

# SUPREME COURT OF QUEENSLAND

CITATION: *R v Wood* [2014] QCA 256

PARTIES: **R**  
**v**  
**WOOD, Michele Diane**  
(applicant)

FILE NO/S: CA No 96 of 2014  
DC No 381 of 2012

DIVISION: Court of Appeal

PROCEEDING: Sentence Application

ORIGINATING COURT: District Court at Cairns

DELIVERED ON: 10 October 2014

DELIVERED AT: Brisbane

HEARING DATE: 30 September 2014

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

ORDERS: **1. Application for leave to adduce evidence refused.**  
**2. Application for leave to appeal against sentence refused.**

CATCHWORDS: CRIMINAL LAW – APPEAL AND NEW TRIAL – APPEAL AGAINST SENTENCE – GROUNDS FOR INTERFERENCE – SENTENCE MANIFESTLY EXCESSIVE OR INADEQUATE – where the applicant was tried on two counts of fraud and found guilty – where the applicant was sentenced to four and one-half years imprisonment – where the applicant sought release after serving 12 to 15 months of the sentence – whether the sentence was manifestly excessive  
*R v Eveleigh* [2009] QCA 257, considered  
*R v Gasenzer* [2013] QCA 9, considered  
*R v Illguth* [2014] QCA 222, considered

COUNSEL: The applicant appeared on her own behalf  
B J Power for the respondent

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

- [1] **FRASER JA:** I agree with the reasons for judgment of Mullins J and the orders proposed by her Honour.
- [2] **GOTTERSON JA:** I agree with the orders proposed by Mullins J and with the reasons given by her Honour.
- [3] **MULLINS J:** The applicant was found guilty after a trial lasting three days in the District Court of two counts of fraud as an employee, to the value of \$5,000 or more. The applicant was sentenced to imprisonment for four and one-half years in respect of count 2 and given a concurrent sentence of imprisonment for one year in respect of count 1. The applicant (who is self-represented) applies for leave to appeal against the effective sentence of imprisonment of four and one-half years on the ground that the sentence is manifestly excessive.

#### **The circumstances of the offences**

- [4] The applicant was employed by the complainant for count 1, Mr Jones, as a bookkeeper and courier for his transport business. The same business was then constituted as the business of the complainant company named in count 2 which became the applicant's employer.
- [5] To accommodate the applicant's circumstances, the office of the transport business was conducted from the applicant's home, where the employer provided a computer to enable the applicant to carry out transactions for the employer using internet banking.
- [6] At the trial, the applicant's counsel on behalf of the applicant admitted the correctness of the schedule (exhibit 1), setting out the five transactions the subject of count 1 and the 181 transactions the subject of count 2, as identifying what was reflected in the relevant bank accounts and the employer's accounting system.
- [7] The fraud was committed by the applicant transferring moneys from the employer's account direct to the applicant's account or another account which she held jointly with her husband. The transaction was then misdescribed in the records of the employer maintained by the applicant. The total amount defrauded for the purpose of count 1 was \$7,406 in transactions between 3 September and 3 October 2007. The transactions the subject of count 2 were undertaken between 22 October 2007 and 10 August 2009 for a total amount of \$182,241.79.
- [8] There had been no offer to make restitution prior to the sentence.

#### **The applicant's antecedents**

- [9] The applicant committed the offences when she was aged between 41 and 43 years old. She is married and has a school aged child. The applicant had no prior criminal history.

#### **The sentencing remarks**

- [10] The learned sentencing judge confined his consideration of the victim impact statement of Mr Jones to the adverse financial consequences suffered by him and his company due to the applicant's fraud. The sentencing judge ignored Mr Jones' allegations of stress (for which there was no medical evidence) and that the loss to

him and his company was greater than the amount that was the subject of the prosecution case at the trial.

- [11] The applicant was given credit for her cooperation in instructing her solicitors to agree upon the contents of exhibit 1 which reduced the length of the trial and involved a huge saving to the public in court time and less of an imposition upon the jury and witnesses. The sentencing judge indicated that consideration would be reflected by imposing a head sentence lower than would otherwise be the case.
- [12] It was noted that comparable sentences provided to the court involved offenders who pleaded guilty (*R v Parker* [2007] QCA 22, *R v Sommerfeld* [2009] QCA 333 and *R v Adams; ex parte A-G (Old)* [2006] QCA 312).
- [13] There was no explanation advanced for what the applicant had done.
- [14] The sentencing judge did not make a restitution order, as the court had been informed that the applicant's main asset, her house, was presently frozen in civil proceedings instituted by Mr Jones and/or his company against the applicant and her husband.

