SUPREME COURT OF QUEENSLAND

CITATION:	*R v Bradley* [2007] QSC 375
PARTIES:	**THE QUEEN** **v** **CHRISTOPHER JOHN BRADLEY** (defendant)
FILE NO:	Indictment No SC 479 of 2007
DIVISION:	Criminal
PROCEEDING:	Sentence
COURT:	Supreme Court
DELIVERED ON:	3 December 2007
DELIVERED AT:	Brisbane
HEARING DATE:	3 December 2007
JUDGE:	Fryberg J
ORDER:	**1. On count 1 revoke the intensive correction order imposed on the prisoner on 12 December 2005 and commit prisoner to prison for 22 days;** **2. On count 2 sentence the prisoner to imprisonment for three months;** **3. On each count of 3 and 4 sentence the prisoner to imprisonment for two months;** **4. All imprisonment to be served concurrently;** **5. Fix a parole release date in relation to counts 2, 3 and 4 of 3 January 2008**
CATCHWORDS:	Criminal law – Jurisdiction, practice and procedure – Judgment and punishment – Sentence – Breach of intensive correction order, probation order and community service order – Re-sentence and committal to prison *Penalties and Sentences Act 1992* (Qld) s112, s113, s119, s127 *R v Lam* [2007] QSC 137 applied *R v Tran; ex parte Attorney-General* [2002] QCA 21 distinguished

COUNSEL:	Crown: A Freeman Respondent: M Robbins
SOLICITORS:	Applicant: Director of Public Prosecutions (Queensland) Respondent: Legal Aid Queensland

SUPREME COURT OF QUEENSLAND

CRIMINAL JURISDICTION

[2007] QSC 375

FRYBERG J

Indictment No 479 of 2007

THE QUEEN

v.

CHRISTOPHER JOHN BRADLEY

BRISBANE

..DATE 03/12/2007

SENTENCE

HIS HONOUR: Christopher John Bradley, on the 12th of December 2005 you pleaded guilty to one count of supplying ecstasy tablets, another of supplying methylamphetamine and two counts of possession of one each of those materials. The amounts that you possessed were small. You were interviewed by police and you made admissions to having supplied both of those drugs to other people. Again the amounts supplied were small.

I sentenced you on that occasion on the basis that your offending was toward the lower end of the scale. At that time your criminal history was trivial. You had one offence of consuming liquor in a public place whilst under the age of 18 years, committed some 10 years earlier. There were a number of circumstances indicating your willingness to co-operate in the administration of justice.

Your counsel submitted that your conduct demonstrated both remorse and that you had been rehabilitated, but the material before me did not support either inference. In the circumstances I thought it appropriate to impose community based orders. I asked you if you were agreeable to that. The orders which I proposed were an intensive correction order for a period of six months, a probation order for a period of two years and 120 hours of community service to be performed between July 2006 and December 2007.

You told me on that occasion that you were agreeable to my making those orders and that you agreed to comply with them. You have not done so. The evidence before me shows that on

the 20th of May 2006, less than six months later, you committed the offence of driving under the influence of liquor. That breach was committed 22 days before the expiry of the intensive corrections order. The evidence also shows that on the 18th of December 2006 you drove a motor vehicle while disqualified and that again on the 22nd of March 2007 you committed the same offence. Not only did you breach all of the orders by reason of the commission of those offences, your performance under the orders showed what I think can fairly be described as a very substantial contempt for them.

As regards the intensive correction order your response was described by the Corrective Services officers who reported as being, "at best mediocre". They certainly did not exaggerate. An important part of that intensive corrections order was the performance of community service. You were directed by the authorities to perform eight hours of community service per week. That would have meant a total of 208 hours performed in the six month period. You, in fact, performed 42 hours. You did that notwithstanding that you were issued with four separate work instructions between January and April 2006, during which time, in fact, you completed only two hours of community service.

Your excuses for your failure to attend were unacceptable, a conclusion in the report not challenged before me today. You were issued with a formal censure letter in relation to your unsatisfactory performance, but notwithstanding that warning, unacceptable performance continued in that you failed to

attend on three occasions, while you did attend on five occasions. There was therefore some improvement but it was not sustained. You turned up to appointments when it suited you rather than when directed, you rarely reported twice per week as directed and you failed to provide reasonable excuses.

The probation order required that you not commit further offences and the two driving offences constituted breaches of it. You breached the order not only by the two offences but also by failing to report on five separate occasions. Indeed the Probation and Parole Office had no contact with you until the 25th of July 2007 and then again no contact until the 2nd of August 2007.

In relation to the community service order, not only were there the two breaches constituted by the offences but also there were 10 occasions when you failed to report. Until a week or so ago you had completed only thirty-seven and a half hours of the 120 hours community service. In the last week, no doubt with knowledge of the imminence of these proceedings, you have performed a further 34 hours. There are still some forty-eight and a half hours left unperformed.

I note that you continued to fail to comply with the orders, particularly the probation and community service orders, even after you were charged with offences in relation to them. You were charged with those offences and appeared in the Holland Park Magistrates Court on the 22nd of September 2006. You

were convicted and fined but it seems to have made no difference to your performance.

