SUPREME COURT OF QUEENSLAND

CITATION:	*R v Semyraha* [2004] QCA 373
PARTIES:	**R** **v** **SEMYRAHA, Craig Anthony** (applicant)
FILE NO/S:	CA No 288 of 2004 SC No 380 of 2004
DIVISION:	Court of Appeal
PROCEEDING:	Sentence Application
ORIGINATING COURT:	Supreme Court at Brisbane
DELIVERED EX TEMPORE ON:	7 October 2004
DELIVERED AT:	Brisbane
HEARING DATE:	7 October 2004
JUDGES:	de Jersey CJ, Jerrard JA and Jones J Separate reasons for judgment of each member of the Court, each concurring as to the orders made
ORDER:	**Application refused**
CATCHWORDS:	CRIMINAL LAW – APPEAL AND NEW TRIAL AND INQUIRY AFTER CONVICTION – APPEAL AGAINST SENTENCE – APPEAL BY CONVICTED PERSONS – APPLICATIONS TO REDUCE SENTENCE – WHEN REFUSED – GENERALLY – where the applicant was sentenced to 18 months' imprisonment to be served cumulatively upon the terms of imprisonment he was then serving – where the applicant seeks to leave to appeal on the ground that the sentence is manifestly excessive – whether the sentence is manifestly excessive
COUNSEL:	The applicant appeared on his own behalf M R Byrne for the respondent
SOLICITORS:	The applicant appeared on his own behalf Director of Public Prosecutions (Queensland) for the respondent

THE CHIEF JUSTICE: The applicant was sentenced to 18 months' imprisonment to be served cumulatively upon the terms of imprisonment he was then serving. He had pleaded guilty to the supply of heroin within a correctional facility. Upon request he threw a package, which he suspected contained heroin, over a fence within the compound so that it could be accessed by another prisoner with whom he was friendly. The package contained .056 grams of powder, including 14.8 per cent heroin.

At the time the applicant was 25 years old. He had a substantial prior criminal history dating back 10 years. That included convictions for crimes of violence, property offences, an escape from custody, rioting and a previous possession of cannabis within a juvenile detention centre. At the time of this offence he was serving sentences of five and a half years' imprisonment for offences including robbery in company with personal violence.

The applicant seeks leave to appeal on the ground that the sentence is manifestly excessive. The learned Judge accepted that the applicant would probably have to serve full time prior to the commencement of the 18-month term he imposed, and therefore modified that 18-month term, so far as he could, by adding a strong recommendation that the applicant be released on post-prison community based release after serving six months of that 18-month term.

I say, "So far as he could", because his Honour was constrained by section 157, subsection 3 of the Penalties and Sentences Act 1992. The learned Judge accordingly, "strongly" recommended that the applicant be considered for parole on the 8th of September 2005.

In selecting the 18-month term the learned Judge worked from *R v Maroney* [2002] 1 Qd R 285, where a two-year cumulative term was imposed upon a 26-year-old prisoner who had a substantial past record, who had arranged for the introduction of heroin into a prison. The substantial difference between the positions of *Maroney* and this applicant, as the learned Judge recognised was that Maroney went to trial, whereas this applicant pleaded guilty.

There was, additionally, greater organisation preceding the commission of the crime in *Maroney*. The learned Judge recognised the guiding principle that, as he put it,

> "[T]he Courts and the law must uphold discipline in prisons and must effectively discourage prisoners from possessing or dealing in dangerous drugs in prison."

In my view, the penalty crafted by his Honour, with the head term moderated by the strongly worded recommendation, was plainly appropriate, and the contention that it is manifestly excessive cannot be sustained.

I would, however, recognising his Honour's intention that the applicant be released on 8 September 2005, add my endorsement

to the learned Judge's strongly worded recommendation and express the hope, absent the intervention of any new relevant consideration, that it will be respected. I would also direct that a copy of the judgment in this matter be forwarded to the Department of Corrective Services for placement on the applicant's file.

JERRARD JA: I agree with the reasons for judgment of the learned Chief Justice and add my own observation, that I agree with the learned sentencing Judge that to require the applicant to serve all or most of the 18 month' cumulative term would be unjust. The applicant has been in custody since early August 1999 and in October 2000 was sentenced to a five and a half year term of imprisonment of which 391 were declared already served. It appears he has been refused all remissions and parole recommended then and expected in 2001 has been refused. He is expected to complete serving his present term in March 2005, and to require a relatively young man to spend so long imprisoned would be unjust.

JONES J: Yes. I agree with the reasons of the Chief Justice and Justice Jerrard, and with the observations made, and I expressly add my endorsement that the remarks of the learned sentencing Judge be fully observed. I agree with the orders proposed.

THE CHIEF JUSTICE: Those are the orders.
