SUPREME COURT OF QUEENSLAND

CITATION:	*R v Morrison* [2020] QCA 187
PARTIES:	**R** **v** **MORRISON, Karl Michael** (applicant)
FILE NO/S:	CA No 238 of 2019 DC No 2609 of 2017 DC No 1911 of 2019 DC No 1913 of 2019 DC No 64 of 2018 DC No 2120 of 2018 DC No 1901 of 2019 DC No 1938 of 2019
DIVISION:	Court of Appeal
PROCEEDING:	Sentence Application
ORIGINATING COURT:	District Court at Brisbane – Date of Sentence: 21 August 2019 (Rafter SC DCJ)
DELIVERED ON:	4 September 2020
DELIVERED AT:	Brisbane
HEARING DATE:	22 July 2020
JUDGES:	Sofronoff P and Philippides JA and Davis J
ORDER:	**The application is refused.**
CATCHWORDS:	CRIMINAL LAW – APPEAL AND NEW TRIAL – APPEAL AGAINST SENTENCE – GROUNDS FOR INTERFERENCE – SENTENCE MANIFESTLY EXCESSIVE OR INADEQUATE – where, on the first indictment, the applicant was convicted of 11 charges of supplying a dangerous drug – where, on the second indictment, the applicant was convicted of five counts against the *Weapons Act* 1990 (Qld), one count against the *Drugs Misuse Act* 1986 (Qld) and one count against the *Criminal Code* (Qld) – where, on the third indictment, the applicant was convicted of three counts of importing tier 2 goods contrary to the *Customs Act* 1901 (Cth) and one count against the *Weapons Act* – where the applicant was sentenced to imprisonment for five years and six months with a parole eligibility date after 18 months on the first indictment – where that sentence commences after the sentences on the second and third indictments expire – where the longest sentence imposed on the charges in the second and third indictments was two and a half years imprisonment to be served wholly in a corrective services

facility – where that sentence was the mandatory minimum that could be imposed under the *Weapons Act* – where the applicant submits that the accumulation of the sentences made the overall sentence excessive – where the applicant submits that the sentence was manifestly excessive when compared to other related offenders – whether the sentencing discretion miscarried – whether the sentences were manifestly excessive

Criminal Code (Qld), s 433
Customs Act 1901 (Cth)
Drugs Misuse Act 1986 (Qld), s 5, s 6, s 9
Human Rights Act 2019 (Qld), s 29
Penalties and Sentences Act 1992 (Qld), s 91
Weapons Act 1990 (Qld), s 5, s 50, s 50B, sch 2

Azzopardi v The Queen (2011) 35 VR 43; [2011] VSCA 372, considered
Barbaro v The Queen (2014) 253 CLR 58; [2014] HCA 2, cited
Broederlow v Commissioner of Police [2019] QDC 228, not followed
Campbell v Galea [2019] QDC 53, followed
Commissioner of Police v Broederlow [2020] QCA 161, followed
Hili v The Queen (2010) 242 CLR 520; [2010] HCA 45, followed
Lowe v The Queen (1984) 154 CLR 606; [1984] HCA 46, cited
Markarian v The Queen (2005) 228 CLR 357; [2005] HCA 25, cited
Mill v The Queen (1988) 166 CLR 59; [1988] HCA 70, cited
Postiglione v The Queen (1997) 189 CLR 295; [1997] HCA 26, cited
R v Brienza [2010] QCA 15, considered
R v Dowel; Ex parte Attorney-General (Qld) [2013] QCA 8, cited
R v DS [2019] QSC 288, followed
R v Feakes [2009] QCA 376, cited
R v Ham [2016] QDC 255, not followed
R v Hill [2017] QCA 177, considered
R v Kalaja [2017] QCA 123, considered
R v Kendrick (2015) 249 A Crim R 176; [2015] QCA 27, considered
R v Lewis, Unreported, Brown J, SC No 377 of 2016, 9 March 2018, followed
R v Meerdink [2010] QCA 273, cited
R v Nunn [2019] QCA 100, cited
R v Orley [2013] QCA 119, considered
R v Ritzau [2017] QCA 17, cited
R v Stamatov [2018] 2 Qd R 1; [2017] QCA 158, cited
Wong v The Queen (2001) 207 CLR 584; [2001] HCA 64, cited

COUNSEL: The applicant appeared on his own behalf
D A Holliday for the first respondent

J T Aylward for the second respondent

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

[1] **SOFRONOFF P:** I agree with Davis J.

