SUPREME COURT OF QUEENSLAND

CITATION:	*R v Rae* [2016] QCA 228
PARTIES:	**R** **v** **RAE, Stephen Craig Edward** (applicant)
FILE NO/S:	CA No 245 of 2015 SC No 206 of 2015 SC No 465 of 2015 SC No 733 of 2015
DIVISION:	Court of Appeal
PROCEEDING:	Sentence Application
ORIGINATING COURT:	Supreme Court at Brisbane – Date of Sentence: 21 September 2015
DELIVERED ON:	Orders delivered ex tempore 25 May 2016 Reasons delivered 13 September 2016
DELIVERED AT:	Brisbane
HEARING DATE:	25 May 2016
JUDGES:	Margaret McMurdo P and Morrison JA and Atkinson J Separate reasons for judgment of each member of the Court, each concurring as to the orders made
ORDERS:	**Delivered ex tempore on 25 May 2016:** **1. The application for leave to appeal is granted.** **2. The appeal is allowed.** **3. The sentences imposed at first instance are set aside and instead the following concurrent sentences are imposed:** **a. On count 1 on the three count indictment the appellant is sentenced to five years imprisonment suspended as of today with an operational period of five years.** **b. On count 2 on that indictment the appellant is sentenced to six months imprisonment.** **c. On count 3 on that indictment the appellant is sentenced to nine months imprisonment and two years probation on the usual terms and conditions with the additional conditions that:** **i. he abstain from the use of illegal drugs; and** **ii. that he participate in drug testing and substance abuse counselling as required by an authorised Corrective Services Officer.** **d. On the 1 count indictment the appellant is sentenced to two years imprisonment fully suspended with an**

operational period of three years.

e. In respect of the breach of the suspended sentence this Court is satisfied that in all the circumstances it would be unjust to activate the whole of that suspended sentence imposed on 27 October 2011 and instead orders that the appellant serve nine months of that sentence.

f. 37 days of pre-sentence custody between 12 November and 18 December 2013 is declared as time served under the sentences.

4. The court will publish its reasons for these orders later.

CATCHWORDS: CRIMINAL LAW – APPEAL AND NEW TRIAL – APPEAL AGAINST SENTENCE – GROUNDS FOR INTERFERENCE – PARITY BETWEEN CO-OFFENDERS AND OTHER RELATED OFFENDERS – where the applicant pleaded guilty to one count of trafficking methylamphetamine, two counts of supplying cannabis and one count of extortion – where the offending activated a suspended sentence of 12 months imprisonment – where the applicant was sentenced to six years imprisonment for the trafficking and lesser concurrent terms of imprisonment for the other drug charges and the extortion – where the primary judge ordered the remainder of the suspended sentence also be served concurrently – where a related offender on the drug charges was sentenced to five and a half years imprisonment – where the applicant was trading at a lower level than the related offender – where the applicant provided significant co-operation to police and gave evidence against a co-offender and the principal offender on the extortion charge – where the principal offender subsequently pleaded guilty – where the principal offender was sentenced, after the applicant was sentenced, to two years imprisonment, wholly suspended – whether the primary judge gave sufficient weight to the applicant's special co-operation when sentencing – whether there should be parity between the sentences of the applicant, the related offender on the drug charges and the principal offender on the extortion charges

Hili v The Queen (2010) 242 CLR 520; [2010] HCA 45, cited
R v Amery [1999] QCA 236, cited
R v Baradel [2016] QCA 114, related
R v Briggs [2012] QCA 291, cited
R v Cifuentes [2006] QCA 566, cited
R v Coleman [2006] QCA 442, cited
R v Cooney; ex-parte Attorney-General (Qld) [2008] QCA 414, cited
R v D [1995] QCA 332, cited
R v Girardo & Michaelides [2012] QCA 166, cited
R v Gladkowski (2000) 115 A Crim R 446; [2000] QCA 352, cited
R v HBK [2014] QCA 100, cited

