

SUPREME COURT OF QUEENSLAND

CITATION: *R v Provic* [2003] QCA 317

PARTIES: **R**
v
PROVIC, Gordon
(applicant)

FILE NO/S: CA No 130 of 2003
DC No 960 of 2003
DC No 809 of 2003
DC No 926 of 2003
DC No 927 of 2003
DC No 2456 of 2002

DIVISION: Court of Appeal

PROCEEDING: Sentence Application

ORIGINATING COURT: District Court at Brisbane

DELIVERED EX TEMPORE ON: 24 July 2003

DELIVERED AT: Brisbane

HEARING DATE: 24 July 2003

JUDGES: de Jersey CJ, Mackenzie and Helman JJ
Separate reasons for judgment of each member of the Court, each concurring as to the order made

ORDER: **Application for leave to appeal against sentence refused**

CATCHWORDS: CRIMINAL LAW – JURISDICTION, PRACTICE AND PROCEDURE – JUDGEMENT AND PUNISHMENT – SENTENCE – FACTORS TO BE TAKEN INTO ACCOUNT – MISCELLANEOUS MATTERS OTHER MATTERS – whether sentencing judge correctly exercised sentencing discretion

COUNSEL: The applicant appeared on his own behalf
M Copley for the respondent

SOLICITORS: The applicant appeared on his own behalf
Director of Public Prosecutions (Queensland) for the respondent

THE CHIEF JUSTICE: I will invite Mr Justice Helman to deliver the first judgment.

HELMAN J: This is an application for leave to appeal against sentences imposed upon the applicant on 29 April 2003. He claims that the sentences were manifestly excessive. The applicant came before the District Court at Brisbane on 29 April 2003 to answer two indictments - one ex officio - in which fourteen offences were alleged, and charge sheets alleging fifteen offences. There were nine counts on the ex officio indictment: three of unlawful entry to vehicles with intent, three of stealing, one of receiving, and two of fraud. The other indictment had five counts: one of entering premises with intent to commit an indictable offence in the premises, three of breaking, entering and stealing, and one of attempting to enter premises with intent to commit an indictable offence in the premises. All offences were allegedly committed in 2002 and all of the "premises" were motor vehicles.

The applicant pleaded guilty to each charge against him, and was sentenced to imprisonment for eight months on each count of unlawful entry to vehicles with intent, on the count of entering premises with intent, and on each count of breaking, entering and stealing. On each of the remaining counts on the indictments he was sentenced to imprisonment for six months. He was sentenced to imprisonment for three months on each of nine of the summary offences, to imprisonment for one month on one, and to fines totalling \$1,600 on the remaining five charges. All of the sentences of imprisonment were to be served concurrently and he was allowed eighteen months to pay the fines.

In January 2001, in the Beenleigh District Court, the applicant had been sentenced to imprisonment for nine months on charges of assaults occasioning bodily harm and unlawful use; the sentences to be suspended after he had served 150 days, which 150 days equalled the time he had had in pre-sentence custody. The operational period was to be three years. The learned sentencing judge on 29 April 2003 ordered that the applicant serve the unserved remainder of his sentences imposed in January 2001. Those sentences were ordered to be cumulative upon the sentences imposed on 29 April 2003.

The applicant was born on 1 April 1966, and so was thirty-seven years old when he was sentenced. He has a long criminal history beginning in 1983 and containing a large number of offences of dishonesty, often related to motor vehicles, and drug offences.

In arriving at the head sentences of imprisonment for eight months, the learned sentencing judge took into account the applicant's pleas of guilty, the ten months he had been in pre-sentence custody but which could not be deemed to be time served under any sentences imposed, the fact that some offences were committed while he was at large with bail, and the numerous summary offences he had committed. His Honour thus arrived at an outcome which reflected the applicant's total criminality. His Honour ordered the whole of the

unserved portions of the suspended sentences be served because of the applicant's early return to his persistent offending. The effect of his Honour's orders was to require the applicant to serve a further one year in prison. His Honour observed that although the applicant had been said to have a reasonable employment history, there seemed no real prospect of his refraining from continuing to commit offences.

Bearing in mind the applicant's history and the number of offences his Honour was required to deal with, I see no merit whatever in this application. The sentences imposed fell within the bounds of a sound sentencing discretion. I should refuse the application.

THE CHIEF JUSTICE: I agree.

MACKENZIE J: I agree.

THE CHIEF JUSTICE: The application is refused.
