

SUPREME COURT OF QUEENSLAND

CITATION: *R v Feakes* [2009] QCA 376

PARTIES: **R**
v
FEAKES, Simon
(applicant)

FILE NO/S: CA No 255 of 2009
SC No 49 of 2009
SC No 708 of 2009

DIVISION: Court of Appeal

PROCEEDING: Sentence Application

ORIGINATING COURT: Supreme Court at Brisbane

DELIVERED ON: 8 December 2009

DELIVERED AT: Brisbane

HEARING DATE: 20 November 2009

JUDGES: McMurdo P, Fraser JA and Fryberg J
Separate reasons for judgment of each member of the Court, each concurring as to the order made

ORDER: **The application for leave to appeal against sentence is refused**

CATCHWORDS: CRIMINAL LAW – APPEAL AND NEW TRIAL – APPEAL AGAINST SENTENCE – GROUNDS FOR INTERFERENCE – SENTENCE MANIFESTLY EXCESSIVE OR INADEQUATE – the applicant pleaded guilty to one count of trafficking in the dangerous drugs cocaine, MDMA and MDEA, one count of producing a dangerous drug and one count of possessing dangerous drugs – the applicant was sentenced to 10 years imprisonment with a declaration that he was convicted of a serious violent offence on the trafficking count – whether the primary judge gave insufficient weight to the applicant's mitigating factors, including his guilty plea and efforts at rehabilitation – whether the sentence was manifestly excessive

Corrective Services Act 2006 (Qld), s 182, s 184, s 188
Drugs Misuse Act 1986 (Qld), s 5(a), s 5(b), Sch 1, Sch 2
Penalties and Sentences Act 1992 (Qld), s 161A

R v Assurson (2007) 174 A Crim R 78; [\[2007\] QCA 273](#), distinguished
R v Bradforth [\[2003\] QCA 183](#), considered
R v Elizalde [\[2006\] QCA 330](#), considered

R v Kashton [2005] QCA 70, considered
R v Klasan [2007] QCA 268, cited
R v Raciti [2004] QCA 359, considered
R v Rodd; ex parte A-G (Qld) [2008] QCA 341, distinguished
R v Saunders [2007] QCA 93, distinguished

COUNSEL: B W Farr SC for the applicant
D Meredith for the respondent

SOLICITORS: Guest Lawyers for the applicant
Director of Public Prosecutions (Queensland) for the respondent

- [1] **McMURDO P:** The applicant, Simon Feakes, was originally charged with one count of trafficking in the dangerous drugs, cocaine,¹ 3,4-methylenedioxymethamphetamine (MDMA)² and 3,4-methylenedioxyethylamphetamine (MDEA)³ between 4 May and 15 November 2006 (count 1); 11 counts of supplying drugs (counts 2-12); one count of producing a dangerous drug, cannabis sativa, in excess of 500 grams (count 13); and one count of possessing dangerous drugs (cocaine, cannabis, MDMA, MDEA) in excess of 500 grams (cannabis sativa) and 2.0 grams (cocaine and MDMA) (count 14). On 28 September 2009 in the Brisbane Supreme Court, he pleaded guilty to counts 1, 13 and 14. The prosecution accepted those pleas in full discharge of the indictment and did not pursue counts 2-12 which were particulars of count 1. Feakes was sentenced on count 1 to 10 years imprisonment with a declaration that he was convicted of a serious violent offence; on count 13 to two years concurrent imprisonment; and on count 14 to three years concurrent imprisonment. He was also sentenced in respect of a summary charge, possession of property suspected of having been used in connection with the commission of a drug offence, to a further concurrent term of one year imprisonment. He applies for leave to appeal against the sentence imposed (in practical terms, only the ten year sentence imposed on count 1) contending that it is manifestly excessive in the circumstances.
- [2] The effect of the 10 year sentence is that Feakes is ineligible for parole until he has served eight years imprisonment.⁴ Had he been sentenced to a period of imprisonment of less than 10 years and the offences were not declared to be serious violent offences, then, in the absence of a set parole eligibility date, he would have been eligible for parole after he had served half the period of imprisonment.⁵

Antecedents

- [3] Feakes was 30 and 31 at the time of his offending and 34 at sentence. He had some relevant but minor criminal history. In 1994, he was fined for offences of malicious damage, resisting arrest and assaulting police. In July 1999, he was fined without conviction for possession of a prohibited drug and cultivating a prohibited plant. On 11 January 2006, he was placed on a \$300 good behaviour bond for four months

¹ A sch 1 drug under the *Drugs Misuse Act 1986* (Qld) so that the maximum penalty for trafficking in it is 25 years imprisonment. See *Drugs Misuse Act*, s 5(a).

