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IN THE SUPREME COURT
OF THE NORTHERN TERRITORY
OF AUSTRALIA
AT DARWIN

No.JA4 of 1995

BETWEEN:

AARON ROBERT RODWELL
Appellant

AND:

KEVIN GERARD MALEY
Respondent

No. JA5 of 1995

BETWEEN:

AARON ROBERT RODWELL
Appellant

AND:

ROBIN LAURENCE TRENERRY
Respondent

CORAM: KEARNEY J

REASONS FOR DECISION

(Delivered 7 April 1995)

I rule today on 2 appeals by the appellant against the severity of the totality of 18 sentences of imprisonment imposed on him by the Court of Summary Jurisdiction at Darwin on 16 December 1994.

The sentences under appeal

It is desirable to set out the sentences and the orders made by the Court as to their service. The sentences were imposed after the appellant pleaded guilty to 18 offences.

(1) The sentences the subject of appeal No.JA5 of 1995

By Notice of Appeal dated 3 January 1995 the appellant appealed against the following 12 sentences:-

(a) 9 months imprisonment for each of the following offences:-

(i) Unlawfully entering a dwelling house in Stuart Park on 16 August 1994 with intent to steal. This offence under Code s213 carries a maximum punishment of 10 years imprisonment.

(ii) Stealing property to the value of $6644 from those premises on 16 August 1994; this offence under Code s210 carries a maximum punishment of 7 years imprisonment.

The Court ordered that these sentences both be deemed to have commenced to be served on 19 October 1994, the date of the appellant's arrest; the effective sentence for these 2 offences was 9 months imprisonment.

(b) 9 months imprisonment for each of the following 7 offences:-

(i) Unlawfully entering a dwelling house in Beatrice Street, Stuart Park, on 24 August 1994, with intent to steal;

(ii) Stealing property to the value of $10,340 from those premises on 24 August 1994;

(iii) Unlawfully entering a dwelling house in Henry Street, Stuart Park on 24 August 1994, with intent to steal;

(iv) Stealing property to the value of $1100, from those premises on 24 August 1994;

(v) Unlawfully entering a dwelling house in Stuart Park on 26 September 1994, with intent to steal;

(vi) Unlawfully entering a building at Stokes Hill Wharf on 9 October 1994, with intent to steal. This carries a maximum penalty of 7 years imprisonment.

(vii) Unlawfully entering a building in Cavenagh Street, Darwin on 16 October 1994, with intent to steal. This also carries a maximum punishment of 7 years imprisonment.

These 7 sentences of 9 months imprisonment were all directed to be served cumulatively upon the 2 sentences in (2)(a) above; that is to say, the

effective sentence for the 9 offences was 18 months imprisonment (9+9).

(c) 2 months imprisonment for each of the following offences:-

(i) Stealing property to the value of $400 from the premises in (1)(b)(v) above on 26 September 1994;

(ii) Stealing property, to the value of $80 from the premises in (1)(b)(vi) above, on 9 October 1994;

These sentences were directed to be served concurrently with the 7 sentences in (1)(b) above. The effective sentence for the 11 offences remained 18 months imprisonment.

(d) 9 months imprisonment for stealing property to the value of $1500 from the premises in (1)(b)(vii) above, on 16 October 1994.

This sentence was directed to be served concurrently with the 7 sentences in (1)(b) above. The effective sentence for the 12 offences remained 18 months imprisonment.

(2) The sentences the subject of appeal No.JA4 of 1995

By the same Notice of Appeal as in (1) above, the appellant appealed against the following 6 sentences:-

(a) 9 months imprisonment for each of the following 2 offences:-

(i) Unlawfully entering a dwelling house in Larrakeyah between 10 September and 28 September 1994, with intent to steal;

(ii) Stealing property to the value of $1300 from those premises, between 10 September and 28 September 1994;

It is common ground that these sentences were intended to be served concurrently with the sentences in (1)(a) above. The effective sentence for the 14 offences remained 18 months imprisonment.

(b) 15 months imprisonment for each of the following offences:-

(i) Unlawfully entering a dwelling house in Larrakeyah on 13 October 1994, with intent to steal;

(ii) Stealing property to the value of $21,230 from those premises, on 13 October 1994;

These sentences were each directed to be served cumulatively upon the sentences in (1)(b) above.

