

# SUPREME COURT OF QUEENSLAND

CITATION: *R v Wockner & Hodges* [2007] QCA 392

PARTIES: **R**  
**v**  
**WOCKNER, Quenten Philip**  
(applicant)

**R**  
**v**  
**HODGES, Ryan William**  
(applicant)

FILE NO/S: CA No 246 of 2007  
CA No 278 of 2007  
DC No 327 of 2007  
DC No 400 of 2007

DIVISION: Court of Appeal

PROCEEDING: Sentence Application

ORIGINATING COURT: District Court at Southport

DELIVERED ON: 16 November 2007

DELIVERED AT: Brisbane

HEARING DATE: 6 November 2007

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

ORDER: **1. In CA No 246 of 2007, application for leave to appeal against sentence is refused**  
**2. In CA No 278 of 2007, application for leave to appeal against sentence is refused**

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 – GENERALLY – where Hodges pleaded guilty to four counts of armed robbery in company with violence and other offences – where Hodges sentenced to four years imprisonment with a recommendation for parole eligibility after 16 months – where Wockner pleaded guilty to three counts of armed robbery in company with personal violence and one count of entering premises and stealing – where Wockner sentenced to four years imprisonment with a recommendation for parole eligibility

after 15 months – where both applicants ordered to pay \$597.50 by way of compensation within 12 months – where Wockner was the younger of the offenders but had a more extensive criminal history – where Hodges had been the more active offender – whether sentences manifestly excessive – whether leave should be granted

*R v Briody* [2002] QCA 364; CA No 135 of 2002, 17 September 2002, considered

*R v Bush* [1996] QCA 172; CA No 71 of 1996, 17 May 1996, considered

*R v Houldsworth & Crossman* [1999] QCA 322; CA Nos 150 & 156 of 1999, 20 August 1999, considered

*R v Law* [2001] QCA 208; CA No 230 of 2000, 31 May 2001, considered

COUNSEL: The applicant, Wockner, appeared on his own behalf  
P Nolan for the applicant Hodges  
M J Copley for the respondent

SOLICITORS: The applicant, Wockner, appeared on his own behalf  
Stacks Gray Lawyers on behalf of the applicant Hodges  
Director of Public Prosecutions (Queensland) for the respondent

- [1] **WILLIAMS JA:** The applicants, Wockner and Hodges, were each convicted on 24 September 2007 of a number of serious offences and each seeks leave to appeal against the sentences imposed.
- [2] Hodges pleaded guilty to four counts of armed robbery in company with personal violence, one count of burglary, one count of entering premises and stealing, two counts of stealing, one count of possessing a dangerous drug, and one count of possessing a prohibited substance. He was sentenced to four years imprisonment for the offences of armed robbery in company with personal violence, 12 months imprisonment for the offences of burglary and entering premises and stealing, six months imprisonment for the stealing offences, and one month imprisonment for the possession of a dangerous drug. Those terms were to be served concurrently. In addition he was sentenced to one month's imprisonment cumulative on the other sentences for possessing a prohibited substance – that was unlawful possession of a prescription drug whilst in custody. He was also ordered to pay compensation totalling \$597.50 within 12 months.
- [3] With respect to Hodges it was declared that he had already served 310 days in custody and the parole eligibility date was fixed at 16 months.
- [4] Wockner pleaded guilty to three counts of armed robbery in company with personal violence and one count of entering premises and stealing. He was sentenced on the robbery counts to four years imprisonment and to 12 months imprisonment on the other charge; those terms to be served concurrently. He was also ordered to pay \$597.50 by way of compensation within 12 months.
- [5] With respect to Wockner a declaration was made that he had spent 310 days in pre-sentence custody, and his parole eligibility date was fixed at 15 months.