R v Hoad (1989) 42 A Crim R 312, cited
R v Ryan (Unreported, District Court of Queensland, Clare SC DCJ, 15 December 2015), cited
R v Salameh (1991) 55 A Crim R 384, cited
R v Short [2010] QCA 206, cited
R v Taouk [2012] QCA 211, cited
R v Thompson (1994) 76 A Crim R 75; [1994] QCA 393, cited
R v Webber (2000) 114 A Crim R 381; [2000] QCA 316, cited
R v York (Unreported, Supreme Court of Queensland, Atkinson J, 18 June 2004), cited

COUNSEL: J R Hunter QC for the applicant
C N Marco for the respondent

SOLICITORS: Howden Saggers Cridland and Hua for the applicant
Director of Public Prosecutions (Queensland) for the respondent

[1] **MARGARET McMURDO P:** The applicant, Stephen Rae, pleaded guilty on 27 March 2015 to extortion committed on 6 September 2013. On 21 September 2015 he additionally pleaded guilty to trafficking in methylamphetamine between 6 May and 18 October 2013 (count 1), and two counts of supplying cannabis on 25 July (count 2) and 3 August 2013 (count 3). He was sentenced to six years imprisonment on the trafficking charge, to lesser concurrent terms of imprisonment on the remaining drug charges, and to three years concurrent imprisonment on the extortion charge. He was also ordered to serve 12 months concurrent imprisonment which had been wholly suspended for three years on 27 October 2011, as his most recent offending breached the terms of that suspension. Pre-sentence custody of 37 days was declared as time served under the sentence. A parole eligibility date was set after 18 months.

[2] He applied for leave to appeal against his sentence contending that the judge erred in failing to properly discount the sentence by reason of his significant co-operation with police and the prosecution; and that the sentences are excessive having regard to those imposed upon a co-offender on the drug charges, Michael Baradel, on 22 May 2015, thereby occasioning a justifiable sense of grievance.

[3] On 25 May 2016 this Court granted leave to appeal, allowed the appeal, set aside the sentences imposed at first instance and instead made the following orders:

> "(a) On count 1 on the three count indictment the appellant is sentenced to five years imprisonment suspended as of today with an operational period of five years.
>
> (b) On count 2 on that indictment the appellant is sentenced to six months imprisonment.
>
> (c) On count 3 on that indictment the appellant is sentenced to nine months imprisonment and two years probation on the usual terms and conditions with the additional conditions that:
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> i. he abstain from the use of illegal drugs; and

ii. that he participate in drug testing and substance abuse counselling as required by an authorised Corrective Services Officer.

(d) On the 1 count indictment the appellant is sentenced to two years imprisonment fully suspended with an operational period of three years.

(e) In respect of the breach of the suspended sentence this Court is satisfied that in all the circumstances it would be unjust to activate the whole of that suspended sentence imposed on 27 October 2011 and instead orders that the appellant serve nine months of that sentence.

(f) 37 days of pre-sentence custody between 12 November and 18 December 2013 is declared as time served under the sentences."

[4] These are my reasons for joining in those orders.

Antecedents

[5] The applicant was 43 at sentence and 41 at the time of the most recent offending. He had a criminal history commencing in the Magistrates Court in 1990 for stealing, assault, minor drug and street offences for which he was fined. In 2006, he was sentenced to 12 months imprisonment wholly suspended for 18 months and ordered to pay $250 compensation for wilful damage, entering premises and committing an indictable offence, and two charges of receiving. In 2008, he was fined for assault/obstruct police. As I have noted, on 27 October 2011 he was sentenced to 12 months imprisonment wholly suspended for three years for sexual assault. The assault was of a 17 year old girl in a taxi and included touching her breast under her bra, pushing his hand under her skirt and putting her hand on his penis. He made ready admissions and entered an early guilty plea. In 2012, he was fined for possession of a dangerous drug and the operational period of the 2011 sentence was extended by one month. He was sentenced on that occasion on the basis that he was the occupier of the car where the drugs were found but he himself was not a drug user, a contention at odds with the submission made on his behalf before the sentencing judge with which this application is concerned. In 2014, he was fined for failing to comply with a reporting condition.