² A sch 2 drug at this time. MDMA became a sch 1 drug on 1 June 2008 by *Drugs Misuse Amendment Act 2008* (Qld), s 4 so that the maximum penalty for trafficking in it is 20 years imprisonment. See *Drugs Misuse Act*, s 5(b).

³ A sch 2 drug under the *Drugs Misuse Act 1986* (Qld) so that the maximum penalty for trafficking in it is 20 years imprisonment. See *Drugs Misuse Act*, s 5(b).

⁴ See *Penalties and Sentences Act 1992* (Qld), s161A and *Corrective Services Act 2006* (Qld), s 182.

⁵ See *Corrective Services Act 2006* (Qld), s 184.

and "drug diversion". The present trafficking offence (count 1) was charged as occurring between 4 May and 15 November 2006 and so commenced during the last seven days of his good behaviour bond when he was subject to "drug diversion". In December 2006, he was fined without conviction for breaching bail.

- [4] Feakes' lawyers conducted the committal proceedings on the present charges without cross-examination. The prosecutor presented an indictment in the Supreme Court on 30 January 2009. Discussions followed between the prosecution and Feakes' lawyers about guilty pleas. Feakes confirmed in writing his intention to plead guilty in May 2009. The prosecution accepted that his guilty plea was timely.

The facts of the offences

- [5] The circumstances of Feakes' offending, set out in a tendered schedule of facts, were as follows. Police conducted a controlled covert operation to investigate drug offences in south-east Queensland. The operation involved surveillance of Feakes, Douglas James McCutcheon, Jason Edward Brophy, Murray Schmidt and Neville Cooney. It also involved a covert police operative (CPO) and a covert civilian operative (CCO). In April 2006, the CCO introduced the CPO to McCutcheon who had worked for Brophy. McCutcheon provided a statement to police detailing his involvement with Feakes, whom he had known for about four years, and from whom he had bought "green" (cannabis) for his personal use.
- [6] Count 1 (trafficking) was based on 11 particularised occasions (originally charged as counts 2-12) when Feakes supplied drugs to the CPO and the CCO over a seven month period. Feakes supplied 32.052 grams of the sch 1 drug, cocaine, and almost 5,000 tablets containing 329.889 grams of the then sch 2 drug, MDMA and 109.744 grams of the sch 2 drug, MDEA.
- [7] Count 13 occurred in this way. At about 6.41 am on 14 November 2006 police executed a search warrant at an Ashmore address where Angela Mrcela (Feakes' partner) and their child were present. At 7.15 am police detained Feakes at Harbour Town. Police discovered 22.8 grams of "GLM" in a kitchen cupboard and a well advanced hydroponic setup in a locked room downstairs. Two large, eight medium and 11 small cannabis plants were growing. Police also found 15 transformers with leads; four exhaust fans; 15 lights; and water. The cannabis plants, after the roots were removed, weighed 4,978.2 grams. The total weight of cannabis sativa found on the premises was 5,001 grams.
- [8] Count 14 occurred in this way. A police officer found a locked briefcase at Feakes' home. Feakes agreed to open it and admitted its contents belonged to him. It contained a set of digital scales, a plastic spoon, \$5,000, a quantity of cipseal bags and a heat-sealed white bag containing white powder, later analysed as 9.983 grams of pure cocaine. Police also found a cipseal bag containing 36 white tablets, eight brown tablets, two broken tablets and five orange tablets. The 36 white tablets were analysed and contained 2.881 grams (74.6 per cent) pure MDMA. The remaining tablets were analysed and contained 0.071 grams of pure MDEA and 0.802 grams of pure MDMA. In all, the heat-sealed white bag contained 49 tablets and an additional two broken tablets containing 0.071 grams of pure MDEA and 3.683 grams of pure MDMA.
- [9] The minimum net benefit to Feakes from his drug related activity the subject of these offences was \$56,199.66. This was calculated on the basis of the extent to

which his quantifiable expenditure exceeded his nine sources of income during the trafficking period. Slightly in excess of \$115,000 passed through his hands during the trafficking period. Feakes' trafficking was commercially motivated for monetary gain and involved considerable quantities of illegal drugs.