[2] **PHILIPPIDES JA:** I agree with the order proposed by Davis J for the reasons given by his Honour.

[3] **DAVIS J:** Karl Michael Morrison seeks leave to appeal against sentences imposed upon him in the District Court on 21 August 2019 in relation to offences on three indictments and 25 summary charges which were transferred to the District Court pursuant to s 651 of the *Code*.

[4] The first indictment charged 11 counts of supplying a dangerous drug, namely cannabis to others.[1] Count 1 alleged a supply of cannabis on 18 February 2014. Count 11 alleged a supply of cannabis on 23 March 2014. In that one month period, the applicant supplied a total of 197.305 kilograms of cannabis.

[5] There was clearly a commercial element to the supply of the cannabis. It was sourced by others from Melbourne and sold to the applicant who then on-sold it. The ultimate recipients of the cannabis were not identified.

[6] Notwithstanding the commercial purpose, and the relatively large number of transactions in a relatively short period of time, the Crown did not charge the applicant with trafficking in the cannabis.[2] However, each of Justin Corke, Matthew Stirling and Matthew Smyth, from whom the applicant acquired the cannabis, were charged with trafficking. They each pleaded guilty and were sentenced by Daubney J on 6 February 2017 to a number of offences, including trafficking.

[7] Corke was the main offender. He carried on the business of trafficking in cannabis over a period of two and a half years from November 2011 to March 2014. Between November 2011 and March 2013, he trafficked alone and then from March 2013 to March 2014, he trafficked with Stirling and Smyth. Corke pleaded guilty to two counts of trafficking while Stirling and Smyth each pleaded guilty to one count.

[8] In the first period of trafficking, Corke generated at least $131,650 from the trafficking and in the second period about $1,424,600.

[9] Evidence from telephone intercepts showed that Corke, Smyth and Stirling supplied wholesale quantities of cannabis totalling about 897.444 kilograms. These supples were made from cannabis transported to Brisbane from Melbourne. About 2,000 kilograms of cannabis was imported into Queensland.

[10] Corke, Smyth and Stirling pleaded guilty to other charges related to drugs and money obtained from trafficking.

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1 *Drugs Misuse Act* 1986, s 6(1)(f).
2 *Drugs Misuse Act* 1986, s 5.

[11] Each of Stirling and Smyth were sentenced to a term of seven years' imprisonment with a parole eligibility date set after two years.[3]

[12] Corke was sentenced to six and a half years' imprisonment but there was almost three years pre-sentence custody which, given the provisions of the *Penalties and Sentences Act* 1992 at the time could not be declared as time served on the sentences.[4] The effective head sentence was nine and a half years.[5] He was ordered to be eligible for parole on 22 September 2017, at which time he would have served about three and a half years.

[13] There was a fifth offender, Brendon Aislabie. He was an associate of Corke, Stirling and Smyth. He pleaded guilty in the District Court to a charge of trafficking in cannabis but he contested the particulars alleged by the Crown. After a hearing, Judge Devereaux found that Aislabie received large amounts of cannabis which he then on-sold. His involvement was much less than Corke, Stirling and Smyth but his Honour was unable to make findings as to the financial benefit gained by him. It probably was limited to no more than $70,000.

[14] Aislabie had a "very small and irrelevant criminal history" and was sentenced as a first time offender who had taken steps towards rehabilitation. He was sentenced to four and a half years' imprisonment suspended after one year for an operational period of five years.

