SUPREME COURT OF QUEENSLAND

CITATION:	*R v Hannan; Ex parte Attorney-General (Qld)* [2018] QCA 201
PARTIES:	**R** **v** **HANNAN, Sarah McCarlie Muir** (respondent) **EX PARTE ATTORNEY-GENERAL OF QUEENSLAND** (appellant)
FILE NO/S:	CA No 303 of 2017 SC No 1762 of 2017
DIVISION:	Court of Appeal
PROCEEDING:	Sentence Appeal by Attorney-General (Qld)
ORIGINATING COURT:	Supreme Court at Brisbane – Date of Sentence: 27 November 2017 (Lyons SJA)
DELIVERED ON:	31 August 2018
DELIVERED AT:	Brisbane
HEARING DATE:	24 May 2018
JUDGES:	Fraser and Morrison and Philippides JJA
ORDERS:	**1. Appeal allowed.** **2. Set aside so much of the orders made on 27 November 2017 as wholly suspended the period of imprisonment for an operational period of three years.** **3. Order that the term of imprisonment imposed be suspended after serving five months.** **4. Otherwise affirm the orders made on 27 November 2017.** **5. Order that a Warrant issue for the arrest of the respondent, to lie in the Registry for seven days.**
CATCHWORDS:	CRIMINAL LAW – APPEAL AGAINST SENTENCE – GROUNDS FOR INTERFERENCE – SENTENCE MANIFESTLY INADEQUATE – where the respondent pleaded guilty to the offence of money laundering – where she was sentenced to three years' imprisonment, wholly suspended with an operational period of three years – where a total of 12 days of presentence custody were declared under that sentence – where the Attorney-General submitted that the penalty imposed on the respondent did not reflect the

seriousness of the offence and the applicable maximum penalty – where it was further submitted that the learned sentencing judge was overwhelmed by consideration of the impact on the children, at the expense of recognising the very serious offence involved in laundering about $650,000, where that was done with the full knowledge that the money constituted the proceeds of criminal activity – where it was submitted that actual incarceration of a period between six and 12 months was warranted – where the respondent submitted that the sentence was not unreasonable or plainly unjust as it was open to the learned sentencing judge to take into account the effect on the children of their mother's imprisonment – where it was submitted the children would be deprived of parental care and likely to suffer severe hardship – whether the sentence was manifestly inadequate

CRIMINAL LAW – APPEAL AGAINST SENTENCE – GROUNDS FOR INTERFERENCE – EFFECT OF SENTENCE OF IMPRISONMENT ON PRISONER – FAMILY CONSIDERATIONS – where the respondent's husband was the head of a cannabis syndicate – where they had three children – where the appellant submitted that those who offend in a serious way cannot avoid incarceration by invoking family considerations – where the two older children were born whilst the respondent was knowingly engaged in criminal activity – where the third child was born after the respondent had been charged, when she and her husband were both facing the prospect of a long period of incarceration – where it was submitted that the two elder children possessed difficulties, namely a difficulty dealing with the loss of their father when he was imprisoned and in the case of the second daughter, speech difficulties, which had to be taken into account by the learned sentencing judge – where it was submitted by the respondent that the children would be without parental care were the respondent to also be imprisoned – whether exceptional circumstances were shown to be present in this case – whether it was open to the learned sentencing judge to take into account the hardship caused to the respondent's children by her imprisonment

CMB v Attorney-General (NSW) (2015) 256 CLR 346; [2015] HCA 9, cited
R v Chong; Ex parte Attorney-General (Qld) (2008) 181 A Crim R 200; [2008] QCA 22, considered
R v Edwards [2011] QCA 331, considered
R v Edwards (1996) 90 A Crim R 510, cited
R v Gadaloff [1998] QCA 458, cited
R v Hopper; Ex parte Attorney-General (Qld) [2015] 2 Qd R 56; [2014] QCA 108, considered
R v McConachy [2011] QCA 183, considered
R v Murray (2014) 245 A Crim R 37; [2014] QCA 250, considered

COUNSEL:	C W Heaton QC for the appellant J Allen QC for the respondent
SOLICITORS:	Director of Public Prosecutions (Queensland) for the appellant Legal Aid Queensland for the respondent

[1] **FRASER JA:** I agree with the reasons for judgment of Morrison JA and the orders proposed by his Honour.

[2] **MORRISON JA:** The respondent, Sarah Hannan, was convicted, on her plea of guilty, of the offence of money laundering. She was sentenced on 27 November 2017 to three years' imprisonment, wholly suspended with an operational period of three years. A total of 12 days of presentence custody was declared as time already served under that sentence.

[3] The Attorney-General challenges the sentence on the basis that it is manifestly inadequate. That challenge is not directed at the head sentence of three years, but at the fact that the sentence was wholly suspended. In essence the Attorney-General contends that a period of actual custody should have been served.

