SUPREME COURT OF QUEENSLAND

CITATION:	*R v Singleton; R v Singleton* [2019] QCA 302
PARTIES:	**R** **v** **SINGLETON, Justin Ian** (applicant) **R** **v** **SINGLETON, Ian Raymond** (applicant)
FILE NO/S:	CA No 83 of 2019 CA No 84 of 2019 DC No 518 of 2018
DIVISION:	Court of Appeal
PROCEEDING:	Sentence Application
ORIGINATING COURT:	District Court at Brisbane – Date of Sentence: 26 March 2019 (Chowdhury DCJ)
DELIVERED ON:	20 December 2019
DELIVERED AT:	Brisbane
HEARING DATE:	3 June 2019
JUDGES:	Fraser and Philippides JJA and Lyons SJA
ORDER:	**The applications for leave to appeal against sentence are refused.**
CATCHWORDS:	CRIMINAL LAW – APPEAL AND NEW TRIAL – APPEAL AGAINST SENTENCE – GROUNDS FOR INTERFERENCE – SENTENCE MANIFESTLY EXCESSIVE OR INADEQUATE – where the applicants were each convicted on pleas of guilty to two counts of fraud – where the applicants were sentenced to 20 months and two years imprisonment respectively, suspended after four months, for an operational period of two years – where the applicants issued fraudulent certificates that certified that their customers had completed required training and, upon presentation, allowed their customers to obtain motorcycle licences from the Department of Transport and Main Roads – where the applicants contended that their sentences were manifestly excessive because, in passing sentence, the sentencing judge applied considerations commensurate to cases of official corruption as opposed to fraud or, in the alternative, because the sentencing judge did not give sufficient weight to matters in mitigation – whether the sentences are manifestly excessive

R v Brady, Brindley and Shale [2005] QCA 135, considered
R v Gmeinder [2001] QCA 354, considered
R v Moxon [2015] QCA 65, considered
R v Sadeed [2004] QCA 32, considered

COUNSEL: A S McDougall for the applicants
E L Kelso for the respondent

SOLICITORS: Hannay Lawyers for the applicants
Director of Public Prosecutions (Queensland) for the respondent

[1] **FRASER JA:** I agree with the reasons for judgment of Philippides JA and the order proposed by her Honour.

[2] **PHILIPPIDES JA:** On 26 March 2019, Ian Singleton and his son Justin Singleton, were sentenced on their pleas to two counts of fraud pursuant to s 408C(1)B of the *Criminal Code*. They were sentenced to two years imprisonment and 20 months respectively, with four months required to be served. Each sentence was operational for a two year period.

[3] They seek leave to appeal against those sentences on the grounds that the sentences imposed were manifestly excessive in that in imposing the sentences, the sentencing judge applied considerations commensurate to cases of official corruption as opposed to fraud. In the alternate, the sentencing judge did not apply sufficient weight to matters in mitigation. It was contended that lesser sentences in the vicinity of nine to 12 months fully suspended should have been imposed.

Background

[4] Ian Singleton, assisted by his son, operated a business called "Stay Alive Defensive Motorcycle Training Academy" from premises at Hein Road, Buccan. They were accredited rider trainers by the Department of Transport and Main Roads and as such were both in a position to make decisions on who should or should not be eligible to obtain a motorcycle licence. In the course of the business they issued certificates to customers to submit to the Department of Transport and Main Roads. These certificates confirmed the customer had completed the required practical and theoretical requirements to obtain a motorcycle licence. They collected the fees for providing this training, without requiring customers to complete it. Over 20 months, 29 certificates were issued, and $8,100 for fees was obtained.

[5] Twenty four of the customers who received, and then lodged, those certificates were subsequently charged with fraud by Queensland Police. Between 9 September 2014 and 31 May 2016, Ian Singleton received payments from 12 persons who were found not to have completed the required training and assessment to obtain a Q-Ride Competency Declaration Certificate. Between 3 March 2015 and 31 May 2016, Justin Singleton received payment from 17 persons who were found not to have completed the required training and assessment to obtain a Q-Ride Competency Declaration Certificate.

[6] The quantum from the fraud actually received by Ian Singleton was $3,400 and the quantum from the fraud actually received by Justin Singleton was $4,700. They were jointly liable for the fraud of the other by their roles in the business.

Sentencing remarks

[7] In sentencing the applicants, his Honour described the amount of money obtained as "relatively modest". However, the offending was serious in that it undermined the integrity of the motorcycle training system and, consequently, posed a risk to road users of having drivers on the public roads without the necessary training. His Honour accepted that some of those who obtained the certificates may have been experienced riders themselves but that, in any event, the system relied on outside agencies to provide the training and there was a significant risk to the public from the scheme. The offending extended over a significant period of time and came to an end as a result of police investigation and the applicants' arrests.

