CITATION:	*Cook v The Queen* [2018] NTCCA 5
PARTIES:	COOK, James Stuart v THE QUEEN
TITLE OF COURT:	COURT OF CRIMINAL APPEAL OF THE NORTHERN TERRITORY
JURISDICTION:	CRIMINAL APPEAL from the SUPREME COURT exercising Northern Territory jurisdiction
FILE NO:	CA 10 of 2017 (21646742)
DELIVERED:	22 March 2018
HEARING DATE:	1 March 2018
JUDGMENT OF:	Grant CJ, Blokland J and Mildren AJ

CATCHWORDS:

CRIMINAL LAW – JURISDICTION, PRACTICE AND PROCEDURE – JUDGMENT AND PUNISHMENT

Whether sentence manifestly excessive – whether sentencing judge acted on wrong principle in finding that prior good character to be given less weight in cases involving drug supply for commercial gain – applicant principal in the cross-border transportation of 10 kilograms of cannabis with sole purpose of significant commercial gain – no relevant mitigating factors apart from lack of previous convictions, prior good character and plea of guilty – in circumstances no error in giving prior good character less weight – head sentence not manifestly excessive given salient features of offending and applicant's subjective personal circumstances – significant difference between non-parole period and partly suspended sentence – three years before suspension of sentence necessary to meet the need for general deterrence and condign punishment – application for leave granted but appeal dismissed.

Misuse of Drugs Act (NT) s 5
Parole Act (NT) s 3HA, s 5A, s 5B
Sentencing Act (NT) s 40, s 53, s 55

Braham v The Queen [1994] NTCCA 60, *Chong v R* [2017] NSWCCA 185, *Daniels v The Queen* [2007] NTCCA 9, *Dinsdale v The Queen* (2000) 202 CLR 321, *Director of Public Prosecutions (Vic) v Masange* [2017] VSCA 204, *Director of Public Prosecutions (Vic) v Terrick* (2009) 24 VR 457, *House v The King* (1936) 55 CLR 499, *Jesson v The Queen* (unreported, Northern Territory Court of Criminal Appeal, 20 July 2010), *Noakes v The Queen* [2015] NTCCA 7, *R v Leroy* [1984] 2 NSWLR 441, *R v OPA* [2004] NSWCCA 464, *R v Shrestha* (1991) 173 CLR 48, *Redfern v The Queen* [2012] NSWCCA 178, *Ryan v The Queen* (2001) 206 CLR 267, *Schuelein v The Queen* [2016] NTCCA 7, *The Queen v Indrikson* [2014] NTCCA 10, *The Queen v Roe* [2017] NTCCA 7, *Weininger v The Queen* (2003) 212 CLR 629, *State of Western Australia v Johnson* [2010] WASCA 187, *Wong v The Queen* (2001) 207 CLR 548, referred to.

REPRESENTATION:

Counsel:

Applicant:	S Cox QC
Respondent	S Geary and L Hopkinson

Solicitors:

Applicant:	Northern Territory Legal Aid Commission
Respondent	Office of the Director of Public Prosecutions

Judgment category classification: B
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IN THE COURT OF CRIMINAL APPEAL
OF THE NORTHERN TERRITORY
OF AUSTRALIA
AT DARWIN

Cook v The Queen [2018] NTCCA 5
No. CA 10 of 2017 (21646742)

BETWEEN:

JAMES STUART COOK
Applicant

AND:

THE QUEEN
Respondent

CORAM: GRANT CJ, BLOKLAND J and MILDREN AJ

REASONS FOR JUDGMENT

(Delivered 22 March 2018)

THE COURT:

[1] This is an application for leave to appeal against sentence and for an extension of time within which to appeal. The Court heard those applications and the appeal against sentence at the same time. It was conceded by the Crown that, in the event that the Court is of the opinion that the appeal should be allowed, leave to appeal and an extension of time ought to be given. The proposed grounds of appeal are that the sentence was manifestly excessive and that the sentencing judge acted on a wrong principle in finding that the applicant's prior good character was to be given less weight in the circumstances of this offending.

Factual background

[2] The applicant pleaded guilty to a single count of intentionally supplying a commercial quantity of cannabis to a person or persons unknown, being reckless as to the substance being a dangerous drug, contrary to s 5(1) of the *Misuse of Drugs Act* (NT).