Circumstances of the offending

[4] An agreed schedule of facts was tendered at the sentencing hearing.[1]

[5] The respondent was married to Ben Hannan and they lived in Willow Vale. Ben Hannan was the head of a syndicate growing hydroponic cannabis at two properties in Willow Vale, and distributing wholesale quantities of cannabis. He was involved in the day to day operations of the business, attending to the crop, giving advice on chemicals and pest control, checking water consumption and assisting with cultivation. His brother, Scott Hannan, was a member of the syndicate who, along with employees called Murrell and Gillis, also looked after the day to day operations of the business. The respondent assumed the role of the treasurer of the group, dealing with the money of the business in conjunction with her husband Ben Hannan.

[6] By way of overview, the Hannan syndicate produced 22 to 32 pounds of saleable cannabis every eight weeks. The business produced about 44 cannabis plants every eight weeks, according to the growth cycle and distribution in age of the plants.

[7] The cannabis was sold by Ben Hannan, Scott Hannan and Murrell, with the assistance of Gillis. The proceeds of sale were returned to Ben Hannan. Scott Hannan and Murrell were paid $4,000 per week by Ben Hannan for their role in the business. That money was paid in cash and by bank transfers from Ben Hannan's company.

[8] The schedule of facts dealt with the history of the syndicate. In early 2010 Ben Hannan and the respondent were living at Fairview Drive, Willow Vale. They had purchased that property in October 2009. Ben Hannan obtained two large shipping containers and engaged the services of an earthmover in February 2010, to excavate an area of land at the back of the property. The containers were moved to the excavated area and a concrete slab and large shed were erected over the containers by the end of August 2010. Ben Hannan commenced producing and trafficking in cannabis

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1 Appeal Book (**AB**) 43-48.

from that property subsequent to the installation of the shipping containers and shed.

[9] In March 2012 Ben and the respondent purchased another property at Willow Vale, at Hotham Creek Road. In June 2012 Ben Hannan had a shed constructed on that property, which was completed by early August 2012. Ben Hannan had the intention of producing cannabis in that shed, but that production did not commence until April 2013.

[10] In October 2012 Scott Hannan returned from Canada and moved into Fairview Drive with Ben and the respondent. As soon as Scott Hannan arrived home, Ben Hannan showed him the hydroponic set up and asked him to take control of the operation.

[11] Over an 18 month period Ben Hannan and Scott Hannan grew, harvested, packaged and organised the sale of the cannabis. From October 2012 to the closure of the operation in March 2014, Scott Hannan controlled both productions and the trafficking business. Scott Hannan employed Murrell to assist him with the production and sale of cannabis. Murrell was also paid on a weekly basis. Gillis also assisted in cultivating and supplying cannabis. As noted above, Ben Hannan received $5,000 per week from the business for a period of 30 weeks.

[12] In May 2013 Ben Hannan and the respondent moved into a property at 40 River Downs Crescent, Helensvale. Scott Hannan remained at Fairview Drive, with Murrell.

[13] Ben and the respondent purchased several properties during the relevant period. The first was on 30 November 2011 for $396,635.60. Mortgage repayments on that property were $2,500 per month. The second (Hotham Creek) was purchased on 12 February 2012 for $603,160.48. The mortgage repayments on it were $3,500 per month. The third (Riverdowns) was purchased on 14 April 2013 for $1,137,233.86. The mortgage repayments on that house were $3,500 per month.

[14] The Crown alleged that the mortgage repayments and all service payments made for the properties were paid using money obtained from trafficking in cannabis.

[15] In respect of the respondent's money laundering offence, the following facts were set out in the schedule. She obtained the proceeds from the business and "filtered the money through their lawful businesses in an attempt to legitimise the money … by creating false invoices".[2]

[16] In total the growing rooms at Fairview and Hotham Creek contained 98 plants, grown over an eight week growth period. On the basis of telephone intercepts the Hannan group produced about 22 to 32 pounds of saleable cannabis at each property, every eight weeks. Based on those figures, between 1 October 2012 and 18 October 2013 (at Fairview) and between 1 April 2013 and 18 October 2013 (at Hotham Creek) the Hannan syndicate produced approximately 215 pounds of cannabis. Based on a sale price of $3,000, the yield to the Hannan group from the sale of that amount of cannabis was about $645,000. The profit was unable to be stated because it could not be determined how much money was spent on seeds and equipment.

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2 AB 44.

[17] For the trafficking period between October 2013 and March 2014, the Hannan syndicate sold at least 168 pounds of cannabis for a total yield of approximately $504,000.

[18] All of the proceeds obtained by Scott Hannan, Murrell and Gillis from the sale of cannabis were given to Ben Hannan.

[19] When police searched the properties they discovered the shed at Fairview Drive, and the buried shipping containers. The two containers constituted "a sophisticated [set up] for the production of cannabis with equipment including: a bank of electrical ballasts and timers, flood to drain watering system, numerous light sources, exhaust fans and air conditioners".[3] At that property a total weight of cannabis plants found was 8.088 kilograms.

[20] At Hotham Creek the police searched a large shed with a number of cannabis plants growing in a hydroponic set up. The shed was "a professional [set up], with well-appointed equipment and solely built for the purpose of growing commercial quantities of cannabis". It was geared towards the continual production of large volumes of cannabis, with a production line of cannabis growing.[4] The total weight of cannabis seized at that property was 147.143 kilograms.