The circumstances of the drug offences

[6] The prosecutor at sentence tendered an agreed schedule relating to the most recent drug offences which set out the following facts.[1] Police began an operation to investigate the production and trafficking of methylamphetamine out of a mechanic shop in Richlands. They were targeting Baradel and Malcolm Hunt. In the course of telephone intercepts and surveillance, the applicant's involvement came to light. He was sourcing methylamphetamine from Baradel, Hunt and other suppliers which he sold to 29 customers on about 140 occasions, usually in quantities between 0.01 gram and 1 gram but sometimes as much as 3.5 grams and 7 grams (count 1).

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1 Exhibit 4, AB 78 - 80.

[7] The prosecution at sentence submitted that he sold the drugs almost daily during the five month trafficking period. It was unclear what profit, if any, he made but his dealings were plainly commercial and he frequently sold on credit.

[8] The schedule also recorded that on 25 July 2013 he called a supplier and arranged to purchase one ounce of cannabis for $300 on behalf of Jacob Ryan, his co-offender in the extortion charge (count 2). In early August 2013, he arranged for the supply of one pound of cannabis to "Shano." He unsuccessfully attempted to source the cannabis through two other suppliers and ultimately obtained it from a third supplier for $3,600 (count 3).

[9] Police executed a search warrant at his home and arrested him on 12 November 2013.

Baradel's sentence

[10] Baradel was sentenced on 22 May 2015 to five and a half years imprisonment with parole eligibility after one third after pleading guilty to trafficking in methylamphetamine; possessing things used in connection with producing a dangerous drug; and two counts of producing methylamphetamine. The last offence was committed whilst on bail. His trafficking was in association with Hunt and extended over a four month period. They regularly sourced about 14 grams of methylamphetamine between once a fortnight and once a month for one customer. They on-sold the drug, making a profit of $500 (or $250 each). They supplied or attempted to supply methylamphetamine on 61 occasions to 28 different customers. The quantities varied from small personal amounts to two ounces but generally involved between 1.75 grams and 3.5 grams.

[11] On 8 September 2013, after police intercepts suggested that there was a production of methylamphetamine at the workshop, police executed a search warrant. They found a methylamphetamine laboratory with significant quantities of chemicals for the production of methylamphetamine. Baradel's profit was in the range of $10,000. His fingerprints were found on items in another laboratory associated with the production of methylamphetamine which indicated that he had supplied glassware and other items to facilitate the production of the drug there.

[12] He had a minor non-drug-related criminal history and was subject to a good behaviour bond at the time of his offending. Having completed a diesel-fitting apprenticeship, he went into business with Hunt, a much older man with a criminal past. Baradel was a drug user but his drug offending was not only to feed his habit but also for profit. He was 24 years old at sentence, had the support of his parents and family and was said to have rehabilitated. That submission was supported by clear drug screen tests.

[13] The judge noted Baradel's guilty plea, thereby assisting in the administration of justice, and accepted there had been some unexplained delay in finalising the matter during which Baradel had made significant steps towards his rehabilitation, but considered a deterrent sentence had to be imposed. His Honour moderated the six year head sentence he would have imposed to five and a half years imprisonment because of the unexplained delay, and set parole eligibility after one third (22 months) to reflect the guilty plea. Baradel's application for leave to appeal against sentence was refused on 4 May 2016.[2]

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2 *R v Baradel* [2016] QCA 114.

The circumstances of the extortion

[14] The prosecutor also tendered an agreed schedule relating to the extortion offence which set out the following facts.[3] Police became aware of the extortion charge when investigating the drug matters. The complainant was the managing director of a company selling fundraising chocolates. In 2009 he entered into an agreement with a refrigerated courier business operated by Jacob Ryan to distribute the chocolates in the Brisbane and Toowoomba region. The complainant received a letter of demand for $25,000 from Ryan's company which the complainant disputed. Ryan's company brought an action in the Magistrates Court. In an out of court settlement the complainant's company agreed to pay Ryan's company $12,000, less $9,900 for legal fees which Ryan's company had been ordered to pay the complainant's company. As a result Ryan's company received only $2,100. He was unhappy with the settlement and complained to others including the applicant. In early September 2013, Ryan suggested that the applicant "hustle" the complainant to recover some money and they would "go halves" in whatever was received.