[15] The second indictment charged the applicant with seven counts, being two counts of unlawful possession of a category H weapon,[6] one count of unlawful supply of a category H weapon,[7] one count of possessing a dangerous drug in excess of 500 grams,[8] two counts of possessing a category R weapon,[9] and one count of receiving tainted property.[10]

[16] These offences were committed considerably later than the 11 counts of supply the subject of the first indictment.

[17] In March 2016, police executed a search warrant and searched the applicant's residence. They located a loaded Phoenix .22 calibre handgun concealed inside a motorcycle helmet. The handgun is a category H weapon.[11]

[18] In July 2018, police were investigating a person called Cowan. Cowan's telephone calls were intercepted and during one of these calls the applicant was identified as offering Cowan a Glock handgun together with a switch to convert the gun to a fully automatic weapon. Arrangements were made between the two of them for the applicant to deliver the gun to Cowan. Police intercepted the transaction and the applicant ran away. At that point, the gun was not located. However, by force of

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3 Appeal Record Book ("ARB") page 287.
4 Section 159A; later amended by the *Justice and other Legislation Amendment Act* 2020, s 164.
5 ARB page 284.
6 Count 1 and count 7; *Weapons Act* 1990, s 50(1)(c)(i).
7 Count 2; *Weapons Act* 1990, s 50B(1)(c)(i).
8 Count 3; *Drugs Misuse Act* 1986, s 9(1)(c).
9 Counts 4 and 5; *Weapons Act* 1990, s 50(1)(c)(i).
10 Count 6; *Criminal Code*, s 433(1)(b).
11 Count 1.

the *Weapons Act* 1990, the offer to supply a weapon is a supply for the purposes of s 50B which makes the supply of a weapon an offence.[12]

[19] Police later discovered that the applicant, while escaping from police, had thrown the gun under a tree in the front garden of a private residence. The occupier of the residence recovered the gun and alerted police who then charged the applicant with unlawful possession of it.[13]

[20] After the applicant was apprehended, searches were conducted of his residence. Police located 4.03 kilograms of cannabis in five Cryovac bags.[14] Two automatic selector switches[15] and a silencer[16] were located in a black plastic container in the kitchen. These are category R weapons.[17] Also located was a Ruger .22 calibre bolt action repeating rifle. That rifle had been stolen from its owner in Caboolture in May 2018.[18]

[21] The third and last indictment charged four counts, being three counts of importing tier 2 goods contrary to the *Customs Act* 1901 (Cth) and one count of unlawful possession of a category R weapon contrary to s 50(1) of the *Weapons Act*. These offences occurred between 22 March 2018 and 18 September 2018. Each of the three counts of importing a tier 2 weapon involved consignments from the United States of America. The consignments were received on 22 March 2018,[19] 19 June 2018,[20] and 8 July 2018.[21] It is unnecessary to describe the things imported other than to say that they were various pistol parts.

[22] On 18 September 2018, Australian Federal Police executed a search warrant at the applicant's father's house and located a taser which the applicant admitted he owned.[22]

[23] Between 7 March 2016 and 26 July 2016, a period of 142 days, the applicant was in custody on remand. He was then bailed. While on bail for the offences the subject of the first indictment, he committed the offences the subject of the other two indictments. He was then in custody between 12 July 2018 and 20 August 2019, a period of 403 days. The total time in custody on remand was 545 days.

[24] In relation to the second indictment, being the one charging five counts against the *Weapons Act*, one count against the *Drugs Misuse Act* and one count against the *Criminal Code*, the learned primary judge imposed the following:

(a) In relation to each of counts 1, 4, 5, 6 and 7, which are possession of a category H weapon,[23] two counts of possession of a category R weapon,[24] one count of possession of tainted property,[25] 18 months' imprisonment.

(b) In relation to count 2, supply of a category H weapon, two years and six months' imprisonment to be served wholly in a corrective services facility.

