[2020] QCA 84

COURT OF APPEAL

SOFRONOFF P
BODDICE J
DAVIS J

CA No 334 of 2019
SC No 56 of 2019

THE QUEEN

v

PICCLES, Lauren Elizabeth **Applicant**

BRISBANE

MONDAY, 27 APRIL 2020

JUDGMENT

DAVIS J: The applicant seeks leave to appeal against a sentence imposed upon her by Justice Crow sitting in Mackay on 2 December 2019 upon her plea of guilty to one count of trafficking in the dangerous drug methylamphetamine and one count of being in possession of the dangerous drug methylamphetamine with a circumstance of aggravation, namely, that the quantity of the dangerous drug exceeded two grams.

On the trafficking count, the applicant was sentenced to a term of imprisonment of four years. As the possession of methylamphetamine alleged in the other count on the indictment was one of the acts said to constitute the trafficking, his Honour convicted the applicant on the possession count and took no further action. That was, with respect, clearly the correct approach.

At the time of the commission of the two offences, the applicant was on parole for earlier offences, including one of trafficking in methylamphetamine. Section 156A of the *Penalties and Sentences Act* 1992 dictated that the learned primary Judge was obliged to order that the sentence imposed be served cumulatively upon the earlier sentences for which she was on parole. Section 160B required that his Honour set a new date for eligibility for parole. His Honour ordered that the sentence be served cumulatively on the other sentences and set a parole eligibility date of 24 April 2021, being a date approximately one year beyond the full-time expiry date of the earlier sentences.

No complaint is made about the sentence of four years' imprisonment imposed by his Honour. That sentence is supported by authorities such as *R v Saggers* [2016] QCA 344, *R v Jobsz* [2013] QCA 5, *R v Bagnall* [2005] QCA 20 and *R v Spark* [2018] QCA 231, all of which were cited to his Honour. The narrow point on the application for leave to appeal is that the fixing of a date for eligibility for parole at a point one year after the full-time expiry of the earlier sentences renders the sentence imposed by his Honour manifestly excessive. To understand that submission, it is necessary to look at the applicant's criminal history.

The applicant's first conviction was in the Mackay Magistrates Court on 17 January 2002, a few months before her 18th birthday. She was convicted of various counts of assault. Between then and 7 December 2005, the applicant was convicted on numerous occasions in the Mackay Magistrates Court for offences against the *Drugs Misuse Act* 1986 and for offences of dishonesty.

In 2006 and 2007, the applicant trafficked in methylamphetamine. She was arrested but absconded while on bail. After being at large for some time, she surrendered to police and was sentenced on 3 May 2011 in this Court to an effective term of imprisonment of five years. The sentence was suspended after serving 666 days. By 3 May 2011, she had been in custody for the said 666 days and was, therefore, released.

On 7 November 2016, the applicant was sentenced in the Mackay Magistrates Court to 18 months' imprisonment. The offences were a large number of offences against the *Drugs*

Misuse Act, offences of dishonesty, offences against the *Bail Act* 1980 and offences against the *Weapons Act* 1990. By the time she was sentenced, she had served 31 days in pre-sentence custody. She was ordered to be released on parole on 7 November 2016. The offences, for which she was convicted on 7 November 2016, breached the partially suspended sentence of imprisonment imposed in this Court on 3 May 2011.

On 28 April 2017, the applicant appeared in this Court to face breach proceedings. Justice Boddice found the breach proved and activated 15 months of the remaining sentence imposed on 3 May 2011 and ordered the release of the applicant to parole after serving three months.

On 4 May 2017, the applicant appeared in the Brisbane Magistrates Court, and on a number of drug offences and one dishonesty offence, she was sentenced to 18 months' imprisonment to be served cumulatively on the 15 months of the suspended sentence activated by Justice Boddice. A parole eligibility date of 26 January 2018 was fixed.

The applicant appeared again in the Magistrates Court, this time in Townsville, on 30 May 2017, where she was convicted of offences against the *Corrective Services Act* 2006, but she was sentenced to concurrent sentences and her parole eligibility date was not disturbed.

On 22 February 2018, the applicant was released on parole. Parole was granted on the activated suspended sentence from 2011 and the sentence imposed in the Magistrates Court in Brisbane.

