IN THE COURT OF APPEAL [1997] QCA 114

SUPREME COURT OF QUEENSLAND

C.A. No. 523 of 1996
C.A. No. 444 of 1996

Brisbane

[R. v Jacobs]

THE QUEEN

v

RAYMOND MARK JACOBS

(Applicant) Appellant

McPherson JA
Ambrose J
White J

Judgment delivered 9 May 1997

Separate reasons for judgment of each member of the Court each concurring as to the orders made.

APPLICATION TO EXTEND TIME WITHIN WHICH TO APPEAL AGAINST CONVICTION REFUSED
APPLICATION FOR LEAVE TO APPEAL AGAINST SENTENCES REFUSED

CATCHWORDS:*DRUGS MISUSE ACT* 1987 S.5(1) - indictment - count alleging business of trafficking in more than one dangerous drug - no distinction between 1st and 2nd schedule drugs - whether form of indictment bad for duplicity - *Walsh v Tattersal*l (1996) 70 ALJR 884 - "continuing offence".

Counsel: Mr P Feeney for the applicant/appellant
Mr D Bullock for the respondent

Solicitors: Price and Roobottom for the applicant/appellant
Queensland Director of Public Prosecutions for the respondent

Hearing Date: 19 March 1997

REASONS FOR JUDGMENT - McPHERSON J.A.

Judgment delivered 9 May 1997

For the reasons given by Ambrose J., I agree that both the application to extend time within which to appeal against conviction and the application for leave to appeal against sentence should be refused.

Like Ambrose J., I see no reason why an indictment should not be framed charging the person accused with carrying on the business of trafficking in dangerous drugs of different varieties. What needs to be established by the Crown in order to prove the carrying on of a business in this context was considered at some length in *R. v. El Husseini* [1988] 1 Qd.R. 442. It needs little if any adaptation to enable the principles stated in the judgments in that decision to be applied to a case where the business of trafficking is carried on in a variety of drugs. A person trading in drugs may choose to specialise in one kind or to maintain an emporium offering a range of drugs. As long as they all answer the statutory description of "dangerous drug", there appears to be no reason why such activities may not be viewed as amounting to a single continuing offence of carrying on a business of trafficking in dangerous drugs.

It is only at the stage of sentencing that it may become necessary to make a distinction between first schedule and second schedule drugs in a count of that kind. The maximum sentence applicable to the former is higher than in the case of the latter. Much the same kind of question can arise in relation to other offences under the *Criminal Code*; for example, under s.210 or s.215, according to whether the victim or victims are below or above the age of 12 when the offence is committed. The

process of sentencing is, however, capable of being adjusted to meet that exigency. A problem might exist if the trafficking was carried on substantially in second schedule drugs, but with, say, one instance only of trafficking in a first schedule drug. One would, however, expect that in those circumstances the accused would be sentenced essentially on the basis of having carried on a business of trafficking in second schedule drugs, leaving the single instance of the first schedule drug to be brought into account as possibly calling for a penalty at a somewhat higher level than might otherwise have been imposed if there had been no dealing at all in a second schedule drug of that kind.

As regards the "duplicity" point, it seems to me that carrying on the business of trafficking in a dangerous drug or drugs is plainly one to which the description "continuing offence" may be applied. In *Walsh v. Tattersall* (1996) 70 A.L.J.R. 884, Gaudron and Gummow JJ. at 890, and Kirby J. at 900 col.2 B-C, all regarded an offence of that character as an exception to the rules applied by their Honours in that case.

The orders to be made are those stated in the reasons of Ambrose J.

REASONS FOR JUDGMENT - B W AMBROSE J

Judgment delivered 9 May 1997

This is an application for leave to appeal against conviction upon a charge of "carrying on business of unlawfully trafficking in the dangerous drugs, heroin and amphetamine and other dangerous drugs contained in the first schedule and the second schedule of the *Drugs Misuse Regulations* 1987".

The applicant was convicted of this charge upon his plea of guilty on 23 September 1996.

The circumstances placed before the court were serious and the applicant was sentenced to imprisonment for 14 years upon this single count.

The basis upon which leave to appeal against conviction is sought, is that the count was defective in that it charged an offence not created by s.5(1) of the *Drugs Misuse Act*.

Section 5(1) of the *Act* provides:

"5(1) A person who carries on the business of unlawfully trafficking in a dangerous drug is guilty of a crime.