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12 Count 2; *Weapons Act* 1990, s 5 and Schedule 2 – Dictionary.
13 Count 7; *Weapons Act* 1990.
14 Count 3; *Drugs Misuse Act* 1986, s 9(1)(c).
15 Count 4.
16 Count 5.
17 *Weapons Act* 1990, s 50(1)(c)(i).
18 Count 6; *Criminal Code*, s 433(1)(b).
19 Count 1.
20 Count 2.
21 Count 3.
22 Count 4.
23 Count 1.
24 Counts 4 and 5.
25 Count 6.

(c) In relation to count 3, possession of the dangerous drug cannabis, two years' imprisonment.

[25] Count 2 on the second indictment (supply of a category H weapon) attracted a minimum mandatory penalty of two and a half years imprisonment served wholly in a corrective services facility.[26]

[26] All those sentences were to be served concurrently with each other.

[27] In relation to the third indictment, which charged the Commonwealth offences, his Honour sentenced the applicant:

(a) In relation to each of counts 1 to 3 (importing tier 2 goods), two years' imprisonment.

(b) In respect of count 4, the *Weapons Act* offence, 12 months' imprisonment.

[28] Those sentences were ordered to be served concurrently with each other and concurrently with the sentences imposed on the second indictment. The sentences for the Commonwealth offences were ordered to commence to run on the date of sentence, namely 21 August 2019, and the 545 days spent in pre-sentence custody was declared as time served on the sentences on the second and third indictments.

[29] In respect of the first indictment, his Honour sentenced the applicant:

(a) to imprisonment for five years and six months on each of the 11 counts;

(b) ordered those sentences to be served concurrently with each other;

(c) ordered them to be served cumulatively upon the sentences for the second and third indictments; and

(d) set a parole eligibility date of 18 February 2022.

[30] The 25 summary offences were, in one sense or another, related to the criminal offending reflected in the three indictments. It is unnecessary to analyse those charges as his Honour took no action in relation to them other than recording convictions.

[31] Forfeiture orders were made in relation to property seized,[27] and serious drug offence certificates were issued.[28]

General observations about the sentences

[32] The longest sentence imposed on the charges in the second and third indictments was two and a half years to be served wholly in a corrective services facility. That was the mandatory minimum which could be imposed on count 2 on the second indictment.

[33] The five and a half years sentence imposed on the first indictment will commence once the applicant has served two and a half years.

[34] The pre-sentence custody of 545 days calculates to about 18 months.

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26 *Weapons Act* 1990, s 50(1)(e).
27 *Drugs Misuse Act* 1986, Part 5.
28 *Penalties and Sentences Act* 1992, s 161G.

[35] The remaining year to be served on the second and third indictments will expire in August 2020. The parole eligibility date of 18 February 2022 is 18 months into the five and a half years sentence.

[36] Therefore, for the entire offending, the sentences were:

(a) a head sentence of eight years;

(b) eligibility for parole after serving four years.

[37] As already observed, all the sentences on the counts on the second and third indictments were ordered to be served concurrently with each other. That included the sentence on count two which reflected the mandatory minimum two and a half years sentence prescribed by the *Weapons Act*. The effect then was to subsume the rest of the offending into the statutory minimum for count 2.

[38] The offences on the second and third indictments, which attracted sentences which were ordered to be served concurrently with count 2 on the second indictment (which attracted the statutory minimum), did not all arise from the same event. Quite the contrary. The supply of the category H weapon[29] on the second indictment occurred in July 2018. That was totally unrelated to the possession of the Phoenix .22 calibre handgun.[30] That offence occurred over two years previously. The counts of possession of a category H weapon and supply of a category H weapon were unrelated to the three counts of importing tier 2 goods the subject of the third indictment. Those offences occurred between 22 March 2018 and 18 September 2018. The second indictment also charged possession of 4.03 kilograms of cannabis. That was unrelated to any other count on either the second or third indictment.

[39] By making these observations, I am not being critical of the learned sentencing judge. His Honour's structure of the various sentences across the three indictments satisfied the requirements of totality.

[40] The way the sentences were structured, the effect, over and above the two and a half years mandatory minimum for count 2 on the second indictment was:

(a) an additional five and a half years head sentence; and

(b) an additional 18 months before being eligible for parole.