[15] At 9.00 am on 2 September 2013, the applicant rode a blue Harley Davidson motor bike with a mural of a ghost or skull across the sides of its tank to the complainant's company premises. He was wearing a knitted beanie and a skull-type mask. He dismounted and asked for the complainant. His employee said the complainant was on holiday. The applicant said he was there to collect $32,000 owed from a cool room built three years ago. He said he wanted $25,000 now and would pick up the rest in a week. The employee said they did not keep money on the premises. The applicant, on the request of the employee, turned off his bike and removed his mask so that the employee was later able to give a description of the applicant to police. When a receptionist came into the area the applicant again demanded money and said he would return in a week to see the complainant. The two staff members maintained they knew nothing about the debt.

[16] Two days later police intercepted a phone call between Ryan and the applicant in which Ryan asked whether he had seen "that cunt." The applicant confirmed that he went to the premises and, as the complainant was not there, he planned to return the next day. Ryan told the applicant to "put as much shit on him as you can" and to "fuckin' stick it up the cunt." The applicant responded, "Yeah I'll get the cunt."

[17] The complainant spoke to police about the incident on 5 September 2013 after his staff told him what had happened. The following day, after Ryan gave the applicant the complainant's phone number, the applicant called the complainant from Ryan's office and police intercepted the call. The applicant again demanded money and said, "I'm gonna haunt you mate...for that money...and if you don't give it to me, you see what happens...I'm not gonna fuck around with ya mate." The applicant told the complainant that he would "sit off" his company premises and wait for him and then he would go to his house and wait for him. The complainant insisted that the debt had been paid and that he would provide proof. The applicant said he would put a sign in front of the complainant's company premises stating that he did not pay his bills. He said he would also complain to Cadbury so that the complainant would lose his business. This was not a hollow threat; Cadbury had the right to terminate the distribution contract with the complainant's company if it failed to pay any outstanding account. Any slur on the reputation of the complainant's company could have a detrimental effect on its business. The complainant then made a formal complaint to police.

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[3] Exhibit 5, AB 81 – 84.

[18] The applicant was charged with extortion and arrested. On 16 November 2013 he participated in an interview and made admissions in which he implicated Ryan. He told police he did not intend to go through with any of the threats. He later provided a signed statement to police.

[19] Police then charged Ryan with extortion and arrested him. He claimed that the complainant owed him $35,000 and had exploited a loophole in the law. He maintained his belief that he was lawfully entitled to recover the money, despite earlier signing a deed of release. He admitted he spoke casually to the applicant about the debt but denied asking him to confront the complainant. When shown the transcript of the recorded telephone conversation of 4 September 2013, Ryan claimed that the applicant acted alone because he was in debt. Ryan initially denied being present when the applicant phoned the complainant on 6 September 2013. Later, after learning the applicant had spoken to police, Ryan said that he was in his office when the applicant made the call but he could not hear what he said.

[20] On 27 March 2015, the applicant pleaded guilty to extortion whereas Ryan indicated he was going to trial. On 20 May 2015 at a hearing under s 590AA *Criminal Code* 1899 (Qld), Ryan's counsel cross-examined the applicant for 45 minutes and unsuccessfully applied to exclude his evidence. After several other pre-trial hearings, Ryan pleaded guilty on 18 September 2015.

Ryan's sentence

[21] At the time of the applicant's sentence, Ryan had pleaded guilty but not been sentenced. On 15 December 2015 he was sentenced to two years imprisonment, wholly suspended with an operational period of three years.[4] The factual basis of his sentence was consistent with the applicant's evidence at the pre-trial hearing.