As there is no complaint about the sentence of four years imposed on the count of trafficking, it is unnecessary to descend into any significant detail of the offending. Suffice to say that the applicant trafficked in the Mackay area in wholesale and street-level quantities of methylamphetamine for a period of just over a month in July and August 2018.

The applicant was taken into custody in relation to the current charges on 15 August 2018. On 17 August 2018, her parole was suspended. Consequently, the 15th and 16th days of August 2018 was time served on the current sentences. The period from 17 August 2018 until the day the applicant was sentenced on 2 December 2019 was time served on the balance of

the activated suspended sentences and the sentence imposed on 4 May 2017. The full-time expiry of those sentences calculates to 27 April 2020, and there is no dispute about that calculation.

In sentencing the applicant, his Honour did not specifically state that he was taking into account the overall impact of the sentence viewed with the sentences still being served and did not specifically state that both the head sentence and the period to be served before being eligible for parole ought to be ameliorated to reflect that the sentences being imposed were to be served cumulatively.

However, his Honour was, from the transcript of argument, clearly aware that those principles were applicable here, and, in any event, the only error alleged here is manifest excessiveness, not some misapplication of principle.

The effect of the sentence was to add 12 months' actual custody to the full-time release date in relation to sentences dating back to 2011, which related to conduct going back to 2006. The parole eligibility date which was set was at 25 per cent of the period of imprisonment imposed by his Honour.

Mr Benjamin of counsel, who appeared for the applicant, sought to demonstrate that the sentence was manifestly excessive in this way.

Firstly, Mr Benjamin took the date when the applicant went into custody: 15 August 2018. He then calculated a full-time release date, taking into account the four year cumulative sentence. That date became 25 April 2024. He, then, calculated the period of time between 15 August 2018 and 25 April 2024 as five years, eight months and 10 days.

He then took the date at which the applicant will now be eligible for parole and calculated that there were two years, eight months and 10 days between the time she went into custody and the date when she will become eligible for parole, which is 24 April 2021.

Mr Benjamin then submitted that the two years, eight months and 10 days is only a couple of months shy of the halfway mark of the term of imprisonment of five years, eight months and

10 days. Therefore, he submitted that demonstrated that insufficient allowance, by way of early release, had been given to the plea of guilty and other mitigating circumstances.

In my view, it is inappropriate to assess the severity of the sentence imposed on the latest trafficking charge as if it, and the balance to be served on earlier sentences were, in effect, together one sentence.

When an offender is sentenced to a term of imprisonment, they are, from that point, liable to serve the entirety of the term of imprisonment. By provisions of the *Corrective Services Act* 2006, part of that period of imprisonment may be served in the community on parole. Whether the period of imprisonment is served in prison or in the community, and what proportion of the sentence is served in prison and in the community, depends upon a number of factors.

The first is the date when the prisoner becomes eligible for parole. The second is whether the prisoner secures a grant of parole, and the third is whether the prisoner complies with the terms of parole or, alternatively, becomes liable for the parole to be cancelled or suspended.

Here, the applicant initially received a suspended sentence for trafficking in methylamphetamine. She breached the suspended sentence by further drug offending, and that led to the activation of part of the suspended term.

While she was given the benefit of release on parole, she then breached parole by committing further offences and attracting a further term of imprisonment for which she again received parole. She then again breached her parole by trafficking in methylamphetamine. The effect of the *Corrective Services Act* and decisions made under it was that she lost the benefit of parole and found herself serving her time in custody.

The legislature has determined that any sentence of imprisonment imposed in relation to offences which have been committed on parole must be ordered to be served cumulatively, but a further eligibility date must be set. The applicant had been given several opportunities to serve the earlier terms in the community. His Honour, given the applicant's criminal history and all the circumstances, structured the sentence so that she would serve the

remainder of earlier sentences in custody but then be eligible for parole after serving only 25 per cent of the sentence his Honour imposed.

In my view, the sentence is not manifestly excessive and I would dismiss the application.

SOFRONOFF P: I agree.

BODDICE J: I agree.

SOFRONOFF P: The order of the Court is that the application is dismissed.