

Platt v The Queen [2015] NTCCA 6

PARTIES: DANIEL PLATT
v
THE QUEEN

TITLE OF COURT: COURT OF CRIMINAL APPEAL OF
THE NORTHERN TERRITORY

JURISDICTION: CRIMINAL APPEAL FROM THE
SUPREME COURT EXERCISING
TERRITORY JURISDICTION

FILE NO: CA 2 of 2015 (21440147)

DELIVERED: 23 September 2015

HEARING DATE: 21 September 2015

JUDGMENT OF: RILEY CJ, KELLY J AND MILDREN
AJ

APPEALED FROM: SOUTHWOOD J

CATCHWORDS:

CRIMINAL LAW – sentencing – appeal against unsuspended term of imprisonment – manifest excess – prospects for rehabilitation – mitigating circumstances weighed against seriousness of offending - cooperation with authorities – no error in finding reasonable rather than excellent prospects

CRIMINAL LAW – sentencing – appeal against unsuspended term of imprisonment – manifest excess – outside the range imposed in cases of similar circumstances and gravity

R v Dunn [2007] NTSC 20614375 (27 March 2007) Sentencing remarks, *Clarke v The Queen* [2009] NTCCA 5, distinguished.

REPRESENTATION:

Counsel:

Appellant: I Read SC
Respondent: D Morters

Solicitors:

Appellant: Northern Territory Legal Aid
Commission
Respondent: Director of Public Prosecutions

Judgment category classification: B
Number of pages: 7

IN THE COURT OF CRIMINAL APPEAL
OF THE NORTHERN TERRITORY
OF AUSTRALIA
AT DARWIN

Platt v The Queen [2015] NTCCA 6
No. CA 2 of 2015 (21440147)

BETWEEN:

DANIEL PLATT
Appellant

AND:

THE QUEEN
Respondent

CORAM: RILEY CJ, KELLY J AND MILDREN AJ

REASONS FOR JUDGMENT
(Delivered 23 September 2015)

THE COURT:

- [1] This matter was dealt with in the Court of Criminal Appeal on 21 September 2015. At the conclusion of the hearing the Court allowed the appeal and resented the appellant. The Court did not interfere with the head sentence but found the unsuspended part of that sentence to be manifestly excessive in all the circumstances and ordered the immediate release of the appellant under a suspended sentence. Our reasons for so doing are as follows.
- [2] On 15 December 2014 the appellant was sentenced to imprisonment for a period of two years and 10 months to be suspended after he had served 17 months in prison. The sentence related to offences of having unlawfully

possessed a commercial quantity of cannabis plant material and having unlawfully possessed a commercial quantity of MDMA. Leave to appeal against the sentence was granted on three grounds on 24 April 2015.

The offending

- [3] The appellant is an English National aged 28 years. He came to Australia in June 2012 on a working holiday. In Sydney he met and fell in love with a girl. She was described as being “destitute” and in a “low emotional state” because she had been raped. The appellant used a significant amount of money to assist her. The appellant and his girlfriend had difficulty obtaining suitable employment and they incurred debts on the girlfriend’s credit card. At the same time the appellant had visa problems because his passport had expired. The appellant described his situation as being “desperate”.
- [4] At that time the appellant started using MDMA. One of his dealers, a person referred to as Declan, gave him 5 g of MDMA to sell or keep for personal use. He consumed the drugs and when he was unable to pay the debt, he was invited by Declan to transport drugs from Melbourne and sell them in Darwin. The appellant agreed on the basis that by doing so: he would discharge his debt to Declan; Declan would purchase airfares for him and his girlfriend to return to their countries of origin; and Declan would pay the girlfriend’s credit card debt of about \$4000.
- [5] As part of the arrangement the appellant made three trips transporting drugs from Melbourne to Darwin. On the first trip he took 10 ounces of cannabis

to Darwin which he sold. He gave \$3000 of the proceeds to Declan. On the second trip he transported 16 ounces of cannabis and 50 MDMA tablets. He gave Declan about \$7000 from the proceeds. On those occasions he used some of the proceeds for travel and living expenses and also to repay a debt he owed his brother. He was arrested on his third trip when the bus on which he was travelling was searched by police with the assistance of a drug detection dog. The dog reacted when it sniffed the appellant's bag. The appellant observed this and approached officers saying, "I think you guys are looking from me". He made full admissions to all charges and to the other offences he had committed. The appellant estimated that the proceeds from the sale of the drugs he was then carrying would have been about \$40,000.

Grounds of Appeal

- [6] The appellant complained that the sentencing judge erred in finding that his prospects for rehabilitation were "merely reasonable"; that the unsuspended portion of the sentence imposed was manifestly excessive; and the judge erred in fixing the unsuspended portion of the sentence at 50% of the head sentence having regard to the subjective circumstances of the appellant.

