

# SUPREME COURT OF QUEENSLAND

CITATION: *R v Drummond* [2007] QCA 359

PARTIES: **R**  
**v**  
**DRUMMOND, Donna Michelle**  
(applicant/appellant)

FILE NO/S: CA No 161 of 2007  
DC No 164 of 2007

DIVISION: Court of Appeal

PROCEEDING: Sentence Application

ORIGINATING COURT: District Court at Cairns

DELIVERED EX TEMPORE ON: 25 October 2007

DELIVERED AT: Brisbane

HEARING DATE: 25 October 2007

JUDGES: Williams and Holmes JJA and Dutney 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. Allow the appeal**  
**3. Vary the original order substituting 4 months imprisonment for the 6 months imprisonment, to be served by intensive correction order.**

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 GRANTED – PARTICULAR OFFENCES – OTHER OFFENCES – where the applicant was convicted of eight counts of stealing and related offences – where applicant sentenced to 80 hours community service and 18 months probation – where applicant completed community service but breached probation order – where applicant was convicted of two counts of stealing and one count of obstructing a police officer during probation period – where applicant sentenced to two months imprisonment wholly suspended for an operational period of 12 months for breach offences – where applicant brought back before court for breach of probation – where primary judge set aside probation order and re-sentenced applicant to 6 months

imprisonment to be served by way of intensive correction order – whether the sentence was manifestly excessive given the applicant had already completed original sentence

*Penalties and Sentences Act 1992 (Qld) s 126, s 123*

COUNSEL: The applicant appeared on her own behalf  
M J Copley for the respondent

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

DUTNEY J: On the 11th of November 2005, Donna Michelle Drummond pleaded guilty in the District Court to eight charges of stealing and related offences. She was sentenced to a combination of 80 hours of community service and 18 months' probation.

The offences were described by the sentencing Judge as low level. Terms of the orders included a prohibition on further offending, whilst subject to either the community service order or the probation order.

Community service was completed on the 9th of November 2006. The period of probation finished on the 11th of May 2007. On the 16th of March 2007, Ms Drummond was convicted in the Magistrates Court of two counts of stealing, committed on the 29th of November 2006 and one count of obstructing a police officer on the same day.

For the stealing offences, Ms Drummond received a sentence of two months' imprisonment, wholly suspended for an operational period of 12 months. For the obstructing police

offence, she was fined \$150. Each of these offences, when committed, breached the probation order which was still in place. The community service order had already been completed.

On the 21st of June 2007, Ms Drummond was brought back before the Court for breaching the probation order. By then, the period of probation had been completed and the primary Judge set aside the probation order and re-sentenced Ms Drummond to six months' imprisonment to be served by way of an intensive correction order.

It is from this sentence that she seeks leave to appeal. Prior to November 2005, Ms Drummond had been convicted of offences of dishonesty in April 2004, for which she received 12 months' probation, October 2004, for which she received two years' probation and June 2005 for which she was fined.

The breaching offences consisted of stealing an item of clothing from each of two stores in Cairns. When police were called, Ms Drummond obstructed them in the performance of their duties.

The primary Judge took into account the serious view the Court takes of breaches of its orders that Ms Drummond was still being treated for a drug problem and that she was living at Coolangatta and attempting to support herself.

He indicated that the purpose of the intensive correction order was to provide her with close supervision and to assist her in receiving rehabilitative treatment. The primary Judge also took into account Ms Drummond's apparent vulnerability to men as a reason for imposing an order involving close supervision.

In my view, it cannot be said that a sentence of six months' imprisonment, served by way of an intensive correction order, was outside the sentencing range of the Judge who imposed the original sentences, given Ms Drummond's history. However, pursuant to section 126(6) of the Penalties and Sentences' Act 1992, the primary Judge is required to take into account the making of the community based orders and anything done to comply with them when re-sentencing Ms Drummond.

No order was made under section 123(1) of the Penalties and Sentences' Act. In any event, the maximum penalty for breach of a community based order is 10 penalty units.

Ms Drummond was not being sentenced for the breaching offences. She had been punished for those in the Magistrates Court. A report from Ms Drummond's probation officer was tendered.

Apart from the commission of the further offences, the probation officer reported that Ms Drummond's response to the order had been satisfactory. The officer recommended

that the order be continued and Ms Drummond be dealt with under section 123(1).

Of course, a Judge dealing with a breach of a community based order is not required to give effect to any recommendation from a probation officers. None the less, if the primary Judge chooses to re-sentence the offender, regard must be had to the extent of compliance with the original orders.

In this case, Ms Drummond had successfully completed the whole of the community service order and save for the breaching offences, the probation order as well.

The sentence imposed, although appropriate to the original offences, had the primary Judge been the original sentencing Judge, failed to reflect that Ms Drummond had completed most of the sentence originally imposed by the time of the breach and all of it by the time of the re-sentencing.

In those circumstances, to impose a sentence for the original offence without regard to the fact that she'd already served a sentence for those offences, means that she has been required to perform 80 hours of community service, serve 12 months of probation, even if the period of probation after the breaches is ignored, as well as six months' imprisonment by way of the intensive correction order.

While the exercise does not involve simply a matter of adding up the totals, it appears in this case, that these partially served sentences have not been taken into account.

In those circumstances, I would grant leave to appeal, allow the appeal to the extent of reducing the period of imprisonment to four months to be served by way of intensive correction order. This is intended to reflect the extent of compliance with the original orders.

WILLIAMS JA: I agree.

HOLMES JA: I agree.

WILLIAMS JA: Well, the order of the Court is that the appeal is allowed and the sentence imposed is varied by substituting a period of four months intensive correction order for the original six months that was imposed.

Ms Drummond, do you understand what the Court has said?

PRISONER: Not really.

WILLIAMS JA: Well, what the Court has done is varied the order so that you are only required to serve four months by way of an intensive correction order and as I understand it, that period has already expired. So, that means that you would be now not subject to any further period under the intensive correction order.

PRISONER: Okay, I understand.

WILLIAMS JA: There is nothing further, Mr Copley?

MR COPLEY: No, your Honour.

-----