Laughton v Hales & Anor [2004] NTSC 22

PARTIES:	MARGOT RUTH LAUGHTON v PETER WILLIAM HALES and PETER MARK THOMAS
TITLE OF COURT:	SUPREME COURT OF THE NORTHERN TERRITORY
JURISDICTION:	SUPREME COURT OF THE NORTHERN TERRITORY exercising Territory jurisdiction
FILE NO:	JA 140 of 2003, 141 of 2003, 142 of 2003 (20302192, 20303758, 20217464)
DELIVERED:	16 April 2004
HEARING DATES:	4 February 2004
JUDGMENT OF:	THOMAS J

REPRESENTATION:

Counsel:

Appellant:	G Smith
Respondent:	D Lewis

Solicitors:

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

Judgment category classification:	C
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IN THE SUPREME COURT
OF THE NORTHERN TERRITORY
OF AUSTRALIA
AT DARWIN

Laughton v Hales & Anor [2004] NTSC 22
Nos. JA140/03, JA141/03, JA142/03 (20302192, 20303758, 20217464)

BETWEEN:

MARGOT RUTH LAUGHTON
Appellant

AND:

PETER WILLIAM HALES
and
PETER MARK THOMAS
Respondents

CORAM: THOMAS J

REASONS FOR JUDGMENT

(Delivered 16 April 2004)

[1] This is an appeal pursuant to the Justices Act from a sentence imposed in the Court of Summary Jurisdiction on 13 August 2003.

[2] On 12 August 2003 the appellant entered pleas of guilty and was subsequently convicted and sentenced as follows:

(1) Unlawful possession of a trafficable quantity of cannabis plant material (namely 91.6 gms) on 21 September 2002. Sentenced to six months imprisonment.

(2) Unlawful supply cannabis on 13 November 2002 of cannabis to another person, namely Brett Scobie. Sentenced to three months imprisonment cumulative upon the sentence of six months imprisonment on the first offence.

(3) Unlawful possession of a trafficable quantity of cannabis plant material (namely 179.09 gms). Sentenced to eight months imprisonment cumulative upon the sentence imposed on (1) and (2) above.

(4) Unlawful possession of a trafficable quantity of cannabis plant material (namely 80.30 gms) between 1 December 2002 and 5 December 2002. Sentenced to 10 months imprisonment to commence at the expiration of five months of the eight months imprisonment on the third offence.

[3] This was a total period of two years imprisonment. The learned stipendiary magistrate specified a non-parole period of 12 months imprisonment. The sentence was backdated to 11 August 2003.

[4] The maximum penalty on each of the offences is $10,000 or five years imprisonment.

[5] The appellant served a period of approximately four and a half months in prison from 12 August 2003 to 2 January 2004 when she was released on bail pending determination of this appeal.

[6] With respect to the offence of 21 September 2002, police executed a search warrant at the appellant's flat and found 91.1 gms of cannabis plant material in 34 plastic bags and a further half a gram of cannabis plant material in a bowl on the lounge room floor. In a record of interview the appellant admitted the half a gram in the bowl was hers, but declined to comment on the 91.1 gms of cannabis.

[7] With respect to the supply offence, the appellant on 13 November 2002 gave a small clip seal bag of cannabis to Brett Scobie, a current flatmate, as thanks for assisting her with household chores. On the same day, police executed a search warrant at her flat and seized a total of 179.09 gms of cannabis in around 87 plastic bags at various locations in the flat. The appellant admitted all the cannabis was hers. She also admitted to giving it away in exchange for Aboriginal art work or in exchange for goods or labour. She denied ever selling cannabis for cash.

[8] On 5 December 2002 the police again executed a search warrant at the appellant's flat. Police seized 80.39 gms of cannabis plant material in around 22 plastic bags in addition to 2.3 gms left in an ashtray and tobacco tin. The appellant declined to comment on the ownership of this cannabis.

[9] The learned stipendiary magistrate, in his reasons for sentence, indicated that he allowed the appellant a discount of 15 per cent with respect to her guilty pleas – which he found were not early pleas, or at least pleas not made at the earliest opportunity.