[3] The applicant arranged to purchase what he understood to be 22 pounds of cannabis from an unknown supplier in Adelaide, South Australia, for $20,000. On or about 6 October 2016, he paid the cash to the supplier in South Australia and collected the drugs. He purchased a duffel bag and a grey Rhino trunk for $208 from Bunnings Warehouse in Parafield, South Australia, in which to store the drugs. There were 22 bags of cannabis separated into three vacuum sealed bags. He placed the bags into the duffle bag then placed the duffle bag into the Rhino trunk. He then put the trunk into the rear tray of his 2016 White Nissan Navara NP300 Dual Cab Ute, and covered the trunk with a tarpaulin.

[4] The applicant then drove from Adelaide to the Northern Territory. His father travelled with him in the passenger seat. His cousin drove a vehicle ahead of the applicant's vehicle. It is not suggested that either his father or his cousin knew about the presence of the cannabis, or were involved in the offending.

[5] On 8 October 2016 at about 6 pm members of the Organized Crime Division, acting on information received, intercepted both vehicles as they drove along the Stuart Highway inbound toward Katherine. The drivers were

directed to the Katherine weighbridge carpark. The applicant was cautioned and advised that a search would be conducted. When police asked him if there were any drugs in his vehicle, he stated that there were none.

[6] As a result of the search, the cannabis was located. The drugs and the vehicle were seized for forensic testing. Police also seized thirty $50 notes totalling $1,500 from a duffle bag located behind the driver's seat of the applicant's vehicle. The applicant was arrested and conveyed to the Katherine Police Station where he participated in an electronic record of interview. The applicant stated that he did not use cannabis and admitted that he intended to sell the drugs.

[7] The total weight of the cannabis was 10,034.9 grams. The estimated proceeds, had the cannabis been sold in Darwin by the pound, were in excess of $132,000. The sale of that quantity of cannabis could have yielded over $2,000,000 if sold by the gram in remote communities.

[8] Prior to the sentencing hearing, the applicant had spent two days in custody in October 2016 before being released on bail. It was accepted by the prosecution that the applicant had entered a plea of guilty at the first reasonable opportunity. The maximum penalty for the offending was imprisonment for 14 years.

[9] At the sentencing hearing, counsel for the applicant informed the learned sentencing judge that the applicant expected to sell the drugs for $100,000, thereby making a profit of $80,000, and that his motivation was financial.

He had purchased the vehicle for $59,000 and prior to the offending had driven it to Adelaide with his partner. The vehicle was under finance. He has a large extended family in Adelaide. She then made her way to Melbourne and eventually returned to Darwin. In addition to his liabilities under the vehicle financing arrangement, the applicant had purchased a house in Palmerston some time prior to the offending. There was a mortgage liability over the property of $535,000. The applicant's repayments on the mortgage amounted to $1,900 per month.

[10] The applicant worked for a contractor involved in the INPEX gas venture as a fork-lift driver and was earning about $2,500 per week as a trades assistant. His partner was a school teacher earning $1,000 per week. The relationship with his partner had commenced in 2016 and she had moved into his home in August of that year. The applicant knew that he was to be made redundant as the INPEX project came to a close, but he expected to be able to secure other employment relatively quickly. The $20,000 used to purchase the cannabis was comprised by savings from his regular employment and from doing cash jobs as a carpenter.

[11] It was submitted that the applicant's prime motivation was to shore up his financial position because he knew that the INPEX project would soon come to an end. It was put that the applicant was not aware at the time of just how seriously this type of offending is viewed by the community and, by extension, how significant the penalties were. Counsel for the applicant also drew attention to the fact that the applicant had been on bail since October

2016, that he had continued to work on a full-time basis following his release on bail, and that there had been no suggestion of any further offending during that time.

[12] The applicant was 30 years of age at the time of his arrest. He had no prior convictions. A number of personal references were tendered. The references provided some further background. The applicant had been born in Darwin and undertook primary and secondary schooling in Palmerston. After completing year 12, he did an apprenticeship as a carpenter and worked in that trade until about 2014. He then obtained employment on the INPEX project. The references described the applicant as honest, hardworking and trustworthy. They also described his offending as out of character, and stated that he was deeply remorseful. It was submitted that the applicant had undergone counselling and had gained insight into the effect of his offending on both his family and the wider community. In his counsel's written submissions, a request was made to have the applicant assessed for suitability for supervision or for a home detention order.

