

SUPREME COURT OF QUEENSLAND

CITATION: *R v Cameron* [2004] QCA 341

PARTIES: **R**
v
Cameron, Nigel Rickey
(applicant)

FILE NO/S: CA No 255 of 2004
DC No 84 of 2003

DIVISION: Court of Appeal

PROCEEDING: Sentence Application

ORIGINATING COURT: District Court at Cairns

DELIVERED EX TEMPORE ON: 20 September 2004

DELIVERED AT: Brisbane

HEARING DATE: 20 September 2004

JUDGES: Williams JA, White and Cullinane 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 dismissed**

CATCHWORDS: CRIMINAL LAW — JURISDICTION, PRACTICE AND PROCEDURE — JUDGMENT AND PUNISHMENT — SENTENCE — APPEAL AGAINST SENTENCE — whether unjust for applicant to serve whole of remainder of suspended sentence — where applicant committed offence during operational period

COUNSEL: A J Kimmins for the applicant
M J Copley for the respondent

SOLICITORS: Mellick Smith & Associates for the applicant
Director of Public Prosecutions (Queensland) for the respondent

CULLINANE J: The applicant in this matter seeks leave to appeal against a sentence imposed on the 14th of July 2004 that he serve the whole of the period of suspended imprisonment which had been imposed on the 17th of June 2003

in the District Court at Cairns for the offence of robbery with personal violence. The suspended imprisonment was for a period of two and a half years less 52 days that he had already served.

The applicant was born on the 13th of May 1984. He was 19 years of age when sentenced by the District Court on the 17th of June 2003 and 20 when dealt with in respect of the suspended imprisonment on the 14th of July 2004. The robbery occurred on the 28th of July 2002. The applicant had followed the female complainant who was riding a bicycle for some distance. He had left his car and followed her on foot for a block before running up beside her and grabbing her handbag.

She held onto her bag and was dragged along the roadway some distance. The applicant succeeded in making her let go of the bag and ran off with it. He was chased and apprehended by witnesses.

He had been sentenced on the 16th of September 2002 for 11 counts of wilful damage, two of stealing, two of attempted stealing, one of entering premises and stealing, two of possessing tainted property and one of possessing a dangerous drug. He was placed on probation for two years. He was on bail in respect of those offences when he committed the offence of robbery with violence on the 28th of July 2002.

On the 12th of May 2004 he came before the Magistrates Court in Cairns and pleaded guilty to one count of unlawful

possession of a dangerous drug, in this case a tablet of Ecstasy and a count of driving whilst under the influence of a drug. Those offences were committed on the 9th of April 2004. He was fined \$800 in respect of them. They were committed during the currency both of the suspended sentence and the probation order which had been made on the 16th of September 2002. He was at the same time dealt with for breach of the probation order and fined.

The applicant was in custody for some 52 days in respect of the robbery with personal violence count, and as I have said was sentenced to a term of imprisonment suspended after the 52 days which have already been served for a period of three years. The learned sentencing Judge at the time explained to the applicant when he was being sentenced that if he committed another offence during the next three years he would, "Be back here facing a gaol term which would mean actual time in gaol."

When the applicant came before the District Court to be dealt with for the breach of the suspended sentence, the learned sentencing Judge, having referred to the terms of the section 147 subsection 2 of the Penalties and Sentences Act which required him to order that the applicant serve the whole of the term of imprisonment which had been suspended unless he was satisfied that it would be unjust to order him to do so, concluded that it would not be so unjust to order him to do so.

The considerations which the Court has to take into account when dealing with a matter such as this are contained in section 147 subsection 3 of the Penalties and Sentences Act. His Honour reviewed the circumstances of the offences which constituted the breaches of the suspended sentence. He thought that the conduct of the applicant had constituted a potentially serious danger to himself and others and that the offences could not be regarded as trivial as that term is used in section 147 subsection 3 of the Act.

He also took into account the fact that the applicant was on probation at the time and concluded that there was nothing which would justify the conclusion that it would be unjust to require the applicant to serve the whole of the suspended sentence. He did not think that the fact that less than a third of the operational period had passed before the offences of April 2004 were committed was a particularly telling factor in the applicant's favour as seems to have been urged upon him, given that he had received a wholly suspended sentence. These findings, in my view, were open to him.

Some emphasis was placed by counsel for the applicant upon remarks which the learned sentencing Judge made towards the end of his sentencing remarks which indicated something of an aversion on his Honour's part to suspended sentences as a sentencing option. He referred to differing views held by other members of his Court, but made it clear that whilst he would not himself in the first instance have imposed a suspended sentence having regard to the views that he held,

nevertheless went on to say that it was not permissible for him to go behind the original sentence.

Whatever the advisability or otherwise of such remarks, I do not think that they can be regarded as suggesting that his Honour was reviewing the original sentence or seeking to resentence the applicant in relation to the offence of robbery. A consideration of the reasons as a whole reveals that his Honour plainly addressed the relevant considerations which arise in a matter such as this and in my view there has not been demonstrated any error of approach on his part in the way in which he considered and dealt with the matter.

The applicant, in my view, has failed to demonstrate that his Honour erred and the application should be refused.

WILLIAMS JA: I agree.

WHITE J: I agree.

WILLIAMS JA: The order of the Court is that the application is dismissed.