- [6] Hodges was born on 21 July 1983, meaning he was aged 23 when the offences were committed and aged 24 when sentenced. He had a minor criminal history. He was dealt with in the Southport Magistrates Court on 17 September 2002 on two charges of unauthorised dealing with shop goods and was placed on a bond to be of good behaviour for 12 months. No conviction was recorded. Then on 30 July 2004 he was convicted in the Southport Magistrates Court of receiving, stealing and possessing tainted property; he was fined \$450. At the time of the offences he was employed as a third year apprentice plumber.
- [7] Wockner was born on 25 January 1985, making him 21 at the time the offences were committed and 22 when sentenced. His criminal history was more extensive than that of Hodges. He appeared in the Southport Magistrates Court on 28 August 2003 and was placed on probation for a period of two years for 12 offences of using a vehicle without the consent of the person in lawful possession, one count of unlawful use of a motor vehicle, two counts of receiving stolen property, two counts of bringing stolen goods into Queensland, one count of possessing tainted property, and one count of dangerous operation of a motor vehicle. He was fined \$500 on 5 December 2002 for breaching a bail condition with respect to those aforementioned offences. Then in September 2004 he was convicted and fined in the Southport Magistrates Court for drug offences. There were further convictions for breaching bail conditions on 20 December 2004 and 24 January 2005. Then on 11 March 2005 he was convicted in the Southport Magistrates Court on two charges of entering premises and committing an indictable offence, one count of dishonestly obtaining property, one count of possessing dangerous drugs, three counts of unlawful use of a motor vehicle, and associated charges. The head sentence then imposed was 12 months imprisonment, suspended for two years, after serving five months. Finally on 9 March 2006 he was convicted of the offence of unlawfully entering a motor vehicle with intent to commit an indictable offence and sentenced to imprisonment for a period of 12 months. On that occasion it was also ordered that he serve the balance of the suspended sentence imposed on 11 March 2005. That was to be served concurrently with the 12 months sentence. He was released from custody shortly before the commission of the offences now in question.
- [8] Hodges was arrested by police on 20 November 2006. After arrest he was found to be in possession of a motor vehicle number plate stolen from a vehicle on 1 August 2006, and another number plate stolen from a motor vehicle on 2 August 2006. They were the particulars of the two stealing charges.
- [9] The burglary charge to which Hodges pleaded guilty related to events on 20 November 2006. The complainant was a young girl who was staying on the Gold Coast as part of schoolies week. The applicant entered her room and stole a mobile phone which was later found in his possession.
- [10] The next relevant offence to which each of Hodges and Wockner pleaded guilty was that of entering premises and stealing on 20 November 2006. The applicants saw a vehicle parked in View Street, Surfers Paradise and there was property inside it in view. Hodges forced entry into the vehicle by using a key in his possession; that caused damage to the locking mechanism of the vehicle. Each applicant then entered the vehicle. Cash and personal effects were stolen. When the damage to the vehicle was added in, the total loss to the complainants was \$240.

- [11] Thereafter on 20 November 2006 Hodges committed four offences of armed robbery in company with personal violence and Wockner's involvement was such that he was charged with, and pleaded guilty to, three of those offences. Particulars of those offences are as follows.
- [12] The first offence occurred between 1.50 pm and 2.05 pm. A young lad by the name of Short was walking with a friend along the Esplanade at Surfers Paradise. Both of them were there for schoolies week. Short was shoulder-charged by Hodges and both applicants then cornered the two lads. Hodges asked the complainant, "do you want to be stabbed?". Hodges brandished a silver and black-handled pocket knife at the complainant and demanded his wallet. Short handed over the wallet and Hodges then asked for his mobile phone as well. Hodges and Wockner blocked the exit of Short for a brief period of time. Wockner said to Short as they separated: "We know you, I remember you from last night. Keep walking." There was \$30 in cash in the wallet and other items of personal property. The total value of the property stolen was \$485 and none of it was recovered.
- [13] The next robbery occurred between 3.30 pm and 3.45 pm. The complainant on this occasion was a lad named Doolan who was also on the Gold Coast for the schoolies festivities. He was walking along the Gold Coast Highway when he noticed Hodges crouching down in front of him as if he was tying a shoe lace. As Doolan neared Hodges the latter stood up and pushed the complainant against a fence. He produced a pocket knife and demanded Doolan's wallet and anything else he had of value. Doolan handed over his wallet, mobile phone and sunglasses. When Hodges and Wockner walked away the latter was wearing Doolan's sunglasses. The police recovered the wallet and sunglasses but not the mobile phone which was valued at \$350.
- [14] The next robbery occurred between 4.20 pm and 4.40 pm. The complainant on this occasion was a 14 year old schoolboy who was walking home from school. He was approached by Hodges and Wockner from behind. Hodges demanded his iPod and threatened the complainant with a 10 centimetre knife. The complainant handed over the iPod to Hodges and started crying. Wockner then gave the complainant child back the iPod saying: "We've been mugged too. Stop crying and be brave." Undoubtedly because of Wockner's conduct in handing the iPod back to the complainant he was not charged with that particular offence.
- [15] The final robbery occurred between 4.45 pm and 5.00 pm. The complainant, King, was another young man on the Gold Coast for schoolies week. He was standing on a footpath in Surfers Paradise when he was approached from behind by Hodges and Wockner. Hodges produced the 10 centimetre knife and held it to King's stomach saying: "Now you're going to get it". King retaliated by pushing Hodges away and ran into the street. He was chased by Hodges and Wockner, and eventually Wockner tore the backpack that King was wearing from his back. The backpack contained various personal items most of which were recovered by police. Sunglasses valued at \$120 were not recovered.
- [16] It was emphasised before the sentencing judge, and again on the application for leave to appeal against the sentences, that no injury was done to any of the complainants. But the critical fact is that a 10 centimetre knife was used to threaten each of the four complainants who were understandably traumatised by the experience. It is also of particular significance that the applicants, then aged 21 and