Maximum penalty -

(a) if the dangerous drug is a thing specified in the *Drugs Misuse Regulation* 1987 Schedule 1 - 25 years imprisonment;

(b) if the dangerous drug is a thing specified in the *Drugs Misuse Regulation* 1987 Schedule 2 - 20 years imprisonment;"

Heroin is a dangerous drug specified in schedule 1. Amphetamine, methyl amphetamine, cannabis sativa and cocaine are all dangerous drugs specified in schedule 2 to the *Drugs Misuse Regulations* 1987.

Sentence proceeded on the basis that cannabis sativa and cocaine were the "other dangerous drugs" to which the count referred.

The essence of the applicant's contention is that the offence created by s.5(1) is carrying on the business of unlawful trafficking in a dangerous drug - not the business of unlawful trafficking in dangerous drugs.

It is contended that the different maximum penalties provided in respect of trafficking in a schedule 1 drug and trafficking in a schedule 2 drug indicate a legislative intent that a person may only be charged with carrying on the business of unlawful trafficking in a single dangerous drug. It follows that if that person carries on the business of trafficking in a number of dangerous drugs simultaneously, he commits a different offence under s.5(1) in respect of each dangerous drug involved. It follows from this argument that with respect to every schedule 1 drug (and there are only four dangerous drugs specified in schedule 1) the terms of s.5(1) create four separate

offences, and with respect to every dangerous drug contained in the second schedule (and there are more than 100) s.5(1) creates a different offence for each.

It is contended therefore that the indictment to which the applicant pleaded guilty was defective in that it charged that "between the first day of January 1992 and the twentieth day of October 1995 at Surfers Paradise and elsewhere in the State of Queensland [he] did carry on the business of unlawfully trafficking in the dangerous drugs heroin, amphetamine and other dangerous drugs contained in the first schedule and the second schedule of the *Drugs Misuse Regulations* 1987."

The learned sentencing judge before whom the applicant pleaded guilty to that count, presumably out of an abundance of caution, raised with counsel the form of the indictment and invited their consideration of it. For the Crown it was contended that it was in accord with precedent. For the applicant no point was taken or objection raised.

For the applicant, it is contended that if the indictment is, on its face, improperly drawn in that it charges an offence not defined by the terms of s.5(1) of the *Drugs Misuse Act* then leave to appeal ought be granted, the conviction quashed, and the applicant given the opportunity to plead to an indictment properly drawn containing a different count with respect to each dangerous drug involved which alone, in the circumstances, would meet the requirement of s.5(1) of the *Drugs Misuse Act*.

Stated shortly, he should be called upon to plead to four separate counts of carrying on the business of unlawfully trafficking in a dangerous drug, each count specifying the particular dangerous drug whether it be a first schedule drug or a second schedule drug. These counts were in effect "rolled up in" the single count to which the applicant pleaded guilty. It is contended that the terms of the count to which the applicant pleaded guilty cannot be supported in light of the decision in *Walsh v Tattersall* (1996) 70 ALJR 884 which is authority for the proposition that where a statute makes the doing of an act an offence the person doing that act must be charged only with the offence constituted by doing that very act. Where a series of similar acts are done to

which the statute applies, each act must be charged separately and not be combined into one compendious charge.

It is clear of course that the charge of carrying on the business of unlawfully trafficking in a dangerous drug will normally, although perhaps not always, involve considering the repetition of similar acts over a period of time which may be categorised as trafficking in a dangerous drug.

It is said however that even accepting that a drug offender may carry on repetitiously and simultaneously the business of trafficking in a number of dangerous drugs specified in the first and/or second schedule to the *Drugs Misuse Regulations*, he would nevertheless not be committing a single offence of carrying on the business of unlawfully trafficking in dangerous drugs, but rather committing a number of different offences - a separate one in respect of each of the dangerous drugs involved.

For the Crown it is pointed out that s.32C of the *Acts Interpretation Act* provides the rule of construction that words in the singular include the plural. It is contended that the word "drug" in s.5(1) therefore includes the word "drugs".

The first point to be determined then is whether the rule of interpretation in s.32C is displaced by a contrary intention appearing in the *Act* as contemplated by s.4 of the *Acts Interpretation Act*. The only provision suggesting a contrary intention to which the applicant refers is the penalty provision in s.5(1) providing a different maximum penalty for trafficking in a schedule 1 drug from that for trafficking in a schedule 2 drug. Can the penalty provision have operation in a case such as the present when the trafficking involves both a schedule 1 and a schedule 2 drug? Where there are only schedule 1 drugs or only schedule 2 drugs involved there would seem no problem. But where schedule 1 and schedule 2 drugs are together involved, what is the maximum penalty if a simultaneous trafficking in both is proved?