[13] The learned sentencing judge imposed a conviction and sentenced the applicant to imprisonment for four years and six months, reduced from six years allowing a discount of 25% to reflect the value of his plea of guilty. In making that allowance the sentencing judge clearly accepted that the plea was an early one, that the applicant was remorseful, that the applicant had cooperated with the authorities, and that the applicant was entitled to a significant discount. The sentence was suspended after three years without

any conditions other than specifying an operational period of 18 months from the time of his release from prison as the period during which he must not commit another offence punishable by a term of imprisonment. The sentence was backdated to commence on 6 May 2017.

Ground 1

[14] Counsel for the applicant initially sought to argue the first ground of appeal on the basis that the sentencing judge erred in law in failing to give sufficient weight to the applicant's prior and positive good character, thereby giving rise to a substantial miscarriage of justice. As this Court has previously observed,[1] any contention that the sentencing court has accorded inadequate or excessive weight to a factor is properly viewed as a particular of manifest excess. In recognition of that principle, counsel for the applicant revised the ground of appeal to contend that the sentencing judge acted on a wrong principle in finding that the applicant's prior and positive good character was to be given less weight in the circumstances of this offending.

[15] In his remarks on sentence, his Honour said:

> This Court has recognized over an extensive period of time that cannabis is a drug which does cause harm in our communities. It has also been recognised by the courts that prior good character is to be given less weight in circumstances of deliberate drug supply for commercial gain. The offender was a principal in the enterprise, although he primarily conducted himself as if he was a

[1] *Noakes v The Queen* [2015] NTCCA 7 at [15], citing *Director of Public Prosecutions (Vic) v Terrick* [2009] VSCA 220; 24 VR 457 at 459-460.

> courier. However, he was the person who was intending to supply the drugs had he got them to Darwin.
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> I accept that the offending is out of character and I also accept that the offender has reasonable prospects of being rehabilitated. The references speak well of him and his family is in court today to support him. However, the principal sentencing objectives are punishment, denunciation and deterrence. The Court must do what it can to protect the community from such transactions and the offender and others are to be discouraged from committing the same or similar crimes in the future.

[16] Counsel for the applicant submitted that the authorities do not support any general principle that less weight is given to prior good character in cases involving drug offending. Referring to *R v Leroy*[2] and *Chong v The Queen*[3], it was submitted that the principle there enunciated related to drug offenders whose prior good character was relevant to the offending because the offender had been "selected" by the organizers of the criminal activity because of his or her lack of prior convictions. It was said that the decision of the New South Wales Court of Criminal Appeal in *Redfern v The Queen*[4] was to similar effect, and that in the present case there was nothing to suggest that the applicant's prior good record had any relevance to the offending.

[17] In *Leroy*, three packages of cocaine had been posted to a post office box in Narrabeen addressed to an "S. Williams". The packages were collected by a co-offender on behalf of the applicant. The charge with which the applicant

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2 [1984] 2 NSWLR 441 ("*Leroy*").

3 [2017] NSWCCA 185 ("*Chong*").

4 [2012] NSWCCA 178 ("*Redfern*").

was convicted was being knowingly concerned in the importation of the cocaine under s 233B of the *Customs Act 1901* (Cth). The Court accepted that she was selected to play some part in the chain of drug trafficking because she had no prior convictions, and for this reason the applicant's clear record "will have less significance than in other fields of crime".[5]

[18] In *Chong,* the applicant was a courier who agreed to transport 923 grams of methylamphetamine from Sydney to Perth. After referring to *Leroy,* Basten JA said:

> There is some caution required before applying such a statement as to the facts arising in one case, even if common to a range of cases, as a general statement of principle. There is no suggestion in this case that the offender was "selected" by the organisers of the criminal activity because of his lack of a prior record. Indeed, what may be highly relevant with respect to drug importations may be of less relevance to transportation internally, when the mode of travel is unlikely to attract attention to the individual traveller.[6]

[19] *Redfern* was a case involving a small-time dealer in cocaine who was supplying small quantities of the drug to users on behalf of a principal dealer, who was a personal friend. He was being paid small sums for his efforts. The Court distinguished *Leroy* on the basis that there was no evidence that he had been "selected" because of his lack of prior convictions.

[20] All three of these cases involved people involved in the supply of drugs who were not principals.

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5 *R v Leroy* [1984] 2 NSWLR 441 at 446.