The ground of appeal

[41] The only ground of appeal, the subject of the application, is "the sentence is manifestly excessive".

[42] The applicant filed written submissions which attached two annexures. He made six submissions:

(a) He was sentenced on the basis that he was part of the trafficking syndicate of Corke, Stirling and Smyth when he, the applicant, was not charged with trafficking.

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29 Count 2.

30 Count 1 on the second indictment.

(b) His overall sentence is excessive when compared to the sentences imposed on each of Corke, Stirling, Smyth and Aislabie.

(c) The comparatives which were cited during his sentencing were not relevant because they concerned persons who were convicted of trafficking.

(d) The accumulation of the sentences imposed on the second and third indictments made the overall sentence excessive.

(e) There was no legal requirement to impose the statutory minimum of two and a half years on the count of supplying a category H weapon.

(f) The *Human Rights Act* 2019 ought to be taken into account on the appeal.

Consideration of the applicant's submissions

The applicant was sentenced as part of a trafficking syndicate when he was not charged with trafficking

[43] The learned sentencing judge understood that Corke, Stirling, Smyth and Aislabie were all convicted of trafficking. In a passage in the sentencing remarks which is relevant to each of the first three submissions made by the applicant, his Honour said:

> "All counsel made reference to a number of comparable decisions. The comparable cases referred to by counsel provide a yardstick. Some of the cases related to trafficking in cannabis. The sentences imposed in the cases of the other syndicate members are relevant although, as I have already said, in each case the offenders were sentenced for trafficking. However, the circumstances of each case do require consideration. For instance, in the case of Brendon Aislabie, he had a minor and irrelevant criminal history. The total amount of cannabis involved was 154 pounds over a three to four week period. Your case is more serious than that. At the other end of the scale is the syndicate member Justin Corke who received a notional head sentence of nine and a-half years imprisonment. That case is significantly more serious than yours."[31] (emphasis added)

[44] In the agreed statement of facts, this was said:

> "In July of 2013 police commenced an operation in order to target members of a syndicate involved in the importation and distribution of cannabis in the Brisbane, Gold Coast and Mackay areas.
>
> Lawfully intercepted information (LII) revealed that hundreds of kilograms of cannabis was being imported from Victoria, and up to 300 pounds of cannabis was being sold in Queensland each week.
>
> The defendant was detected sourcing large amounts of cannabis from Justin Adam Corke, Matthew Stirling and Matthew Smyth, members of the syndicate. He then supplied the cannabis to a person whose details are unknown.
>
> In total, on eleven occasions between 18 February and 23 March 2014, the defendant sourced and then supplied 435 pounds (197.313

[31] ARB page 163.

> kg) of cannabis to another person. He paid between $2500 and $3400 per pound, for a total value of between $1,087,500 and $1,479,000."[32] (emphasis added)

[45] The applicant has not, by the agreed statement of facts, accepted that he was part of the syndicate. In the passage from the sentencing remarks quoted above, his Honour refers to "other syndicate members" implying perhaps that the applicant is a member of the syndicate. To refer to all of them as members of the same "syndicate" or gang does not imply that they all committed the same offences.

[46] As can be seen from that passage, his Honour was well aware that Corke, Stirling and Smyth were charged with trafficking and the applicant was not. His Honour was also well aware that the criminality of the other four (including Aislabie) was different to that of the applicant. The sentencing remarks show an analysis of the applicant's offending and a comparison with the relevant offending of Corke, Stirling, Smyth and Aislabie.

[47] If his Honour mistakenly believed that the applicant was a member of the syndicate, rather than a customer of it, no injustice has resulted. His Honour has assessed the applicant's criminality by reference to what he did, not by reference to the activity of the syndicate as a whole.

[48] I reject the applicant's first submission.