The effective sentence for the 16 offences became 33 months imprisonment (9+9+15).

(c) 15 months imprisonment for each of the following offences:-

(i) Unlawfully entering the same dwelling house in Larrakeyah as in (2)(a)(i) above, on 18 October 1994, with intent to steal;

(ii) Stealing property to the value of $880 from those premises on 18 October 1994.

These sentences were directed to be served in part cumulatively upon the 2 sentences in (2)(b) above, in that they were to commence to be served after 3 months of the sentences in (2)(b) had been served. The effective sentence for the 18 offences became 36 months imprisonment (9+9+15+3), with effect from 19 October 1994.

The Court did not fix a nonparole period.

The grounds of appeal

The appellant relied on 4 identical grounds in each appeal, viz:-

(1) The totality of the sentences imposed, 3 years imprisonment, is manifestly excessive.

(2) His Worship erred in law in failing to specify a nonparole period.

(3) His Worship gave no weight or insufficient weight to the appellant's youth, and to the prospects of his rehabilitation.

(4) His Worship gave too much weight to the appellant's prior juvenile record.

The facts of the 18 offences

(a) The offences of 16 August 1994; see (1)(a)(i) and (ii)

On Tuesday afternoon, 16 August 1994, the appellant entered a residence in Stuart Park, by forcing open a door using a screwdriver. He searched the house, and removed various items of jewellery, a camera, keys, a radio with headphones and a pair of runners.

(b) The offences of 24 August 1994; see (1)(b)(i) and (ii), and (1)(b)(iii) and (iv)

On Wednesday 24 August 1994 the appellant entered a residence in Stuart Park via an unlocked window. He searched the house, and removed rings, bracelets, bands, chains and watches from the premises. On the same Wednesday afternoon he entered another residence in Stuart Park, by using a shovel to force open a door. He searched the premises, and removed a gold chain and a Seiko watch.

(d) The offences of 26 September 1994; see (1)(b)(v) and (1)(c)(i)

On Monday afternoon 26 September 1994 the appellant entered a residence in Stuart Park through a rear window, by removing louvres. He searched the premises, and removed a camera.

When the appellant was apprehended by the Police, he made full admissions to the above 8 offences. He also admitted to having sold the property he had stolen to an unknown person in a hotel.

(e) The offences of 9 October 1994; see (1)(b)(vi) and (1)(c)(ii)

On Sunday evening, 9 October 1994, the appellant entered an office at Stokes Hill Wharf, by forcing open some louvre windows. He found $80 in coins in a drawer and removed that money. When apprehended by Police, he made full admissions to these offences. He said that he later spent the money.

(f) The offences of 16 October 1994; see (1)(b)(vii) and (1)(d)

On Sunday afternoon, 16 October 1994, the appellant entered a building in Cavenagh Street, Darwin, through an unlocked sliding window. He located and removed an Apple Mackintosh laptop computer. When apprehended by Police, he made full admissions to these offences.

The only stolen property recovered in respect of all of the 9 stealing offences was the computer.

(g) The offences committed between 10 and 28 September 1994; see (2)(a)(i) and (ii)

Between 10 September and 28 September 1994 the appellant noted that no-one was at home in a dwelling house in Larrakeyah. He entered the premises through the rear by smashing a window. He removed a video camera. When apprehended by the Police he made full admissions to these offences. He said he had sold the property at a nearby hotel for $200.

(h) The offences of 13 October 1994; see (2)(b)(i) and (ii)

On 13 October 1994 the appellant noted that no-one was at home in a residence in Larrakeyah. He entered the premises by forcing the kitchen windows. He removed various items of jewellery. When apprehended by Police he made full admissions to these offences. He said that he sold the jewellery, valued at $21,230 to an unknown person for $600.

(i) The offences of 18 October 1994; see (2)(c)(i) and (ii)

On 18 October 1994 the appellant noted that no-one was at home in the same premises in Larrakeyah he had entered in September; see (g) above. He entered the premises by smashing a sliding door at the rear. He removed a .22 calibre

rifle and a pair of Puma shoes. When apprehended by Police he made full admissions to these offences. He said that he threw the rifle into bushland near the Doctors Gully tourist area.