6 *Chong v The Queen* [2017] NSWCCA 185 at [28].

[21] Counsel for the applicant referred us to s 5(2)(e) of the *Sentencing Act* (NT), which requires a sentencing court to take into account "the offender's character, age and intellectual capacity", and to s 6, which refers to matters which a court may consider in determining the character of an offender. Reference was also made to the decision of the High Court in *Weininger v The Queen*,[7] where the plurality referred to the requirement that a sentencing court take into account the character and antecedents of an offender, to the extent that they are known, and to the extent that they are relevant.

[22] *Weininger* was a case which dealt with, *inter alia*, being knowingly concerned in the importation of cocaine. In that case, the applicant had no prior convictions. The sentencing judge had said that although the applicant's lack of prior convictions entitled him to "some recognition", because the court was able to conclude based on his admissions to police that he had been involved in importation for some time, he could not be given the same degree of leniency as would be the case with a first offender. This was interpreted to mean that because of his admitted continuing role in drug importations, his lack of prior convictions could not, as would ordinarily be the case, indicate lack of prior criminal behaviour.

[23] Reference was also made to *Ryan v The Queen*.[8] The applicant in that matter had pleaded guilty to fourteen counts of sexual offences against twelve young boys over a period of 20 years. He also asked that 39 additional

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7 [2003] HCA 14; (2003) 212 CLR 629 at [32] ("*Weininger*").

8 (2001) 206 CLR 267.

offences of a similar kind be taken into account. Ryan was a priest. Testimonials were received from former parishioners, priests and others of the accused's good character, reputation and positive works and achievements as a parish priest. The sentencing judge said that his "unblemished character and reputation" did not entitle him to "any leniency whatsoever".[9] By majority, the High Court held that the accused was entitled to some, though not significant, leniency for his otherwise good character. As McHugh J said:

> Sentencing is not a mathematical process. Various factors have to be weighed. The otherwise good character of the prisoner is one of them. It is a mitigating factor that the sentencing judge is bound to consider. But the nature and circumstances of the offences for which he or she is being sentenced is a countervailing factor of the utmost importance. The nature of the offences for which the appellant was being sentenced meant that his otherwise good character could only be a small factor to be weighed in the sentencing process.[10]

[24] The submission ultimately made by counsel for the applicant is that drug offences are not in a special category requiring less weight to be given to previous good character on the part of the offender, except where the offender's previous good character is relevant to the offending itself. The submission followed that the learned sentencing judge had fallen into error by approaching the process on the basis that as a matter of general principle "prior good character is to be given less weight in circumstances of deliberate drug supply for commercial gain".

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9 *Ryan v The Queen* (2001) 206 CLR 267 at [1].

10 *Ryan v The Queen* (2001) 206 CLR 267 at [33].

[25] Counsel for the respondent referred the Court to a number of authorities in which it was said, in relation to drug offending for financial gain, that less weight will ordinarily be given to prior good character.[11] These cases demonstrate that where there is a principal offender involved in the importation or supply of a significant quantity of illegal drugs for commercial gain, and there are no relevant mitigating circumstances, ordinarily the weight to be given to general deterrence, punishment, denunciation and protection of the community will be the main sentencing factors. The corollary is that less weight is given to other factors such as prior good character.

[26] The reasons underlying this approach are that crimes of this nature are hard to detect; they are prevalent; they have serious health and social consequences for the community as a whole; they contribute to a very significant proportion of the criminal offences committed in this Territory;[12] the profits to be made by large quantities of drugs are considerable; the cost to the state of dealing with the effects of such criminality are potentially significant; the moral culpability of offenders of this type is often of a high order because they are prepared to put their own greed ahead of the interests of the community; and the sentences imposed must signal to active and

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11 *The Queen v Roe* [2017] NTCCA 7 at [53]; *The Queen v Indrikson* [2014] NTCCA 10 at [30]; *Jesson v The Queen* (unreported, NTCCA, 20 July 2010); *Schuelein v The Queen* [2016] NTCCA 7 at [45]; *Director of Public Prosecutions (Vic) v Masange* [2017] VSCA 204 at [139]-[140]; *Western Australia v Johnson* [2010] WASCA 187 at [17]; *Wong v The Queen* [2001] HCA 64; (2001) 207 CLR 548 at [64]; and *R v OPA* [2004] NSWCCA 464 at [40].

