COURT OF APPEAL

PINCUS JA
DAVIES JA
THOMAS JA

CA No 422 of 1998

THE QUEEN

v.

KARL MATHEW THORNTON Applicant

BRISBANE

..DATE 18/03/99

JUDGMENT

DAVIES JA: The applicant was sentenced in the District Court on 22 October last on the plea of guilty on one count of armed robbery in company, one of entering premises with intent, one of deprivation of liberty, three of wilful damage and two of breaking and entering premises and committing an indictable offence therein.

He was sentenced to five years imprisonment for the first of those offences, two years imprisonment for the second, two years imprisonment for the third, three months imprisonment for each of the counts of wilful damage and two years imprisonment on each of the counts of breaking and entering and committing an indictable offence. All sentences were concurrent.

The learned sentencing Judge concluded that 236 days already spent in custody be time served under the sentences.

The principal offences and some of the subsidiary offences were committed on the night of 26 February 1998. The applicant and his two co-offenders entered a Red Rooster Store at Labrador on the Gold Coast after it had closed. Three staff members were cleaning the store. The offenders were all armed, the applicant carried a machete, one of his co-offenders carried a crowbar and the other a replica pistol. Each was masked and wore dark clothing.

To enter the store they broke a lock on the rear gate and opened the screen door. Once inside they tied up one of the staff members, a young boy of only 14, and ordered the female assistant manager to open the safe.

After some difficulty she did so and $800 was taken from the safe. She was also then bound up. A number of personal items were also taken, these included cash transaction cards and an engagement ring valued at $2,500.

The offenders then left. They were soon apprehended because someone had taken the number of the car in which they escaped. This was traced to the applicant. The police searched the applicant's residence and found clothing and weapons consistent with those used in the robbery. They also found property which the applicant had stolen during the commission of the two break and enter offences referred to earlier. He told the police in respect of each of those that he had smashed a window to enter premises and disabled an alarm system. The property stolen in each case was worth over $8,500.

The applicant in this Court today for the first time says that he did not steal that property, that he was not the thief but a receiver of the goods and that he told the police he was the thief because he did not want to get the owner of the house into trouble.

That is an inherently incredible story and in any event in my view we should disregard it with his having pleaded guilty and having told the police what I have just related.

The applicant was 24 years of age when he committed these offences and nearly 25 at the time he was sentenced. He has quite a substantial criminal history although most of it involves motor vehicle offences and minor drug offences. However he has been convicted on a number of occasions for offences involving dishonesty.

In 1990 he was convicted on two occasions of breaking and entering with intent and one of receiving. In 1991 he was convicted on two occasions of breaking and entering with intent, one of possession of car breaking implements and one of stealing.

In 1992 he was sentenced to imprisonment for the first time receiving an 18 months sentence for possession of amphetamine with intent. He received another 18 month sentence in 1994 for burglary and some smaller concurrent sentences for possession of cannabis.

Again in 1995 he was convicted twice for burglary but on both occasions he received probation. He makes the point today that the last of these offences was three years ago and committed in Western Australia but he came here to get away from the company in which he got into trouble and that some account should be taken of the

fact that it has been three years or so without committing an offence.

It must be said however that it appears that neither probation nor short terms of imprisonment seem to have any deterrent effect on the applicant.

The armed robbery offence was as the learned sentencing Judge noted premeditated, it involved weapons and was committed in company at night-time. His Honour noted the prevalence of these offences in the area in which he sat and rightly thought that general deterrence was a relevant factor in the sentencing process.

Of the three employees of the Red Rooster Store, two of them, a young woman and the boy to whom I have already referred, continue to have psychological problems in consequence of their experiences on the night of the robbery.

The main complaint of the applicant here appears to be that he did not receive a recommendation for early parole because of his guilty plea. However the learned sentencing Judge took into account the guilty plea and said so but he took it into account in reduction of a sentence which he imposed.

The respondent has submitted that a sentence of seven years would have been appropriate or at least well within range and that consequently a sentence of five

years having regard to the guilty plea and any other matters which might be taken into account is also within range.

The only other point which appeared at first glance to be of some substance raised by the applicant here was that there was a disparity between the sentence imposed on him and that of one of the co-offenders who was being sentenced who received a sentence of three years and nine months.

However there were two substantial factors which shows that there was no disparity in the sentences. One is that the co-offender had little or no previous criminal history and the other perhaps even more important matter is that he gave the police information which assisted them.

For the reasons I have mentioned I cannot be satisfied that having regard to the comparable cases referred to as those with which we are familiar that a sentence of seven years would have been outside the range of a sound discretionary judgment and that consequently a sentence of five years having regard to the matters which should be taken into account in the applicant's favour is outside that range.

I would therefore refuse the application.

PINCUS JA: A submission was made by counsel for the Crown that the sentence imposed was too light in one respect, in that the applicant had the benefit of a declaration that a period of 236 days spent in custody was part of the sentence already served. Counsel suggested that the period should have been less than 236 days. However, the Attorney-General has not appealed against the sentence.

Counsel also submitted that perhaps the Corrective Services Commission could have authority to correct what he asserted was an error in the Judge's order. To the best of my knowledge the Corrective Services Commission has no authority to keep people in gaol a day longer than is ordered by the Court and certainly none has been referred to. If the Commission had such authority it would be an alarming position.

Apart from that comment I wish to add nothing to what has been said by Mr Justice Davies about the matter. I agree with His Honour's reasons and with the order which His Honour proposes.

THOMAS JA: I agree with the observations made by Mr Justice Davies and with the further observations of Justice Pincus.

PINCUS JA: The order of the Court is application refused.