[10] His Worship reviewed the appellant's criminal history which included cannabis offences in Queensland during 1977, 1980, 1981, 1982 and 1990. The offences in 1990 resulted in the appellant being sentenced to imprisonment for two years. Previously the appellant had received a sentence of four months imprisonment, a probation order and fines for drug offending. The appellant also had multiple convictions in the 1970s and 1980s for shop theft and exceeding 0.08. It is evident that the learned stipendiary magistrate took the view that the appellant was entitled to none of the credit due to a first-offender or person of previous good character. In this regard, his Worship also considered that it was an aggravating factor that the offences of November and December 2002 were committed at a time when the appellant well knew she was facing prosecution for the earlier (September 2002) drug offence.

[11] With respect to the three offences of possession of trafficable quantity of cannabis plant material, his Worship noted that the appellant made no attempt to rebut the presumption that she possessed the dangerous drugs for the purpose of supply, and indeed she had pleaded guilty to a supply offence which had occurred on 13 November 2002. The learned stipendiary magistrate accepted that the appellant did not supply dangerous drugs for money but considered that relevant only in a minor sense, given that the appellant freely accepted that she did supply others with cannabis for non-cash rewards.

[12] The learned stipendiary magistrate took into account the appellant's difficult background and periods in her life where she had made a worthwhile contribution to her family or society generally – but it is apparent from his reasons that his Worship felt that he had not been given a complete picture of the appellant's difficulties, disability and resort to regular cannabis use.

[13] His Worship considered that general deterrence and protection of the public were as relevant in determining an appropriate sentence for the appellant given her presumed and acknowledged role in supply of drugs to others.

[14] The learned stipendiary magistrate considered that a partly suspended sentence was not appropriate in the appellant's circumstances, given the need for a sentence incorporating a strong element of general deterrence and his assessment that the appellant would in all probability re-offend if she was released on a partly suspended sentence.

[15] In imposing the sentences to which I have referred, the learned stipendiary magistrate expressly indicated that he had taken into account the principles of totality.

[16] The appellant filed a notice of appeal of 22 August 2003 setting out five grounds of appeal:

1. That the learned stipendiary magistrate did not give sufficient weight to the totality principle.

2. That in all the circumstances the total effective sentence was disproportionate to the offending.

3. That the learned stipendiary magistrate placed undue weight upon the appellant's prior convictions.

4. That the learned stipendiary magistrate did not give adequate consideration to the appellant's antecedents.

5. That in all the circumstances the sentence was manifestly excessive.

The appellant subsequently filed an additional ground of appeal:

6. That the learned stipendiary magistrate did not give sufficient weight to the period of time which had passed since the appellant's last relevant prior convictions.

The principles to be applied in dealing with an appeal against sentence have been set out by Kearney J in *Raggett, Douglas & Miller v R* (1990) 50 A Crim R 41.

Ground 2: That in all the circumstances the total effective sentence was disproportionate to the offending.

[17] I agree with the submission made by Mr Smith that in terms of trafficable quantities of cannabis the amount in the possession of the appellant was relatively small. In his written submissions, Mr Lewis counsel for the

respondent, states: “the level of criminality was serious albeit that she appears to be a small time supplier.” Whilst there was an admission by the appellant that she possessed cannabis for the purpose of supply and that she had received as consideration goods and services, she had stated it was her intention to keep for her own use.

[18] The learned stipendiary magistrate accepted that the appellant is a considerable user of cannabis herself. The learned stipendiary magistrate considered a report from consultant psychiatrist Dr N. McLaren dated 3 July 2003 and made the following comments (tp 31):

> “Doing the best I can there are either two scenarios here: the first scenario is that the defendant suffers from some form of mental affliction which has not been given a name by a psychiatrist. She suffers some form of anxiety or paranoia or she feels some loss which she ameliorates by the consumption of cannabis and by on occasions alcohol consumption. That’s one scenario.
>
> The other scenario to be blunt is that she could be a party animal, she found life too difficult, she found the kids too difficult, she found living with her strict mother-in-law too difficult, she wanted to enjoy herself so she got out and she pursued a life where she had some freedom which eventually saw her become involved in drug taking which became substantial drug taking.
>
> I will consider both the scenarios. If she is a party animal she’s not deserving of sympathy. A message has to be sent to the community that you cannot possess trafficable quantities of cannabis plant material where there’s a presumption that you intend to supply the cannabis plant material and you cannot supply cannabis plant material. You can’t put yourself in a situation where you are seen as a place of comfort to others where there’s drugs and where the defendant is put in a situation where she can’t say no.”

[19] I agree with the submission made by Mr Smith on behalf of the appellant that there is no evidence to support the second scenario.

