

SUPREME COURT OF QUEENSLAND

CITATION: *R v Richardson (No 2)* [2010] QCA 278

PARTIES: **R**
v
RICHARDSON, Jamie Kenneth
(applicant)

FILE NO/S: CA No 287 of 2009
CA No 79 of 2010
DC No 2001 of 2009
DC No 2067 of 2008

DIVISION: Court of Appeal

PROCEEDING: Sentence Application – Further Order

ORIGINATING COURT: District Court at Brisbane

DELIVERED ON: 15 October 2010

DELIVERED AT: Brisbane

HEARING DATE: Heard on the papers

JUDGES: Fraser and White JJA and Mullins J
Judgment of the Court

ORDERS: **1. Grant the application to amend the orders made 20 August 2010.**

2. Vary order 4.a. made on 20 August 2010 as follows:

“4. The appellant is sentenced to:

a. six years and four months imprisonment for the armed robbery in company committed on 20 September 2007”.

3. Add a further order:

“5. The appellant’s parole eligibility date is 30 July 2012”.

CATCHWORDS: CRIMINAL LAW – APPEAL AND NEW TRIAL – PROCEDURE – POWERS OF COURT ON APPEAL – OTHER MATTERS – where sentences imposed by the Court of Appeal did not have intended effect in practical application – where these sentences would result in the applicant serving a much longer sentence – where applicant applied to have the sentences varied to reflect the intention of this Court – whether this Court should vary the orders as submitted

Penalties and Sentences Act 1992 (Qld), s 154(1)(a)

L Shaddock & Associates Pty Ltd v Parramatta City Council [No 2] (1983) 151 CLR 590; [1982] HCA 59, cited

R v Allen [1994] 1 Qd R 526, cited

R v Colombo [1995] QCA 083, cited

R v Dillon; ex parte A-G (Qld) [2006] QCA 521, cited

R v Richardson [2010] QCA 216, related

R v Riddell [1997] QCA 005, cited

COUNSEL: M J Woodford for the applicant
M J Copley SC for the respondent

SOLICITORS: Family Law Doyle Keyworth & Harris for the applicant
Director of Public Prosecutions (Queensland) for the respondent

[1] **THE COURT:** On 20 August 2010 the Court granted leave to appeal against the sentences imposed on the applicant in the District Court, allowed his appeal, and set aside those sentences and imposed fresh sentences as follows:¹

- a term of imprisonment of eight years for armed robbery in company committed on 20 September 2007 – (the Post Office robbery);
- a term of imprisonment of seven years for armed robbery committed on 31 December 2007 – (the Newsagency robbery); and
- shorter sentences for associated lesser offences.

All terms were ordered to be served concurrently.

[2] Solicitor, Mr Gordon Harris of Family Law Doyle Keyworth & Harris received documentation from the Department of Corrective Services setting out the Department's interpretation of those sentences to the following effect:

- The seven year sentence for the Newsagency robbery commenced on 31 July 2008, the date that the applicant was originally sentenced by Judge Clare.
- The eight year sentence for the Post Office robbery commenced on 12 March 2010, the date of the original sentence by Judge Irwin.

[3] This construction of the sentences has the effect that the full time release date for the applicant is not until 11 March 2018 and his parole eligibility date is 11 March 2014. That outcome is contrary to the intention of the Court, as revealed in the reasons, that the applicant should serve eight years imprisonment in total, with parole eligibility at the half way mark.²

[4] The applicant, with the pro-bono assistance of Mr Harris and Mr M J Woodford of counsel, has filed an application with detailed submissions to have the sentences

¹ *R v Richardson* [2010] QCA 216.

² *Ibid* at [55]. The fulltime release date on that understanding would be 30 July 2016 with parole eligibility from 30 July 2012.

varied to reflect the intention of the Court. Mr M J Copley SC, who appeared on the original sentence application, has filed submissions on behalf of the respondent Director, effectively supporting the applicant's submissions.

- [5] The Court has inherent jurisdiction to vary its orders if necessary to overcome a slip or accidental omission.³
- [6] A term of imprisonment starts on the day the court imposes imprisonment on an offender.⁴ As the Court observed in *R v Riddell*:⁵

“Generally, when this Court alters a sentence imposed in the Trial Division or a lower Court, the sentence substituted or imposed by this Court takes effect from the date when the original sentence began notwithstanding s. 154 of the *Penalties and Sentences Act* 1992: see subss. 668E(3) and 669A(1) of the Criminal Code.”

The Court may, less usually, order imprisonment to take effect from the date of this Court's order.⁶ There is no power to pre-date the commencement of the term of imprisonment to a time before the original sentence of imprisonment was imposed.

- [7] In order to give effect to the Court's intention, order 4.a. of the orders made on 20 August 2010 needs to be amended so that the applicant is eligible to apply for parole on 30 July 2012, that is, four years from 31 July 2008 rather than on 11 March 2014 as the sentence for the Post Office robbery is presently structured, and to impose an overall eight years head sentence. This may be achieved by varying the sentence of eight years imprisonment for the armed robbery in company offence committed on 20 September 2007 (the Post Office robbery) to one of six years and four months imprisonment to commence on 12 March 2010, the original sentence date for that offence. This has the result that the applicant will serve an effective eight year sentence, in conjunction with the seven years for the Newsagency robbery.
- [8] The Court must also fix a parole eligibility date which should be at the half way mark on 30 July 2012.
- [9] The orders are:
1. Grant the application to amend the orders made 20 August 2010.
 2. Vary order 4.a. made on 20 August 2010 as follows:
 - “4. The appellant is sentenced to:
 - a. six years and four months imprisonment for the armed robbery in company committed on 20 September 2007”.
 3. Add a further order:
 - “5. The appellant's parole eligibility date is 30 July 2012”.

³ *R v Allen* [1994] 1 Qd R 526 at 528-530 applying *L Shaddock & Associates Pty Ltd v Parramatta City Council [No 2]* (1983) 151 CLR 590 at 594.

⁴ *Penalties and Sentences Act* 1992 (Qld), s 154(1)(a).

⁵ [1997] QCA 005 at 5. See also *R v Colombo* [1995] QCA 083 at 2 and *R v Dillon; ex parte A-G (Qld)* [2006] QCA 521 at [18].

⁶ *Ibid.*

- [10] The Court appreciates the assistance of Mr Harris and Mr Woodford attending promptly to this matter, pro-bono, and to Mr Copley SC for his co-operative submissions.