

SUPREME COURT OF QUEENSLAND

CITATION: *R v Styles* [2003] QCA 374

PARTIES: **R**
v
STYLES, Michael Bernard
(applicant)

FILE NO/S: CA No 202 of 2003
DC No 3764 of 1997

DIVISION: Court of Appeal

PROCEEDING: Sentence Application

ORIGINATING COURT: District Court at Brisbane

DELIVERED ON: 2 September 2003

DELIVERED AT: Brisbane

HEARING DATE: 15 August 2003

JUDGES: Williams JA and Muir and Holmes 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 – JUDGMENT AND PUNISHMENT – SENTENCE – FACTORS TO BE TAKEN INTO ACCOUNT – CIRCUMSTANCES OF OFFENDER – where applicant convicted on two counts of armed robbery, two counts of armed robbery in company and one count of attempted break and enter – where sentenced to six years imprisonment with recommendation for parole after 21 months – where applicant absconded and remained at large for a substantial period of time – where during this period the applicant made genuine effort to rehabilitate himself – where obtained employment in the course of which the applicant injured his back – where now in a wheelchair – whether sentence imposed was manifestly excessive

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

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

- [1] **WILLIAMS JA:** The applicant seeks leave to appeal against a sentence of six years imprisonment with a recommendation for parole after serving 21 months imposed after he pleaded guilty to two counts of armed robbery and two counts of armed robbery in company. He also pleaded guilty to one count of attempted break and enter and was given a sentence of 12 months imprisonment to be served concurrently. A declaration was made with respect to 64 days pre-sentence custody.
- [2] The offences occurred between 29 May and 8 June 1997. On 29 May 1997 at about 11.30 pm the applicant entered the Night Owl store at Newmarket armed with a knife and a blood filled syringe. The applicant had some black material covering his head and also was wearing latex gloves. He leant over the counter and stole \$100.00. The applicant admitted to the police that he had waited near the store, hiding in bushes, until no customers were in the shop.
- [3] At about 5.45 am on 4 June 1997 the applicant entered the 7-Eleven store at Red Hill armed with a ten inch knife and blood filled syringe. The applicant was wearing a dark cap, dark sweatshirt and a muffler that covered his mouth. A demand for money was made and he took \$419.40. The applicant made admissions to police indicating that he waited in a stairwell for about three hours until the store was empty.
- [4] At about 6.30 am on 6 June 1997 the applicant and a co-offender (Chandler) entered the Gordon Park seven day convenience store. The applicant was armed with a large hunting knife, and his co-offender had a silver handgun. The applicant wore dark clothing with a black balaclava. The applicant went to the counter and attempted to jimmy open the cash register with the knife. The shop attendant opened the register and \$160.00 was taken.
- [5] Also on 6 June 1997 the applicant attempted to break into a store by removing a security grille but was disturbed and ran from the area. He admitted to using a crowbar to remove the security grille.
- [6] At about 8.45 am on 8 June 1997 the applicant and a co-offender (Chandler) entered the Kedron mixed business store. The applicant was armed with a knife and the co-offender with a gun. The offenders were dressed in dark clothing with dark caps or beanies. The demand for money was made. The applicant pointed the knife near the face of the complainant and \$320.00 was taken. Again the applicant made admissions to police when apprehended shortly thereafter.
- [7] The applicant told investigating police officers that on a number of occasions he had used "speed" prior to the robbery.
- [8] The applicant was in custody from 10 June to 5 August 1997 when he was released on bail. There was a full hand up committal. The indictment was presented on 11 December 1997; whilst the position is not absolutely clear it would appear that the applicant was committed for trial. He failed to appear at court when required on 16 January 1998 and a bench warrant was issued for his apprehension. That warrant was not executed until 6 June 2002.
- [9] On 12 May 2003 the applicant pleaded guilty to the charges and his sentence was finalised on 16 May 2003.