The prosecutor's submissions at sentence

[22] The prosecutor in the present case stated that the applicant's co-operation in respect of the extortion charge provided real assistance in the successful prosecution of Ryan. Although this was not a sentence to which s 13A *Penalties and Sentences Act* 1992 (Qld) applied, the prosecutor submitted the applicant should be given credit for his co-operation with the authorities.

[23] As to the trafficking offence, the prosecutor explained that although four other people had been charged in the operation, only Baradel had yet been dealt with. She emphasised the importance of deterrence in respect of the trafficking offence. The extortion charge, she submitted, was a distinct offence and warranted a cumulative sentence, with some moderation to avoid any crushing effect. The trafficking offence was objectively more serious than the extortion, she submitted, but the applicant made real threats, must have left his victims in fear, and attempted to obtain a large sum of money. Comparable extortion cases included *R v Amery*,[5] *R v Taouk*[6] and *R v Girardo & Michaelides*.[7] The applicant's case, she contended, was less serious than *Taouk* and *Girardo & Michaelides* but more serious than *Amery*.

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4 *R v Ryan* (Unreported, District Court of Queensland, Clare SC DCJ, 15 December 2015).
5 [1999] QCA 236.
6 [2012] QCA 211.
7 [2012] QCA 166.

In respect of the trafficking offence, the prosecutor relied on *R v Briggs*,[8] *R v Coleman*[9] and *R v Cooney; ex-parte Attorney-General (Qld)*[10] as comparable.

Defence counsel's submissions

[24] Defence counsel submitted that the applicant had met his s 13A commitment by giving evidence against Ryan who subsequently entered a plea of guilty to extortion. He also placed emphasis on a psychologist's report[11] which noted the following. The applicant had a difficult upbringing with an abusive and alcoholic father. He had a sound work history and a long term stable marriage with two dependent children. His furniture removal business ran into financial difficulties and went into liquidation in November 2013. He was in great financial stress at the time of all offences. He self-medicated with amphetamine-based illicit substances including speed and ice. Since his arrest on 11 November 2013 he ceased all illicit drug-taking. The psychologist considered that, as long as he abstained from illicit drug use, he was at low risk of re-offending.

[25] Defence counsel placed emphasis on the sentence imposed on Baradel, whose offending was much more serious than the applicant's; *Baradel* suggested that the applicant should be sentenced to about five years imprisonment suspended after 20 months for the drug offences. Such a sentence was supported by *Cooney*. He submitted that, although the extortion offence was a discrete offence, it was committed during the period of the trafficking and against the same personal circumstances. It was a less serious example than in *R v Cifuentes*[12] where a sentence of three and a half years imprisonment was imposed as most of the aggravating features identified in *Cifuentes* were not present. In *Taouk*, also a more serious case than the applicant's, a sentence of three years suspended after twelve months was imposed. Those cases suggested that, were the applicant to be sentenced only on the extortion charge, a sentence of two and a half years imprisonment wholly or partly suspended was within range. Counsel submitted that, were a cumulative sentence to be imposed, it should be in the range of 12 months imprisonment. Alternatively, the head sentence for the trafficking offence could be increased slightly to reflect the applicant's overall criminality. The appropriate sentence for all offending, not taking into account the applicant's extensive co-operation on the extortion charge, would be an effective global sentence of between five and six years imprisonment with parole eligibility after 20 to 24 months.

[26] Defence counsel referred to the applicant's co-operation in the administration of justice, citing *R v Thompson*,[13] *R v D*[14] and *R v Webber*.[15] The applicant had not only agreed to co-operate in the future but had actually given useful evidence against Ryan who had now pleaded guilty. In giving evidence, the applicant had placed himself at real risk whilst in custody. This demonstrated genuine remorse. Relying on *R v HBK*,[16] counsel submitted that, taking into account this high level of co-

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8 [2012] QCA 291.
9 [2006] QCA 442.
10 [2008] QCA 414.
11 Exhibit 9, AB 106 – 118.
12 [2006] QCA 566.
13 [1994] QCA 393.
14 [1995] QCA 332.
15 [2000] QCA 316, [16].
16 [2014] QCA 100.

operation, a global sentence to reflect all his offending of between three and a half to four years imprisonment suspended after six to nine months was appropriate.

