[2002] QCA 94

COURT OF APPEAL

McPHERSON JA
MUIR J
PHILIPPIDES J

CA No 339 of 2001

THE QUEEN

v.

MIRASLAV HALUZAN

BRISBANE

..DATE 15/03/2002

JUDGMENT

McPHERSON JA: After extensive consideration of the sentence in this case, and not without some variations of opinion on the matter, I have come to the conclusion that the application for leave to appeal should be dismissed for the reasons about to be given by Mr Justice Muir.

MUIR J: Having pleaded guilty the applicant was sentenced in the District Court on 6 November 2001 to 10 years of imprisonment on each of three counts of armed robbery and three counts of armed robbery in company. He was also sentenced to five years' imprisonment for unlawful use of a motor vehicle, which vehicle was used to facilitate the commission of an indictable offence; to imprisonment for five years for entering a premises with intent to commit an indictable offence; and to imprisonment for two years for stealing an identification, wallet and card. He was also convicted on his own plea and sentenced in relation to a number of summary offences. All sentences were ordered to be served concurrently.

The applicant was born on 4 July 1966 and was 35 years of age at the time of sentencing. His extensive prior criminal history included convictions for assault occasioning bodily harm in February 1987, breaking and entering a dwelling house with intent in March 1988, and for stealing with actual violence whilst armed with a dangerous weapon in August 1988.

In June 1994 the applicant was convicted on three counts of stealing with actual violence whilst armed with a dangerous weapon in company and on another four counts of stealing with actual violence whilst armed with a dangerous weapon. He was sentenced to nine years' imprisonment on each charge, all

sentences being ordered to be served concurrently.

The facts relating to the offences now under consideration were recorded in a schedule of facts tendered by the prosecutor without objection at first instance. Those facts which relate to the armed robberies may be summarised as follows:

Count 1. The complainant and an accomplice entered a liquor store on 25 June 2000 at Moorooka where they threatened a 46 year old female shop attendant with knives, requiring her to give them money out of a till. Not content with this they escorted the shop attendant to the rear of the shop where she produced her wallet which they then took and left. The wallet contained $200, and the amount stolen from the till was in excess of $2,000.

Count 3. On 26 July 2000 the applicant in company with another male entered a pharmacy at Woolloongabba disguised by handkerchiefs held or tied over their faces and carrying knives which were said to resemble butchers' knives with blades eight to 10 inches long. The intruders demanded narcotics from the complainant who was working in the pharmacy at the time. A knife was held to his stomach and he was asked for keys to the safe. He was able to effect an escape. On his return to the premises he found the cash register open and $200 in cash missing. Some $650 worth of narcotic medicines were also missing.

Count 6 involved another pharmacy robbery. At about 5.20 p.m. on 21 August 2000 the applicant, with a handkerchief wrapped around his lower face and armed with a knife with a blade about 20 centimetres long, entered a pharmacy at Highgate Hill and demanded cash from the till and drugs. He took about $500 in cash from the till and departed.

Count 9. On 27 August 2000 the applicant and another male entered a bottle shop at Moorooka. Whilst an accomplice waited outside in a stolen car the applicant, who was armed with a shotgun, pointed it at the complainant behind the counter whilst the other intruder took approximately a thousand dollars from the till. The complainant, not surprisingly, feared for his life.

Count 10. On 29 August 2000 the applicant entered a newsagency at Woolloongabba with his face partially obscured by a handkerchief and threatened the complainant employee with a loaded sawn-off shotgun. He then pointed the weapon at another employee who was at the rear of the shop. He took $600 from the till and departed.

Count 11. On 1 September 2000 at about 12.35 p.m. the applicant entered a TAB at Moorooka carrying a shotgun with which he threatened a TAB employee and demanded money. He was given $1,075 in cash and departed. Shortly after that incident the police located the applicant hiding under a

dwelling house with a bag containing the stolen money. The shotgun, which was loaded, was found nearby.

In all cases weapons were used to threaten the victims of the applicant's offences. In three cases the applicant's weapon of choice was a gun and on two of those occasions the gun was loaded. The evidence does not disclose whether the gun used in the 27 August robbery was loaded.

A consultant psychiatrist, who provided a report tendered at first instance, expressed the opinion that the applicant suffered "an episode of depression of moderate severity (mood disorder) together with grief reaction" as a result of finding a female friend of his dead beside him as a result of a drug overdose. That was said to have occurred about four months before 24 October 2000. The psychiatrist's opinion was that the applicant had no symptoms of a psychotic illness.

The applicant, when interviewed by police on 1 September 2000, admitted his role in the Moorooka TAB armed robbery. The admission was hardly surprising in the light of the circumstances of his apprehension. However, later that day he admitted his involvement in the other offences under consideration with the exception of the robbery on 25 June 2000. On 4 September 2000 he admitted his participation in that robbery.

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In his sentencing remarks the learned sentencing Judge concluded that the applicant was an on-going danger to the community and expressly took into account his plea of guilty and confessions.

Mr Rafter, who appears for the applicant, submitted that the sentences were manifestly excessive having regard to the applicant's past and future cooperation with the authorities, the significant grief reaction arising from the death of his female companion which caused him to relapse into drug use, and the applicant's admissions and early plea of guilty. He pleaded guilty to an ex officio indictment.

Mr Rutledge, for the Crown, submits that the sentence was appropriate as being at the bottom end of the permissible range after taking all mitigating features into account.

The first of the subject offences was committed a little over five months after the applicant was released from custody after serving the sentences imposed in 1994.

The offences for which the applicant was sentenced in '94 were, in turn, committed shortly after the applicant's release from custody after serving the sentence for the first of the serious offences to which I earlier made reference. The robberies, as well as involving the use of weapons, involved a measure of planning. Stolen vehicles were used and the aid of

accomplices enlisted.

The use of a loaded firearm in two cases gave rise to an appreciable risk that innocent persons might be seriously injured or killed. In the circumstances, it is hardly surprising that his Honour took a very serious view of the offences. His Honour's starting point, although at the higher end of the permissible range, has not been shown to be manifestly excessive having regard to the matters which I have just mentioned. Nor, in my view, was any error revealed in the discounting process undertaken by his Honour. He took into account the applicants' early plea, admissions of his involvement in all offences and further matters the subject of submissions here and at first instance.

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MUIR J: The reduction in sentence given by his Honour was appropriate for the above reasons. I would dismiss the application.

McPHERSON JA: Yes. Adding to what I said before, the principal factor that differentiates this applicant's case from other sentences imposed on similar re-offenders and so attracted a higher head sentence is that the subject offences represented the third occasion of extensive re-offending or recidivism each time soon after the applicant had served lengthy periods of imprisonment for similar offences.

PHILIPPIDES J: I agree with the reasons given by Justice McPherson and Mr Justice Muir.

McPHERSON JA: The order of the Court will be that the application for leave to appear against sentence is dismissed.