A pragmatic answer is that the maximum penalty of 25 years imprisonment applies if trafficking involving any schedule 1 drug or drugs is proved, but for a trafficking in dangerous drugs not including a schedule 1 drug the maximum penalty is 20 years imprisonment.

In the past, counts have been framed charging the carrying on of the business of trafficking in more than 1 dangerous drug simultaneously or at least during the same period of time; that has not however been a universal practice.

Were it not for the penalty provisions in s.5(1) it would be difficult to argue that "a dangerous drug" did not include "dangerous drugs". The gravamen of the offence defined in s.5(1) is the carrying on of the business of unlawful drug trafficking. The kind of drug involved under s.5, the quantity in a possession charge under s.9, and the status or intellectual capacity of the person supplied under s.6, are all circumstances of aggravation relating only to penalty.

I cannot believe upon the facts of this case that had there been a different count in respect of each dangerous drug charged, the sentence imposed for each would have been other than one to be served concurrently with the others and the head sentence would have been imposed with respect to the count involving trafficking in heroin which, as a schedule 1 dangerous drug, would attract the higher penalty having regard to the quantities of each of the dangerous drugs involved in the applicant's drug trafficking business.

Even had the applicant pleaded not guilty to the count in question, he could not have demanded further particulars of the "other dangerous drugs" referred to in the count in question - vide s.57(a). I gain no assistance in considering s.5(1) from the terms of s.57 because in my view s.32C of the *Acts Interpretation Act* would probably operate the same way in respect of each section.

I will turn now to the majority judgements in *Walsh v Tattersall*. That was a case where the appellant was charged with obtaining by dishonest means, payments or benefits under the *Workers Rehabilitation and Compensation Act* 1986 (SA) between October 1992 and October 1993. No particulars of the charges brought were sought by the appellant. The evidence led proved a number of payments of income maintenance and medical and rehabilitation expenses. He was convicted. All told the appellant received nine separate payments categorised as "income maintenance" during a period he claimed to be unfit for work. Evidence was called by the prosecution to show that during the period he received those payments, he was in fact working.

In their joint judgment, Gaudron and Gummow JJ held that upon its proper construction the appellant had not been charged with any offence created by the *Workers Rehabilitation and Compensation Act* 1986, and that in determining whether pursuant to the equivalent of s.32C of the *Acts Interpretation Act* (Q) the "obtaining of any payment or other benefit" or the making of "a statement known to be false or misleading" under s.120 of the *Act* ought be construed to include "obtaining any payments or other benefits" or the making of "statements known to be false or misleading" it was necessary to consider s.120 "in its setting in the legislation and furthermore to consider the substance and tenor of the legislation as a whole" applying what had been said in *Blue Metal Industries Ltd v Dilley* (1969) 117 CLR 651 at 656. Their Honours held that upon its proper construction, s.120(1)(a) of the *Workers Rehabilitation and Compensation Act* displayed the intention to create an offence in the direct terms used in section 120(1)(a) and not otherwise. A discrete offence was completed upon the receipt of any one payment or benefit whereas count 1 spoke of "payments or benefits" which were made under the *Act* and obtained by dishonest means.

Their Honours went on however to observe at p.890:

"In conclusion it may be observed that the present case is to be contrasted with those dealing with an offence defined in terms of a course of conduct or state of affairs such as keeping a disorderly house or being a rogue or vagabond. There upon proof of a series of material facts guilt of the offence may follow although no particular fact suffices by itself."

Kirby J at p.896 concluded that upon the proper construction of the *Act*, it was concerned with individual payments and that any offence alleged under s.120(1) of the *Act* must be charged as an individual offence, his Honour observed:

"In that way a court's attention is addressed to the specificity of each offence avoiding any temptation upon finding dishonesty in one payment to infer dishonesty in all. Only by such precision will the accused and those representing the accused know exactly what is being alleged and how the accused should plead."

At p.901 his Honour observed:

"Various indicia are proposed to sustain a single count against a charge of duplicity, notwithstanding that it may permit evidence to be adduced of events which taken individually could constitute separate offences. The indicia include:

(a)the connection of the events in point of time;

(b)the similarity of the acts;
(c)the physical proximity of the place where the events happened; and
(d)the intention of the accused throughout the conduct."
Weinel v Fedcheshen (1995) 65 SASR 156 at 170 per Perry J

His Honour continued:

"Exceptions to the general rule against duplicity have been allowed where the multiple acts relied on by the prosecution are so close in time and place that they can be viewed as one composite activity; where the offence is one that can be classified as continuing in nature;"

At p.902 his Honour expressed the view that the purpose of Parliament in creating the offence under s.120 of the *Act* "was to create a separate offence for each payment or benefit".