[21] A search was executed at Gillis' unit, and a total of 24.254 kilograms of cannabis was located.

[22] During the search a field interview with the respondent was conducted. She admitted that she did "Ben's bookwork". She said Ben would bring her the money, tell her who it was from and she would do the "paperwork side of it and bank it". She said Ben Hannan worked out of a shed at the back of their house at Willowvale making golf moulds. She said she would do an invoice once it had been done, but she had never seen one of the moulds he made.

[23] Ben was paid $1,500 per week and she was paid $100 per week.

[24] The facts included this description of the conduct of the respondent:

> "The proceeds of the drug trafficking was given to Sarah Hannan who, in an attempt to legitimise the money, created false invoices and deposited the money into their business account."[5]

[25] A total of 45 false invoices were revealed:

(a) three invoices totalling $46,150 were addressed to a legitimate business but which did not have any business dealings with any member of the Hannan family;

(b) 18 false invoices dated between 19 December 2011 and 24 February 2014, totalling $57,175, were addressed to companies for whom the respondent or Ben Hannan had performed work a number of years previously, and largely prior to the bulk of the trafficking; and

(c) 24 false invoices dated between 6 February 2012 and 2 January 2014, totalling $545,864 were addressed to "Tim Bryan"; they were related to fibreglass golf moulds; that person was not known in the golf mould industry.

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3 AB 46.
4 AB 46.
5 AB 47.

[26] In total, in a period of approximately two years and four and a half months, the respondent was involved in the creation of 45 false invoices, totalling $649,189.

The respondent's personal circumstances

[27] The respondent was 24 to 26 at the time of offending, and 30 at the time of sentencing. She had no previous criminal history.

[28] The learned sentencing judge had the benefit of a psychologist's report in respect of the respondent.[6] By way of a factual background and presentation of personal circumstances the report disclosed:

(a) the respondent was remorseful, and extremely anxious about the sentencing proceeding, being fearful of being incarcerated and being separated from her three young children;

(b) despite those fears she said she was motivated to serve any sentence handed down, so that she could progress with her life;[7]

(c) at the time of assessment she was living with her three children (aged five years, three and a-half years and 21 months) at her mother's home; Ben Hannan was at that time in jail;

(d) Ben Hannan had volunteered to commence his custody period in March 2017,[8] and therefore had been absent from the family for nearly eight months at the time of assessment;

(e) the respondent said that both her mother, and her mother and father-in-law, provided practical day to day assistance in relation to her children; the children were happy and healthy but they struggled with the absence of their father; the middle daughter was engaged in speech therapy, and the elder daughter was engaged in grief counselling to cope with the absence of her father;[9]

(f) the respondent described a normal and an untroubled upbringing in a stable family, being educated to grade 12 and being employed in various jobs;

(g) her first daughter was born in August 2012;[10]

(h) Ben Hannan was nine years older than her; they had become engaged in 2011, which was a year of turmoil for her as her grandmother and father both died that year; after her father died Ben Hannan took over the role of supporting her and giving her advice and guidance; she said that she did not query any of his decisions;

(i) she said she did not have much to do with the activities in the sheds as she was focused on caring for the children; she did the data entry for her husband late at night or when she was feeding the baby, and would write up invoices according to his instructions;

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6 AB 56.
7 AB 57-58.
8 Five months prior to his sentencing.
9 AB 58.
10 AB 59; this means that she was conceived and born during the period of offending, which commenced in September 2010 and continued through until March 2014.

(j) she said she did not realise the extent of her husband's activities, and did not question his instructions to her;[11]

(k) she said that neither she nor, as far as she knew, her husband used cannabis;

(l) her mother had provided substantial support to her over the previous three and a-half years; she had retired in 2015 and "looks after the children on most days";[12]

(m) she said she had been diagnosed with, and treated for, depression since she was charged with the offending, consulting a psychologist since 2014; she was also on anti-depressant medication;[13] and

(n) she said she was extremely fearful that she would receive a custodial sentence because of the impact it would have on her children.

[29] The psychologist's opinion was that there was little risk of reoffending because the respondent had experienced substantial consequences of punishment in respect of the offending, including the strain on the family unit, extensive media coverage and breakdown of family relationships. The psychologist expressed the view that she would be a vulnerable person in a prison environment "due to her likely level of distress at being separated from her children and due to her vulnerability to depression".[14] The psychologist also expressed the view that the daughters would be innocent victims of their parents' offending, and likely to be further affected by sudden separation.

Approach of the learned sentencing judge

[30] The learned sentencing judge noted that the money laundering charge attracted a maximum penalty of 20 years' imprisonment. Her Honour referred to the fact that the plea of guilty was a timely one, and that it had saved a long trial.

[31] Her Honour then referred to the circumstances of the offending as set out above. Her Honour then referred to the fact that all of the respondent's assets had been seized and essentially lost, except for an amount of about $100,000 which would possibly be returned to the respondent's mother.[15]

[32] The learned sentencing judge referred to a number of authorities which, she said, supported a sentencing range of two to four years as a head sentence.