12 The contributing causes include users acting under the influence of illegal drugs (in the case of cannabis, especially when mixed with alcohol), and users seeking to finance or secure a supply of drugs.

would-be drug traffickers that the potential financial rewards to be gained by such activities are not worth the risks involved.

[27] Of course, that is not to say that in all cases little weight will be given to previous good character. That will, as always, depend on the circumstances of the individual case. The balancing exercise requires that factors such as the nature, quality and quantity of the drugs concerned, the rewards expected to be gained, the nature of the enterprise, and the offender's role in the enterprise, be taken into account in assessing the extent to which the purposes of general deterrence, punishment, denunciation and protection of the community should be accorded primacy in the exercise of the sentencing discretion.

[28] In the circumstances of this case, the learned sentencing judge was not in error in his conclusion that less weight ought to be given to the applicant's personal circumstances. The applicant was of mature age, being 30 years old at the time of the offending. He had arranged for the purchase of the cannabis in Adelaide and driven his vehicle to Adelaide for the purpose of collecting the drugs from his supplier. He paid $20,000 of his own savings to purchase the drugs. Whilst in Adelaide, he purchased the Rhino trunk and the duffle bag in which to conceal the drugs. The quantity of the drugs was significant. It was over twenty times the threshold for a "commercial quantity" as defined by the *Misuse of Drugs Act* (NT). He expected to gain a profit of $80,000. He intend to sell the drugs himself when he arrived in Darwin. His motivation was financial gain.

[29] As the learned sentencing judge remarked, cannabis causes serious harm to our communities.[13] His Honour would have been well aware that about 30% of the Northern Territory's population is indigenous. Although there was no evidence that the applicant intended to sell the drugs to indigenous communities, there is always a significant chance that at least some portion of a large quantity of drugs brought into the Northern Territory will be on-sold into such communities. This Court is well aware of the harm that cannabis causes, not only in indigenous communities, but in the general population. Further, the experience in the courts demonstrates that offending by importing cannabis into the Northern Territory, particularly from South Australia, is a prevalent offence.[14] It is hard to detect unless every vehicle which crosses the border is searched, and this is not feasible.

[30] The applicant was effectively the principal in the cross-border transportation and supply of more than 10 kilograms of cannabis with the sole purpose and intention of significant commercial gain. Apart from the applicant's lack of previous convictions, his prior good character and the value of his plea of guilty, there were no relevant mitigatory factors. In the circumstances of this case, the learned sentencing judge did not fall into error in giving the applicant's prior good character less weight. Ground 1 of the appeal must be dismissed.

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13 See also *Daniels v The Queen* [2007] NTCCA 9 at [25], [36]-[40].

14 *The Queen v Indrikson* [2014] NTCCA 10 at [30].

Ground 2

[31] Counsel for the applicant contends that both the head sentence and the period to be served before the order suspending sentence takes effect are manifestly excessive. The principles upon which this Court will interfere in such cases were authoritatively stated by the High Court in *House v The King.*[15] What must be shown, in the absence of any specific error, is that the sentence imposed is not only excessive, but that it is manifestly so. It is not enough that individual judges of this Court might have imposed a lesser sentence. As was said in *House v The King*:

> It may not appear how the primary judge has reached the result embodied in his order, but, if upon the facts it is unreasonable or plainly unjust, the appellate court may infer that in some way there has been a failure properly to exercise the discretion which the law reposes in the court of first instance. In such a case, although the nature of the error may not be discoverable, the exercise of the discretion is reviewed on the ground that a substantial wrong has in fact occurred.[16]

[32] As already seen, the learned sentencing judge sentenced the applicant to imprisonment for four years and six months, reduced from six years allowing a discount of 25% to reflect the value of his plea of guilty. The salient features of the offending and applicant's subjective personal circumstances have been dealt with above in the recitation of the facts and the consideration of the first ground of appeal.[17] Having regard to those

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15 [1936] HCA 40; (1936) 55 CLR 499.

16 (1936) 55 CLR 499 at 505.

17 See, in particular, paragraphs [3]-[13] and [28]-[30] of these Reasons.

considerations, the head sentence was not of such a character that it bespeaks error on the ground of manifest excess.