The prosecutor's submissions at sentence

- [10] The prosecutor at sentence submitted that Feakes was "a cynical trafficker of commercial wholesale quantities of unlawful drugs for profit" at a wholesale level, whose supplier was very close to the source of the drugs. Feakes occupied a position very high up that chain and was well removed from street level trafficking.
- [11] The prosecutor tendered the sentencing remarks of others convicted in this police operation: *R v Schmidt*;⁶ *R v McCutcheon*;⁷ and *R v Brophy, Jenkins, Rollason and Green*.⁸ He submitted that the last matter involved a substantially different set of factual circumstances from those in Feakes' case; that Feakes was clearly more involved in the enterprise of trafficking than both Schmidt and McCutcheon; and Feakes' case was also more serious than *R v Cooney*.⁹ He ultimately submitted that Feakes should be sentenced to a term of imprisonment of between 10 and 12 years, relying on *R v Bradforth*¹⁰ and *R v Raciti*.¹¹

Defence counsel's submissions at sentence

- [12] Defence counsel commenced his submissions by tendering, without objection, a report from psychologist, Ms Jacqui Yoxall, which set out the following personal and factual background details, information ordinarily provided to the court by lawyers on instructions from the offender. Feakes had a four year old child with his current partner and they were expecting a second child. He claimed to be now living a drug-free, responsible and law-abiding life for the first time in his adult life. His childhood was traumatic and dysfunctional. He is the eldest of three sons. His mother is a chronic alcoholic. His parents exposed him to regular cannabis use from a young age. His parents separated from time to time. During one such separation, his mother left the children with their father for two years while she travelled overseas. She established and ran several brothels in the NSW Northern Rivers area. He began to use cannabis at 12 years old and, by the age of 16, he was openly smoking cannabis on a daily basis at home, usually an ounce each week. He did not use synthetic drugs such as ecstasy, amphetamines and cocaine until he was 30 years old. His work history from the age of 24 to 31 was sketchy and his memory was hazy because he was "stoned" most of this time.
- [13] Feakes told Ms Yoxall that he met McCutcheon in about 2005. They discussed cannabis and Feakes supplied him with some. McCutcheon later offered Feakes ecstasy pills in exchange for cannabis. He used the pills, enjoyed their euphoric effect, and later asked McCutcheon for more. McCutcheon supplied pills on credit

⁶ Indictment No 852 of 2007, Mackenzie J, 10 December 2007.

⁷ Indictment No 1219 of 2007, Wilson J, 26 February 2008.

⁸ Indictment No 475 of 2006, 2 February 2007. On appeal, see *R v Jenkins, Rollason and Brophy* [2008] QCA 369; Jenkins' and Brophy's appeals were dismissed, but Rollason's appeal was allowed and his sentence reduced from 12 years to 11 years. Green did not appeal.

⁹ Indictment Nos 583 of 2008 and 1216 of 2007, Martin J, 6 August 2008. On appeal, see *R v Cooney; ex parte A-G(Qld)* [2008] QCA 414, appeal dismissed.

¹⁰ [2003] QCA 183.

¹¹ [2004] QCA 359.

and he became indebted for about \$2,000. To reduce his debt to McCutcheon, he agreed to store pills and to deliver them when required. He became dependent on ecstasy and cocaine and used the money he obtained from dealing for living expenses. Feakes claimed to have stopped using ecstasy and cocaine since he was arrested; to have gradually reduced his chronic cannabis habit; and to have been abstinent from cannabis and all other drugs for over two years. He had completed the relapse prevention education program for alcohol, tobacco and other drugs – "Back in Control". He had undertaken education and counselling at Mirikai Drug Council where he continues to attend twice a week for drug urine analysis. Since July 2009 all tests have been clear. He has been working full-time as an electrical assistant and is a silent partner in an innovative venture to reduce carbon emissions in public lighting. His relationship with his partner has improved since he has been drug-free.

