SUPREME COURT OF QUEENSLAND

CITATION:	*R v Reardon* [2006] QCA 225
PARTIES:	**R** **v** **REARDON, Samantha Leah** (applicant)
FILE NO/S:	CA No 150 of 2006 SC No 62 of 2006
DIVISION:	Court of Appeal
PROCEEDING:	Sentence Application
ORIGINATING COURT:	Supreme Court at Brisbane
DELIVERED EX TEMPORE ON:	19 June 2006
DELIVERED AT:	Brisbane
HEARING DATE:	19 June 2006
JUDGES:	Williams, Keane and Holmes JJA Separate reasons for judgment of each member of the Court, each concurring as to the order made
ORDER:	**Application dismissed**
CATCHWORDS:	CRIMINAL LAW - APPEAL AND NEW TRIAL AND INQUIRY AFTER CONVICTION - APPEAL AND NEW TRIAL - APPEAL AGAINST SENTENCE - APPEAL BY CONVICTED PERSONS - APPLICATIONS TO REDUCE SENTENCE - WHEN REFUSED - PARTICULAR OFFENCES - OTHER OFFENCES - applicant convicted on plea of guilty of one count of unlawfully supplying the dangerous drug heroin to a person who was at the time within a correctional facility - applicant sentenced to six months imprisonment - applicant has minor criminal history related to drug dependence - whether the sentence imposed was manifestly excessive *R v Cole* [1998] QCA 205; CA No 140 of 1998, 26 June 1998, considered
COUNSEL:	A J Moynihan for the applicant M J Copley for the respondent
SOLICITORS:	Legal Aid Queensland for the applicant Director of Public Prosecutions (Queensland) for the respondent

KEANE JA: On 5 May 2006 the applicant was convicted on her own plea of guilty of one count of unlawfully supplying the dangerous drug heroin to Troy John Watson who was at that time within a correctional facility. The offence occurred on 31 January 2005. On 11 May 2006 the applicant was sentenced to six months imprisonment. The applicant seeks leave to appeal against that sentence on the ground that it is manifestly excessive.

As to the circumstances of the offence, on 31 January 2005 the applicant visited Watson who was an inmate at the Arthur Gorrie Correctional Centre. While the applicant and Watson were appearing to be engaged in an affectionate embrace, Watson was observed attempting to hide something in his trousers. When he was searched it emerged that the applicant had passed to him a balloon in which was contained two cut down syringes and a small clip-seal bag of 0.128 grams of white powder containing 0.033 grams of heroin.

When questioned about the incident the applicant made no admissions. There was a committal hearing. The charge against the applicant was listed for trial on 5 May 2006. The applicant's plea of guilty was late and was therefore of little utilitarian value. The prosecution case was reasonably strong. Moreover, the applicant's late plea cannot be taken to be indicative of remorse on her part or give reason for an optimistic view of her prospects of rehabilitation. At the hearing below it was common ground that Watson had asked the complainant to bring the drug into the prison.

As to the applicant's circumstances, she was born on 12 June 1970. She endured a troubled childhood. Her mother died of a heroin overdose when the applicant was 14 years of age. This tragic loss evidently had a profound adverse effect upon her emotional development.

The applicant has struggled with an early addiction to alcohol and later to other drugs. Attempts at rehabilitation have not been successful. The applicant has a daughter from a previous relationship. Her daughter is presently 10 years of age.

The applicant has a minor criminal history which is no doubt associated with her drug addiction. She has previously had the benefit of a probation order.

The report of Marguerite O'Brien, a clinical addictions consultant, concluded that the applicant has the ability to overcome her drug dependence.

The learned sentencing judge recognised that the applicant was entitled to be given some credit for her late plea of guilty. His Honour also took into account in the applicant's favour the circumstances of her drug addiction, her friendship with Watson, her stated wish to break her drug habit and the availability of a place at an institution where her rehabilitation might be pursued.

Nevertheless, his Honour rejected a submission that the applicant should be given the benefit of a suspended sentence. In this regard his Honour concluded that the offence was too serious to warrant a wholly suspended sentence. His Honour was understandably concerned by the degree of preparation and planning involved in the commission of the offence and with the need for deterrence, both personal and general, in cases of this kind.

On the applicant's behalf, it is submitted that the sentence was manifestly excessive in that sufficient weight was not given to the principles that a sentence of imprisonment should only be imposed as a last resort and that a sentence that allows an offender to stay in the community is preferable. See the *Penalties and Sentences Act 1992* (Qld), s 9(2). Furthermore, it was submitted that the applicant's prospects of rehabilitation if her drug dependence is managed, her plea of guilty, her separation from her daughter and the circumstance that a sentence of three months imprisonment was imposed on her co-offender shows that her sentence was manifestly excessive. It is submitted as a result that her sentence should be wholly suspended.

If it be accepted that the sentence of six months was in order, it is impossible in my respectful opinion to respect the contention that his Honour erred in failing to suspend the sentence. It should be said immediately that his Honour was not disposed to act upon Ms O'Brien's opinion, but even if one were disposed to take an optimistic view of the applicant's

prospects of rehabilitation that is warranted by her history, there is no reason to suppose that she will not be able to pursue her rehabilitation at the end of a short sentence.

Further, reference to the decision of this Court in *R v Cole* [1998] QCA 205 affords support for the view that the sentence of six months imprisonment was not excessive. In that case, a 22 year old who supplied 1.3 grams of cannabis to her brother on a visit to him in a correctional facility as "a late Christmas present" was sentenced to 18 months imprisonment suspended after three months. That offender made an early plea of guilty. In that case the offender had previous convictions of dishonesty. Nevertheless, comparison with the present case is to the disadvantage of the applicant because of the nature of the drug supplied, the applicant's greater maturity and the lateness of her plea of guilty.

Furthermore in my respectful opinion, considerations of parity do not show that the applicant's sentence was manifestly excessive. There was no reason for the learned judge to be concerned with the claims of parity in this case. No submission was made to him in that regard and no information relevant to that issue in terms of Watson's age, antecedents and the reasons why he required the drug were put before the learned sentencing judge. True it is that Watson asked the applicant to supply him with the heroin, but there is no suggestion that she was under any form of compulsion to do so. There is no reason to think that a decision to supply the

heroin was other than a considered decision voluntarily made on her part.

Most importantly, she was the supplier of the heroin and she freely chose to supply the heroin to a prison inmate in circumstances which involved a deliberate defiance of the due administration of justice. For these reasons I would reject the applicant's submissions. The applicant is unable in my respectful opinion to demonstrate that the sentence was manifestly excessive or otherwise affected by error. The application for leave to appeal should be dismissed.

WILLIAMS JA: I agree.

HOLMES JA: I agree.

WILLIAMS JA: Well the order of the Court is the application is dismissed.
