

SUPREME COURT OF QUEENSLAND

CITATION: *R v Assurson* [2007] QCA 350

PARTIES: **R**
v
ASSURSON, Hev
(applicant/appellant)

FILE NO/S: CA No 72 of 2007
SC No 561 of 2006

DIVISION: Court of Appeal

PROCEEDING: Sentence Application – Further Order

ORIGINATING COURT: Supreme Court at Brisbane

DELIVERED ON: 19 October 2007

DELIVERED AT: Brisbane

HEARING DATE: Heard on the papers

JUDGES: Williams and Keane JJA and Mullins J
Judgment of the Court

ORDER: **Amend paragraph 2(b) of the orders of this Court made on 24 August 2007 in *R v Assurson* [2007] QCA 273 by removing 14 September 2012 and inserting in lieu thereof 1 January 2011**

CATCHWORDS: PROCEDURE – JUDGMENTS AND ORDERS – AMENDING, VARYING AND SETTING ASIDE – INHERENT POWER TO AMEND TO GIVE EFFECT TO THE MEANING AND INTENTION OF COURT – where Court allowed appeal against sentence – where order made setting parole eligibility date – where date set failed to take into account time spent in pre-sentence custody – whether order should be amended

R v Allen [1994] 1 Qd R 526, cited
R v Gordon [2007] 1 WLR 2117, cited

COUNSEL: No appearance by the applicant/appellant, the applicant/appellant's submissions were heard on the papers
No appearance by the respondents, the respondent's submissions were heard on the papers

SOLICITORS: No appearance by the applicant/appellant, the applicant/appellant's submissions were heard on the papers
No appearance by the respondents, the respondent's submissions were heard on the papers

- [1] **THE COURT:** On 24 August 2007 the Court made the following orders in this matter: [2007] QCA 273:
1. Grant leave to appeal against sentence.
 2. Allow the appeal to the extent of :
 - (a) deleting from the sentence imposed on the count of trafficking the serious violent offence declaration;
 - (b) fixing the appellant's parole eligibility date as 14 September 2012;
 3. Otherwise confirm the sentences as imposed.
- [2] It is clear from the separate reasons for judgment of Williams JA and Keane JA that the intention behind the order was that the applicant serve five and a half years in custody for the principal offence of trafficking in a mix of illegal drugs. Paragraph [3] of the order of the Court effectively confirmed the declaration made at first instance that the 621 days spent in pre-sentence custody be declared as time already served. But that was not reflected in that part of the order which fixed the parole eligibility date as 14 September 2012.
- [3] In written submissions to the Court both counsel for the applicant and counsel for the respondent have requested that the order of the Court be amended so that the parole eligibility date reflects the 621 days spent in pre-sentence custody.
- [4] Pursuant to its inherent jurisdiction (see *R v Allen* [1994] 1 Qd R 526 and *R v Gordon* [2007] 1 WLR 2117) this Court amends the order pronounced on 24 August 2007 by deleting in paragraph 2(b) thereof the date 14 September 2012 and inserting in lieu thereof the date 1 January 2011.