- [14] Ms Yoxall concluded that, in her opinion, with support to prevent relapse to drug use, Feakes was at low risk of re-offending.
- [15] Defence counsel also tendered the following: a certificate of Feakes' attendance at a drug education relapse prevention program; a certificate from Mirikai indicating that Feakes had attended four of the five sessions in the "Stop Pot" program; and Feakes' urine analysis reports between February and September 2009, all but one of which were drug-free. The exception was collected on 19 June 2009 and detected paracetamol and opiates which, this Court was told, was the after-effect of legitimate medication.
- [16] Defence counsel also tendered a number of letters in support of Feakes from his partner, his parents, other relatives, community members and his employer. All spoke of Feakes' present responsibility as a partner to Ms Mrcela and as a father to his child, his high level of competence as a computer technologist and electrician, his remorse for his offending and his impressive efforts at reform.
- [17] Defence counsel then made the following submissions. Most of the incidents relied on to establish the trafficking occurred over a two month period between May and July 2006. There was then a four month gap before the next episode of trafficking. The purity of the cocaine was between 20 and 30 per cent and therefore not high. Feakes had a most dysfunctional upbringing. He had a long term drug problem at the time of his offending. He was arrested and charged on 14 November 2006 and has been on bail, with these charges hanging over him, for about three years. He had a good work history during this period and had made real efforts at rehabilitation. He had promising prospects. Defence counsel stated that it was difficult to find closely comparable cases, but referred to a large number of other decisions. He especially emphasised as mitigating factors the delay; Feakes' cooperation with the administration of justice; his rehabilitation; and the absence in the trafficking of aggravating features such as actual violence or talk of violence, or of opening new markets or manufacturing drugs. He ultimately submitted that a sentence of seven or eight years imprisonment should be imposed. A serious violent offence declaration was not warranted. Instead, a recommendation for early parole should be made.

The primary judge's sentencing remarks

- [18] In sentencing Feakes, the primary judge stated the following. The offence of trafficking was especially serious. It was compounded by the offence of producing

cannabis and by the offence of possessing significant quantities of cocaine, cannabis, MDMA and MDEA. The trafficking occurred over a seven month period and involved more than a dozen transactions with covert operatives. Feakes earned at least \$56,000 by way of unexplained income and the turnover of his business was in excess of \$100,000. The 11 transactions relied on in the schedule of facts were but a window into a larger operation in which Feakes was able to source substantial amounts of relatively high quality cocaine and ecstasy at short notice. He was a substantial wholesale supplier. His trafficking involved several thousand tablets containing 330 grams of MDMA and almost 110 grams of MDEA and cocaine with a total weight exceeding 32 grams. To some extent, Feakes was trafficking to feed his addiction and he was a long term user of cannabis.

- [19] The judge noted the mitigating factors that Feakes pleaded guilty; his addiction; the delay in bringing the matter to conclusion; his efforts at rehabilitation; and the circumstances adverted to in Ms Yoxall's report. The guilty plea in particular warranted a more lenient sentence than would have been imposed had the case proceeded to trial. Rehabilitation must be encouraged. General deterrence was also important. Cocaine and ecstasy are highly dangerous drugs with significant potential for harm, including death. As noted earlier, the judge imposed a sentence on the trafficking offence (count 1) of 10 years imprisonment and declared that it was a serious violent offence, with lesser concurrent sentences on the remaining offences.

The parties' contentions in this appeal

- [20] Counsel for Feakes submits that in all the circumstances the primary judge gave insufficient weight to mitigating factors and that the sentence of 10 years imprisonment was excessive having regard to *R v Kashton*;¹² *R v Assurson*;¹³ *R v Rodd; ex parte A-G (Qld)*;¹⁴ *R v Elizalde*¹⁵ and *R v Saunders*.¹⁶ He contends that, if the starting point after a trial was 10 to 12 years, the judge gave insufficient weight to the guilty plea.
- [21] Counsel for the respondent submits that the 10 year sentence was within and at the lower end of the appropriate range (10 to 12 years imprisonment) and is supported by *Bradforth; Raciti*; and *R v Klasan*.¹⁷

Conclusion

- [22] The most serious offence is unquestionably the trafficking in cocaine, MDMA and MDEA (count 1), the maximum penalty for which is 25 years imprisonment as it involved the sch 1 drug cocaine.¹⁸ The primary judge imposed a global sentence for count 1 which also took into account Feakes' conduct in counts 13 and 14 and imposed concurrent sentences on those counts. That approach was entirely apposite. In determining the appropriate sentencing range for Feakes' offending it is a useful starting point to discuss the cases relied on as comparable by counsel in this application.

