper inducement or by fraud".[16] His plea of guilty was made voluntarily and with an understanding of that which he was admitting. Upon the facts which his counsel admitted on his behalf, he was guilty of the offence charged. His conviction should stand.

The challenge to the sentence

[25] The application for leave to appeal, as filed, referred to each of the sentences. However the applicant's submissions address only the sentence imposed for the attempted possession count.

[26] The principal submission by the applicant is that there is a disparity between his sentence and that received by Onyebuchi. He argues that Onyebuchi's offence was more serious, being an offence of importing a commercial quantity of a border controlled drug, whereas the applicant was sentenced for the attempted possession of that material.

[27] Before the sentencing judge, the applicant's counsel submitted that he should receive a much lesser sentence than Onyebuchi, who had taken extensive steps to effect the importation of the drug. This was in contrast to the applicant's role which, he argued, was to effectively provide a post box for the parcel together with a false name to be used as the addressee and to hold the parcel for no longer than was necessary for Onyebuchi to collect it from him. The circumstances of Onyebuchi's offending are, of course, set out in this Court's judgment which increased his sentence. It is unnecessary to repeat them here and the sentencing judge was aware of them, referring in her sentencing reasons to that judgment. Onyebuchi had travelled to China to arrange this importation and had arranged with DHL for the parcel to be shipped. The sentencing judge noted the prosecutor's concession that Onyebuchi had had "a significantly larger role to play". Her Honour accepted that the applicant's role had been "substantially less than that of Mr Onyebuchi" and that the applicant should receive a lower sentence than that imposed upon him.

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15 cf *R v Nerbas* [2012] 1 Qd R 362.

16 *Meissner v The Queen* (1995) 184 CLR 132 at 157.

[28] Her Honour described the applicant's offending as premeditated and playing "an essential role" in the importation, in the role of "an intermediary" rather than that of a "courier". Her Honour noted that the applicant had believed that the substance was a border controlled drug, without knowing the particular identity of the drug and without knowledge of the precise contents or their weight.

[29] Her Honour referred to the applicant's personal circumstances. He was aged 29 at the time of the offences and 31 at sentence. He had no criminal history. He was born in Liberia and had escaped the civil war there to Ghana where he was in a refugee camp for seven years. He arrived in Australia on a humanitarian visa in 2010, after which he studied and improved his literacy and numeracy. Her Honour accepted that the offence appeared to be out of character but found it was one in which he was motivated by profit. The applicant had a wife and a young child, his wife working full time. There were references tendered at the hearing which spoke of the applicant's good character and standing. His guilty pleas were described as timely.

[30] Her Honour said that she had had particular reference to three comparable cases, each of which had been discussed by Flanagan J in giving the principal judgment in the appeal in Onyebuchi's case. The first of those cases was *R v Harris*,[17] where this Court refused to disturb a sentence of seven years, with a non-parole period fixed at four years, for a count of attempting to possess a marketable quantity of a border controlled drug, namely cocaine. The applicant there had meant to take delivery of a package which she believed would contain cocaine but which had been intercepted by the AFP who had replaced the cocaine with an inert substance and a listening device. The cocaine had a total weight of nearly 1,500 grams.

[31] The second of these cases was the judgment of the New South Wales Court of Criminal Appeal in *R v Todoroski*,[18] in which the court refused to disturb a sentence of six and a half years, with a non-parole period of three years nine months, for attempting to possess a marketable quantity of a border controlled drug, namely heroin. That was an appeal by the Crown on the ground that the sentence was manifestly inadequate. The quantity of the drug was 1,136 grams with a pure weight of heroin of 825 grams.

[32] The third case was another decision of that Court, *R v Nikolovska.*[19] The Court there increased a sentence of six years' imprisonment, with a non-parole period of three years and nine months, to one of seven and a half years' imprisonment, with a non-parole period of four years and nine months, for an offence of importing a border controlled drug, namely cocaine, the quantity imported being a marketable quantity. The amount of pure cocaine in that case was 1.431 kilograms.

[33] Her Honour found each of these cases to be of more assistance than cases cited by the prosecutor, and in particular *Webber v R*,[20] where the New South Wales Court of Criminal Appeal did not disturb a sentence of 11 years, with a non-parole period of seven years, for importing a commercial quantity of cocaine. The gross weight of the cocaine was 3280.7 grams with a calculated pure weight of 2219.3 grams. The defendant was found to be in possession of $93,400 and, as the sentencing judge here observed, that defendant was found to have a role of a joint venturer.

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17 [2009] QCA 370.
18 [2010] NSWCCA 75.
19 [2010] NSWCCA 169.
20 [2014] NSWCCA 111.

[34] At the hearing in this Court, the applicant referred to *R v Agboti*,[21] where this Court resentenced the applicant to a term of nine and a half years with a non-parole period fixed after four and a half years, for an offence of importing a commercial quantity of methamphetamine. The quantity of the drug in that case was about three times that in the present case. That applicant was relatively young (23 years at the date of the offence) and was said to have high prospects of rehabilitation. There were particular circumstances in that case which had affected the applicant in the period prior to her offence. She had been disowned by her family, had become pregnant and had an abortion and had begun to use drugs. Peter Lyons J described these circumstances as "an unusual series of events, which was likely to have left the applicant in a fragile state of mind, bordering on desperation."[22] Her only reward for carrying the drugs was "a cheap airline ticket involving a complicated journey via Australia and ultimately to Sweden".[23] The original sentence of 11 years with a non-parole period of five years and six months was set aside as manifestly excessive. This decision does not assist the applicant's argument. Although the quantity of the drug was much greater, there were particular circumstances about that applicant which warranted some reduction of her sentence. And the sentence which was imposed, which of course was higher than that imposed upon the present applicant, could not be regarded as the highest sentence which might have been imposed in that case.

[35] In my view the apparent criminality in the applicant's offence was less than that of Onyebuchi and warranted a substantially lower sentence. But her Honour recognised that the applicant should receive a lower sentence than Onyebuchi's term of nine years. And as her Honour noted, the intended use by the applicant of the false passport was an aggravating feature. Although the offence by Onyebuchi was importation, the applicant's offence also carried a maximum penalty of life imprisonment. I am not persuaded that this sentence failed to apply the principle of parity of sentences between co-offenders.

[36] There is no suggestion that her Honour failed to consider each of the matters prescribed by s 16A(2) of the *Crimes Act* 1914 (Cth). The remaining complaint is that there must have been some error because the sentence could not have been imposed by the proper exercise of the sentencing discretion. This was a case, as her Honour correctly described it, of a premeditated involvement in an undertaking to import a commercial quantity of methamphetamine, aggravated by the use of a false passport. It had to be inferred, as her Honour did, that the applicant was motivated by profit. The consideration of general deterrence is of particular importance in these cases. In my conclusion this sentence was not manifestly excessive.

Order

[37] I would order that the application for leave to appeal against sentence be refused.

[38] **BODDICE J:** I agree with Philip McMurdo JA.

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21 [2014] QCA 280.

22 *R v Agboti* [2014] QCA 280 at [51].

23. *R v Agboti* [2014] QCA 280 at [52].