[33] Her Honour then listed a number of factors which she took into account:

(a) the respondent's state of mind, which was accepted to be actual knowledge of the criminal activities;[16]

(b) the large sum of money involved, in excess of $649,000, and the significant period of time involved;[17]

(c) the source of the money was a criminal operation;

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11 AB 62.
12 AB 67.
13 AB 67.
14 AB 76.
15 AB 36-37.
16 AB 37 l 33.
17 AB 37 l 35.

(d) the principles expressed in *R v Gadaloff*,[18] which were to the effect that an offender cannot shield themselves under the hardship they would create for others, and undue weight should not be given to personal or sentimental factors;

(e) the respondent's previous good character and absence of criminal history; also the various references which spoke well of her in the role she had played for her children, and in the community;

(f) the psychologist's report, indicating genuine remorse, the influence of her husband, and the respondent's depression and treatment for it since 2014; and

(g) the ages of the three children, the need for speech pathology treatment for one daughter, and treatment for the separation anxiety felt by the eldest daughter.

[34] The learned sentencing judge then turned to the question of the impact on the respondent's children:[19]

> "I have also taken into account the decision in *R v McConachy* [2011] QCA 183, and, as I have said, the principles that were outlined in *R v Gadaloff* cannot be ignored. In particular, in the decision of *R v McConachy*, the principles in relation to young children were outlined. In particular, there was reference to the decision of Justice Atkinson in *R v Chong* [2008] QCA 22, where it is clear that there is authority for the proposition that hardship caused to an offender's children by imprisonment can be taken into account but only in certain circumstances, and it is one of the many factors to be taken into account. Generally, the hardship caused to an offender's children is not a circumstance to be taken into account. The authorities are clear, however, that it may be taken into account when the degree of hardship that imprisonment will involve is exceptional or when the offender is the mother of young children, or where imprisonment will result in the children being deprived of parental care. In all cases, however, it depends on the gravity of the offence and the circumstances of the case.
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> In my view, there are some exceptional circumstances here. In particular, your husband is yet to serve another 18 months, you have three children under five, two of whom are struggling and already needing some significant assistance. I note your five year old is receiving psychological assistance already. It is also clear that if you are to be incarcerated, significant responsibility would fall on your mother, who is already assisting you to a great degree, as well as your parents-in-law. It would seem that your father-in-law has some significant health issues, and your mother-in-law does as well. They are, however, willing to assist."

[35] The learned sentencing judge also took into account that the 12 days served in pre-sentence custody was as a person charged under the *Vicious Lawless Association Disestablishment Act* 2013 (Qld). That, together with the fact that she had an eight

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18 [1998] QCA 458.

19 AB 38 l 34 to AB 39 l 14.

week old baby at the time, meant it was a period of great difficulty, in that the child did not accompany the respondent into custody.

[36] The learned sentencing judge recognised that the offence was one calling for denunciation and for deterrence, though not personal deterrence.[20]

[37] The learned sentencing judge considered that it was "an exceptional case", warranting a full suspension of the sentence. Part of the reason for the suspension was that the 12 days spent in pre-sentence custody would have been "extraordinarily harsh".[21]

Submissions

[38] Mr Heaton QC, appearing for the Attorney-General, submitted that the penalty imposed on the respondent did not reflect the seriousness of the offence and the applicable maximum penalty, and was therefore inadequate in the sense that it was "unreasonable or plainly unjust".[22] The submission was that the sentencing discretion miscarried because the learned sentencing judge gave too much weight to the hardship on the children should the respondent be incarcerated, and thereby imposed a sentence which was manifestly inadequate.

[39] It was submitted that the learned sentencing judge allowed the discretion to be overwhelmed by consideration of the impact on the children, at the expense of recognising the very serious offence involved in laundering about $650,000, where that was done with the full knowledge that the money constituted the proceeds of criminal activity.

[40] Mr Heaton placed reliance upon the decision in *R v Chong*; *Ex parte Attorney-General (Qld)*[23] and *R v D'Arrigo; Ex parte Attorney-General (Qld)*[24] and *R v T*.[25] The submission was made that those who offend in a serious way cannot avoid incarceration by invoking family considerations especially where arrangements can be made for the responsible care of the child during the offender's period in custody. Further, it was submitted that the weight to be given to the effect of incarceration upon the respondent's children was significantly diminished by the fact that the two older children were born whilst the respondent was knowingly engaged in dishonestly attempting to hide the criminal proceeds from the cannabis production. The third child was conceived and born after she had been charged, when both she and her husband were facing the prospect of a long period of incarceration.

[41] Mr Heaton contended that actual incarceration of a period between six to 12 months was warranted.

[42] Relying on the same essential approach Mr Heaton submitted that this was not a case where the residual discretion would be exercised.

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20 AB 39 ll 35-44.
21 AB 40 l 9.
22 Referring to *Hili v The Queen* (2010) 242 CLR 520; [2010] HCA 45 at [58]-[60]; *House v The King* (1936) 55 CLR 499 at 505; [1936] HCA 40.
23 (2008) 181 A Crim R 200; [2008] QCA 22.
24 [2004] QCA 399.
25 (1990) 47 A Crim R 29.