- [10] The applicant was born on 1 June 1976, making him aged 21 when the offences occurred and 26 when sentenced. He had one minor conviction for a property offence in June 1993.
- [11] During the period the applicant was at large from January 1998 to June 2002 he lived and worked on the Gold Coast. No offences were committed during that period. Whilst working on the Gold Coast he received an injury to his back on 1 May 2001 and was on workers' compensation from then until his apprehension. Reports from Dr Apel, a psychiatrist, and Dr O'Callaghan, a specialist in pain medicine, were placed before the sentencing judge. It appears that the applicant has chronic back pain which amounts to a five per cent whole body permanent impairment, but there is a significant psychological overlay. In the opinion of Dr Apel he has also developed a depressive disorder. Before sentence the learned sentencing judge obtained a report from Dr McDonald, the medical director of the security unit, indicating that the applicant could be managed appropriately in the correctional system.
- [12] The material before the learned sentencing judge referred to the applicant's emotionally deprived background and personality vulnerabilities prior to his commission of the offences in question. He apparently ran away from his home in Victoria aged about 9, and lived on the street for a number of years. He came to the Gold Coast aged about 16. By that time he had become severely drug dependent and had apparently attempted suicide on a number of occasions. His life turned around when he met a woman with whom he formed a relationship which lasted for some five years. That broke up shortly before the commission of the offences in question, and that was advanced by his counsel before the sentencing judge as the reason for his relapse into drug dependency and the commission of the offences.
- [13] His co-offender on two of the armed robbery counts, Chandler, was aged 17 at the time of the offences and had a previous conviction for armed robbery and attempted armed robbery. Chandler pleaded guilty in January 1998 to four counts on an ex officio indictment, the two armed robbery in company charges, and two other offences of armed robbery. He was sentenced to seven years imprisonment with a recommendation for parole after serving two years. It is clear that he received a significant discount because of his cooperation with the administration of criminal justice by pleading guilty at an early stage to the ex officio indictment.
- [14] In his remarks the learned sentencing judge referred to the fact that these were not "spur of the moment offences". There had been a degree of planning necessary on each occasion. On each occasion the applicant was disguised and armed, and waited outside the premises until it was considered safe to carry out the robbery. The learned trial judge recognised that "rehabilitation since absconding cannot be completely ignored" but he went on to say that could not be given the same significance as in a case "where the delay is not due to the offender's own actions." That was an entirely appropriate way in which to deal with the applicant's apparent good behaviour during the period he was at large.
- [15] The applicant appeared on his own behalf on the hearing of this application. He argued his case from a wheelchair, and indicated that he was spending most of his time in custody in the wheelchair. In consequence he said that his time in custody was being served under more severe conditions than applied to most inmates. It

does appear that he has made a genuine attempt to rehabilitate himself, at least so far as the use of illicit drugs is concerned.

- [16] However, the offences he committed were extremely serious and victim impact statements indicate that at least some of the victims of his robberies have suffered significant personal consequences.
- [17] Both the applicant and counsel for the respondent referred to cases said to indicate the appropriate range of sentence for offences of this type. There are many cases involving the robbery of small convenience stores in the early hours of the morning or late at night when the attendant was alone. The courts have generally regarded such robberies as particularly serious.
- [18] A review of the comparable cases indicates that a sentence in the range six to seven years is appropriate for this type of offence, and the applicant's counsel on sentence made a submission accepting that range. Given that the applicant is not entitled to any discounting for an early plea, a head sentence of six years was well within range and cannot be said to be manifestly excessive. Indeed it could be said that making a recommendation for parole after 21 months was a generous moderation of the sentence.
- [19] Whilst there are aspects of the applicant's present condition which are unusual they are not such as to result in a conclusion that the sentence imposed was manifestly excessive. Given his condition one could confidently expect that he will be released on parole after serving 21 months, if not sooner.
- [20] In all the circumstances the sentence imposed was not manifestly excessive and the application for leave to appeal against it should be refused.
- [21] **MUIR J:** I agree with the reasons for judgment of Williams JA and the order he proposes.
- [22] **HOLMES J:** I agree with the reasons for judgment of Williams JA and the order he proposes.