[8] In the applicants' favour, the sentencing judge had regard to the early pleas entered and to the "extraordinary number of references" tendered for both applicants which highlighted that apart from the offending before the Court, how "productive and law abiding and useful [the applicants] had been to the community".

[9] His Honour also noted that, while the applicants had criminal histories, they were largely irrelevant. Ian Singleton, who was 61 to 63 at the time of the offending, and was 66 at the time of sentence, had a single conviction on his criminal history from 1995 for possessing a dangerous drug, producing a dangerous drug and possessing a pipe for which he was convicted and fined.[1] Justin Singleton, who was 22 to 24 at the time of the offences and 27 at sentence, had a criminal history consisting of contravening a direction or requirement in 2009 and unlawful possession of a weapon in 2016 for which he was fined with no conviction being recorded.

[10] His Honour had regard to the psychological report of Mr Stoker tendered for each applicant. Ian Singleton was retired having had a good work history and was suffering from heart problems. He had three families to help out financially. His Honour took into account the opinion of Mr Stoker that he suffered from depression and anxiety and, as a result, poor decision making, and was remorseful.

[11] Justin Singleton was described as having an "excellent work history". He suffered with depression following a relationship breakdown and concern for his young son. His Honour observed Mr Stoker diagnosed a major depressive disorder, a diagnosis that would ordinarily be made by a psychiatrist, but his Honour accepted that at the relevant time the applicant was suffering from depressive symptoms and from anxiety and was taking anti-depressive medication.

Were the sentences manifestly excessive?

[12] It was submitted on behalf of the applicants that in relation to the factual basis of the offending there was no allegation that the payments represented other than the normal fee applicable for the relevant training and assessment. Of the 29 persons issued with the impugned certificates, 15 submitted the certificates to the Department of Transport and Main Roads.

[13] The applicants argued that his Honour erroneously applied, as a yardstick, sentences imposed for offences involving official corruption as opposed to mere fraud.

[14] It is certainly the case that the authorities placed before the sentencing judge included cases involving official corruption. Such a case was *R v Gmeinder*[2], where

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1 AB at 72.

2 [2001] QCA 354.

a sentence of three years imprisonment to serve six months was imposed on a 27 year old offender who was convicted of official corruption in issuing false learner's permits and certificates of registration. The offending there concerned 72 corrupt applications issued over a two year period which resulted in the offender personally receiving $30,000.

[15] However, it is abundantly clear from repeated comments made by his Honour during sentencing submissions that his Honour distinguished the gravity of offending concerning official corruption from the serious but different nature of the offending before the court, which concerned deliberate undermining of the integrity of the motorcycle training system. Those comments were reiterated in his Honour's sentencing remarks that *Gmeinder* was a "much worse case" in that it concerned official corruption.

[16] His Honour also referred to *R v Brady, Brindley and Shale*,[3] which was relied upon by the prosecution, but also distinguished it as involving more serious offending. That case concerned the issuing of false roadworthy certificates as part of a scheme where people would pay for fraudulent inspections. Over an eight or nine month period, more than 3,200 false motor vehicle safety certificates were issued to second hand car dealers and, on occasion, private individuals. The offenders were paid $123,000 from the scheme. Brady and Brindley pleaded guilty to two counts of fraud (one involving a circumstance of aggravation), one count of official corruption and one count of dishonestly obtaining delivery of postal articles. Brady, the most serious of the offenders, and the principal proponent of the scheme was sentenced to four and a half years imprisonment on each count, suspended for an operational period of five years after serving nine months. Brindley was sentenced to three years suspended after six months with an operational period of five years. Shale, the least involved offender, who pleaded to the two counts of fraud was sentenced to 18 months imprisonment, suspended after serving three months. In referring to the sentence imposed on Shale, his Honour specifically commented on the fact that Shale had not been charged with official corruption. It was thus a more apposite comparative.

[17] Given his Honour's remarks in relation to those authorities, there can be no basis for any contention that his Honour erroneously applied considerations commensurate to cases of official corruption as opposed to fraud.

[18] His Honour was also referred to other authorities such as *R v Sadeed*[4] and *R v Moxon*,[5] which did not include offending involving official corruption.