[43] Mr Allen QC, appearing on behalf of the respondent, submitted that the sentence was not unreasonable or plainly unjust, and the findings made by the learned sentencing judge in relation to the impact on the children were properly open. It was submitted that the respondent was the mother of young children and her imprisonment would result in the children being deprived of parental care. Further, because of their vulnerability, the respondent's imprisonment was likely to cause severe hardship to them. It was submitted that it was open to the learned sentencing judge to reach the conclusion that exceptional circumstances were shown to be present, and consequently it was open to wholly suspend the sentence.

[44] Mr Allen also submitted that if the court was to find the ground of appeal made out, nonetheless there was a residual discretion to dismiss the appeal.[26] He submitted that circumstances since the date of sentence were relevant to the exercise of the residual discretion, and in that respect relied upon a further report by the respondent's psychologist. That revealed that her anxiety and depression had been exacerbated as a consequence of the appeal.

Discussion

[45] The principles applicable when considering the impact of a sentence upon dependent children were stated in *R v Chong; Ex parte Attorney-General (Qld)*:[27]

> "[29] There is authority for the proposition that the hardship caused to an offender's children by imprisonment may be taken account of in the exercise of the sentencing discretion but only in certain circumstances. It is then one of many factors to be taken into account. In *Stewart v The Queen* (1994) 72 A Crim R 17 at 21, the Court of Criminal Appeal in Western Australia held:
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> > 'Generally the hardship caused to an offender's children is not a circumstance to be taken into account. The authorities are clear, however, that it may be taken into account when the degree of hardship that imprisonment will involve is exceptional or when the offender is the mother of young children, or where imprisonment will result in the children being deprived of parental care. In all cases, however it depends on the gravity of the offence and the circumstances of the case.'
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> [30] It is true that the hardship to an offender's children cannot be allowed to overwhelm all other considerations in sentencing: See *R v Tilley* (1991) 53 A Crim R 1 at 3. However, as the appellant conceded in this case, the effect on a family is not irrelevant. As Cooper J observed in *R v Tilley* at 6:
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> > 'The public interest is promoted by preserving wherever possible a family unit. The respondent's background demonstrates quite clearly the social cost where some semblance of family stability and support is lacking.

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26 Reliance was placed on *CMB v Attorney-General (NSW)* (2015) 256 CLR 346 at 365 and 366; [2015] HCA 9 at [54] and [56].

27 (2008) 181 A Crim R 200; [2008] QCA 22 at [29]-[32].

> Rehabilitation and preservation of a stable family environment are both relevant and important to the process of sentencing.'

[31] *Tilley* was followed in this court in *R v Le* [1996] 2 Qd R 516 at 522; (1995) 83 A Crim R 428 at 434 by Thomas J with whom Williams J agreed. Thomas J said that the hardship and distress shared by the family of an offender cannot be allowed to overwhelm factors such as retribution and deterrence. Pincus JA observed, at 519; 431, that the practice of Queensland courts is to give consideration, when appropriate, to the effect of a sentence on an offender's young children.

[32] In *R v D'Arrigo*; *Ex parte Attorney-General (Qld)* (2004) 42 MVR 54, the court was considering a case in which the only reason for suspending a term of imprisonment was the respondent's position as sole carer of his young daughter. In that case it was held that the fact that the applicant was the sole carer for a 16 month old child could not be allowed to overwhelm the otherwise appropriate punishment for a conviction of dangerous operation of a vehicle causing death for which the offender was convicted after a trial. He had a previous conviction for dangerous driving and convictions for speeding which preceded and followed the driving the subject of the conviction before the court. The President noted that he had other children living in Victoria with their mother and he did not contribute to their maintenance. The Chief Justice observed at pages [9]-[10]:

> 'The balance of authority supports the view that while hardship to third parties because of the imprisonment of a family member may, if rarely, be a relevant consideration, it must not overwhelm others such as the need for deterrence, denunciation and punishment. See *R v Le* [1996] 2 Qd R 516.
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> Indeed the preponderance of authority is to the effect that this consideration may be brought to account only in exceptional or extreme circumstances. See *R v MP* [2004] QCA 170; *Boyle v The Queen* (1987) 34 A Crim R 202; *Arnold v Trenerry* (1997) 118 NTR 1; and *R v Edwards* (1996) 90 A Crim R 510.'"

[46] *Chong* was an exceptional case. It concerned a mother sentenced on Mornington Island, who was given immediate parole in circumstances where: (i) she was still breast feeding her child; (ii) once she was taken into custody the breast feeding would have to cease immediately; (iii) there were no facilities to breast feed the baby in custody (iv) the baby could not be flown to the prison with her; and (v) the offender was a responsible mother of seven children, and her removal to the mainland, remote from the children and without any practical means of personal contact or visits, was significant.