This court of course is bound by the majority judgment in *Walsh v Tattersall*. It is my view however that this case falls within the exceptions to which both majority judgments refer. The gravamen of the charge in this case was carrying on the business of unlawful drug trafficking. On the facts of this case, the business of unlawful trafficking involved trafficking in four drugs at various places during a specified period exceeding three and a half years.

On the face of the indictment two dangerous drugs were specified - heroin and amphetamine. "Other dangerous drugs" which were unspecified were also included in the count and it was charged that they were contained in the first schedule and second schedule to the *Drugs Misuse Regulations*.

In my view it could not be said that there was more than one business of trafficking charged - albeit that the act of carrying on business would inevitably involve the proof of more than one act. Indeed trafficking in even one dangerous drug would normally involve proof of repetitive acts.

In my judgment upon the facts of this case, the Crown was entitled to lay a charge "of a compendious kind". The essence of the charge was carrying on the business of drug trafficking and the particulars of the dangerous drugs contained in the count were no more than particulars of some of the dangerous drugs that the Crown relied upon. The "other dangerous drugs" referred to in the count were sufficiently particularised having regard to the provisions of s.57(a) of the *Drugs Misuse Act*.

In my judgment the form of the indictment was not bad for duplicity. Had it been bad for duplicity it would have been necessary to give consideration to whether in the circumstances an extension of time within which to appeal or leave to appeal ought be given. The form of the indictment was specifically raised by the sentencing judge before proceeding with the sentence. Counsel for the appellant raised no objection to the form of the indictment. The sentence was conducted on the basis that during the period specified at Surfers Paradise the appellant had indeed carried on the business of unlawfully trafficking in four dangerous drugs - one specified in the first schedule to the *Regulations* and the other three specified in the second schedule.

The appellant was convicted on 23 September 1996 and sentence was imposed on 8 October 1996.

Application for leave to appeal against sentence was made on 9 October 1996. There was no appeal then against conviction and indeed application for leave to appeal against the sentence was argued on 19 March 1997. It was on that day that material was filed seeking an extension of time within which to appeal against conviction and/or for leave to appeal on the basis essentially of the duplicity in the count to which I have referred.

In my view the applicant can raise no merits - even "legal merits" which would suffice to set aside the conviction entered when he pleaded guilty to the count.

I would therefore refuse the application for an extension of time within which to appeal against that conviction and/or for leave to appeal against that conviction.

The applicant also seeks leave to appeal against the sentence of 14 years' imprisonment imposed upon his conviction of carrying on the business of unlawfully trafficking in drugs and against a second sentence of 12 months' imprisonment upon each of two charges of unlawful possession of a motor vehicle and one charge of false pretences to which he pleaded guilty in the District Court on 1 November 1996. On each of those charges he was sentenced to imprisonment for 12 months to be served concurrently with a recommendation of eligibility for parole after serving six months of those three concurrent sentences. Those sentences however are to be served

cumulatively with the sentence of 14 years' imprisonment imposed on the charge of carrying on the business of unlawfully trafficking in dangerous drugs imposed on 8 October 1996.

The facts placed before the first learned sentencing judge indicated that during the period in question the applicant carried on the business of trafficking in dangerous drugs by the use of dealers in the Gold Coast area.

A man named Layton was one of the drug dealers the applicant approached and asked if he could dispose of some heroin for him. The applicant showed him a large sum of money and eventually retained him to sell heroin and amphetamines for him. Layton said that he used to sell heroin for about $400 per gram and amphetamine for between $80 and $100 per gram. The arrangement was that he would pay the applicant half the proceeds of the sale that he effected. As business progressed, about twice per week the applicant gave Layton large quantities of both heroin and amphetamine to sell. Layton said that he gave the applicant about $20,000 from the sales made on his behalf. The applicant gave Layton a firearm for use in his business operations and discussed the possibility of violence should he "break the rules" of the drug trafficking business that he was conducting with and on behalf of the applicant.

In the course of police surveillance, the applicant was observed to fire shots from a semi-automatic pistol in the direction of another vehicle. This event resulted from a dispute about a drug dealing operation.

