

SUPREME COURT OF QUEENSLAND

CITATION: *R v Gough* [2008] QCA 372

PARTIES: **R**
v
GOUGH, Manuella Sandy
(applicant)

FILE NO/S: CA No 179 of 2008
SC No 60 of 2008

DIVISION: Court of Appeal

PROCEEDING: Sentence Application

ORIGINATING COURT: Supreme Court at Cairns

DELIVERED ON: 28 November 2008

DELIVERED AT: Brisbane

HEARING DATE: 25 November 2008

JUDGES: de Jersey CJ, Keane JA and White AJA
Separate reasons for judgment of each member of the Court,
each concurring as to the order made

ORDER: **Application refused**

CATCHWORDS: CRIMINAL LAW – APPEAL AND NEW TRIAL –
APPEAL AGAINST SENTENCE – plea of guilty to
trafficking in methylamphetamine – 3 years with parole after
12 months – substantial relevant prior history – whether
Judge accorded sufficient weight to drug rehabilitation of
applicant and the burden of her incarceration on her
daughters

COUNSEL: The applicant appeared on her own behalf
M B Lehane for the respondent

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

[1] **de JERSEY CJ:** The applicant pleaded guilty to carrying on the business of unlawfully trafficking in the schedule 1 drug methylamphetamine over a period of seven and a half weeks in early 2006. She was sentenced to three years imprisonment, with parole fixed at the 12 months point. For a charge of producing methylamphetamine about six weeks later, she was not further penalized. She seeks leave to appeal against sentence. She appeared in person before this court by telephone link. (The video facilities were malfunctioning.)

- [2] The applicant was 32 years old when she offended. She sold the methylamphetamine to a covert police officer on seven occasions, in amounts aggregating 2.381 grams of the pure drug, for a total of \$8,650. She sold smaller amounts two or three times a day to other customers. She said her motivation was to repay monies owed by a de facto partner who had been incarcerated – drug debts, and the need to feed her own habit. She cooperated with the police when arrested, and entered timely pleas of guilty. She bore the burden of a very substantial and significant criminal history, including many drug offences for which she had been given the benefit of community based orders. She had served terms of imprisonment.
- [3] Subsequently to her commission of the instant offences, the applicant was sentenced to a maximum 12 months imprisonment for drug and other offences, suspended pending her completion of an intensive drug rehabilitation course. While subject to that order, she unfortunately committed further offences. The rehabilitation order was vacated, on the basis that she had failed to comply with it, and she was sentenced in consequence for up to two months imprisonment. The learned Judge who imposed the sentences now challenged was aware of a divergence of opinion as to the quality of the applicant's performance under that rehabilitation order, but was in the end faced with the obvious significance of the court's having vacated the order.
- [4] The applicant now complains that his Honour was given an unduly negative report on her performance under that order, and was not sufficiently informed about the positive aspects of her progress, especially in remaining drug free. But as I have said, the Judge was informed of varying assessments about her performance, and in relation to the tendering of one report rather than others, it is significant that the applicant was represented by counsel at the sentencing hearing.
- [5] The other major criticism by the applicant of the circumstance that his Honour required her to serve 12 months before release on parole, is that it failed to allow for the circumstances of the daughters who would otherwise be in her care, especially a daughter due to give evidence against her father in alleged abuse proceedings in Western Australian in early 2009, and another daughter with a five month old child. The applicant urged her immediate release on the basis that she has served five months of the term imposed.
- [6] Before the learned Judge, the Crown Prosecutor contended for a range of three to five years imprisonment with parole after 15 months. Defence Counsel agreed with that range, but sought her immediate release on parole.
- [7] The Judge rightly acknowledged the seriousness of the trafficking offence. He acknowledged the applicant's explanation for her offending, her unfortunate past history, and the burden her incarceration would cast onto her daughters. But he also properly acknowledged the significance of her criminal history, and her failure to benefit in the long term from community based orders. He noted the revocation of the intensive drug rehabilitation order, while acknowledging that she had come to

terms with her addiction by the time of sentencing. Also, as he noted, she had spent 64 days on remand.

- [8] His Honour apparently carefully listed all relevant circumstances. There is no demonstrated error in the way he weighed those considerations. The applicant cannot gainsay the significance of the revocation of the intensive drug rehabilitation order. Furthermore, the circumstances of her children, while disturbing, did not oblige the Judge to allow the applicant immediate parole. Such an order would frankly have been indefensible in view of her past history and the gravity of the offending.
- [9] There is no basis for concluding that the sentence of three years, with parole after one-third, following the plea of guilty to this charge of trafficking, was manifestly excessive in all the circumstances just covered.
- [10] I would refuse the application.
- [11] **KEANE JA:** I agree with the reasons of the Chief Justice and with the order proposed by his Honour.
- [12] **WHITE AJA:** I have read the reasons for decision of the Chief Justice and agree with his Honour for the reasons that he gives that the application for leave to appeal against the sentence imposed on the applicant should be refused.