### **Proposed new evidence**

- [15] The applicant also applies for leave to adduce evidence that relates to medical conditions from which she suffers, her good behaviour since being imprisoned, the strain on her parents in caring for her child, and her child's special needs. The nature of the new evidence is a statement by the applicant and supporting letters from her parents, other inmates, the visiting medical officer at the prison, and friends.
- [16] Her child's vulnerability due to an incident that occurred before the applicant was sentenced was known at the time of sentence. Her own medical conditions are no doubt distressing for the applicant, but are not relevant to the application for leave to appeal against sentence. To the extent that matters have arisen after sentence that may affect the applicant's well-being, her recourse is through the prison system under the *Corrective Services Act 2006*.
- [17] The new evidence the applicant seeks to rely on is irrelevant for the purpose of the application for leave to appeal against sentence. The application for leave to adduce evidence must be refused.

### **The applicant's submissions**

- [18] The applicant relies on a long list of comparable sentences which were ameliorated by a suspension or eligibility (or fixing the date) for parole release at a point much earlier than the half way mark that applies to the applicant's sentence. (It was apparent during the hearing that the applicant does not appreciate the significance that can be attached to a guilty plea in structuring a sentence.)
- [19] One of the applicant's authorities is *R v Gasenzer* [2013] QCA 9. Ms Gasenzer pleaded guilty to one count of fraud as an employee in excess of \$5,000 and was sentenced to four years imprisonment suspended after 15 months. Over a period of three and one-half years as the bookkeeper for her employer, she overpaid herself some \$57,662. She took steps to hide her fraud from the firm's accountant. She had a gambling addiction. She did not make restitution. She was aged between

38 and 41 years at the time of her offending. Her sentence was not found to be manifestly excessive.

- [20] A number of comparable authorities were analysed in *Gasenzer* and they appear to be the source of the applicant's other comparable authorities, in addition to *R v Eveleigh* [2009] QCA 257. Ms Eveleigh pleaded guilty to stealing as a servant where the value of the property was more than \$5,000. She was 22 years old and employed at a supermarket as a cash management systems operator. Over a period of two months and five days she stole \$87,900 from the supermarket's takings, creating false computer records to hide her thefts. When the thefts were discovered and she was identified as the culprit, she made full admissions to the police and said she lost the money playing the poker machines. Her sentence of four years imprisonment with eligibility for parole after serving 14 months was not disturbed on appeal.
- [21] The applicant seeks a variation to her sentence that will allow for her release after serving 12 to 15 months in custody on the basis this would allow her to receive medical treatment for her conditions and to take care of her child.
- [22] Although the applicant submits that her sentence is manifestly excessive, she does not identify any error in the sentencing judge's exercise of the sentencing discretion other than the failure to provide for her release from custody at a significantly earlier point than after serving half of the sentence.

### **The respondent's submissions**

- [23] On the basis that the applicant committed the offence by abusing the trust of her employer over a period of almost two years that was ended only by the discovery of her fraud when the loss was almost \$190,000, the respondent submits that the sentence imposed on the applicant balanced the mitigating and aggravating features and is not manifestly excessive.
- [24] The respondent relies on *R v Illguth* [2014] QCA 222 and the cases summarised in paragraphs [16] to [19] of that decision.
- [25] In *Illguth* the applicant was convicted after a six day trial of one count of stealing, as a clerk, property valued over \$5,000. She was sentenced to five years imprisonment. She had admitted taking about \$100,000 from her employer. Her employer's financial controls were described as "loose" and although the employer could show that it had a shortfall of almost \$468,000, the trial judge proceeded to sentence on the basis that Illguth took somewhere between \$200,000 and \$250,000. She was between 40 and 45 years old at the time of offending with no relevant criminal history. She had been under a lot of stress when she took the money and she reacted to the stress by drinking and gambling. The sentence was held not to be manifestly excessive and it was noted there was no remorse or plea of guilty which could have justified an ameliorating order.

### **Is the sentence manifestly excessive?**

- [26] On the basis of the comparable authorities referred to the sentencing judge and those relied on by both the applicant and the respondent, but particularly *Illguth* and those analysed in it, the sentence of four years six months imposed on the applicant is unimpeachable. It reflects the cooperation that resulted in reducing the length of the

trial to three days and no amelioration was warranted where the applicant was convicted after trial. The sentence was appropriate to the offending and the applicant's circumstances.

### **Orders**

[27] The orders which should be made are:

1. Application for leave to adduce evidence refused.
2. Application for leave to appeal against sentence refused.