

SUPREME COURT OF QUEENSLAND

CITATION: *R v Campbell* [2006] QCA 373

PARTIES: **R**
v
CAMPBELL, Jodie Lee
(applicant)

FILE NO/S: CA No 229 of 2006
DC No 149 of 2006
DC No 230 of 2006

DIVISION: Court of Appeal

PROCEEDING: Sentence Application

ORIGINATING COURT: District Court at Beenleigh

DELIVERED EX TEMPORE ON: 26 September 2006

DELIVERED AT: Brisbane

HEARING DATE: 26 September 2006

JUDGES: Keane and Holmes JJA and Jones J
Separate reasons for judgment of each member of the Court, each concurring as to the orders made

ORDER: **1. Grant leave to appeal**
2. Appeal allowed
3. Sentences of 12 months imprisonment for 2 offences of attempting to aid an escape from lawful custody be set aside
4. In lieu thereof, the applicant be sentenced in respect of each offence to 3 months imprisonment such sentences to be served concurrently

CATCHWORDS: CRIMINAL LAW – APPEAL AND NEW TRIAL AND INQUIRY AFTER CONVICTION – APPEAL AND NEW TRIAL – APPEAL AGAINST SENTENCE – GROUNDS FOR INTERFERENCE – DISPARITY – CO-OFFENDERS – where applicant pleaded guilty to 2 counts of attempting to aid an escape from lawful custody – where applicant sentenced to 12 months imprisonment suspended after 4 months with an operational period of 2 years – where prisoner attempting escape was sentenced to 3 months imprisonment under a different sentencing regime – where prisoner instigated the attempted escape – whether learned

primary judge failed to give effect to the parity principle

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 GRANTED – GENERALLY – where applicant pleaded guilty to 2 counts of attempting to aid an escape from lawful custody – where applicant sentenced to 12 months imprisonment suspended after 4 months with an operational period of 2 years – where prisoner attempting to escape was sentenced to 3 months imprisonment – where attempt to escape was instigated by the prisoner – where applicant and prisoner had lengthy criminal histories – whether the sentence imposed was manifestly excessive

Lowe v The Queen (1984) 154 CLR 606

COUNSEL: A W Moynihan for the applicant
S G Bain for the respondent

SOLICITORS: Legal Aid Queensland for the applicant
Director of Public Prosecutions (Queensland) for the respondent

JONES J: On the 11th of July 2006, the applicant, Jodie Lee Campbell, was convicted on her own plea of guilty of three offences: one count of fraud committed on the 17th of November 2004 and two counts of attempting to aid an escape from lawful custody committed on 18 June 2005.

In respect of the offence of fraud, she was sentenced to one month imprisonment and, in respect of the two counts of attempting to aid an escape, 12 months' imprisonment suspended after serving four months with an operational period of two years.

No argument is raised in respect of the penalty put forward for fraud which, though unrelated to the other offences, was to be served concurrently.

The two offences of attempting to aid an escape arose out of the same conduct. On 18 June 2005, the applicant visited the Palen Creek Correctional Centre to see her then boyfriend, one Glen Russell. During the course of the visit, he suggested a plan to escape. The applicant was to wait with a motor vehicle outside the prison boundary where she would be met by Russell and another prisoner, Michael Morley. She was then to drive them away.

They were apprehended by prison guards and the escape was foiled. The applicant was confronted by prison authorities while she was standing beside her vehicle with its bonnet raised on the pretence that the vehicle had stalled.

She admitted her involvement to the authorities and her committal to the District Court followed a full hand-up brief. The maximum penalty for this offending by her against section 141 of the *Criminal Code* is seven years.

Russell pleaded guilty to escaping lawful custody when he first came before the Magistrates Court on 20 June 2005. He was dealt with summarily pursuant to section 552A of the *Criminal Code* and was sentenced to three months' imprisonment cumulative upon the four year sentence imposed on him on the 23rd of March 2004. In this sentencing regime, the maximum

penalty for his conduct was three years' imprisonment. See section 552H(a).

The point at issue in this appeal is whether there has been a failure of the sentencing discretion by reason of the learned primary Judge's failure to give effect to the parity principle, having regard to the penalty imposed on the co-offender Russell.

That principle provides that where the difference between sentence is manifestly excessive, the Court will intervene on the ground that the "disparity engenders a justifiable sense of grievance on the part of the accused on whom the heavier sentence is imposed", *Lowe v The Queen* (1984) 154 CLR 606.

The disparity between the penalty of three months imposed on Russell and the 12 months imposed on the applicant, is to my mind manifestly excessive. Russell appears to have been the instigator of the plan and thus the principal offender.

Russell had a significant criminal history which included three prior short terms of imprisonment. His current term of imprisonment related to a series of criminal offences occurring between October and December 2002.

The sentencing remarks of the learned Magistrate when dealing with Russell, do not appear to have been placed before the learned primary Judge, but it is unlikely that the totality principle would not have loomed large in the Magistrate's

thinking when the additional penalty imposed was only for three months.

Rather the penalty imposed on Russell reflected the rather amateurish approach to an escape from a low security facility as Palen Creek Correctional Centre is. This was certainly the assessment of the applicant's counsel in his submissions at sentence. The counsel submitted that the head sentence should be of the same order as that imposed on Russell, but in her case should be wholly suspended. See Record Book page 11, lines 20 to 30.

The penalty imposed upon Russell was a material consideration to which the learned primary Judge ought to have had regard. That he did so cannot be gleaned from the sentencing remarks for there is no reference to Russell's penalty nor to the basis upon which the disparity which could have been allowed to occur.

The disparity in my view is such as to give rise to the justifiable sense of grievance in the applicant. In the circumstances, I take the view that the sentencing discretion has miscarried in this instance. Thus the application for leave to appeal and the appeal itself ought to be allowed. It is necessary then for the applicant to be re-sentenced which task ought to be undertaken by this Court.

The applicant is 25 years of age and is the mother of three children who have now been removed from her care. She has an

appalling criminal history, which includes offences for stealing, assault, unlawful use of a motor vehicle, entering premises, armed robbery, fraud and now attempting to aid an escape from lawful custody. Moreover a number of offences between 1999 and 2001 were committed while the applicant was on probation. She committed these current offences shortly after being released from prison on fraud and stealing charges.

Despite this background and the fact that aiding or attempting to aid and escape from lawful custody, is properly regarded as a serious offence. The particular circumstances here did not warrant a sentence of 12 months' imprisonment. Although the mitigating factors permitted the learned primary Judge to direct the penalty would be suspended after four months' imprisonment, the total effect of that penalty in my view remains manifestly excessive.

The applicant claims, since the commission of these offences, to have found purpose for not reoffending in the future so that she can regain custody of her children. She is supported in this quest as appears from the references received from her grandmother and a family friend. She has already served two months and 15 days of her sentence.

Having regard to all of these matters, including the fact that she was sentenced under a different sentencing regime, I take the view that the penalty which ought to be imposed on each of the offences of attempting to aid escape from lawful custody

is three months' imprisonment. The sentences are to be served concurrently. I would make the following orders:-

1. Grant leave to appeal;
2. Appeal allowed;
3. Sentences of 12 months imprisonment for 2 offences of attempting to aid an escape from lawful custody be set aside;
4. In lieu thereof, the applicant be sentenced in respect of each offence to 3 months imprisonment such sentences to be served concurrently.

KEANE JA: I agree.

HOLMES JA: I agree.

KEANE JA: The orders will be as proposed by Jones J.
