

SUPREME COURT OF QUEENSLAND

CITATION: *R v Kavney* [2006] QCA 96

PARTIES: **R**
v
KAVNEY, Raymond Paul
(applicant)

FILE NO/S: CA No 12 of 2006
DC No 265 of 2005

DIVISION: Court of Appeal

PROCEEDING: Sentence Application

ORIGINATING COURT: District Court at Toowoomba

DELIVERED EX TEMPORE ON: 4 April 2006

DELIVERED AT: Brisbane

HEARING DATE: 4 April 2006

JUDGES: Williams and Jerrard JJA and Mullins J
Separate reasons for judgment of each member of the Court, each concurring as to the order made

ORDER: **Application dismissed**

CATCHWORDS: CRIMINAL LAW – APPEAL AGAINST SENTENCE
APPEAL BY CONVICTED PERSON – APPLICATION TO
REDUCE SENTENCE – WHEN REFUSED –
PARTICULAR OFFENCES – OTHER OFFENCES –
FRAUD – where the applicant pleaded guilty on ex officio
indictment to 28 charges of fraud – where the applicant
passed valueless cheques for a total benefit of \$13,981.92 –
where the applicant had been sentenced on over 30 prior
occasions for dishonesty offences – whether sentence
manifestly excessive

R v Jones [1997] QCA 132; CA No 63 of 1997, 27 May
1997, considered

COUNSEL: The applicant appeared on his own behalf
B G Campbell for the respondent

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

MULLINS J: The applicant, who is unrepresented, seeks leave to appeal the sentence of two and one-half years imprisonment that was imposed in respect of each of 28 counts of fraud on an ex officio indictment to which the applicant pleaded guilty on 15 December 2005. The ground of the application is that the sentence is manifestly excessive in all the circumstances.

The applicant was born in October 1961 and is 44 years' old. The applicant has an extensive criminal history in Queensland, New South Wales, Victoria and the Australian Capital Territory which primarily relates to dishonesty offences. He had appeared before the Courts on about 30 occasions to be sentenced for offences of dishonesty.

The chronology of those offences where sentences of imprisonment were imposed commenced in 1980 when the applicant was sentenced to imprisonment for 12 months for stealing, forgery and uttering. He was sentenced to imprisonment for 15 months in 1982 for fraudulently omitting to account. In 1984 he was given a sentence of 12 months' imprisonment on each of 60 counts of false pretences. He was, again, sentenced for false pretences in March 1987 when a sentence of six months' imprisonment was imposed.

In August 1987 the applicant was sentenced to 21 months' imprisonment for 68 charges of passed valueless cheque and 28 charges of imposition. He was sentenced in June 1988 to six months' imprisonment for multiple charges of obtain property

by deception, obtain financial advantage by deception, forgery and uttering. In May 1991 the applicant was sentenced to 18 months' imprisonment for multiple counts of obtain property by deception and obtain financial advantage by deception.

In February 1993 he was sentenced to an intensive correction order of 12 months for multiple counts of obtain financial advantage by deception, false pretences and attempted false pretences but in June 1993, after breaching that order, he was ordered to served 354 days' imprisonment. In May 1993 he was sentenced to nine months' imprisonment for multiple counts of obtain financial advantage by deception and attempt to obtain financial advantage by deception.

In August 1994 he was sentenced to eight months' imprisonment for four counts of theft and multiple counts of other dishonesty offences. Another sentence of 12 months' imprisonment was imposed in December 1996 for multiple dishonesty offences. In July 1998 he was sentenced to nine months' imprisonment for seven dishonesty offences. He was sentenced to three terms, each of four months' imprisonment, for dishonesty offences in August and November 2001 and April 2002.

The offending for which the applicant was dealt with on 15 December 2005 was the passing of 28 valueless cheques for a total amount of \$13,981.92. Counts 1 to 3 were committed between 6 June and 1 July 2003. The applicant was arrested on

18 July 2003 in respect of those three counts and released on bail.

Counts 4 to 18 were committed between 26 July and 6 December 2003. After December 2003 the applicant travelled to New South Wales and committed another offence. He returned to Queensland and committed counts 19 to 28 between 2 February and 6 April 2005. Most of the cheques were presented for medical treatment. Other cheques were presented for the purchase of mobile telephones, travel, a gift basket, accommodation, hair care and beauty therapy, computer equipment and sunglasses.

The learned sentencing Judge referred to the applicant's "appalling criminal history" and described him as "a long term false pretender". The learned sentencing Judge noted that compensation was impracticable and that some of the offences suggested that they were for "greed rather than need". The sentencing Judge noted that 25 of the offences were committed after the applicant had been released on bail for the first three counts but noted in the applicant's favour that he had pleaded to an ex officio indictment and that he suffers from Crohn's disease.

The maximum penalty for each of the counts is five years' imprisonment. The learned sentencing Judge considered that an appropriate sentence for the applicant would have been four years' imprisonment with a recommendation for parole after 16 months. The applicant's counsel before the sentencing

Judge submitted that a sentence of two and one-half years was appropriate.

The sentencing Judge considered that there were benefits for the applicant if the head sentence was reduced to two and one-half years and accepted the submission of the applicant's counsel. The sentencing Judge, therefore, did not make a parole recommendation as on a sentence of two and one-half years' imprisonment the applicant would be eligible for post-prison community based release after serving 15 months.

Both before the sentencing Judge and on this application the respondent had appropriately relied on Jones [1997] QCA 132 CA Number 63 of 1997, 27 May 1997. In Jones the offender was of similar age to the applicant and had a lengthy record of offences of dishonesty. He was being sentenced for six counts of false pretences involving the giving of six valueless cheques for household and computer goods valued at \$25,728 over a period of two and one-half months.

The sentencing was complicated by the offender having spent 11 months on remand in custody for the offences for which he was being sentenced and other offences so that no declaration could be made under section 161 of the Penalties and Sentences Act 1992. After giving some credit for that presentence custody the Court of Appeal substituted a sentence for each offence of four years with a recommendation for eligibility for parole after serving one year and nine months.

In this matter the learned sentencing Judge expressly took account of the factors in favour of the applicant. The applicant submitted that the sentencing Judge placed too much weight on his criminal history and not enough weight on the small amount of money involved in each of the offences. Although most of the offences did involve relatively small amounts of money, the applicant's persistence in offending in the same way for which he had been dealt with on many previous occasions means that the sentence is not manifestly excessive. The application should be dismissed.

WILLIAMS JA: I will ask Justice Jerrard to deliver his reasons next.

JERRARD JA: I agree with the reasons and conclusion reached by her Honour. Mr Kavney has appeared in other Courts for sentence for offences other than those, the subject of this application, on, at least, 31 separate occasions over a lengthy period. He has been dealt with for offences other than the ones now, the subject of this application, which total, at least, 432 prior convictions for dishonesty. He has been sentenced to shorter terms of imprisonment than the ones which he now appealed on, at least, 20 separate occasions.

Mr Kavney is an articulate man and an obviously intelligent person. He would appreciate that the sentence imposed on him and against which he has unsuccessfully applied for leave to appeal has been justified by the need to protect the community.

WILLIAMS JA: I agree with the reasons of both my colleagues.
The order of the Court is that the application is dismissed.
