

SUPREME COURT OF QUEENSLAND

CITATION: *R v AAJ & HAW* [2009] QCA 330

PARTIES: **R**
v
AAJ,
(first applicant)
HAW
(second applicant)

FILE NO/S: CA No 143 of 2009
CA No 131 of 2009
SC No 1305 of 2008

DIVISION: Court of Appeal

PROCEEDING: Sentence Application

ORIGINATING COURT: Supreme Court at Brisbane

DELIVERED ON: 30 October 2009

DELIVERED AT: Brisbane

HEARING DATE: 18 September 2009

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

ORDERS: **R v AAJ (131/09)**

- 1. Grant the application for leave to appeal against sentence and allow the appeal.**
- 2. Vary the sentence with respect to count 1 by setting aside the declaration that AAJ committed a serious violent offence.**
- 3. The reasons for judgment of Fraser JA handed down to the parties today and marked "A" be not further published and a copy thereof be placed in a sealed envelope to be opened only by order of the Court.**

R v HAW (143/2009)

- 1. Grant the application for leave to appeal against sentence and allow the appeal.**
- 2. Vary the sentence with respect to count 1 by setting aside the declaration that HAW committed a serious violent offence.**
- 3. The reasons for judgment of Fraser JA handed down to the parties today and marked "A" be not further published and a copy thereof be placed in a sealed envelope to be opened only by order of the Court.**

CATCHWORDS: CRIMINAL LAW – APPEAL AND NEW TRIAL – APPEAL AGAINST SENTENCE – GROUNDS FOR INTERFERENCE – OTHER MATTERS

Penalties and Sentences Act 1992 (Qld), s 161B(3)

COUNSEL: P Callaghan SC for the first applicant
B W Farr SC for the second applicant
R G Martin SC for the respondent

SOLICITORS: Ryan & Bosscher for the first and second applicants
Director of Public Prosecutions (Qld) for the respondent

- [1] **MUIR JA:** I agree with the reasons of Fraser JA and with the orders proposed by him.
- [2] **FRASER JA:** On 16 April 2009 the applicants were convicted on their pleas of guilty of carrying on the business of unlawfully trafficking in the dangerous drug heroin between 11 August 1998 and 31 January 2008 (count 1) and unlawfully supplying the dangerous drug heroin to another person on 4 June 2008 (count 2). On 12 May 2009, convictions were recorded and, in respect of count 1, each applicant was sentenced to imprisonment for eight years and the sentencing judge made declarations under s 161B(3) of the *Penalties and Sentences Act 1992 (Qld)* that each applicant had committed a serious violent offence. Concurrent terms of imprisonment of 12 months were imposed for count 2. AAJ was convicted but not further punished for three summary offences to which AAJ also pleaded guilty.
- [3] The applicants seek leave to appeal against their sentences. The grounds of each application are that the sentencing judge erred by sentencing upon the basis that the exercise of the discretion to make the declaration that the applicant had been convicted of a serious violent offence was affected by his Honour's application of a "rule", and that the sentence of eight years imprisonment was rendered manifestly excessive by that declaration.

Proposed orders

- [4] In the case of each applicant, I would grant the application for leave to appeal against sentence and allow the appeal to the extent only of setting aside that part of the sentence for count 1 by which the sentencing judge made a declaration that the applicants committed a serious violent offence. Because my reasons for concluding that the declarations should be set aside concern matters which were the subject of argument heard in camera my reasons should not be published otherwise than to the parties. Accordingly I would make the following orders:

R v AAJ (131/09)

1. Grant the application for leave to appeal against sentence and allow the appeal.
2. Vary the sentence with respect to count 1 by setting aside the declaration that AAJ committed a serious violent offence.
3. The reasons for judgment of Fraser JA handed down to the parties today and marked "A" be not further published and a copy thereof be placed in a sealed envelope to be opened only by order of the Court.

R v HAW (143/09)

1. Grant the application for leave to appeal against sentence and allow the appeal.
2. Vary the sentence with respect to count 1 by setting aside the declaration that HAW committed a serious violent offence.
3. The reasons for judgment of Fraser JA handed down to the parties today and marked "A" be not further published and a copy thereof be placed in a sealed envelope to be opened only by order of the Court.

[5] **CULLINANE J:** I have read the reasons for judgment of Fraser JA in this matter. I agree with those reasons and the orders proposed.