¹² [2005] QCA 70.

¹³ [2007] QCA 273.

¹⁴ [2008] QCA 341.

¹⁵ [2006] QCA 330.

¹⁶ [2007] QCA 93.

¹⁷ [2007] QCA 268.

¹⁸ MDMA was at the time of the trafficking a sch 2 drug; see fn 2. MDEA is a sch 2 drug; see fn 3.

- [23] In *Kashton*, the trafficking in heroin and methylamphetamine took place over a two and half year period. *Kashton* re-offended whilst on bail and his two apprehensions involved short police car chases. A financial analysis showed he made an apparent profit of \$156,000. He was aged 35 to 37 at the time of his offending; had a substantial criminal history; and used cannabis but not heroin nor methylamphetamine. Apart from his plea of guilty, there was little evidence of cooperation with the administration of justice. This Court concluded that *Kashton's* 10 year sentence was at "the bottom of the range for cases involving pleas of guilty to trafficking in schedule 1 drugs on a substantial scale".
- [24] *Assurson* involved less serious trafficking than *Feakes'*. It was over a six week period during which the applicant received about \$29,900. He continued offending whilst on bail. He was considering expanding his business into producing amphetamines where he thought the profit margin might be greater. *Assurson* discussed, but did not carry into effect, a transaction involving a potential profit of \$200,000 and with the possibility of netting \$1 million, but he has to be sentenced on his actual, not his planned conduct. Like *Feakes*, *Assurson* had a relatively minor criminal history but he was only 23 when he trafficked in wholesale quantities of cocaine, speed and ecstasy. This Court determined that the sentence of nine years imprisonment was well within range, but considered the declaration that the trafficking offence was a serious violent offence made the sentence excessive. This Court ordered that his parole eligibility date be fixed after five and a half years, after the half-way point,¹⁹ because of his re-offending whilst on bail.
- [25] *Rodd* appeared to be an even more serious example of trafficking than the present offence. His sentence of nine years imprisonment with parole eligibility fixed after six years was set aside on an Attorney-General's appeal. Instead, this Court imposed a sentence of 10 years imprisonment. *Rodd* was a joint principal in a methylamphetamine trafficking business which involved "cooks" at a number of properties. A financial analysis of *Rodd's* actual profit varied from \$101,000 to \$236,000, but this Court considered that this estimate was "far from a complete picture of his profits". He used cash to purchase expensive items leaving no document trail and had items purchased for him in other names. His criminal history was also worse than *Feakes'*. This Court considered it:

"was a particularly serious instance of trafficking in a schedule one drug. It persisted over more than two years; the offending was relentless, moving from one address to another; it continued while [*Rodd*] was on bail; the amounts produced were large; [*Rodd*] both produced and sold on a wholesale basis; [*Rodd*] was commercially motivated, funding an extravagant lifestyle and regularly in possession of very large amounts of cash; and the trafficking was attended by gangster-type actual and threatened violence."²⁰

He was, however, addicted to methylamphetamine, using more than one gram per day. But his desire for commercial gain soon became of at least equal significance to feeding his habit. *Rodd* pleaded guilty but it was not a timely plea and was not indicative of remorse. This Court considered that a sentence of 12 to 13 years would have been appropriate at first instance, but as the appellant sought a sentence only of 10 years imprisonment, that was the sentence substituted by this Court. The

¹⁹ Cf *Corrective Services Act 2006* (Qld), s 184.

²⁰ [2008] QCA 341 at [15].

sentencing range in Rodd's case was therefore 12 to 13 years imprisonment, not 10 years.