- 23, targeted vulnerable young school-age lads who would have been understandably terrified by the threats which occurred in daylight in a public place.
- [17] When Hodges was arrested later on 20 November he was found to be in possession of 3.1 grams of cannabis; that was the basis of the charge of possessing a dangerous drug.
- [18] Whilst in the Woodford Correctional Centre on remand on 16 March 2007 Hodges was found to be in possession of a prescription drug without proper authority. That was the basis of the final charge to which he pleaded guilty.
- [19] Before the sentencing judge there was broad consensus that on sentence each applicant should be treated equally. Whilst Wockner's criminal history was worse, and he had only recently been released from prison, it was Hodges who had the knife and threatened each of the complainants on the robbery charges with it.
- [20] Before the sentencing judge the Crown prosecutor submitted that a head sentence of three years with a requirement that 12 months be actually served would be an appropriate penalty. The sentencing judge immediately indicated he thought that was too low. At that stage counsel for each applicant and the prosecutor could not place before the sentencing judge any sentence dealing with facts strictly comparable with those then before the court. Reference was subsequently made to *R v Law* [2001] QCA 208 in support of the submission that a head sentence of three years would be appropriate. In the course of submissions the sentencing judge made it clear that he did not regard such a sentence as appropriate, and did not regard the decision in *Law* as being comparable.
- [21] Material placed before the sentencing judge, particularly in the form of a report from a psychiatrist, established that Hodges was a heavy user of amphetamines and was affected by the ingestion of substantial quantities of that drug when the robbery offences were committed. However it was submitted that he now had the support of his parents, who had been separated for some time, and with that support it was proposed he undergo a program of rehabilitation.
- [22] On behalf of Wockner it was submitted that he was not the prime instigator, and that was evidenced by his returning the iPod to the young schoolboy. It was submitted that the events of 20 November were not pre-planned. It was unclear whether Wockner was affected by drugs at the time.
- [23] The sentencing judge noted that Hodges had pleaded guilty to four counts of armed robbery in company with personal violence and that his motivation was to acquire money for drugs. He gave him credit for the fact that he had pleaded to an ex officio indictment. The sentencing judge concluded that Wockner's role was not a minor one but Hodges was the more active offender of the two. He noted that Wockner did not touch any of the victims other than that he grabbed the backpack off the last complainant. The learned sentencing judge noted that offences of the type in question were prevalent on the Gold Coast. Although no injuries were suffered by the complainants he concluded that each was traumatised by the experience. He noted that Hodges had work available to him after his release from custody and stated that each offender had to be punished according to the role he played. He concluded that Wockner's prospects of future employment were fairly vague and observed that Wockner's prospects of reformation were not encouraging in view of the fact that a prison term had not deterred him from re-offending.

Finally he noted the offer by each to pay compensation. It was against that background the sentences under appeal were imposed.

- [24] In this Court counsel appeared for Hodges and his submissions substantially reflected what was submitted to the sentencing judge. He contended that, particularly as the Crown prosecutor below had submitted a three year head sentence was appropriate, the learned sentencing judge erred in imposing a sentence of four years imprisonment. He submitted that whilst there were four separate offences of armed robbery they all occurred within a very short space of time on the same day. He emphasised that none of the complainants suffered specific personal injury as a result of the commission of the offences.
- [25] Wockner appeared on his own behalf and placed before the Court written submissions in support of his application for leave to appeal. Counsel for Hodges did assist the Court by emphasising matters contained in Wockner's written material.
- [26] Generally Wockner submitted that shortly before the commission of the offences he had been released from custody and had, unfortunately, fallen into bad company again on the Gold Coast. In addressing the Court Wockner expressed remorse for his conduct and indicated that he was prepared to take serious steps to turn his life around.
- [27] As already noted, the sentencing judge was referred to the decision of this Court in *Law*, and that decision was again relied on by counsel for Hodges before this Court. *Law* was convicted on his own plea of two counts of armed robbery and one count of attempted robbery. The offences occurred on the evening of 23 April 2000. He was initially sentenced to 12 months imprisonment to be served by way of an intensive correction order, and this Court was concerned with an appeal against that sentence by the Attorney-General. The first offence involved the offender, who was aged 22, approaching an 18 year old at a railway station and demanding that he hand over his bicycle. The complainant noticed that the offender carried a large butcher's knife which appears to have been protruding from under his shirt. The judgment does not suggest that it was actually brandished at the complainant. The bicycle was given to the offender. The other two offences occurred a little later. The offender approached an elderly couple at a railway station and demanded money whilst again armed with the knife. He stole the purse. The judgment makes it clear that the contention on behalf of the Attorney-General was that a sentence of three years imprisonment should have been imposed. The judgment detailed the rather lengthy criminal history of the offender.
- [28] In delivering the judgment, with which Thomas JA and Helman J agreed, Atkinson J said that the "starting point for a head sentence in a case such as this should be three years." That was essentially an adoption of the contention on behalf of the Attorney-General and it must be remembered that that was an Attorney's appeal.
- [29] In my view the offending by the applicants here was greater than that of the offender in *Law*. Here adults specifically targeted young school leavers who were very vulnerable and could readily be described as easy targets. There were four brazen armed robberies in broad daylight on public streets in a short space of time. The actual use of the knife and brandishing it in front of the complainants was an aggravating factor. Particularly where an offender in such a case is drug-affected