The Court proceedings of 16 December 1994

The appellant first came before the Court on 10 November 1994. On that occasion he pleaded guilty to the 12 offences mentioned in appeal No.JA5 of 1994. The hearing was adjourned so that a presentence report could be prepared; it resumed on 16 December. During the intervening period the appellant was charged with 6 further offences, being those referred to in appeal No.JA4 of 1994.

On 16 December the appellant pleaded guilty to these additional 6 charges. The Prosecutor read out the alleged circumstances in which those offences were committed. The appellant accepted these facts as correct. He consented to the Court of Summary Jurisdiction dealing with all the offences, pursuant to s121A of the Justices Act. His Worship accepted the pleas of guilty and convicted the appellant.

In mitigation, Mr Brown of counsel for the defendant/appellant conceded that while "a short determinate sentence" was appropriate, given the nature, severity and multiplicity of offences, the Court should give due weight to the principle of rehabilitation, and to the following subjective factors: the appellant's youth; his unfortunate, disadvantaged and "disastrous" family life; his motivation for committing the offences (being necessity as opposed to greed); his contrition, as evidenced by his pleas of guilty and his

having assisted Police by making full admissions, and by supplying the Christian name of the person he sold some of the property to; the fact that his criminal record was "not a lengthy one", although Mr Brown conceded that the appellant had been convicted on 6 August 1992 in Queensland of "break and enter", and had been placed on "a good behaviour bond for 12 months."

In the course of Mr Brown's submissions in mitigation, there were 2 exchanges which are relevant to issues raised on appeal. First, his Worship said at transcript p8:-

> "I'm directing my mind to a lengthy term of imprisonment, although he's a young person, a lengthy term which would not be suspended."

Mr Brown conceded that the appellant had to receive a sentence of imprisonment but in essence submitted that due weight and consideration must be given to the appellant's circumstances before arriving at the appropriate sentence.

Second, his Worship later observed that rehabilitation had no role to play in determining the nonparole period.

The sentencing of the appellant

His Worship first noted the conflict between the sentencing principles of general and specific deterrence and rehabilitation. He noted that the appellant was only 17, and

referred to the established principle that Courts "bend over backwards to keep young people out of gaol". He bore in mind the subjective factors of the appellant: his youth, contrition, co-operation with Police, his generally disadvantaged and very unfortunate background. He concluded that "there - - - possibly exists good prospects for the defendant [provided he had] a change of thinking"; he noted that the appellant was "very immature".

His Worship then looked to the objective factors,in particular, the multiplicity of offences - 9 unlawful entries and 9 stealings over the 10 weeks between 10 August and 18 October; the value of the property stolen, which totalled $44,474 of which only the computer ($1500) had been recovered; and the fact that the appellant had had a "previous Court warning" for this type of crime but had not responded to that warning.

His Worship concluded his observations at p19:

> "In this case I feel that there has to be a deterrent sentence, there has to be a sentence to show him that he cannot steal and unlawfully enter with impunity. He can't steal; if he steals he has to expect that he will be punished for it because the community doesn't want him to steal, and there also has to be a sentence to show young people in the community that they cannot repeatedly steal. There also has to be a sentence to show that if people run away and take it upon themselves to live illegally, that is, to steal in order to feed themselves, then they're not facing up to their obligations and in the course of stealing they're interfering with the lives of others, that those people can expect gaol."

As to fixing a nonparole period, his Worship said:

> "- - - I decline to set a nonparole period. I decline to set a nonparole period because the law is

> that in setting a nonparole period, rehabilitation has no place, no part to play. I decline to set a nonparole period bearing in mind the number of offences that the defendant has committed, nine offences over two months involving $44,000 worth of property."

The appellant's submissions on the grounds of appeal

(1) That the sentence imposed is in its totality manifestly excessive

Mr Brown conceded:-

> "- - - that a term of imprisonment was the appropriate penalty [in the circumstances of this case] notwithstanding that [the appellant] was a young man [at the time the offences were committed]. - - - The magnitude of the offending was such that notwithstanding youth it was a serious matter."

In my opinion, that concession was rightly made, in the circumstances.

However, Mr Brown submitted that the circumstances of the offences and of the appellant (in particular his youth) showed convincingly that the effective sentence of 3 years imprisonment was manifestly excessive. In support he relied on *The Queen v Raggett* (1990) 101 FLR 323 at 329; *R v Longshaw* (unreported, Court of Criminal Appeal, 24 September 1993); *Trueman v Svikart* (unreported, Kearney J, 17 March 1995); and a decision by Mr McCormack SM, *Police v Satterly* 25 January 1995.