[20] Finally, there is no suggestion that the supply of cannabis was of a commercial nature or that there was a commercial aspect to these offences as contemplated under the Misuse of Drugs Act.

[21] I would allow this ground of appeal.

Ground 3: That the learned stipendiary magistrate placed undue weight upon the appellant's prior convictions.

Ground 6: That the learned stipendiary magistrate did not give sufficient weight to the period of time which had passed since the appellant's last relevant prior convictions.

[22] The appellant has a number of prior convictions for drug related offences in Queensland between 1977 and March 1990. For convictions prior to 1981 she received a fine. On 30 October 1981, Ms Laughton was found guilty in the Supreme Court in Brisbane of drug offences and placed on probation for two years. In April 1982 she was sentenced to four months imprisonment for being in possession of a dangerous drug and possess a utensil used in connection with the administration of a dangerous drug. On 29 March 1990, Ms Laughton was convicted in the Supreme Court in Brisbane on charges of being in possession of a dangerous drug and sentenced to two years imprisonment.

[23] The appellant has no convictions for drug related offences since March 1990. In fact, there are no convictions at all since 5 November 1991 when she received a fine for a minor dishonesty offence, approximately 12 years prior to the present offences. I agree with the submission made by Mr Smith

for the appellant, that the learned stipendiary magistrate did not give the appellant any credit for the fact that there was a significant gap in time since her last conviction for a drug related offence.

[24] I note the learned stipendiary magistrate stated:

> "The second thing I take into account is if the defendant is not entitled to the leniency that a first, a second, a third or fourth, or indeed a fifth offender receives. That's clear from a consideration of her record. …"

[25] The Northern Territory Court of Criminal Appeal considered the weight to be given to the "gap" between offences in the decision of *Munungurr v R* 4 NTLR 63 and stated at 74 – 75:

> "… In our view, his Honour does not appear to us to have given sufficient credit to the applicant for the gap between the two convictions. Where there is a significant period free from conviction, this will normally justify substantial mitigation of the sentence: see generally, Thomas *Principles of Sentencing: The sentencing policy of the Court of Appeal Division* 2nd ed, pp 200-202. We do not think it was correct to say that his prior conviction precluded him from any leniency. …"

[26] I would allow this ground of appeal.

Ground 4: That the learned stipendiary magistrate did not give adequate consideration to the appellant's antecedents.

[27] The appellant is a 55 year old woman who is on a disability pension. Mr Read, counsel who appeared for Ms Laughton in the Court of Summary Jurisdiction, outlined the difficulties in her early childhood, her marriage and divorce at a relatively young age. Submissions were made as to her

capacity for hard work, her relationship with her three children and her psychological condition as outlined in the report prepared by Dr McLaren dated 3 July 2003. This report was tendered as an exhibit in the proceedings. Dr McLaren states inter alia:

> "… She has a psychological dependency upon marijuana but her use is intermittent and erratic and there have been times when she has not used it all."

[28] The learned stipendiary magistrate indicated he was not prepared to consider a suspended sentence. I agree with the submission made on behalf of the appellant that a partially suspended sentence should not have been ruled out. There was evidence before the learned stipendiary magistrate, both in the report from Dr McLaren and the long period of time since her last conviction for a drug offence, that would indicate the appellant can exercise restraint.

Ground 5: That in all the circumstances the sentence was manifestly excessive.

[29] I have concluded that the total sentence is manifestly excessive for the offences committed.

[30] I allow the appeal and would impose the following sentences in the order that they have been described at the commencement of these reasons for judgment.

(1) Convicted and sentenced to six months imprisonment.

(2) Convicted and sentenced to three months imprisonment, concurrent with (1).

(3) Convicted and sentenced to eight months imprisonment, six months concurrent with offences (1) and (2).

(4) Convicted and sentenced to eight months imprisonment, cumulative upon offence (3).

This is a total of 16 months imprisonment.

[31] The appellant has already served a period of imprisonment from 12 August 2003 to 2 January 2004, a period of 20 weeks and four days. I consider this is a sufficient period of actual imprisonment.

[32] Accordingly, the order I make is that I impose a head sentence of 16 months imprisonment backdated to 12 August 2003. The appellant to be released on 2 January 2004 on condition she be of good behaviour for a period of 12 months.

[33] The operative period, for the purpose of s 40(6) of the Sentencing Act, is 12 months from today.

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