He leased a storage shed for drug operation purposes in a false name.

Reconstruction of bank books showed income which could not be accounted for legitimately for the same period in the sum of $106,772. The applicant paid many of his bills in cash and it could be inferred from this that moneys banked were used for purposes other than ordinary living expenses.

The applicant lived a lavish lifestyle. He rented an apartment for between $300 and $350 per week. He paid his rent in cash. He possessed about $40,000 worth of jewellery. He had been observed to put cash in safety deposit boxes. He received unemployment relief from July 1992 to August 1994 and income from this source amounted to about $18,000. He drove a motor vehicle.

He was released on bail on 14 October 1994. On 27 October he bragged to an undercover policewoman who attended a gymnasium that he attended, of his substantial income and skited to her about his involvement in the earlier shooting incident to which I have referred. He told her that he had a drug manufacturing operation and that he was able to put her in touch with a person bringing cannabis sativa up to Queensland from a southern state. He offered to give her some amphetamine when he made it so that she could sell it and said that he would "smash anyone" who "ripped her off".

From mid-1995 the applicant was regularly dealing in heroin and was observed to regularly have thousands of dollars in his wallet.

There is no suggestion that the applicant consumed drugs himself.

For the applicant it was contended that he had in fact given assistance in undercover police operations and had supplied the names of other drug offenders on the Gold Coast. According to the Crown, any assistance which the applicant had given to the police was generally found to be unreliable.

The applicant had all told been found in possession of 26 grams of pure heroin, 14 grams of pure cocaine and 9 grams of pure amphetamine. The evidence showed that he had facilities for manufacturing amphetamines, and that he had acquired substantial quantities of chemicals apparently for that purpose. The evidence indicated that he had tried to have equipment manufactured specifically for the purpose of producing pills - to distribute certain of the dangerous drugs; he had sought to acquire another dealers' distribution network in particular involving drug distribution in nightclubs on the Gold Coast. He had access to and possession of firearms. He had discharged a firearm himself on the street in connection with his drug business, and had given a firearm to one of his dealers.

He had offered violence to persons - particularly to one of his dealers who did not pay him money recovered from sales of the applicant's drugs which involved punching, threatening with a razor and the use of pliers on the dealer's fingers.

A substantial amount of money exceeding $102,000 had passed through his hands which could only be attributed to dealing in drugs.

He lived an expensive lifestyle, much of which he paid for in cash suggesting that the actual amount of money he received from his drug trafficking business greatly exceeded the $102,000 found in his bank account.

At a relatively late stage in the investigations he was found with $78,000 in cash in his possession.

In a period slightly in excess of a year, he had spent $16,000 in cash on chemicals which were used in the production of amphetamine drugs. There was evidence of many thousands of dollars being spent on laboratory equipment which however was not located. In the course of sentencing, reference made by the prosecutor to this "manufacturing arm" of the applicant's drug trafficking business was not challenged. He was found in possession of material and equipment that could be used for the purpose of falsifying identification. He had a number of genuine passports all bearing his photograph but all in a different name. When released on bail he returned to dealing with drugs notwithstanding the charges he was facing. He did not take drugs himself and he was motivated purely by commercial considerations in trafficking in drugs.

He pleaded guilty to the charge on the morning of the trial. This saved the expense of a trial that was listed to continue for six weeks.

He had a significant criminal history, commencing in the Children's Court at Minda, New South Wales, in January 1978. He was there given probation. As an adult he had three convictions between 1987 and 1991 for assault (two occasioning bodily harm). He had two drug offences, the last in Cairns in 1991 when he had been convicted of possession of a dangerous drug specified in the first schedule to the *Regulations*. For that offence he was sentenced to 18 months' imprisonment.

Having regard to the criminal history of the applicant the extent and nature of his business in trafficking in dangerous drugs, and his willingness to resort to violence if necessary to ensure that his business was conducted efficiently and profitably in my view the sentence of 14 years'

imprisonment was within the appropriate range and it cannot be said that it was manifestly excessive.

I would dismiss the application for leave to appeal against that sentence.

With respect to the sentence imposed on the unlawful possession charges and the false pretences charge, these offences were committed in July and August 1995 - towards the end of the period in respect of which he was convicted of the drug trafficking offence. On the first count the owner of a car advertised it for sale. The applicant inquired about the car and then inspected it and arranged to meet the owner about a week later to purchase it. The applicant made contact with the owner who was waiting to deliver the car to the applicant and said that he would be a little late, and suggested that the owner wait for him inside a coffee shop where he would meet him. The owner left the car secured in the car park but later returning to where he left it found that it had been taken. A short time later the applicant arrived at the shopping centre with the purchase money of $6,500 in his hand. The purchase of course was not completed.