[27] Counsel also tendered a large number of positive character references,[17] including one from the applicant's wife, all of which supported the submission that the applicant had made encouraging and positive steps towards beating his drug problem and that he had rehabilitated since his arrest. Counsel also tendered a series of urine drug tests which supported that contention.[18] Although the applicant had made money from his trafficking business, counsel contended that, to a large extent, he trafficked to obtain free drugs.

[28] The sentencing judge raised his concern that, if a concurrent sentence were imposed to encompass the trafficking and the extortion as well as the activated breach of the suspended sentence to reflect the applicant's co-operation on the extortion, then it would be "double-dipping" to further reduce the trafficking sentence. Defence counsel responded that, in light of the co-operation and the applicant's two years of sustained rehabilitation, a global head sentence of five years imprisonment with parole eligibility after as early as 12 months could appropriately reflect the competing considerations.

The sentencing judgment

[29] The judge noted the applicant's plea of guilty to all counts and that the guilty plea to the extortion was particularly early. The applicant had genuinely co-operated with the authorities and was remorseful. His offending was serious and involved not only drug activities but an unrelated charge of extortion, all of which were committed during the operational period of a suspended sentence.

[30] His Honour set out the circumstances of the offending, noting that the applicant was involved in illegal activities concerning two drugs in circumstances which suggested he was heavily involved in the drug industry between May and October 2013. The extortion offence involved a significant threat of actual violence and actual detriment. The judge noted the applicant's criminal history which extended over two pages, and that he had not previously been ordered to serve an actual period of imprisonment. This would be a significant impost but was the only appropriate penalty. His Honour referred to the references, drug screens and the psychologist's report, all of which suggested the applicant was on the path to rehabilitation.

[31] His Honour again referred to the applicant's significant co-operation with police on the extortion charge and that this extended to providing a witness statement and giving evidence in court against a co-offender who subsequently pleaded guilty. That co-operation significantly strengthened the prosecution case. The judge identified that courts sentence offenders who co-operate with the authorities in such a significant way by reflecting this co-operation in the sentence.

[32] His Honour referred to the comparable cases cited, the totality principle and the need to sentence the applicant having regard to his overall criminality. The judge determined that a five year sentence would not properly reflect the totality of the applicant's criminality. The competing factors, his Honour considered, could best be tempered by a significant global head sentence for the trafficking offence. The

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17 Exhibit 10, AB 119 – 148.
18 Exhibit 11, AB 149 – 159.

extortion offence was a significant example of the charge and the appropriate head sentence was three years imprisonment. The most appropriate way in which to reflect the applicant's significant co-operation with the criminal justice system in respect of the extortion offence was to impose concurrent sentences for all offending including the previously suspended sentence. His Honour imposed six years imprisonment on the trafficking offence with lesser concurrent sentences on all remaining counts including the extortion, and also ordered that the previously suspended sentence of 12 months imprisonment be served concurrently. To reflect the mitigating circumstances, his Honour set parole eligibility after 18 months.

The applicant's submissions

[33] The applicant submits that the extortion offence was more serious than in *Amery* but less serious than in *Taouk* where three years imprisonment suspended after one year was imposed on an offender who lured the 59 year old complainant to an industrial complex where he kept him for two hours and threatened him with death and his family with serious harm, resulting in significant psychiatric consequences for the victim. The appropriate sentence for the extortion, the applicant contends, was in the order of two years imprisonment but, had this been imposed cumulatively, the totality principle would require it be moderated to about one year.

[34] The applicant also contends that when his sentence on the drug offending is compared to Baradel's, the applicant has a justifiable sense of grievance. Baradel's offending involved supplying larger quantities of drugs, and he was well-equipped for a substantial production of methylamphetamine. His youth did not diminish the objective seriousness of his offending. The applicant should have been sentenced to no more than five years imprisonment for the trafficking and drug offences, before being given consideration for his high level co-operation on the extortion offence.