Your counsel sought to explain, although I do not think she tried to excuse, your non performance by pointing out that the reason for it was, in many cases at least, that you had paid employment and that you chose to do that instead of performing your community service. You have, in my view, displayed a history of contempt for orders made by not only this Court but also by any Court. The offences of disqualified driving both took place in breach of Court ordered disqualifications. You are now 30 years of age, you are no callow youth; you know perfectly well what the law requires. I do not think that your recent efforts to perform under the community service order demonstrate any change of heart but rather simply an attempt to limit the damage that may be inflicted upon you by today's proceedings.

In deciding what penalty to impose in respect of these offences I must take into account the seriousness of the original offences but I am nonetheless constrained by the fact that the attempt to give you a chance to demonstrate your willingness to be rehabilitated has failed. I have no confidence that any similar order would have the slightest impact. It seems to me that the only appropriate course which will make it clear to you that this sort of behaviour is not to be tolerated is to impose a period of actual imprisonment.

In relation to the intensive correction order I have had the benefit of substantial submissions made on your behalf by your counsel on the proper interpretation of the legislation. I have said something previously of my views on that interpretation: see The Queen v. Lam [2007] QSC 137. I there observed that under section 112 of the Act the Court is empowered to make an intensive correction order. An intensive correction order has the effect that an offender is to serve the sentence of imprisonment by way of intensive correction in the community and not in a prison. The reference to "the sentence of imprisonment" in section 113 relates back to the condition precedent set out in section 112 for the making of the intensive correction order. That condition is that the Court sentences an offender to a term of imprisonment of one year or less. In Lam I expressed the view that the sentence of imprisonment was not part of the intensive correction order. When that order is terminated it does not terminate the sentence of imprisonment. I remain of that view.

Ms Robbins has referred me to section 119 of the Act. That section provides in subsection (2) that:

> "An intensive correction order is terminated if the offender is sentenced or further sentenced for the offence for which the order was made."

There is a problem in what is meant by the word "sentenced" in that provision but it is not a problem material to today's proceedings. The section provides for the termination of the intensive correction order but in my judgment it does not

provide for the termination of the sentence of imprisonment. That was something separate which was imposed by way of the condition precedent to which I have already referred.

That view is in my judgment reinforced by the reference in section 119(2)(c) to termination if the offender is committed to prison under section 127(1). That section in its turn provides that:

> "A Court that deals with an offender for an offence for which an intensive correction order was made may, whether or not the order is still in force, do so by revoking the order and committing the offender to prison for the portion of the term of imprisonment to which the offender was sentenced that was unexpired on the day the relevant offence against section 123 was committed."

In your case that is 22 days. The use of the word "committing" in that section reinforces in my judgment the fact that in so acting a Court is not imposing a fresh sentence but rather committing the offender to prison to serve the sentence which already exists. It is not mandatory to act under that section. However, as I observed in Lam there is a tension between section 126(4) and the notion that an intensive correction order is something separate from the sentence of imprisonment which precedes it.

I do not think that the tension can be resolved in the way for which Ms Robbins contends. The provisions of section 130 upon which she relied do not advance the discussion because in my judgment they deal only with the discharge of the community based orders. There is no doubt that the intensive correction

order can be discharged. The question that is of concern is whether the sentence of imprisonment can be in any way affected.

That that is the correct view is, I think, reinforced by reference to section 126(2) of the Act which provides that in the case to which it applies orders of admonishment and discharge may be made and subsection (3), that the making of such orders does not affect the continuation of the community based order.

Reliance was also placed by Ms Robbins on the decision in The Queen v. Tran Ex Parte Attorney-General [2002] QCA 21. In that case The President and Justice Douglas, in a joint judgment, were considering whether the imposition of an intensive correction order for a serious offence was too lenient a penalty. In the course of holding that in the circumstances of the particular case that it was not, they made some observations by way of obiter dicta about the nature of an intensive corrections order and suggested that when an order was made the Court had power under section 126(4) to impose a further order of imprisonment.

That dictum was not written after argument dealing with the problem in the way in which I dealt with it in Lam and I do not believe that their Honours were intending to make a considered statement which addressed such arguments. I therefore do not think that the dictum is of assistance in the present case.

It seems to me that this is an appropriate case to exercise the power conferred by section 127. In my judgment I cannot, in respect of that period, fix a parole release date because I am not imposing a sentence within the meaning of section 160A of the Penalties and Sentences Act. It is otherwise in relation to the probation and community service orders.

For these reasons I make the following orders:

I revoke the intensive corrections order imposed on you on the 12th of December 2005 and commit you to prison for 22 days;

I re-sentence you on counts 2 to 4. By reason of that re-sentencing the community service order will automatically be terminated under section 108 of the Act and the probation order under section 99 of the Act.

On count 2 I sentence you to imprisonment for three months.

On counts 3 and 4 I sentence you to imprisonment on each count for two months.

All imprisonment, including that in relation to count 1, is to be concurrent.

I fix a parole release date in relation to counts 2, 3 and 4 of the 3rd of January 2008.

Is there anything further?

MS FREEMAN: Nothing, your Honour.
