

COURT OF APPEAL

WILLIAMS JA
HELMAN J
JONES J

CA No 164 of 2002

THE QUEEN

v.

ROY MANSFIELD KING

Applicant

BRISBANE

..DATE 17/09/2002

JUDGMENT

HELMAN J: On 23 April this year before the District Court at Townsville, the applicant pleaded guilty to entering premises at Giru, Queensland on 8 January 2001 and stealing three air conditioners in the premises, entry to the premises having been gained by a break.

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Two other men were parties to the offence, Francesco Barbagallo the nephew of the applicant who was unemployed and aged twenty years at the time of the commission of the offence, and Robert Wright the foster son of the applicant who also was unemployed and was aged twenty-one years at the time of the commission of the offence. They also pleaded guilty to the offence - in Wright's case after pleading not guilty, but then, after a jury had been empanelled to try him, changing his plea to guilty. The applicant is older than the other two. He was forty-six years old when the offence was committed. He, too, was unemployed.

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The air conditioners, valued at about \$4,200, were stolen from a dwelling house. They had not been recovered at the time the three men were sentenced.

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The learned sentencing judge imposed a sentence of imprisonment for six months wholly suspended with an operational period of one and a-half years on Barbagallo, a 100-hour community service order and a two-year probation order on Wright, and a sentence of imprisonment for two years suspended after eight months with an operational period of two years on the applicant. A conviction was not recorded in

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Wright's case, but the convictions of Barbagallo and the applicant were of course recorded.

The applicant seeks leave to appeal against his sentence on the ground that it was manifestly excessive. He relies on the parity principle in bringing his application. There is, he asserts, such a discrepancy between the sentence imposed on him and those imposed on the other two men to warrant the intervention of this Court.

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The parity principle will be violated if co-offenders of equal responsibility for an offence and whose antecedents and circumstances are substantially the same are not given equal punishment. But where there are different degrees of responsibility, different antecedents, and other different circumstances, justice requires that those differences be reflected in the sentences imposed. So if, for instance, a hardened criminal prevails upon a young person who has never before committed an offence to commit a crime the former can expect a heavier sentence than the latter.

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This case is an illustration of that process. The applicant was far older than the other two. He had a long criminal history which began with his being convicted in 1972 of a breaking and entering offence before the Townsville District Court. His history shows convictions for other such offences as well as for other offences of dishonesty and for two rapes. He was imprisoned in 1992 for rape and was not released until 2000. His Honour took into account the applicant's plea of

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guilty and noted the ages of the applicant and the ages of the other two. His Honour remarked that the sentence he imposed on the applicant was a lenient one in the circumstances. The youngest of the three, Barbagallo, had a criminal history and he pleaded guilty to two other offences unrelated to this one for each of which he was sentenced to imprisonment for three months. Those sentences were wholly suspended too.

Barbagallo's criminal history is not nearly as bad as the applicant's. Wright had no previous convictions.

The first obvious difference between the applicant's case on the one hand and those of the other two is that of age. It is in accordance with sound sentencing principles, other things being equal, to accord youthful offenders some leniency in the hope that they will understand the error of their ways before their criminal behaviour has become entrenched and the chances of their rehabilitation are diminished. So in this case the two young men were given lighter sentences than was the applicant, a man of mature years who should, by the age of forty-six, have known better than to become involved in the escapade which led to his being prosecuted.

The second difference - a striking one in this case - is as to the antecedents of Barbagallo and Wright on the one hand and those of the applicant on the other. The applicant has a long criminal history. His counsel said, addressing his Honour, that he had had "very lengthy periods of incarceration". Of the other two, Barbagallo had some criminal history which, of course, could not be ignored and Wright had none.

Accordingly, although Barbagallo and Wright were treated more leniently than the applicant, Wright was given the lighter sentence reflecting the absence of any history of wrongdoing by him.

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There were other matters put before his Honour concerning the applicant's state of health and his attempts at rehabilitation since his release from prison in 2000, and there is no reason to conclude his Honour failed to take them into account when arriving at the sentence imposed on the applicant. Indeed, his Honour's reference to the leniency of the sentence may be regarded as an oblique reference to those considerations.

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I conclude then that there is no proper basis for holding that his Honour's sentencing discretion miscarried. Accordingly, I should refuse the application.

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WILLIAMS JA: I agree.

JONES J: I agree also.

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WILLIAMS JA: The order will be as proposed by Justice Helman.

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