[19] *Sadeed* concerned a scheme for the issuing of false importation approval certificates for imported vehicles. The offending included the forgery of approvals from the Commonwealth Department of Transport for the importation of non-standard vehicles from Japan, some of which were uttered to third parties. It also involved the sale of those vehicles through the use of bogus modification certificates. The forgeries were committed by photocopying genuine approvals and then altering their particulars using a variety of different names. Sadeed was convicted after a trial of four counts of forgery, four counts of uttering and two counts of fraud and

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3 [2005] QCA 135.
4 [2004] QCA 32.
5 [2015] QCA 65.

sentenced to four years imprisonment with a non-parole period of two years. His Honour rightly considered the relevance of the case as going to the statement of principle by McPherson JA[6] as to the seriousness of the offence of forging and uttering official documents purporting to come from governmental instrumentalities, on the integrity and faith of which so much commerce is necessarily conducted and depends and the importance of general deterrence in cases of such offending. The consideration referred to by McPherson JA was apposite in the present case where the offending undermined the integrity of a system aimed at ensuring public safety.

[20] His Honour had regard to similar observations in *Moxon* which concerned 29 counts of forgery and one count of contravening regulations relating to official marks relating to certificates in respect of timber. Moxon was sentenced to two years imprisonment with release after serving eight months upon entering into a Commonwealth recognizance on condition of good behaviour for two years. Moxon was the CEO of a company that imported and exported timber. Exports required phytosanitary certificates issued by the Commonwealth Department of Agriculture, Fisheries and Forestry (DAFF). The applicant obtained a false DAFF stamp with which the company's employees forged false DAFF certificates between August 2006 and May 2009 in order to bypass quarantine inspections. There was no evidence that the timber that had been exported had not been properly treated, nor that any of the exported timber was unsuitable for export, nor that any recipient of the timber received timber of a quality other than for which they had contracted. The application for leave to appeal against sentence was refused. His Honour had regard to the comments of McMurdo P that the offending called for a stern deterrent penalty given that the offending was at the expense of the interests of Australia and its timber industry.

[21] His Honour was referred to *R v Smith*[7] by the applicant's counsel and rightly distinguished it on the basis that there was no suggestion of public risk from the offending in that case.

[22] The contention that the sentencing judge's discretion miscarried because his Honour proceeded on an incorrect application of the authorities on the basis that factors on a par to official corruption were considered is incorrect.

[23] Further, there can be no complaint that the sentences imposed were manifestly excessive in failing to consider matters of mitigation. His Honour considered that the seriousness of the offending, which was deliberate and continued over a significant period of time involving a large number of people with risk to the public and which undermined the integrity of the motorcycle training system, called for a term of imprisonment with a period of actual custody to properly reflect considerations of general deterrence. However, his Honour also had appropriate regard to the need to balance considerations of deterrence with matters of mitigation.

[24] As his Honour stated in his sentencing remarks, he went into some considerable detail in setting out the matters in the applicants' favour, including the excellent references and the matters raised in each of the psychological reports.

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6 [2004] QCA 32 at [18].
7 [2000] QCA 390.

[25] In relation to Ian Singleton, his Honour observed that Mr Stoker reported that he had suffered from depression and anxiety all of his life and in particularly at certain periods. His Honour took into account the mood testing undertaken by Mr Stoker and his opinion of the connection between his symptomology and the offending. His Honour specifically took into account the opinion that, at least to some extent, Ian Singleton was probably not thinking as rationally and clearly as he should have been, observing that "had he sat back and thought about what [he] was doing" he would have seen he was putting a successful business at risk and could be charged with criminal offences. In relation to Justin Singleton, while noting reservations as to the diagnosis of psychiatric illness, his Honour stated that he was prepared to accept that the applicant was suffering from depressive symptomology and that he had been on medication for some years.

[26] His Honour also stated that it was relevant that during the delay before sentencing there had been no further offending. His Honour also specifically indicated the manner in which he was going to take into account the mitigating factors; that is, by fashioning sentences that would see the applicants released much earlier than would ordinarily follow. His Honour imposed on each applicant a custodial component of four months, which was a considerable further reduction on the head sentences of 24 months and 20 months, to reflect matters of mitigation beyond the one third discount that commonly accommodates a plea.

[27] His Honour imposed the varying head sentences on the basis that Ian Singleton, as the father of Justin, should have set a much better example and was the prime owner in the business, although he set the same period of actual custody since both were actively involved in the offending. In that regard, it is to be observed that there was no evidence that Justin Singleton had participated because he was overborne by his father and that he acted other than freely. Nor was there any submission that Justin Singleton had become involved in the fraud at the behest of his father. Justin Singleton personally issued a greater number of certificates than his father, despite being a part of the business for a shorter period.

Order

[28] I would refuse the applications for leave to appeal against sentence.

[29] **LYONS SJA:** I agree with the reasons for judgment of Philippides JA and the order proposed by her Honour.