COURT OF APPEAL

HOLMES JA
MACKENZIE AJA
PHILIPPIDES J

CA No 132 of 2008

THE QUEEN

v

WILLIAM ADAM JONES

BRISBANE

DATE 27/08/2008

JUDGMENT

APPLICANT conducted his own case

MS S G BAIN (instructed by the Director of Public Prosecutions (Queensland) for the respondent Crown

HOLMES JA: The applicant for leave to appeal against sentence was convicted of eight counts of fraud with a circumstance of aggravation (that the amount involved exceeded $5000) and one count of fraud simpliciter. On 16th May 2008 he was sentenced on a plea of guilty to four years and three months' imprisonment, with a parole eligibility date fixed at 16th January 2009. 284 days in pre-sentence custody were declared as already served. The net effect was that he was eligible for parole after serving approximately 17 and a half months, slightly over a third of the head sentence.

The total amount involved in the applicant's frauds was in the order of $113,000, of which approximately $38,000 was able to be recouped. Eight of the nine offences involved the applicant's obtaining finance to buy motor vehicles by providing false information on the relevant applications. On one application he used a false name, on others he gave a different

middle name from his own, or a false birth date, presumably to avoid any effective credit search. On some occasions he provided a false telephone contact number and in six instances identified a residential property which he falsely claimed to own. More significantly, in every case the applicant falsely claimed to have been in steady employment with a named employer for a number of years and to be earning a regular salary.

The amounts of finance obtained in this way ranged from approximately $2300 (the fraud simpliciter charge) to $23,000. The precise nature of the finance arrangements was not explained but it seems that at least in some cases the finance companies retained a proprietary interest in the vehicles and were able by recovering them to recoup some of their losses.

The remaining fraud charge entailed the applicant's sale of a vehicle the subject of a repossession order which he had bought with finance in Victoria. He brought it to Queensland, gave it a false vehicle identification number, registered it under a false name and sold it to an unsuspecting citizen. She lost it when it was identified and reclaimed as the finance company's property and was left out of pocket in the amount of $18,500.

All of the offences occurred in Townsville, between July 1998 and November 1999. The applicant was interviewed by police in respect of one of the matters and made very limited concessions but declined any further interview in relation to the other charges. An indictment was presented against him on 22nd June 2001. On 5th December 2001 a warrant was issued for his arrest. He had breached his bail conditions and returned to Victoria. He was taken back into custody in Queensland on 2nd August 2007. On 22nd April 2008, the matter was listed for sentence.

The applicant was 52 years old when he was sentenced. He had a criminal history in Victoria, having been sentenced under a number of aliases. The earliest entry was a conviction in 1981 for obtaining property by deception, for which he was sentenced to one month's imprisonment. He was convicted in 1991 of offences of dealing with stolen goods and

obtaining property by deception, receiving a suspended sentence of 12 months' imprisonment; and again of receiving offences in 1995, once more receiving a suspended sentence of one month's imprisonment.

On 7th April 2005, the applicant was sentenced for two offences of obtaining property by deception and received a wholly suspended sentence of eight months' imprisonment. At that time he was also sentenced to three months' imprisonment for obtaining a licence or permit by false statement and to a concurrent sentence of nine months' imprisonment suspended after six months in respect of offences of making a threat to kill, possessing an unregistered hand gun, criminal damage and theft.

The actual time of commission of the offences was not apparent from the Victorian criminal history, which gave only the dates of conviction. That actual time became the subject of some interest on the appeal. The Crown read an affidavit from which it emerged that the offences of obtaining property by deception occurred in 1994 and 1995 but the charges of threat to kill, possess a hand gun, criminal damage and threat arose from events in 2005. It is not clear when the offence of obtaining a licence or permit actually occurred.

In his submissions at the sentence hearing, counsel for the applicant informed the Judge that the applicant had some three years previously been treated for non Hodgkinsons lymphoma, from which he appeared to have recovered, although a more recent weight loss required investigation. His disappearance on bail to Victoria was said to have been to obtain medical treatment, although that of course hardly explained his conduct.

The learned sentencing Judge identified as important factors the large amount involved in the frauds and their systematic nature. He regarded the offence in which the applicant had defrauded an individual, who was now out of pocket for the amount she had paid for the vehicle, as the most serious of the offences. His Honour took into account the applicant's lengthy criminal history which had commenced at the age of 26, with the last offence being in

2005; the fact that he had absented himself from the jurisdiction; and the fact that (as appeared to be the case from the criminal history) he had committed a further offence of a similar nature while at large in Victoria.

His Honour referred to the comparable sentences of *R v Alexander* [2004] QCA 11 and *GAC* [2007] QCA 410, which had been put before him, noting that there were some circumstances which distinguished them. In the applicant's favour, he took into account his health concerns and his cooperation by pleading guilty.