The sentence was excessive when compared to that imposed on Corke, Stirling, Smyth and Aislabie

[49] The applicant's submission is:

> "Starting a five and a half year top with an eighteen month bottom straight after the two and a half year sentence for offer to supply firearm leaves me with a larger sentence than the syndicate members and a higher bottom sentence than the syndicate leader."

[50] Principles of equal justice demand that there be proper proportion between the sentences of co-offenders after taking into account their respective criminality and circumstances relevant only to particular co-offenders.[33] Here, the relevant comparison is between the sentences imposed upon the applicant on the first indictment and the sentences imposed on Corke, Stirling and Smyth, it being accepted that Aislabie had the benefit of fairly favourable findings from Judge Devereaux.

[51] Each of Corke, Stirling and Smyth received significantly higher head sentences than the applicant and received less favourable parole eligibility dates than did the applicant. As against the applicant's head sentence of five and a half years, Corke was sentenced to nine and a half years, Stirling seven years and Smyth seven years. As against the applicant's parole date set at 18 months, Corke is required to serve three years before parole and each of Stirling and Smyth two years.

[52] The applicant's real complaint is that because the sentences on the first indictment were ordered to be served cumulatively upon the sentences imposed on the second and third indictments, his overall head sentence exceeded that of Smyth and Stirling and the time to be served before parole exceeded that required to be served by Corke. Those results are not reflective of an error in the sentencing. Those results

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32 ARB page 264.

33 *Lowe v The Queen* (1984) 154 CLR 606 at 610-611, 617-618 and 623; *Postiglione v The Queen* (1997) 189 CLR 295 at 301-302.

flow from the conviction of the applicant of a large number of serious offences charged in the second and third indictments, and from the provisions of the *Weapons Act* requiring a mandatory minimum sentence to be imposed on count 2 on the second indictment.[34]

[53] I would reject the applicant's second submission.

The comparatives which were cited during the sentencing were not relevant because they concerned persons who were convicted of trafficking

[54] The maximum sentence for the offence of supply of cannabis (which is a schedule 2 drug) is 15 years' imprisonment on each count.[35] Here, there are 11 counts. The maximum sentence for trafficking in cannabis is 25 years.[36]

[55] The circumstances in which the offences of trafficking and supply of drugs occur vary widely. High sentences may be justified for both trafficking and supply of cannabis. Low sentences may also be justified depending upon the circumstances. That the range of sentences is so wide is shown from the cases justifying non-custodial sentences for trafficking even in schedule 1 drugs in some limited circumstances.[37]

[56] Here the comparatives relied upon by the Crown were all decisions of this court concerning sentences imposed for trafficking in cannabis:

1. In *R v Kalaja*,[38] the appellant was a courier for substantial reward of about 100 pounds of cannabis transported over a period of about two and a half months. He had a minor criminal history and on appeal he was sentenced to six years' imprisonment with a recommendation for parole after serving two.

2. *R v Orley*[39] involved trafficking in cannabis over a three month period. The offender dealt in at least 150 pounds of cannabis which had a street value of over $450,000.[40] He received at least $9,315.46 as a reward for couriering the drugs.[41] He had a minor criminal history. He was convicted after a plea of not guilty and a trial. He was sentenced to six years' imprisonment which was not disturbed on appeal. No date was set for eligibility for parole which meant that he became eligible after serving three years.

3. In *R v Brienza*,[42] the offender was sentenced to six years' imprisonment with parole after two years in relation to one count of trafficking cannabis sativa over a period of about 11 months. Co-offenders supplied Brienza with about 70 pounds of cannabis which he then sold on. He had no relevant criminal history.

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34 *R v Meerdink* [2010] QCA 273 at [31]-[38].
35 *Drugs Misuse Act* 1986, s 6(1)(f).
36 *Drugs Misuse Act* 1986, s 5.
37 *R v Dowel; Ex parte Attorney-General (Qld)* [2013] QCA 8; and see the judgment of McMurdo P in *R v Feakes* [2009] QCA 376 at [33]; and the judgment of Morrison JA in *R v Ritzau* [2017] QCA 17 at [36]; and the judgment of Applegarth J in *R v Stamatov* [2018] 2 Qd R 1 and *R v Nunn* [2019] QCA 100 at [10]-[12].
38 [2017] QCA 123.
39 [2013] QCA 119.
40 At [16].
41 At [15].
42 [2010] QCA 15.