- [26] In *Elizalde*, a nine year term of imprisonment for trafficking in MDMA, methylamphetamine, and cocaine over a four and a half month period was found to be within range. Elizalde was 25 at the time of his offending and 28 when sentenced. The judge considered him to be a large scale drug dealer in MDMA with a total turnover of about \$100,000, also supplying cocaine and methylamphetamine from time to time for substantial amounts of money. He deliberately dealt in drugs for profit as a wholesaler. He had one prior minor drug entry in his criminal history. He had a substantial addiction to methylamphetamine but had obtained regular employment since his arrest and favourable references were tendered. But for the matters in the Elizalde's favour, the judge would have sentenced him to a term of 11 years imprisonment with a declaration of a serious violent offence. Because of his rehabilitation, his good prospects and early plea, the judge reduced the sentence to nine years imprisonment without the declaration.
- [27] In *Bradforth*, the offender was 26 years old and had no relevant previous convictions when sentenced for trafficking in MDMA (62.086 grams), cocaine (63.398 grams) and methylamphetamine (7.379 grams). The evidence established that his trafficking was "a large business" which he continued whilst on bail. He was on remand for nine months but no declaration could be made as to time served. His sentence of 12 years for trafficking, effectively a 13 year sentence, was reduced on appeal to 10 years, effectively an 11 year sentence, because of the period spent on remand.
- [28] In *Raciti*, the offender pleaded guilty to trafficking in MDMA, methylamphetamine and cocaine over a four month period and sentenced to 11 years imprisonment for trafficking. He was about 40 years old when he offended. He was first arrested in respect of a transaction involving \$117,000 and given bail. He re-offended whilst on bail in a trafficking transaction involving \$50,000. Raciti's offending was considered "substantially more serious" than Bradforth, but he had undertaken efforts at rehabilitation following his second arrest. This court noted that the range for offences of this kind seemed to be 10 to 12 years imprisonment and concluded, in re-exercising the sentence discretion for reasons not relevant to this appeal, that an 11 year sentence should be imposed.
- [29] *R v Saunders* is not comparable as the eight year sentence imposed there turned on the fact that Saunders' trafficking was in a sch 2 drug with a lesser maximum than in Feakes' case, and Saunders had to serve other sentences before commencing his eight year sentence. Principles of totality applied in Saunders' which are not apposite to Feakes'.
- [30] The sentencing remarks in *Schmidt, McCutcheon, Brophy, Jenkins, Rollason and Green*, and *Cooney* tendered by the prosecutor at sentence are not especially helpful in determining the appropriate sentence in this case.
- [31] Cooney was sentenced to an effective term of five years imprisonment with parole eligibility on 6 August 2010 but his trafficking was less serious than Feakes'. Schmidt was also obviously much less culpable than Feakes as is shown by his sentence (six months imprisonment wholly suspended for 18 months) for one count of supplying cocaine with a pure weight of 21.2 grams.