It is of limited utility to refer to other decisions. It is trite that each case must be dealt with on its facts. Consequently, the cases cited above are of limited assistance; many distinguishing features were canvassed in an

exchange between the Court and Mr Brown during the hearing of the appeal.

(2) That his Worship erred in law in failing to specify a nonparole period

Mr Brown submitted that the Court fell into error in not fixing a nonparole period pursuant to s4(1) of the Parole of Prisoners Act. He submitted that the Court had declined to do so, because it had misinterpreted what the High Court said in *Power v The Queen* (1974) 131 CLR 623 and *Bugmy v The Queen* (1990) 169 CLR 525. His Worship had said:

> "I decline to set a nonparole period because the law is that in setting a nonparole period, rehabilitation has no place, no part to play."

Mr Fox of counsel for the respondents rightly conceded that the Court had made "a fundamental error [in not fixing] a nonparole period", on this basis. It is not the law that rehabilitation has "no part to play" in the setting of a nonparole period.

(3) His Worship gave no weight or insufficient weight to the appellant's youth and his prospects of rehabilitation

Mr Brown conceded that the Court had turned its mind to the youth of the offender and his prospects of rehabilitation in fixing the head sentence. However, he submitted that the head sentence of 3 years by its length

showed that the Court either did not give any weight, or gave insufficient weight, to these factors.

Mr Brown submitted that it is well settled that a sentence of actual punishment should not be imposed upon a young person, or a Court should be slow to imprison in such a case.

He further argued that in calculating the head sentence a Court:

> "- - - has to look at [the offender's] youth in calculating that sentence and that youth is a factor that will mitigate the severity of the head sentence, unless there are exceptional circumstances to show that there are no prospects of rehabilitation."

In this case, he submitted,

> - - - "in calculating the length of the head sentence no thought was given [by the Court] to the prospects of rehabilitation."

In support, Mr Brown relied on *Yovanovic v Pryce* 33 NTR 24 at 27; *Duncan v R* 47 ALR 746 at 749; *Jagamara v Shepherd* 18 ALR 253 and *Power v R* (supra) at 627.

(4) His Worship gave too much weight to the appellant's prior criminal record as a juvenile

Mr Brown submitted that - "in fixing the head sentence - - - too much weight was given to the failure [by the appellant] to respond in Queensland."

The appellant's prior criminal history was set out in the presentence report of 12 December 1995 as follows:

> "- - - his first transgression with the law was noted on 28 February 1992 in Queensland for Break and Enter. He was reprimanded for this offence.

> On 6 August 1992 [when he was 15 years and 1 month old] at Hervey Bay, Rodwell was convicted of Break and Enter and Steal and was placed on a Good Behaviour Bond for 12 months. During the period of the Good Behaviour Bond, the offender was reported to have maintained irregular contact and was "resistant to support and assistance".
>
> The family services worker advised Rodwell has outstanding warrants in Queensland and commented on Rodwell's evident "history of abscondings" in that the offender absconded from his "mother, Grandmother in 1991, foster placement, and Boystown"."

These matters were admitted by the appellant before his Worship.

To support this submission, Mr Brown relied on the following sentencing remarks by his Worship (at p18 of transcript):

> "The defendant is very immature at this stage. His answer to problems is to run away from them, and that is why he's here. He couldn't respond when he was put on that order in Queensland in 1992, Hervey Bay, when he was convicted of break and enter and placed on a good behaviour bond. He maintained [irregular] contact and was resistant to support and assistance."

The respondent's submissions

(1) That the sentence imposed is in its totality manifestly excessive

Mr Fox submitted that -

> "- - - the aggregate sentence is appropriate for the criminal conduct in its entirety, - - - the sentence imposed of 36 months - - - does reflect that criminality."

In other words, he submitted that -

> "- - - each individual sentence and - - - the aggregate sentence is not manifestly excessive in the circumstances and the gravity of the crimes".

Mr Fox argued that the appellant's criminality must be measured by looking to the following factors:-

(i) the statutory maximum penalties for the various offences;

(ii) the gravity of the actual offences as committed, including:

(a) the "level of skill and professionalism" used by the appellant in committing the offences; and

(b) the value of the property stolen, and the fact that all items stolen were "readily saleable";

(iii) the multiplicity of the offences; and

(iv) the appellant's prior criminal history relating to the same type of offence, which allowed the Court to give "less leniency" in sentencing.