[57] The learned sentencing judge did not attempt to reconcile the comparable cases. Instead, he properly used them as a "yardstick" from which to judge the sentences he was to impose.[43]

[58] There were mitigating circumstances which the sentencing judge took into account. These included the applicant's pleas of guilty and steps towards rehabilitation. The applicant's time in prison has been difficult as one of his friends committed suicide in a nearby cell. He has family support upon release.

[59] There are also aggravating circumstances to which the learned judge made reference. The 11 counts of supply each involved significant quantities of cannabis. The total amount of cannabis supplied, 197.305 kilograms (434 pounds) was a large amount.

[60] The applicant's criminal history is long. His first adult conviction was in the Petrie Magistrates Court in 1999. He has appeared and been sentenced in court on numerous occasions.

[61] The applicant was imprisoned for the first time in September 2000 in the District Court at Brisbane. He was sentenced to a total of five years for a raft of offences including numerous counts of entering premises with intent to commit indictable offences, stealing and unlawful use of motor vehicles. The sentences were suspended after he served 22 months. He had served almost seven months by the time he was sentenced.

[62] The applicant was imprisoned again in 2003 in the Brisbane District Court for a number of offences including unlawful use of a motor vehicle, entering dwelling houses with intent to commit indictable offences and escaping from lawful custody. He was sentenced to a term of imprisonment of 18 months with the earlier suspended sentence being activated.

[63] The applicant was sentenced to further terms of imprisonment in June 2004 in the District Court at Brisbane, in July 2008 in the District Court at Brisbane, in January 2016 in the Brisbane Magistrates Court and again in May 2017 in the Brisbane Magistrates Court. He has previously been convicted on many occasions of firearm offences, including the offence of importing tier 2 goods without approval. There have been numerous convictions for offences against the *Drugs Misuse Act*.

[64] When regard is had to all the circumstances, it was no error of the learned sentencing judge to have regard to the comparatives that he did.

[65] I would reject the applicant's third submission.

The accumulation of the sentences imposed on the second and third indictments made the overall sentence excessive

[66] The duty of the learned sentencing judge was to impose a sentence which was just in all the circumstances. Sentences ought not be accumulated if the total result of the sentence is unjust. That can arise in different ways. Firstly, if the structure of the sentences imposed for a number of offences results in an overall sentence which

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[43] ARB page 163; *Barbaro v The Queen* (2014) 253 CLR 58 at 74, [41], following *Hili v The Queen* (2010) 242 CLR 520 at 536-537, [53]-[54]; and see generally *Wong v The Queen* (2001) 207 CLR 584 at 606, [59] and *Markarian v The Queen* (2005) 228 CLR 357 at 375, [39] and 378-379, [53].

is more severe than justified by the totality of the criminality represented by all the offending, then an error has occurred.[44] Secondly, it is an error to impose sentences which are "crushing", leaving an offender with no expectation of a useful life after finally being released.[45]

[67] Neither principle is offended here.

[68] The sentence on the first indictment of five and a half years' imprisonment is, in my view, clearly appropriate. As already explained, the judge effectively subsumed all the sentences for the offences on the second and third indictments into the mandatory sentence of two and a half years which his Honour was obliged to impose on count 2 on the second indictment. His Honour then ameliorated the impact of the sentences by setting a parole eligibility date after the applicant had served a little more than one quarter of the sentence imposed on the first indictment.

[69] The sentences imposed were for a large number of serious offences committed over a period of about four years. The accumulation of the sentences did not render the overall sentence manifestly excessive or crushing.

[70] I would reject the fourth submission of the applicant.

