

COURT OF APPEAL

**McMURDO P
FRASER JA
CHESTERMAN J**

**Indictment No CA 198 of 2008
CA 199 of 2008**

THE QUEEN

v

LOUIE WILLIAM GIBSON and WAYNE ARNOLD GIBSON

BRISBANE

DATE 21/11/2008

JUDGMENT

CHESTERMAN J: The applicants are brothers, each of whom, on 7 July 2008, pleaded to guilty to one charge of trafficking in the dangerous drug methylamphetamine, one charge of supplying the drug methylamphetamine and one charge of producing methylamphetamine.

On the first and third charges, trafficking and producing, both were sentenced to a term of 11 years' imprisonment which carried with it a declaration that the applicants had committed a serious violent offence.

On the second charge of supplying, each was sentenced to five years' imprisonment. All terms were to be served concurrently. The offences were committed between March 2004 and January 2005.

The applicant, Louie Gibson, was 52 years old when the offences occurred and 55 when sentenced. The applicant, Wayne Gibson was 49 at the time of the offences and 52 when sentenced. Neither had any relevant criminal history.

The only ground of appeal is that the sentences imposed on the applicants was substantially greater than those imposed upon one David Thomson who was said to be a co-offender whose offending involved the like degree of criminality.

The consequence is said to be that there was a departure from the "parity" principle and that, "The difference between the sentences imposed upon the applicants and Thomson, for the same offence, ought not to be such as to give rise to a justifiable sense of grievance on the part of the offenders with the heavier sentence or to give the impression that justice had not been done."

The passage comes from the judgment of Dawson J in *Lowe v The Queen* (1984) 154 CLR 606 at 623. Thomson was relevantly charged on the same indictment as the applicants with what I have called the first and third charges.

He was dealt with earlier, on 16 May 2008, and sentenced by Martin J to a term of nine years' imprisonment with a recommendation for parole after six years on each charge.

Wilson J, who sentenced the applicants, proceeded on the basis that they and others, including Thomson were engaged in a business of producing and trafficking methylamphetamine and that the applicants were superior to Thomson in the business hierarchy.

This finding and the consequent imposition of sentences more severe than those imposed on Thomson was said to involve an error of fact and discretion.

Thomson, the applicant's counsel submitted, was an equal co-offender and it was an impermissible departure from the principle of parity to impose a harsher sentence.

Justice Wilson gave detailed reasons. Her Honour said, "The applicants were professional gamblers and in that business, used Thomson as a bodyguard. He introduced the applicants to

the amphetamine trade. He already had a number of suppliers and was himself involved in sales at street level.

A business was created. The applicants organised finance for production of methylamphetamine. They sourced precursor chemicals. This involved Louie Gibson travelling to Sydney on more than one occasion and having other co-accused transport the precursor chemicals to Brisbane.

The applicants engaged other co-accused as cook and assistant. They purchased glassware and other equipment and cooks were performed at Bribie Island. The applicants sold wholesale, principally to Thomson but also to one Phillips.

Count two of the indictment involves a sale to Phillips. It was an efficient, well administered business. Three cooks were performed and a fourth was under way but interrupted by a police raid on 30 January 2005.

In the early cooks, Thomson complained of the defective quality of the finished product and that this would have an adverse effect on his sales. The problem was overcome.

Each cook resulted in approximately one pound or 450 grams of pure drug being produced. The police interrupted the fourth cook. That too, would have been of about one pound or 450 grams. The drug produced was 72 per cent to 73 per cent pure. That is a very high level of purity.

Police found glassware that had been purchased by Louie Gibson. They found a cheque for \$10,000, written by Louie Gibson in favour of the cook. The operation was closed on 28 January 2005 when the applicants were arrested.

Over the course of the business, regular supplies were made to Thomson in quantities of about one ounce. Such supplies were valued at wholesale at about \$6,500 to \$7,000 each.

The supplies to Thomson took place every two to three days and sometimes more often. The applicants did not entirely trust Thomson and they declined to supply him with larger amounts. Neither of the applicants were the user of methylamphetamine. I adopt the prosecutor's description of them as cynical, commercial profiteers."

Her Honour noted a marked divergence in the submissions on sentence. The prosecutor argued the applicants were, "The top of the syndicate and Thomson lower down", so that Thomson's criminality was less.

Counsel for the applicant submitted that there was no hierarchy and that Thomson's offending was at the same level and of the same degree as the applicants.

In response to those submissions, Wilson J reviewed the sentencing remarks addressed to Thomson and concluded, "I have carefully considered the facts put before the Court today and the basis upon which Thomson was sentenced, I am not satisfied that the relationship between the applicants and Thomson was truly linear.