[47] The sentencing impact on a child, such as separation of a young child from a mother, has to be seen in context and balanced against the seriousness of the

offence. For example in *R v Murray*[28] the offender was a young mother whose incarceration would result in separation from her one year old child. Fraser JA,[29] in the course of considering comparable cases, distinguished that situation from the circumstances in *Chong* and *McConachy*, which his Honour described as "quite exceptional":

> "[18] In *Laskus*,[30] the Court refused leave to appeal against four months imprisonment suspended after two months for an operational period of 12 months. Byrne J dissented, holding that 'immediate imprisonment was far too severe a sanction having regard to the circumstances of the offence and the personal circumstances of the offender … a momentary loss of temper and control by a young, pregnant first offender who, albeit inappropriately, perceived that her explanations of an entitlement to the $60 [about which there was a dispute] were being unreasonably rejected by the police officer.' The maximum penalty was then three years imprisonment. It was increased to seven years imprisonment in 1997. Unlike the applicant, that offender was not regretful and she did not offer any apology to the police officer for her actions. Although that offender was pregnant, her imprisonment did not involve the increased burden suffered by the applicant of being separated from her baby. The circumstance that the applicant's imprisonment would separate her from her baby was certainly relevant to sentence even though it was not nearly as significant as the quite exceptional circumstances in *R v Chong; Ex parte Attorney-General (Qld)* or those in *R v McConachy*. Having regard to all of those circumstances whilst giving full weight to the increase in the maximum penalty from three years imprisonment to 14 years imprisonment, the fact that the sentence in *Laskus* was found to be not manifestly excessive provides no support for the sentence imposed upon the applicant."

[48] In *R v Edwards*[31] the circumstances were that the offender had been the sole carer for her daughters, then aged 16 and 18 years, for the past 14 years and most of her family lived overseas. The offender's mother and sister lived near to where her children were living, but they had not visited her children to ensure their welfare, and refused to assist with their accommodation or care. The evidence from the daughters was that they had been unable to continue their schooling, their father had taken no responsibility for their welfare and finances, and they had suffered health and stress problems. Fraser JA held that such circumstances came within the principles in *Chong*, warranting an adjustment of the sentence.[32]

[49] *R v McConachy*[33] was also a case where this Court held that the circumstances fell within *Chong*. The offender was a single parent of three dependent children and

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28 (2014) 245 A Crim R 37; [2014] QCA 250 at [18].
29 With whom Gotterson and Morrison JJA concurred.
30 [1996] QCA 120.
31 [2011] QCA 331.
32 *Edwards* at [70]; de Jersey CJ and White JA concurring.
33 [2011] QCA 183.

their estranged mother was unable to care for them. His own mother was physically unable to care for the children. The eldest child was being investigated for suspected epilepsy, the four year old had developmental problems, and the eight-month old was diagnosed with whooping cough. All the children had special needs at the time of sentence. The Court concluded that the children would suffer exceptional hardship upon the offender's incarceration.[34]

[50] This Court has consistently held, including in *Chong*, that hardship to family members cannot overwhelm considerations such as the need for denunciation, deterrence and punishment.[35] In other words it ought not be allowed to overwhelm the punishment which would otherwise be appropriate.[36]

[51] In *R v Bedeau*[37] this Court also said that regard should be had to what was said by Gleeson CJ in *R v Edwards*:[38]

> "Hardship to spouse, family, and friends, is the tragic, but inevitable consequence of almost every conviction and penalty recorded in a criminal court … It seems … that courts would often do less than their clear duty … if they allowed themselves to be much influenced by the hardship that prison sentences, which from all other points of view were justified, would be likely to cause to those near and dear to prisoners."

[52] In the context of those statements of principle, and mindful of those examples which this Court has held to be outside the principles in *Chong*, one can turn to the circumstances of this case.

[53] There can be no debate that this offence should be classed as a serious one. The following features point inevitably to that conclusion, and equally to the demonstrable need for denunciation, deterrence and punishment. They are:

(a) the sheer size of the operation; the cannabis production and trafficking spanned the period between September 2010 and March 2014; over that time the yield from the cannabis was about $1.15 million and covered in excess of 383 pounds of cannabis;

(b) the respondent knew that the money she was laundering was the proceeds of criminal activity; the agreed facts are clear that her creation of false invoices, and the depositing of money in the business account, were an attempt to legitimise the proceeds of crime;

(c) the extent of the money thus laundered is demonstrated by the fact that she created 45 false invoices for an amount of $649,189; and

(d) her participation was an integral part of a sophisticated and well-run professional cannabis production and trafficking business, conducted purely for profit; even if she did not know the extent of what was being done, the admissions were that she knew she was assisting to disguise the proceeds of crime.

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34 [2011] QCA 183 at 7 per McMurdo P, Muir JA and Boddice J concurring.

35 *R v Calis* [2013] QCA 165 at [47]; *R v Le* [1996] 2 Qd R 516 at 522; [1995] QCA 479; *R v D'Arrigo; Ex parte Attorney-General (Qld)* [2004] QCA 399 at [9]; *R v Price; Ex parte Attorney-General (Qld)* [2011] QCA 87 at [61].