Mr Fox noted that as regards the contention that the effective sentence was manifestly excessive, the appellant had not sought to establish that there was a tariff in respect of this type of offending; he referred to *Mason v Pryce* (1988) 53 NTR 1. He appeared to submit that when regard was had to the appellant's concession that a term of imprisonment was warranted in the circumstances, and to the seriousness of the offences, it could not be said that the aggregate sentence of 3 years imprisonment was manifestly excessive.

In support, he relied on *Mill v The Queen* (1988) 166 CLR 59 in relation to factor (i) above; *R v Hayes* (1984) 1 NSWLR 740 and *R v Joyce* (1985) 20 A Crim R 384 in relation to factor (ii); and *Lade v Mamarika* (1986) 83 FLR 312 at 316 and *R v Knight* (1981) 26 SASR 573 at 575, in relation to factor (iii).

(2) That his Worship erred in law in failing to specify a nonparole period

As noted earlier, Mr Fox conceded that this error had occurred.

(3) That his Worship gave no weight or insufficient weight to the appellant's youth and the prospects of his rehabilitation

Mr Fox submitted that the Court had turned its mind, and given appropriate weight to these matters, when sentencing. He submitted that the Court had properly weighed the need for general and specific deterrence, with the need for rehabilitation. He also submitted that the Court was entitled to have regard to the -

> "- - - appellant's response to [the] previous rehabilitation efforts - - - - in relation to the bond he received in 1992 in Queensland" ,

when assessing the prospects of his rehabilitation.

Mr Fox relied on certain passages in the Court's sentencing remarks of 16 December 1994 to support these

submissions. I set out the entirety of the Court's sentencing remarks, relevant to this appeal, viz:-

> "This case neatly represents the conflict between the sentencing principles of general deterrence, specific deterrence on the one hand and rehabilitation on the other hand. I'm dealing with a young man, 17 years of age. The courts bend over backwards to keep young people out of gaol. As to why, I'm not 100 percent sure; I think the rationale is that it's felt that gaol contaminates young people, spoils them because they learn bad skills in gaol.
>
> I'm not sure that that's the truth. I have difficulty accepting that as a general statement, because there are certainly people who go to gaol, do their gaol term, come out of gaol and live productive lives - - -
>
> - - -
>
> However, it's clear that when people are sentenced to imprisonment, they do re-offend upon release. - - -
>
> - - -
>
> I'm fully aware and I fully have it in my mind that I'm dealing with a young man and the courts bend over backwards to keep young people out of gaol. I'm also fully aware that I'm dealing with a person who has pleaded guilty and a person who has co-operated with police, not in a major way, but in a small way in telling the police the christian name of the person to whom he sold the jewellery.
>
> I'm also dealing with a young man whose background evokes sympathy. He's had a very unfortunate background; his parents were drug addicts and they were engaged in constant travel. I form the view that the defendant had no real chance to form lasting relationships with adult figures or indeed with children, didn't have a chance to spend a lengthy period of time in the one area to form a few friendships. Basically, what he has had is a very unstable childhood, and I would imagine an unstable childhood that involved parents who were more interested in fuelling their addiction than looking after him, in trying to bring him up in a responsible fashion.

His background evokes a lot of sympathy. But the difficulty is, what do we do to get him to throw off that background? He's been given a poor example; how do we get him to throw off that poor example? I can well imagine that because of his unhappy background that he has had to have a strong will simply in order to survive. He could see that his parents were not able to look after him so he had to take steps, perhaps anti-social steps or illegal steps, in order just to survive, as I would imagine that as he looked at his family he could see that he was missing out when he looked at other families.

I fully accept that the defendant is not violent. I fully accept that he is good-hearted. - - -

- - -

- - - what I'm trying to say is that there possibly exist good prospects for the defendant, but in order for there to be good prospects the defendant has to have a change of thinking. The defendant is very immature at this stage. His answer to problems is to run away from them, and that is why he's here. He couldn't respond when he was put on that order in Queensland in 1992, Hervey Bay, when he was convicted of break and enter and placed on a good behaviour bond. He maintained a regular contact and was resistant to support and assistance.