- [32] McCutcheon pleaded guilty to trafficking in cocaine, MDMA and MDEA between April and November 2006 involving 11 counts of supplying dangerous drugs. He was 45 at the time of his offending. He was a wholesale trafficker acting as a conduit between Brophy and distributors. The drugs in which he trafficked included 70.531 grams MDMA, 53.271 grams of cocaine and 0.15 grams of MDEA with \$36,350 changing hands. McCutcheon had prior drug convictions including for supplying amphetamines when more than \$7,000 passed hands and for which he was sentenced to 18 months imprisonment with a parole recommendation after four months. Brophy recruited McCutcheon to become a drug dealer when McCutcheon broke his arm. McCutcheon pleaded guilty at an early time. He was sentenced to an effective term of five years imprisonment wholly suspended for five years. McCutcheon's trafficking was at a slightly lower level than Feakes'. But of much greater significance in distinguishing it from Feakes' sentence was that s 13A *Penalties & Sentences Act* 1992 (Qld) was clearly a crucial and extraordinary factor in McCutcheon's lenient sentence.
- [33] My analysis of the comparable cases relied on by Feakes and the respondent in this application demonstrate that, absent extraordinary circumstances, in cases of trafficking in sch 1 drugs on a scale like the present offence, the sentence imposed on mature offenders who have pleaded guilty is ordinarily in the range of 10 to 12 years imprisonment. Younger offenders without a significant criminal history and with excellent rehabilitative prospects may be sentenced to a slightly lesser term of imprisonment in the range of eight to nine years: see, for example, *Assurson* (aged 23) and *Elizalde* (aged 25). As I noted earlier in these reasons, the practical effect of a sentence of less than 10 years imprisonment where there is no declaration that the offence is a serious violent offence takes on disproportionate significance.²¹
- [34] Feakes' trafficking was serious. He was aged 30 and 31 at the time of his offending and so was further removed from the category of youthful offenders than were Assurson and Elizalde. Feakes had previously been granted a lenient sentence for possession and cultivation of marijuana, which included "drug diversion". He did not (or was unable to) take advantage of that lenient community based rehabilitative sentence and commenced trafficking in sch 1 and sch 2 drugs whilst at the tail end of that four month good behaviour order. This Court has often stated that those who traffic in sch 1 drugs for profit at a high level and in large quantities can anticipate that courts will impose heavy deterrent sentences: on a cost-benefit analysis, the profits from such illegal, anti-social and dangerous conduct are not worth the resulting long jail sentences.
- [35] There were impressive mitigating factors in Feakes' case. He had the disadvantage of a grossly dysfunctional upbringing. It is to his credit that at last he seems to have made real efforts at overcoming his dependence on cannabis and other drugs so that he has promising prospects of rehabilitation when he is released from custody. He is fortunate to have the support of his partner and many other community members, including his employer. As Ms Yoxall and Feakes' family and friends recognise, he is clearly a talented and resourceful person. When he is released from prison, he will make a positive contribution both domestically and in the wider community, if he stays away from illegal drugs.
- [36] The cases which I have analysed demonstrate, at their highest for the applicant, that because of his significant mitigating features, particularly his rehabilitative

²¹ See these reasons at [2].

prospects, a sentence of nine years imprisonment without a serious violent offence declaration would have been at the bottom of the appropriate range, which I consider is between nine and 11 years imprisonment. But they do not demonstrate that the sentence imposed of 10 years imprisonment was outside that range. The sentencing range in this case spans the 10 year point at which a serious violent offence declaration becomes mandatory, requiring the offender to serve 80 per cent of the sentence before parole eligibility.²² Under this sentencing range, the minimum time served in prison before parole eligibility can therefore vary widely, from four and a half to 9.2 years imprisonment. But that is the effect of the sentencing regime under the *Penalties and Sentences Act*²³ and the *Corrective Services Act 2006 (Qld)*.²⁴ There will often be benefits for the community in sentencing drug addicted offenders who appear to have rehabilitated to a sentence which provides for a lengthy, rather than a short, parole period. In this case, the sentencing judge was acutely aware of balancing the need for rehabilitation and the need for deterrence. Feakes was not a youthful first offender. He trafficked at a high level in sch 1 and sch 2 drugs over a six month period after having been placed on a good behaviour bond with "drug diversion" a few months earlier. When viewed in the context of the cases which I have discussed, it is not possible to conclude that his 10 year sentence is excessive.

- [37] The applicant's contentions that the sentence imposed did not give sufficient weight to the applicant's plea of guilty or that the judge began his sentencing rationale from too high a commencement point, are not made out. It follows that the application for leave to appeal against sentence must be refused.
- [38] **FRASER JA:** I have had the advantage of reading the reasons for judgment of the President. I agree with the order proposed by her Honour and I agree with her Honour's reasons, subject only to the caveat expressed in the reasons of Fryberg J.
- [39] **FRYBERG J:** I agree with the order proposed by the President and with one caveat, I agree with her Honour's reasons for that order. In my judgment it is not necessary in deciding this case to identify a range of imprisonment ordinarily applied in serious trafficking cases;²⁵ nor is it necessary to set the boundaries of a range appropriate in this case.²⁶
- [40] The sentence imposed at first instance was not manifestly excessive. The only ground for the application should be rejected.

²² See fn 4.

²³ *Penalties and Sentences Act 1992 (Qld)*, Pt 9A.

²⁴ *Corrective Services Act 2006 (Qld)*, s 182, s 188.

²⁵ Para [33].

²⁶ Para [36].