About a month later the applicant had Mr Carlos who conducted a vehicle restoration business on the Gold Coast do some work on his car. He provided various parts for this work to be performed and later Mr Carlos observed at the applicant's residence the remnants of a car the same colour as some of the parts which the applicant had given to him to be fitted to his car. In fact the parts and engine provided for installation in the applicant's car had been taken from the car stolen from the shopping centre.

The second count involved the taking of a jet ski and trailer from the driveway of a Mr Reid. A week or so later Mr Reid saw his jet ski being used by a Mr Lippar who identified the applicant as the person from whom he had purchased it. In fact a week before Mr Reid's jet ski had been taken, the applicant spoke to Mr Lippar to whom he later sold it, and who happened to be a person who worked with Mr Carlos, about his interest in a jet ski. On the same day, the jet ski was taken from Mr Reid's driveway, the applicant contacted Mr Lippar and offered to sell it to him. Mr Lippar in fact paid the applicant $1,800 for that jet ski.

All three offences were committed while the applicant was on bail for another offence (discharging a projectile at a motor vehicle - to which I have referred in dealing with his carrying on the business of trafficking).

The three offences were each carefully planned and executed with complete disregard for the rights of the owners of the property involved. They were committed in a very business like way. They had nothing to do with the drug trafficking business being carried on at the same time and indeed were all committed while the applicant was on bail for the shooting charge which was not proceeded with but which was subsumed into the charge of carrying on the business of drug trafficking as being related to the conduct of that business.

In my view the effect of the sentence imposed in the District Court was to ensure that the applicant suffered an additional punishment to that imposed upon him for carrying on the business of the drug trafficking. The effect of it was that his eligibility for parole with respect to all offences would arise six months after he would have become eligible for parole on the drugs trafficking offence. In essence he will become eligible for parole in respect of all offences for which he is presently held in custody, on 7 December 2002.

The moderation of the sentences imposed for the unlawful use and the false pretence charges is only explicable on the basis that the applicant had already been sentenced to a long term of imprisonment. Had it not been for the sentence of 14 years for the drug trafficking offence which had already been imposed upon him, it is my view that the appropriate sentence for these offences would have significantly exceeded 12 months' imprisonment, particularly having regard to his prior criminal record and the fact that they were committed while he was on bail.

The learned sentencing judge obviously kept this in mind when framing the sentence to avoid imposing one which could be categorised as a crushing cumulative sentence.

In my view the approach adopted by the learned sentencing judge was correct and it could not be said that he erred in the exercise of his sentencing discretion.

I would refuse leave to appeal against this sentence.

In conclusion therefore I would

a)Refuse to extend the time within which to appeal against conviction and would refuse leave to appeal against conviction.

b)Refuse leave to appeal against the sentence of 14 years' imprisonment imposed on 8 October 1996.

c)Refuse leave to appeal against the sentence of 12 months' imprisonment imposed on 12 November 1996 to be served cumulatively with that imposed on 8 October 1996.

REASONS FOR JUDGMENT - WHITE J

Judgment delivered 9 May 1997

I have had the advantage of reading in draft the reasons for judgment of Ambrose J and am in substantial agreement with what he has written. The question of the validity of the indictment in charging compendiously the offence of trafficking in dangerous drugs cannot be regarded as entirely free from doubt. What is clear however is that the appellant engaged in a long-standing commercial enterprise selling a variety of dangerous drugs between the dates alleged in the indictment. The criminal conduct of the appellant can fairly be regarded as one criminal enterprise and nothing in the Drugs Misuse Act 1987 suggests that s.5(1) may not support a count alleging being in the business of trafficking in more than one dangerous drug whether the drugs are first and/or second schedule drugs. That matter concerns questions of aggravation which relates to sentence. The complaint is essentially as to the form of the indictment not that any injustice has resulted. I have concluded in agreement with Ambrose J that the form of the indictment is not bad for duplicity. Further against the background of no request for particulars of the charge by the appellant and the form of the indictment having been questioned by the learned sentencing judge at the outset below, an extension of time within which to appeal against conviction should be refused in any event.

I agree that both sentences imposed below were within the correct range.

I agree with the orders proposed by Ambrose J.