

SUPREME COURT OF QUEENSLAND

CITATION: *R v Gatti* [2013] QCA 97

PARTIES: **R**
v
GATTI, Maurice
(applicant)

FILE NO/S: CA No 291 of 2012
DC No 114 of 2012

DIVISION: Court of Appeal

PROCEEDING: Sentence Application

ORIGINATING COURT: District Court at Townsville

DELIVERED ON: 3 May 2013

DELIVERED AT: Brisbane

HEARING DATE: 7 March 2013

JUDGE: Margaret McMurdo P and Fraser JA and Martin J
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 – GROUNDS FOR INTERFERENCE – SENTENCE MANIFESTLY EXCESSIVE OR INADEQUATE – where the applicant pleaded guilty in the District Court to possessing the dangerous drug cannabis and the quantity exceeded 500 grams – where the learned sentencing judge took into account the applicant’s good record and that he was introduced to cannabis as a form of pain relief – where the applicant disputes evidence that was tendered at trial by consent with respect to the estimate of cannabis found at the applicant’s address – whether the sentence imposed was manifestly excessive

R v Batemberski [\[2000\] QCA 475](#), cited
R v Boyle [1995] QCA 396, cited

COUNSEL: The applicant appeared on his own behalf
B G Campbell for the respondent

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

- [1] **MARGARET McMURDO P:** I agree with Martin J's reasons for refusing this application for leave to appeal. On the uncontested facts before the sentencing court, the sentence imposed was within range, despite the applicant's lack of prior criminal history. He was a mature man who sought to make a profit from his involvement with a large quantity of unlawful drugs. The sentence imposed is supported by the sentences imposed in *R v Boyle*¹ and *R v Batemberski*.² I agree with the order proposed by Martin J.
- [2] **FRASER JA:** I agree with the reasons for judgment of Martin J and the order proposed by his Honour.
- [3] **MARTIN J:** The applicant pleaded guilty in the District Court to one count of possessing a dangerous drug (cannabis) and that the quantity of that drug exceeded 500 grams.
- [4] He was sentenced to imprisonment for two years and six months with that term being suspended after serving a period of 10 months' imprisonment; the suspension had an operational period of three years.
- [5] The applicant seeks leave to appeal against that sentence on the ground that it is manifestly excessive in all the circumstances.
- [6] At the sentence hearing an agreed schedule of facts was tendered. It contained the following information. When police executed a search warrant at the defendant's address, they found 18 cannabis plants drying out in the lounge room and different amounts of cannabis lying on plastic sheets on the floor. The cannabis plants had had their roots chopped off and were approximately 1.5 metres in height. The total weight of the plants was 20 kilograms and it was estimated that approximately 12 kilograms of cannabis head could be harvested from those plants. Further amounts of cannabis head and seeds were found in the lounge room. In two large freezers the police found 11 heat sealed bags containing cannabis head, each weighing one pound, 13 heat sealed bags containing cannabis head each weighing half a pound and one heat sealed bag containing 190 grams of cannabis head. There was also a further 13.5 kilograms of cannabis head contained in 16 shopping bags, four black garbage bags, and one clipseal bag. The total amount of cannabis head found in the freezers was 21.68 kilograms. Apparatus was found which suggested a commercial purpose for the cannabis and these items included two sets of digital scales and one Cryovac heat sealing machine.
- [7] At the hearing no objection was taken to the estimate given by the police as to the amount of cannabis able to be harvested from the plants that were drying in the lounge room.
- [8] The learned sentencing judge took into account the fact that the applicant had a good work record and that he had been introduced to the drug as a means of pain relief. He said that he could only deal with the applicant on the basis that there was a commercial component to this, given the significant amount of the drug.
- [9] At the hearing of the application for leave to appeal the applicant appeared for himself. The only matter he advanced in support of his application was that the

¹ [1995] QCA 396.

² [2000] QCA 475.

estimate given by the police that the cannabis plants found in the lounge room could have produced 12 kilograms of cannabis head was unjustified. The applicant said that a total of about two kilograms would have been more accurate.

- [10] The estimate of the police with respect to the amount of cannabis head which could be harvested from the plants in the lounge room was admitted as evidence by consent. It is not open to the applicant now to merely assert that the estimate was in error.
- [11] The sentence imposed was within range and, even if the applicant's estimate was correct, the amount of cannabis would still have exceeded 20 kilograms and the sentence imposed would not have been excessive for that amount in any event.
- [12] I would refuse the application for leave to appeal.