[35] The sentencing judge, the applicant contends, erred in confining the benefit for the co-operation to the extortion count. There can be but one parole eligibility date fixed with respect to a "period of imprisonment" as opposed to a "particular term of imprisonment".[19] It follows, the applicant submits, that it is not appropriate to compartmentalise the benefit for co-operation in the way done by the primary judge. Here, the applicant not only co-operated and promised to give future co-operation but in fact had delivered co-operation by the time of his sentence in giving evidence against Ryan. The applicant deserved particular benefit for this.[20] His evidence directly resulted in Ryan's successful prosecution; it demonstrated remorse, contrition and a commitment to abandon his past criminal offending; it exposed him to the risk of retribution, both in custody and upon release. The notional global head sentence of five to six years imprisonment for trafficking and extortion, the applicant contends, should have been discounted by up to 40 per cent for these factors, resulting in a head sentence of between three and three and a half years imprisonment with suspension after nine to 12 months. As his most recent re-offending was of an entirely different character from the offending resulting in the suspended sentence, in light of his high level co-operation and rehabilitation, the activated previously suspended sentence should be served concurrently.

The respondent's contentions

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19 *Penalties and Sentences Act*, s 160F.

20 See *R v Salameh* (1991) 55 A Crim R 384, 388; *R v Gladkowski* [2000] QCA 352, [7]; *Webber* [2000] QCA 316, [16].

[36] The respondent emphasises that the applicant's co-operation was limited to implicating Ryan in the extortion charge and did not extend to the trafficking or drug offences. He additionally had to be dealt with for committing all these offences during the operational period of a 12 month suspended sentence for a sexual assault. The applicant informed the sentencing court in 2012 that he was not then a drug user, which was inconsistent with what he subsequently told the psychologist whose report was tendered at first instance here. The applicant's trafficking, the respondent submits, was in more than one prohibited drug, for considerable amounts and for commercial gain as well as to obtain drugs for his own addiction. *Baradel* was a comparable case but he was not a co-offender and parity issues did not arise. The applicant's disparate offending, the respondent submits, made cumulative sentences for his three lots of offending open.[21]

[37] The judge, the respondent contends, gave appropriate recognition to the applicant's co-operation relating to the extortion by ordering that the activated suspended sentence and the extortion sentence be served concurrently with the sentences for the drug offences, and by setting parole eligibility earlier than the one third point. The respondent contends that the applicant's sentence was supported by *Coleman* and *Cooney*. The applicant has not demonstrated that the sentence was manifestly excessive, unreasonable or plainly unjust or that there has been any misapplication of principle by the sentencing judge.[22] The respondent emphasises that an appropriate deterrent penalty was required and submits that leave to appeal should be refused.

Conclusion

[38] The applicant pleaded guilty to grossly anti-social conduct which warranted a firm deterrent penalty. He trafficked in both methylamphetamine and cannabis, mainly at a low level, but he did so with 29 customers on 140 occasions over a five month period, not only to feed his own addiction but also for profit. He additionally tried to extort money from the complainant and his company by threats and intimidation. Although the extortion was unsophisticated and unsuccessful, it must have caused distress to those targeted. All this offending occurred during the operational period of a fully suspended 12 month sentence for sexual assault. He was a mature man with prior convictions (although none had previously resulted in a term of imprisonment). He offended whilst in dire financial trouble which had contributed to his downward spiral into drug addiction. He has rehabilitated since, with clear drug tests and excellent character references. He had a stable marriage and two dependent children. Provided he successfully abstains from illicit drug use, he will be at low risk of re-offending.

[39] Additional very relevant factors were that the applicant both pleaded guilty to all the offending at an early stage and assisted the authorities in a most significant way. He not only gave a full and frank statement to police implicating his co-offender, Ryan, in the extortion charge, he also gave evidence at Ryan's pre-trial hearing as a result of which Ryan ultimately pleaded guilty. Courts have long recognised the need to encourage offenders to supply information to the authorities which assists in the prosecution of other offenders, thereby putting the informant at risk of harm, by

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21 *R v Hoad* (1989) 42 A Crim R 312, 315; *R v Short* [2010] QCA 206, [32] – [33].

