

**COURT OF APPEAL**

**FITZGERALD P  
DAVIES JA  
DEMACK J**

**CA No 113 of 1994**

**THE QUEEN**

**v.**

**McDONALD, Bruce Lee**

**Applicant**

**BRISBANE**

**DATE 15/06/94**

**JUDGMENT**

**DAVIES JA:** The applicant was convicted on his own plea in the District Court at Southport on 7 March this year of 12 serious offences of dishonesty, all committed between late June and late September 1993. Five were offences of receiving, for each of which he was sentenced to three years' imprisonment. Two were housebreaking for which he was also sentenced to three years' imprisonment. For each of the offences of breaking and entering and unlawful possession of a motor vehicle with circumstances of aggravation he was sentenced to two years' imprisonment and for each of the offences of false pretences, stealing and possession of housebreaking implements with intent he was sentenced to one year imprisonment. All sentences were to be served concurrently.

It is unnecessary to relate in detail the circumstances of each of these offences. It is sufficient for present purposes to say something about the more serious of them, those for which the applicant was sentenced to three years' imprisonment. In respect of two receiving offences, property valued at more than \$15,000 had been taken from two housebreakings committed on 15 and 19 September 1993, most of which was found in the applicant's possession in a motel room on 23 September 1993.

These offences, as well as the offences of breaking and entering, unlawful possession of a motor vehicle with circumstances of aggravation and false pretences, were committed whilst the applicant was on bail in respect of some of the other offences the subject of the present proceedings.

In respect of two of the other receiving offences, the applicant was again found in possession of property traceable back to two housebreaking offences. The value of the property the subject of these offences does not appear in the transcript of proceedings before the learned sentencing Judge. The same is true of the third receiving offence.

In respect of one of the housebreaking offences, the applicant broke and entered a dwelling, took \$4,900 in cash and some jewellery which was sold for \$7,000. The circumstances of the other housebreaking offences do not appear clearly from the transcript. Sufficient appears from what I have said, however, to justify the learned sentencing Judge's description of these offences as very serious offences of dishonesty.

At the time of the commission of these offences the applicant was only 19 years of age. For a person so young he had a bad record, commencing from when he was a child in 1988 and including multiple convictions for breaking and entering and stealing in 1989 and 1990 and on the latter occasion on a conviction for rape. Although the applicant pleaded guilty, he was caught red-handed in respect of the receiving offences to which I first referred, being apprehended in the motel room which he occupied and in which most of the stolen goods were found. That is not to say, of course, that proper allowance should not be made in

sentencing the applicant for the time and money saved because of his prompt plea, but it should not be thought of as strong evidence of remorse.

The applicant's complaint in this Court is not against the length of any of the sentences which were imposed but of the absence of any recommendation for early parole. The learned sentencing Judge took into account the applicant's plea of guilty and it appears from what he said during the course of an exchange with counsel that he reduced the sentence for that plea rather than making a recommendation for early parole.

He told counsel in response to a question as to whether he intended to make a recommendation for early release that he could not see that the sentence could possibly be reduced further than that which he had imposed, consistently with the seriousness of the offence. His Honour, in my view, had regard to and complied with the provisions of section 13 of the *Penalties and Sentences Act*. Paying due regard to the applicant's plea of guilty, I do not think that the effective sentence of three years' imprisonment without a specific recommendation for early parole is manifestly excessive for the totality of the criminal conduct here, particularly having regard to the applicant's prior criminal history. Subject to the matter which I am about to mention therefore, I would refuse the application. The learned sentencing Judge ordered that all sentences operate from 22 September 1993, the date of the applicant's arrest and the date from which he was in continuous custody solely in relation to the receiving offences to which I have referred and the other offences for which he was arrested on that day.

His Honour did not then proceed to comply with section 158 subsection 2. This can be readily done in respect of that period by stating as the dates between which the offender was in custody in relation to proceedings for those offences and no other reason as 22 September 1993 and 7 March 1994, stating that that is a period of 165 days and declaring that time to be imprisonment already served under the sentence. However, it appears from the transcript of proceedings on the sentence hearing that the applicant also spent a further three weeks in gaol in respect of earlier offences the subject of these proceedings before being released on bail.

That period should also have been declared to be time served under the sentence, but we are unable to do that because neither the dates nor the precise number of days appears from the material before this Court. I would therefore grant the application only to the extent of making the statements and declarations to which I have referred with respect to the period from 22 September and similar statements and declaration with respect to the period of three weeks to which I have referred, otherwise I would refuse the application. I would also dismiss the appeal against conviction.

**THE PRESIDENT:** I agree.

**DEMACK J:** I agree.

**THE PRESIDENT:** The order of the Court will be as indicated by Mr Justice Davies and further order and declaration will be made in due course when the information is available.