there is a greater possibility of actual serious harm being occasioned to a complainant.

- [30] In my view there are other decisions of this Court which are of assistance in determining whether or not the sentences in question were manifestly excessive. Counsel for Hodges referred to *R v Houldsworth & Crossman* [1999] QCA 322. That case involved an armed robbery of a service station committed by three men. Each pleaded guilty. Two were sentenced to six and a half years imprisonment and the third to six years imprisonment. One, who was sentenced to six and a half years imprisonment, had a more lengthy and serious criminal history than the other two. The men had been drinking heavily and ingesting tablets before committing the offence. At the time each was wearing a balaclava, and each carried a knife. One actually brandished his knife and demanded money. Approximately \$620 was stolen. Two of the offenders appealed and the task of the Court was to ensure that the sentences reflected parity between the three offenders. In the case of the offender who was sentenced to six years imprisonment the Court of Appeal considered that the learned sentencing judge fell into error in failing to take into account his lesser role. In consequence his appeal was allowed and a sentence of four and a half years substituted. So at the end of the day, in that case two offenders got six and a half years imprisonment and the other four and a half years imprisonment for one armed robbery.
- [31] Counsel for the respondent in this Court also referred to *R v Bush* [1996] QCA 172 and *R v Briody* [2002] QCA 364. Each of those cases involved the robbery of a taxi driver. The offender in *Bush* was sentenced to four years imprisonment with a recommendation for parole after serving 12 months on pleading guilty to robbery in company with actual violence. His co-offender, who did not appeal his sentence, was sentenced to four years imprisonment with a recommendation for parole after 18 months. That offender had a more extensive record of convictions than Bush who was aged 19 and had only one prior conviction for stealing. The Court noted that there was little basis for distinguishing between them when it came to the actual events which constituted the robbery. Because of the comparison between the two (criminal history and age) the Court concluded that the sentence on Bush should be reduced to three years imprisonment with a recommendation for parole after serving 12 months.
- [32] The final case referred to by counsel for the respondent was *Briody*. He pleaded guilty to armed robbery in company with personal violence and was originally sentenced to three years imprisonment and that was ordered to be suspended after serving nine months. He contended that was manifestly excessive but the application for leave to appeal against sentence was dismissed. The offender was armed with a knife when he, in company with others, robbed a taxi driver. In its decision the Court referred to a number of other cases, particularly involving robbery of a cab driver, where sentences of four or four and a half years imprisonment were imposed.
- [33] In my view the sentencing judge was correct in not accepting the submission made to him that three years imprisonment was the appropriate head sentence given the circumstances of the offences with which he was concerned. Given the age of the applicants it might be said that a head sentence of four years imprisonment was towards the top of the range, but it cannot be said in my view that a head sentence

of four years imprisonment with the recommendations made by the sentencing judge resulted in the sentence being manifestly excessive.

- [34] It cannot be overlooked that within a short space of time Hodges committed four very serious instances of the offence of armed robbery in company with personal violence and that Wockner was an active participant in three of those offences. As already noted, the fact that vulnerable young people were targeted is an aggravating feature, as are the facts that at the time Hodges was affected by amphetamines, one of the motives for the commission of the offences was to obtain money to obtain more of that drug and Wockner had only shortly before been released from custody.
- [35] In the circumstances each application for leave to appeal against sentence should be refused.
- [36] **KEANE JA:** I agree with the reasons of Williams JA and the order proposed by his Honour.
- [37] **MUIR JA:** I agree with the reasons of Williams JA and with his proposed order.