

SUPREME COURT OF QUEENSLAND

CITATION: *R v Cannon* [2013] QCA 224

PARTIES: **R**
v
CANNON, Charles Edward
(appellant)

FILE NO/S: CA No 200 of 2012
SC No 743 of 2005

DIVISION: Court of Appeal

PROCEEDING: Reference under s 672A *Criminal Code*

ORIGINATING COURT: Supreme Court at Brisbane

DELIVERED ON: 16 August 2013

DELIVERED AT: Brisbane

HEARING DATE: Heard on the papers

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

ORDER: **The appeal against sentence is dismissed.**

CATCHWORDS: CRIMINAL LAW – APPEAL AND NEW TRIAL – PARDON, COMMUTATION OF PENALTY, REFERENCE ON PETITION FOR PARDON AND INQUIRY AFTER CONVICTION – REFERENCE TO COURT – where the appellant’s case with respect to both conviction and sentence was referred pursuant to s 672A *Criminal Code* 1899 (Qld) – where the appellant contended there had been a miscarriage of justice due to fresh evidence given in later court proceedings which raised issues relevant to the credibility of a key witness at the appellant’s trial – where the witness gave evidence the appellant had involvement in drug trafficking prior to 1998 – where the appellant was sentenced on the basis he had engaged in drug trafficking from 1996 until early 2003 – where the appellant contends the fresh evidence would have put in doubt the reliability of the witness – whether the appellant’s sentence should be interfered with

Criminal Code 1899 (Qld), s 672A

COUNSEL: No appearance by the appellant, the appellant’s submissions were heard on the papers
No appearance by the respondent, the respondent’s submissions were heard on the papers

SOLICITORS: Legal Aid Queensland for the appellant
Crown Law for the respondent

- [1] **MARGARET McMURDO P:** I agree with Boddice J's reasons for dismissing the appeal against sentence.
- [2] **FRASER JA:** I agree with the reasons for judgment of Boddice J and the order proposed by his Honour.
- [3] **BODDICE J:** By reference dated 31 July 2012, the Attorney-General for the State of Queensland referred to this Court the whole of the appellant's case for determination. The reference, made pursuant to s 672A of the *Criminal Code* 1899 (Qld) related to both conviction and sentence.
- [4] On 19 July 2013, this Court ordered the appeal against conviction be dismissed. At the time of publishing its Reasons for the dismissal of that Appeal, the parties were directed to provide any further outline of submissions with respect to sentence by 5 August 2013.
- [5] On 5 August 2013 the appellant advised he does not propose to provide any further submissions with respect to sentence. The respondent did not provide any further submissions, contending the appeal against sentence should be dismissed.
- [6] The reference to this Court arose as a consequence of a petition by the appellant, to the Governor of Queensland, for a pardon in respect of his convictions. The appellant contended there had been a miscarriage of justice due to failures by the prosecution to disclose relevant documentation and the availability of evidence given in subsequent confiscation proceedings, and other criminal proceedings.
- [7] Some of that additional material related to evidence given by an informant. That person's evidence was the only evidence led at trial in support of an allegation that the appellant had been involved in drug trafficking at a time prior to 1998.
- [8] The appellant was sentenced on the basis he had engaged in trafficking in dangerous drugs over an extended period from 1996 until early 2003. In finding that the appellant had engaged in trafficking in dangerous drugs prior to 1998, the sentencing judge accepted the evidence of the informant.
- [9] At the appeal, it was contended the additional matters raised in respect of the informant gave rise to the possibility the sentencing judge would not have been satisfied as to the informant's reliability such as to support a finding of the appellant's involvement in drug trafficking prior to 1998.
- [10] However, even if that finding was open, there is no basis for a conclusion the sentence imposed on the appellant was greater than that which would have been imposed had he only been found to have engaged in trafficking in the later period.
- [11] The sentencing judge found the appellant's involvement in trafficking prior to 1998 was on a smaller scale. The appellant 'graduated to a much larger involvement in both procuring the production of methylamphetamine and in selling it on a wholesale basis in the period from about 1998 onwards'.¹
- [12] The sentencing judge also found the appellant's involvement in trafficking was to make money from preying on the weaknesses of others in the community, that there

¹ AB 2230-1.

were elements of sophistication in the operation which had reaped large rewards for the appellant, that there was no evidence of remorse and that whilst methylamphetamine was a Schedule 2 drug for most of the trafficking period, it had become a Schedule 1 drug in September 2001.

- [13] Against a background of a finding of cynical involvement in trafficking in drugs for substantial financial reward on a very large scale from 1998, a sentence of 12 years imprisonment cannot reasonably be said to be likely to have not been imposed even if the trial judge determined the appellant was not involved in trafficking in drugs on a smaller scale in 1996 and 1997.
- [14] I would dismiss the appeal against sentence.