Of course, in saying this I'm making allowances that could very well be due to immaturity, the fact that he needs a bit of growing up to do. It might not be due to immaturity; it might be just the fact that he's lawless, and quite a pleasant young, lawless man who will break the law when he feels that it is necessary. Or it could well be that he just hasn't quite learned that the answer is not to run away but just to take it on the chin and face up to your obligations.

I think when you deal with young people you always err on the side of caution, and I think it's the case that if and when he decides that he can grow up and he can honour his obligations and can face up to whatever is hanging over him, that he has good prospects of rehabilitation, because it would seem to me that, as his mother has said in the report, he is a good-hearted person.

Having said those things, I have to take into account that he is a person who has committed nine unlawful entries and nine stealings from 10 August to 18 October, and he has stolen property worth

$44,474. With one exception, the exception of the lap-top computer valued at $1500, none of that property has been recovered. He's a person who, when he committed these unlawful entries and stealings, had had a previous court warning for unlawful entry - or for break, enter and steal, and despite that previous court warning hadn't responded, hadn't taken it upon himself not to offend again.

Mr Brown on his behalf submitted, well, you know, he's a bit young; his criminal responsibility is lessened. I'm afraid I just don't accept that. I would've thought that with a young person, if you bring home to them at a young age that they've broken the law and you take them to court, they'd be that upset or worried by the court proceedings that they'd try very hard not to offend again. That didn't happen in this case.

Why? I think it's largely because he's immature. He's the sort of person who runs away; he hasn't learned not to run away, and he found that when he ran away on this occasion that in order to survive he had to steal because he couldn't get Social Security, and in order to feed himself he had to get the money, and the only way he could get the money was to steal. There's also another reason and that is, he's the sort of person who gets some pleasure out of stealing, the adrenalin rush. It's part of his routine to steal, and it would appear that when he has nothing to do, no job, he steals, and when he steals he gets pleasure out of it.

In this case I feel that there has to be a deterrent sentence, there has to be a sentence to show him that he cannot steal and unlawfully enter with impunity. He can't steal; if he steals he has to expect that he will be punished for it because the community doesn't want him to steal, and there also has to be a sentence to show young people in the community that they cannot repeatedly steal. There also has to be a sentence to show that if people run away and take it upon themselves to live illegally, that is, to steal in order to feed themselves, then they're not facing up to their obligations and in the course of stealing they're interfering with the lives of others, that those people can expect gaol."

(4) That his Worship gave too much weight to the appellant's prior criminal record as a juvenile

Mr Fox submitted that the appellant's prior criminal history included a conviction for a similar offence to the present offences the subject of this appeal. Consequently, he submitted, the present offences showed "a deliberate return to crime". On this basis, he submitted that the appellant's record militated against leniency in sentencing.

Mr Fox submitted that the Court had looked closely at the appellant's prior criminal history and did not give it undue weight in sentencing. Rather, it gave it its appropriate weight, in light of the circumstances of the offence and the appellant.

In support, he relied on *Grayson v The King* (1920) WAR 37 and *Veen (No.2) v The Queen* 164 CLR 465 at 477.

Conclusions

In light of the matters set out above, I express my conclusions briefly.

My mind has fluctuated as to whether the effective sentence of 3 years imprisonment is manifestly excessive, in the circumstances. It is certainly a very heavy sentence for one so young. But the appellant's aggregate wrong-doing was very bad. I have finally concluded that it has not been shown to be manifestly excessive.

I do not consider that his Worship gave no weight or insufficient weight to the appellant's youth, or to his

prospects of rehabilitation, in fixing the effective head sentence. Nor do I consider that he gave too much weight to the appellant's prior criminal history.

Accordingly, I reject grounds of appeal nos.1, 2 and 4.

His Worship admittedly erred in not fixing a nonparole period. It cannot be said, in terms of s4(3) of the Parole of Prisoners Act, that the nature of the 18 offences and the antecedents of the appellant do not warrant the specifying of a nonparole period. Ground of appeal no.3 must be upheld and a the appeal allowed in that regard; a nonparole period should now be fixed.

Orders

In the result, the effective head sentence of 3 years imprisonment is affirmed. The order declining to fix a nonparole period is quashed and set aside; in lieu thereof a nonparole period of 15 months is fixed, to take effect from 19 October 1994.