I am satisfied that Thomson was near the top but that the applicants were above him in the hierarchy. Is it true that he provided a substantial wholesale market without which the business could not have succeeded but the applicants masterminded the production business. They held ultimate control over it as evidence by their reluctance to supply more than one ounce at a time."

Unless this conclusion is shown to be erroneous, by reference to the facts put before the learned Judge, the conclusion that the applicants were superior in a hierarchy to Thomson cannot be criticised and the basis for the application falls away.

Particulars provided to the Court at sentence showed that on 32 occasions, between 3 September 2004 and 25 January 2005, the applicants supplied Thomson with methylamphetamine.

The regularity of the supply and the small amounts supplied on each occasion justifies the respondent's submission that the applicants controlled the flow of the drug to Thomson who substantially depended upon the success of the applicants' production in order to be able to supply those who bought from him.

Thomson was a vendor to street dealers who obtained his supply from the applicants. Although his network was large and he made substantial profits, he depended largely upon the criminal activity of the applicants for the existence of his business.

Furthermore, the particulars established that the applicants procured others to actually produce the drug for them. They were producers and wholesalers.

They invested capital in the business and paid substantial remuneration to their cook. The applicants were not drug addicts or drug users. They took advantage of Thomson's network of street vendors to organise the production of the drug at high levels of purity and they sold to at least two suppliers.

Thomson's involvement in business is described by Martin J when passing sentence. His Honour said, "(1) In the two months, the subject of count 1, you were engaged full time in collection, production and sale with respect to methylamphetamine. (2) You had a large customer base ..(3) You engaged in deals whereby you sold quantities of methylamphetamine for prices from \$100 to some thousands of dollars. (4) To supply your network you engaged others to sell for you. (5) So far as financing the operating was concerned, you relied upon Louie and Wayne Gibson. (6) You arranged for a co-accused to go on runs to various places with the items containing pseudoephedrine for use in production. For that, you paid him \$1,000 a trip and sometimes expenses.(7) Your relationship with the Gibsons involved one of them warehousing drugs for you so that you could collect amounts at various times for street sales. They were not your only source of supply. (8) Over the period in question, you were involved in the distribution of some 900 grams of methylamphetamine. (9) Notwithstanding that police seized various amounts of drugs from persons engaged in the chain of supply, you

continued to sell. (10) You dealt with this insidious drug while you were on bail for other offences."

Thomson had what was described as a "dreadful criminal history". It included convictions for rape, causing grievous bodily harm with intent, stealing with actual violence, breaking and entering as well as drug offences.

The facts, in my opinion, amply justified the conclusion reached by the sentencing Judge that the business in which the applicants were engaged with Thomson was hierarchical and that the applicants' position in the hierarchy was superior to Thomson's.

They were the manufacturers, financiers and the owners of the means of production. They engaged the cooks and controlled the supply of the drug to Thomson. It is, in my opinion, correct to say that having been introduced to the illicit trade by Thomson, the applicants intervened at a higher level than his distribution network and that the extent of their involvement in trafficking and production and the level of their criminality, was much greater than Thomson's.

They were not co-offenders in the same activities to the same extent and the principal enunciated in the Queen v Rowe has no application. That being the only ground of complaint, I would dismiss both applications.

THE PRESIDENT: I agree. The maximum penalty for trafficking in a schedule one drug, methylamphetamine, is 25 years imprisonment. Deterrence, both general and individual, was an important sentencing principle.

As Justice Chesterman has explained, Thomson was on a lower level of the hierarchy in this trafficking business so that parity between the sentences imposed on Thomson and those imposed on these applicants was not necessary. Although Thomson had a dreadful criminal history, this appears to have been linked to his dysfunctional bringing; he was orphaned at an early age and living on the streets at 17.

By contrast, the applicants had each reached a mature age without convictions. They then made a reasoned decision to participate in this evil industry. They used Thomson to carry out their plans. Their enterprise was motivated solely by greed.

Those who participate in such activities in such circumstances can expect that there is a real likelihood they will be apprehended and convicted, in which case they will be sentenced to heavy terms of imprisonment. They must understand that on a cost benefit analysis, the ultimate consequences for them will heavily outweigh any short-term profits.

The applications for leave to appeal against sentence should be refused.

FRASER JA: I agree that both applications should be refused. I agree with the reasons for those conclusions given by Mr Justice Chesterman. I agree also with the additional observations made by the President.

THE PRESIDENT: The order in each case is that the applications for leave to appeal against sentence is refused.