There was no legal requirement to impose a statutory minimum of two and a half years on the count of supply a category H weapon

[71] This submission is based on a series of decisions in the District Court.[46] Those cases decided that the statutory minimum of "two and a half years' imprisonment served wholly in a corrective services facility" did not preclude placing an offender on probation[47] rather than imposing a term of imprisonment.

[72] Brown J in *R v Lewis*[48] and Bowskill J in *R v DS*,[49] each refused to follow the District Court cases, finding that they were wrongly decided. The Court of Appeal overruled the District Court cases in *Commissioner of Police v Broederlow*.[50]

[73] It follows that the cases relied upon by the applicant do not accurately state the law of Queensland. The learned sentencing judge was obliged to impose the sentence which he did in relation to count 2 on the second indictment.

[74] I would reject the applicant's fifth submission.

The Human Rights Act 2019 ought to be taken into account on appeal

[75] The applicant points to s 29 of the *Human Rights Act* which is entitled "Right to liberty and security of person". Many of the provisions of the *Human Rights Act* apply to the exercise of executive power. Few apply to the exercise of judicial power, although s 29 is one that does.

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44 *Mill v The Queen* (1988) 166 CLR 59 at 62-63; *Postiglione v The Queen* (1997) 189 CLR 295 at 302-304, 307-309, 321, 340-341. See the judgments of Morrison JA in *R v Kendrick* (2015) 249 A Crim R 176 at 185-188, [31]-[41] and Applegarth J in *R v Hill* [2017] QCA 177 at [34]-[36].

45 *Azzopardi v The Queen* (2011) 35 VR 43, considered in *R v Kendrick* (2015) 249 A Crim R 176 at 188, [40].

46 *R v Ham* [2016] QDC 255; *Broederlow v Commissioner of Police* [2019] QDC 228.

47 *Penalties and Sentences Act* 1992, s 91.

48 Unreported, Brown J, SC No 377 of 2016, 9 March 2018.

49 [2019] QSC 288.

50 [2020] QCA 161.

[76] It provides:

> "**29 Right to liberty and security of person**
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> (1) Every person has the right to liberty and security.
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> (2) A person must not be subjected to arbitrary arrest or detention.
>
> (3) A person must not be deprived of the person's liberty except on grounds, and in accordance with procedures, established by law.
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> (4) A person who is arrested or detained must be informed at the time of arrest or detention of the reason for the arrest or detention and must be promptly informed about any proceedings to be brought against the person.
>
> (5) A person who is arrested or detained on a criminal charge—
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> (a) must be promptly brought before a court; and
>
> (b) has the right to be brought to trial without unreasonable delay; and
>
> (c) must be released if paragraph (a) or (b) is not complied with.
>
> (6) A person awaiting trial must not be automatically detained in custody, but the person's release may be subject to guarantees to appear—
>
> (a) for trial; and
>
> (b) at any other stage of the judicial proceeding; and
>
> (c) if appropriate, for execution of judgment.
>
> (7) A person deprived of liberty by arrest or detention is entitled to apply to a court for a declaration or order regarding the lawfulness of the person's detention, and the court must—
>
> (a) make a decision without delay; and
>
> (b) order the release of the person if it finds the detention is unlawful.
>
> (8) A person must not be imprisoned only because of the person's inability to perform a contractual obligation."

[77] There is no suggestion that ss 29(2), (4), (5) or (6) have been offended here. Sections 29(7) and (8) have no relevance to the present appeal.

[78] Section 29(3) recognises the lawful imposition of orders which restrict the right to liberty and security otherwise guaranteed by s 29(1).

[79] The applicant's liberty has been deprived pursuant to a criminal process. The applicant's only complaint with that process is that the sentences which have been

imposed upon him are manifestly excessive. That issue was dealt with in consideration of the applicant's first five submissions. The *Human Rights Act* has no relevance to the appeal.

[80] I would reject the applicant's sixth submission.

Conclusion

[81] I can identify no error of the sentencing judge.

[82] The sentences imposed are within the range of a sound exercise of the sentencing discretion. The sentences imposed are not manifestly excessive.

[83] I would refuse the application for leave to appeal against the sentences.