36 *R v Nuttal; ex parte A-G (Qld)* [2011] 2 Qd R 328; [2011] QCA 120 at [66].

37 [2009] QCA 43 at [13] per Muir JA, Holmes JA and Atkinson J concurring.

38 (1996) 90 A Crim R 510 at 516; per Wells J in *R v Wirth* (1976) 14 SASR 291 at 295.

[54] The statements by the respondent, both to the psychologist and through her counsel to the learned sentencing judge, that she did not know the full extent of the operation must be seen in context. She was handling the money given to her by her husband, and that amounted to very substantial sums. In addition, within the space of 18 months she and her husband had purchased real property worth more than $2.1 million, in respect of which the repayments were about $9,500 per month.[39]

[55] Consideration of the position of the children, and the impact upon them requires some close consideration to the evidence. At the time of sentencing the three daughters were aged five, three and a-half and 21 months old.[40] I pause to note that they are now six, four and a-half and two and a-half years old.

[56] Unlike *Chong*, this is not a case where the children will be left without proper care. Submissions advanced on behalf of the respondent were careful to frame the deficiency, in the event of a custodial sentence, as being a loss of "parental" care. However, the evidence established that at the time of the sentencing both the respondent's mother and her mother and father-in-law provided practical day to day assistance in relation to child care.[41] The respondent told Dr Yoxall that her mother had provided "substantial support to her over the last 3.5 years", that her mother had retired in 2015, and "looks after the children on most days".[42] Further, the respondent told Dr Yoxall that she had "made arrangements with both her mother and mother and father-in-law about arranging care for her children if she is sentenced to a period of actual incarceration".[43] Those plans included that her mother would move in to the house and care for the children on a fulltime basis, with intermittent respite provided by her husband's parents. Though the tension and conflict between her family and her husband's family were noted in that respect, there was a finding by the learned sentencing judge that the mother-in-law and father-in-law were willing to help.[44]

[57] On the appeal Mr Allen QC told the court that the arrangements with the mother were still applicable.

[58] In the material relied upon before this Court, in support of the contention that it should exercise the residual discretion to dismiss the appeal even if error was made out, the position in respect of the care of the children had changed somewhat. The respondent's affidavit reveals that her father-in-law has stage 4 pancreatic cancer and cannot assist in the care of the children. Further, her mother-in-law suffers from Polymyalgia Rheumatica which would put limitations on her assistance in the care of the children. Implicit in that is the fact that the mother-in-law is still willing to assist to the extent that she can. The respondent's mother is obviously still available. The respondent deposes that she is currently living in the house owned by her mother, and that her mother comes to help her when needed. She goes on:

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39 Though the learned sentencing judge was told that the respondent and her husband received about $234,000 from her father's estate, it is unclear how much of that went into the properties: AB 21 lines 40-47.

40 Para 3.1 of the Report of Dr Yoxall, AB 58.

41 Para 3 of Dr Yoxall's report, AB 58.

42 AB 67.

43 AB 68.

44 AB 39 line 14.

> "If I were to be imprisoned my 65 years old mother who is my only relative in Australia would make adjustments to reside with my children fulltime."[45]

[59] In my view, it is therefore right to conclude that whilst there will be some impact on the children in terms of separation from their parents for a period of time, they will not be left without appropriate care, and not left without care by a family member. There is nothing in the material advanced before the learned sentencing judge, nor before this Court, that would suggest that the respondent's mother is incapable or unwilling to provide the care that the three children need. To the contrary she has been assisting and is willing to move in as a fulltime carer.

[60] As for the children themselves, there was some evidence before the learned sentencing judge that they had difficulties which had to be taken into account. The learned sentencing judge referred to those,[46] identifying that the second daughter was receiving treatment from a speech pathologist, as identified in a report tendered on the sentencing hearing.[47] However, that treatment was obviously progressing well as the prognosis for improvement was said to be good.[48] The learned sentencing judge also noted that the eldest daughter suffered from the fact that she was separated from her father.

[61] However, it has to be noted that whilst the children struggled with the absence of their father[49] the respondent told Dr Yoxall the children were "happy and healthy".[50] That was despite the difficulties identified.

[62] In the further material relied on before this Court nothing more was said by the respondent about the children's difficulties mentioned by the learned primary judge. However, one report was included, concerning ENT Management for the second daughter. The report,[51] by a speech pathologist, noted that the second girl had chronic nasal congestion with enlarged tonsils and possibly enlarged adenoids. That affected her breathing and likely oxygenation, and quite possibly affected the quality of her sleep as well as cognitive processing. The report, dated 22 May 2018, proposed a plan of action culminating in an ENT referral to a specialist. The plan, insofar as it involved the respondent, consisted of observations of the second daughter's sleep and breathing and having allergy testing done. There was no indication in the report that the problems identified would not be or could not be successfully controlled by the ENT specialist intervention.