The appellant's prospects for rehabilitation

- [7] The appellant acknowledged that the offending was serious. Under the terms of the *Misuse of Drugs Act 1990* (NT), he possessed more than four times the commercial quantity of cannabis and MDMA, and he stood to make a significant commercial gain from his criminal conduct in bringing the drugs

into the Northern Territory. It was accepted that his motivation was to make as much money as he could in a short time so that he and his girlfriend could pay off the credit card debt, leave Australia and return home.

- [8] However, it was argued that the appellant was a person of positive good character with no prior convictions who became embroiled in the offending when he was “snared” and exploited by the drug supplier who threatened him and his family with violence. It was submitted that the appellant, when detected, immediately accepted responsibility for his actions and was genuinely remorseful. He assisted the police to the fullest extent. This assistance included providing information regarding his supplier, Declan, and his prior offending of which the police were unaware and which was not the subject of any charges. He also indicated a willingness to give evidence against Declan should it become necessary. It was submitted he was a man for whom the offending was out of character.
- [9] In those circumstances, it was argued, the findings of the sentencing judge that the appellant had “reasonable prospects of rehabilitation” were in error and his Honour should have found those prospects to be “excellent”.
- [10] A review of the sentencing remarks makes it plain that his Honour took into account all of the mitigating matters mentioned, and weighed those up along with the seriousness of the offending and the aggravating circumstances to conclude that the appellant’s prospects of rehabilitation were reasonable. This was a positive finding reflecting all of the relevant information.

[11] In our opinion the appellant's prospects for rehabilitation could not be described as excellent. This was not a one off exercise or something that occurred on the spur of the moment. It was a planned criminal enterprise with full knowledge of the seriousness of the criminal activity. The appellant had engaged in the transportation of at least trafficable quantities of cannabis on two prior occasions and, on one of those occasions, also transported a quantity of MDMA. This was not an isolated act of offending. The extent of the offending was escalating and the rewards became greater. The offending only stopped when the appellant was apprehended.

[12] The appellant did cooperate with the authorities once he realised that the drug detection dog had focused attention upon his bag. By that time it was almost inevitable that he would be identified as being responsible for the drugs. He cooperated with the authorities by providing information regarding his co-offender and offering to give evidence against him if necessary. He also voluntarily disclosed the whole of the circumstances of the offending including the two previous instances of offending which would not otherwise have come to light. These matters are reflected in the positive finding regarding his prospects. There was no error on the part of the judge.

The unsuspended term

[13] It was submitted on behalf of the appellant that the objective and subjective factors relevant to fixing the sentence made it apparent that the unsuspended term of 17 months of imprisonment was manifestly excessive. In arguing

this ground the appellant did not challenge the appropriateness of the head sentence and focused attention only on the unsuspended term.

[14] Further, it was submitted, that when viewing other sentences of the Court of comparable gravity, the unsuspended term of actual imprisonment was outside the range of sentences that have previously been imposed. It was argued that it was exceptional for a first offender in circumstances comparable to the appellant to be sentenced to a term of actual imprisonment of more than 12 months. A lengthy schedule of similar matters dealt with by single judges of the Court was provided.

[15] The appellant contended his Honour failed to give adequate weight to the appellant's circumstances leading up to and at the time of offending, his comprehensive confession and his cooperation with police at the time of arrest. It was submitted the appellant showed marked contrition and a full acceptance of responsibility. All indications were that the appellant was unlikely to reoffend.

[16] The respondent conceded that all but one of those sentencing outcomes resulted in a period of actual imprisonment less than the sentence imposed by his Honour.¹ In our opinion the matter referred to was quite different in many respects from the present case and of little assistance by way of comparison. The respondent also pointed to the judgment of the Court of

¹ The exception is *R v Dunn* [2007] NTSC 20614375 (27 March 2007) Sentencing remarks.

Criminal Appeal in *Clarke v The Queen*² as supporting head sentences of this order with lengthy terms of actual imprisonment. Again, in our opinion, this decision is of little assistance by way of comparison.

[17] The respondent pointed to the seriousness of the offending and the nature of the appellant's involvement as discussed above.³

[18] The unsuspended period of imprisonment imposed upon the appellant is significantly greater than that imposed in cases of similar circumstances and gravity. There is nothing in the reasons for sentence of his Honour to indicate the reasons for any difference and, in our opinion, this part of the sentence was manifestly excessive. It is for these reasons that the appeal was allowed and the appellant was resentenced.

The discount

[19] The appellant initially complained that the sentencing judge did not provide an appropriate discount reflecting the early plea of guilty and, importantly, the assistance and cooperation provided by the appellant to the police. This ground was not pressed after the appellant acknowledged that the head sentence was appropriate in all the circumstances.

² [2009] NTCCA 5.

³ At par [5] and [11].