[33] As to the period which the applicant was ordered to serve before being released on a suspended sentence, it was put that the order enabled the applicant to be released only approximately one month earlier than if the minimum non-parole period had been fixed.[18] Section 55(1) of the *Sentencing Act* was amended in 2016 to increase the minimum non-parole period in the case of drug offences from 50% of the head sentence to 70% of the head sentence. If the head sentence is greater than five years, a non-parole period must be set.[19]

[34] Clearly, the Legislative Assembly intended that for serious drug offences warranting a head sentence in excess of five years there must be a non-parole period of at least 70% of the head sentence. That will be the case unless the court is of the opinion that no non-parole period should be fixed at all because the nature of the offence, the past history of the offender and/or the circumstances of the particular case make the fixing of a non-parole period inappropriate.[20] However, it does not follow from the 2016 amendment that where the Court imposes a sentence of imprisonment of less than five years there must be a heavier or longer period of actual imprisonment than was formerly the case. The court retains a complete

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18 Section 55(1) of the *Sentencing Act* prescribes a minimum non-parole period of 70% of the head sentence for this offence. Seventy percent of the head sentence would resolve to 3 years 1 month and 24 days.

19 *Sentencing Act*, s 40(1).

20 *Sentencing Act*, s 53(1).

discretion to impose either a fully or partly suspended sentence depending on the circumstances of the offence and the offender. This is subject to the requirement that a suspended sentence must not be imposed unless the sentence, if unsuspended, would be appropriate in the circumstances having regard to the *Sentencing Act*.[21]

[35] Subject to these constraints, the *Sentencing Act* provides no specific guidance as to when it is appropriate to impose either a wholly or partly suspended sentence. However, whereas prior to the 2016 amendment the requirement to impose a non-parole period of at least 50% of the head sentence operated as a practical limit on the maximum period for which a suspended sentence might be imposed, that practical maximum is now lifted to 70% of the head sentence.

[36] In deciding whether or not to fix a suspended sentence, the court is required to consider again all of the factors relevant to the imposition of the term of imprisonment. These must be revisited in determining whether to suspend that term. This means that it is necessary to look again at all the matters relevant to the circumstances of the offence as well as those personal to the offender. However, there is no warrant for concentrating attention only on matters relevant to the particular circumstances of the offender, such as issues of the offender's rehabilitation and the court's mercy. As Kirby J went on to observe in *Dinsdale v The Queen*:

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21 *Sentencing Act*, s 40(3).

> … what is required by a proposal that a term of imprisonment should be suspended is a reconsideration of "all the circumstances". This necessitates the attribution of "double weight" to all of the factors relevant both to the offence and to the offender – whether aggravating or mitigating – which may influence the decision whether to suspend the term of imprisonment.[22]

[37] What is required is a judgment about the least period of time the offender should serve before being released into the community, having regard to all of the circumstances of the offence and the offender.

[38] The learned sentencing judge, in imposing a partially suspended sentence, gave consideration to the applicant's prospects of rehabilitation and the fact that the applicant was a first offender of otherwise good character. There is a significant difference between fixing a non-parole period and imposing a partly suspended sentence.

[39] First, the fact that a non-parole period is fixed does not necessarily mean that an offender will be released as soon as he or she is legally eligible for release. The Parole Board has a discretion to grant, defer or refuse parole as it sees fit in the circumstances, and its decision cannot be reviewed or appealed. On the other hand, a partially suspended sentence means that the prisoner has a certain date upon which he or she must be released, regardless of his or her behaviour whilst in prison. Secondly, prisoners released on parole must be subject to supervision[23] and may be placed on conditions the

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22 *Dinsdale v The Queen* [2000] HCA 54; (2000) 202 CLR 321 at [85]. See also *Braham v The Queen* [1994] NTCCA 60.

23 *Parole Act* (NT), s 5A(1).

breach of which can result in the parole order being revoked, and this may happen administratively without giving the prisoner the opportunity to be heard.[24]

[40] In the present case, the learned sentencing judge did not impose any conditions on the suspended sentence, other than to fix the period during which the applicant was not to commit an offence punishable by imprisonment as required by s 40(6) of the *Sentencing Act*. So far as the period to be served before release is concerned, the learned sentencing judge plainly considered that the offending was of such seriousness that a minimum term of three years was required in order to meet the need for general deterrence and condign punishment. We are unable to conclude that his Honour's discretion miscarried in that respect.

Disposition

[41] We would extend the time within which to appeal and grant leave, but dismiss the appeal.

24 *Parole Act*, s 5B(1) and s 3HA.