[63] This review above demonstrates, in my respectful view, that the respondent's case is well removed from the sort of circumstances evident in *Chong*, *Edwards* or *McConachy*. Properly characterised, this is a case where separation by reason of the imposition of a custodial sentence on the respondent will inevitably affect the children, but not in the exceptional way which is the hallmark of the principles in *Chong*. When that impact is balanced against the seriousness with which the legislature views that offending,[52] and the need in drug trafficking and money laundering cases for

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45 Para 13 of the respondent's affidavit.
46 AB 38 ll 18-27.
47 AB 96.
48 AB 98.
49 An inevitable consequence of the conviction for the criminal activities in which he was involved.
50 AB 58.
51 Exhibit MPA-A to the affidavit of Ms Power sworn 23 May 2018.
52 By the imposition of a maximum penalty of 20 years' imprisonment.

denunciation and deterrence, it becomes apparent that the learned sentencing judge did, in my respectful view, permit the hardship to the children to overwhelm the punishment which would otherwise have been appropriate.

[64] In that respect, in my respectful view, the learned sentencing judge fell into error. The consequence is that unless the residual discretion is exercised this Court must resentence the respondent.

[65] The learned sentencing judge referred to a number of comparable authorities in coming to the view that a three year sentence was appropriate.[53] Before the learned sentencing judge both the Crown and counsel for the respondent contended for a head sentence of three years. Before this Court no submission was made that such a sentence was otherwise than appropriate. In resentencing I would not interfere with the imposition of that head sentence.

[66] However, in my respectful view, a period of actual custody must be served in order to properly reflect the seriousness of the respondent's offending. Over a period of two years and four months the respondent laundered about $650,000 as part of a large, well run and profitable cannabis production and trafficking business. In the relevant period that business produced and sold cannabis that yielded more than $1.15m. She knew that the invoices she created were false and that what she was doing was to legitimise the proceeds of criminal activity.

[67] In so saying, I am cognisant of the mitigating factors referred to by the learned primary judge, including the 12 days of pre-sentence custody which were undergone under the VLAD regime. Nonetheless, the objective seriousness of the offence and the requirements for denunciation and general deterrence compel a sentence which includes a period of actual custody.

[68] To reflect the mitigating circumstances, as well as the long period which elapsed from the time of offending to the time of sentencing, and the period since whilst this appeal was on foot, I would reduce the period of actual custody from the 12 months which might otherwise reflect a timely plea of guilty, together with other mitigating factors. I would also include a reduction for the fact that the respondent spent 12 days in custody under the VLAD regime, which was made more difficult because she had an eight week old baby who did not accompany her into prison. The reduction for the pre-sentence custody should be greater than just 12 days to reflect its onerous nature.

[69] Consequently I would reduce the period to five months' imprisonment.

Residual discretion

[70] As will be evident from the foregoing, I am not persuaded that this is an appropriate case in which to exercise the residual discretion.[54] In my view, careful and distinct consideration of the circumstances surrounding this offending conduct, and the circumstances of the respondent and her children, warrant the conclusion that the

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53 *R v Christensen* [2006] QCA 197; *R v Foster* [2009] 1 Qd R 53; [2008] QCA 90; *R v Powell* [1999] 108 A Crim R 448; *R v Presotto* (Rafter SC DCJ, 4 March 2016); *R v Gadaloff* [1998] QCA 458; *R v Dewar* (McKenzie J, 9 February 2000) and *R v Salesa* (Richards DCJ, 28 October 2015).

54 *CMB v Attorney-General (NSW)* (2015) 256 CLR 346 at 365-366; [2015] HCA 9 at [54]-[56].

appeal against sentence is justified and the Attorney-General has discharged the necessary onus.[55]

[71] The respondent's circumstances since the sentencing and her anxiety and depression[56] do not rise to the level that they displace the need for a custodial sentence. Contrary to the submissions on the respondent's behalf, they are not of the same character as was the case in *R v Hopper; Ex parte Attorney-General (Qld)*.[57]

[72] In my respectful view, even allowing for the hesitance that the court might recognise in sending to custody someone who had been granted liberty,[58] it would send entirely the wrong message to the community if offending of this kind and magnitude, that is to say money laundering to assist organised criminal drug trafficking, were not to attract the appropriate penalty.

Conclusion

[73] I would propose the following orders:

1. Appeal allowed.
2. Set aside so much of the orders made on 27 November 2017 as wholly suspended the period of imprisonment for an operational period of three years.
3. Order that the term of imprisonment imposed be suspended after serving five months.
4. Otherwise affirm the orders made on 27 November 2017.
5. Order that a Warrant issue for the arrest of the respondent, to lie in the Registry for seven days.

[74] **PHILIPPIDES JA:** For the reasons given by Morrison JA, I agree with the orders proposed by his Honour.

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55 *CMB* at [57].

56 As revealed in her affidavit sworn 9 May 2018, and a report from a psychologist: Exhibit MJP-1 to the affidavit of Ms Power sworn 16 May 2018.

57 [2015] 2 Qd R 56; [2014] QCA 108 at [40].

58 *DPP (Cth) v Gregory* (2011) 211 A Crim R 147 at 169; [2011] VSCA 145 at [79]; *R v Hopper; Ex parte Attorney-General (Qld)* [2015] 2 Qd R 56; [2014] QCA 108 at [37]-[38].