22 *Hili v The Queen* (2010) 242 CLR 520, [58] – [59].

giving tangible recognition to that co-operation in the sentence imposed.[23] Where, as here, an offender has given this special co-operation in respect of one offence for which he is to be sentenced but not in respect of other offences, the court should nevertheless take into account that special co-operation in determining the appropriate sentence on all offences, whether imposed concurrently or cumulatively. It is not uncommon for an offender to give this special co-operation in respect of offences entirely unrelated to the offence or offences for which the informant is to be sentenced. That, of course, is no reason not to encourage the informant by appropriately moderating his or her sentence.[24] The overall sentence, whether involving a single term or concurrent or cumulative terms of imprisonment, must reflect the special co-operation and the various mitigating and aggravating features of the case.

[40] I do not accept the respondent's contention that parity issues have no relevance when considering the sentences imposed on *Baradel* and the applicant whose offending came to light in a police operation investigating Baradel and Hunt. Whilst there were obvious differences between their offending, I consider that Baradel's offending was more serious. The applicant was trading at a lower level than Baradel, mainly at street level. Although considerably older than Baradel, parity issues required him to be sentenced to a slightly lesser penalty. After examining *Cooney* and *Coleman*, I consider that a head sentence of about five years imprisonment for the drug offending was appropriate. The applicant's early plea of guilty, his rehabilitation and mitigating factors other than his special co-operation warranted parole eligibility after about one third.

[41] Parity with Ryan who was sentenced to two years imprisonment wholly suspended was also a relevant consideration when sentencing the applicant for extortion. As the applicant committed the extortion at the instigation of Ryan, and to collect a debt which Ryan claimed he was owed, it would be unjust and would create a legitimate sense of grievance if the applicant were sentenced to any heavier penalty than Ryan. As Ryan had not been sentenced at the time of the applicant's sentence, his Honour was unable to give effect to the parity factor. Like Ryan, the applicant should have been sentenced on the extortion charge to two years imprisonment fully suspended with an operational period of three years. This should have been ordered to be served concurrently with the trafficking sentence. It follows that the global sentence of six years imprisonment imposed at first instance was manifestly excessive in the circumstances.

[42] The applicant's special co-operation on the extortion charge, the material tendered in his favour at sentence and his pleas of guilty are strong indications that he has reformed and is no longer using illegal drugs. I considered a global head sentence of five years imprisonment for the drug and extortion offences appropriately balanced the objective seriousness of all the offending and those mitigating matters, including parity with Baradel and Ryan.

[43] His most recent offending was quite disparate from his 2011 conviction for sexual assault for which he was sentenced to 12 months imprisonment fully suspended.

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23 *Salameh* (1991) 55 A Crim R 384, 388 (Kirby P); *Gladkowski* [2000] QCA 352, [7]; *Webber* [2000] QCA 316, [16] (Pincus JA); *HBK* [2014] QCA 100, [31] (Mullins J).

24 See, eg, *R v York* (Unreported, Supreme Court of Queensland, Atkinson J, 18 June 2004).

With this in mind, together with his special co-operation and his rehabilitation, I considered that sentence should be served concurrently with the other sentences.

[44] The psychologist's evidence was that the applicant was unlikely to re-offend if he abstained from illicit drug use. For that reason I considered it prudent that on one count of supplying dangerous drugs he be placed on probation with special conditions that he abstain from the use of illegal drugs and participate in drug testing and substance abuse counselling as required by his probation officer.

[45] For these reasons I joined in this Court's orders of 25 May 2016.

[46] **MORRISON JA:** I have had the advantage of reading the reasons of the President. They express my own reasons for joining in the orders made on 25 May 2016.

[47] **ATKINSON J:** I have had the advantage of reading the reasons for judgment of the President. They reflect my reasons for joining in the orders made by the Court in this matter on 25 May 2016.