The applicant contends that the sentence was manifestly excessive, having regard to other comparative sentences. He raises two other matters: he asserts that the last convictions recorded on his Victorian criminal history concerned offences actually committed in 1998. (As I have indicated, what is true, in fact, is that the obtaining property by deception offences were committed in 1994 and 1995.) In addition, the applicant says his health is not being properly monitored while he is in custody. Corrective Services have lost his blood samples and failed to take him to appointments.

In *R v Alexander*, the applicant had pleaded guilty to six counts of aggravated fraud, eight of fraud, three of attempted fraud and one of stealing with a schedule setting out another 32 offences of dishonesty. Most of the offences were of a similar kind to those involved here, involving the obtaining of credit or entering into hire purchase agreements using false information, although there were also some offences of presenting cheques subsequently dishonoured and one of stealing a motor vehicle. The amount involved in the fraud offences was $125,000, of which $75,000 remained outstanding. The amounts involved in the attempted frauds were $68,000.

The applicant in *Alexander*, aged 50 at sentence, had a far more extensive history of dishonesty than the applicant here.

He was sentenced to three and a half years' imprisonment; but, crucially, he had spent 539 days in custody on remand, which because of other offences could not be taken into account, so his effective sentence was in the order of five years. No recommendation for parole was made. A psychologist's report indicated that he suffered from alcohol and morphine dependency.

Williams JA, with whom the other members of the Court agreed, observed that a head sentence in the range of five to six years was appropriate but for the time spent in custody. Accordingly a term of three and a half years' imprisonment was not manifestly excessive. He noted that the amount of money lost by victims and the consistent and systematic nature of the offending were both important factors, the relative weight of which might vary in any given case.

In *GAC*, the applicant who had pleaded guilty to three counts of fraud and five of passing valueless cheques, was sentenced to six years' imprisonment with a recommendation for parole after 22 months. He had defrauded 25 people in amounts totalling $345,000. He was 34 years old, had a previous criminal history which seems to have been at a similar level to the present applicant's. The point at issue on his application was his assistance to the Australian Crime Commission, confirmed by a letter from that body indicating that his information was useful, verified, and had exposed the applicant to significant danger. This Court found that the sentencing Judge had erred in accelerating the parole eligibility date by only two months with respect to that factor. The sentence was varied only by substituting a parole eligibility date 18 months after the commencement of the sentence.

To those cases may be added a third, *R v Norris* [2006] QCA 376. The applicant there was sentenced to five years' imprisonment on a number of counts of dishonesty, including 17 counts of fraud and three counts of aggravated fraud. He had obtained goods and services to the value of $44,000, with his victims suffering ultimate losses of $32,000. Over a period

of about 18 months he adopted a practice of forging and uttering to obtain false identification and then using credit cards obtained in false names to obtain goods and services.

Norris was 41 years old with a more significant history of dishonesty than the present applicant. He was described as an "experienced older offender".

Jerrard JA, with whom the other members of the Court agreed, observed that although the amount of money lost by his victims was only a third of that involved in *Alexander*, Norris had engaged in persistent and systematic offending. He had pleaded guilty on an ex officio indictment and had spent six months, apparently not declarable, in pre-sentence custody.

The sentencing Judge proceeded on the basis that a notional head sentence of six years' imprisonment was appropriate, but reflected the matters in mitigation by reducing the sentence to five years, without any recommendation for eligibility for parole. This Court held that that sentence was not manifestly excessive.

The applicant here has a less significant criminal history than the applicants in *Alexander* and *Norris*, and the amount involved in his fraud was much less than that in *GAC*. Consequently, the learned sentencing Judge was right to sentence below the five to six year mark regarded as appropriate in those cases. But like each of those applicants, he was a persistent and calculating offender, in his case over a period of 18 months. He obtained a large sum of money by his frauds, in one instance from an individual without any redress. Having regard to those authorities, I do not think it can be said that a sentence of four years and three months with the benefit of a parole recommendation, not given in *Alexander* or *Norris*, was outside the proper exercise of the sentencing discretion.

Of the other matters raised, the concern in relation to the applicant's health was put before the sentencing Judge, and his Honour clearly took it into account. Although it would be of real concern if Corrective Services were not ensuring that the question of recurrence of the

applicant's cancer was properly assessed and treated, it is not a point for investigation on appeal.

As to the other matter raised, the sentencing Judge could hardly have been expected to know that some of the entries on the applicant's criminal history in fact related to a much earlier time; the offence dates were not included on the history, and were not the subject of any comment by the applicant's counsel. But it appears, in any event, that the applicant had committed serious offences in 2005 including theft, and I do not think that any mistake as to the timing of two of the offences, amongst a large number of offences, by the sentencing Judge was material.

I would dismiss the application for leave to appeal against sentence.

MACKENZIE AJA: I agree.

PHILIPPIDES J: I also agree.

HOLMES JA: The application for leave to appeal against sentence is dismissed.

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