THE UNIVERSITY OF SOUTHERN QUEENSLAND LAW SOCIETY

2022 JUNIOR MOOT QUESTION

The Junior Moot problem question is a criminal dispute between Timothy Randall (Appellant) and the Crown (Respondent).

The counsel for the appellant will represent Timothy Randall. The counsel for the respondent will represent the Crown in this matter.

The appellant was granted leave to appeal to the USQ High Court after his appeal to the Court of Appeal of Queensland on the two grounds. The judgement from the court of appeal is found below.

Leave to appeal was granted on the following two grounds:

Grounds of Appeal:
In relation to the sentence:

1. That insufficient weight was given to the parity principle such that the sentence imposed by Opperman J left the appellant with a justifiable sense of grievance

In relation to the serious drug offender confiscation order:

2. The public interest was not in favour of the serious drug confiscation order being made and that insufficient weight was accorded the personal circumstances of the appellant.

Orders sought by the appellant:

1. That the appeal be allowed, and for his sentence to be reduced.
2. That the serious drug offender confiscation order should be set aside.

All parties should note that for simplicity of the matter that the authorities are limited to the following:

- *R v Owen* [2015] QCA 46
- *State of Queensland v Deadman; Thompson v State of Queensland* [2016] QCA 281
- *Osland v Secretary to the Department of Justice* [2008] HCA 37
- *Drugs Misuse Act 1986* (Qld)
- *Drugs Misuse Regulation 1987*
- *Criminal Proceeds Confiscation Act 2002* (Qld)

SUPREME COURT OF QUEENSLAND
COURT OF APPEAL

CITATION: *R v Randall* [2022] QCA 69

PARTIES: **Randall, Timothy Elias**
(Appellant)
v
THE QUEEN
(Respondent)

Judgement of his Honour Opperman J:

Introduction

[1] This matter involves two appeals which, for the sake of convenience, have been heard together.

[2] The appellant was convicted of the offence of unlawfully trafficking in a dangerous drug pursuant to s 5 of the *Drugs Misuse Act 1986* (Qld). The appellant was sentenced to nine (9) years imprisonment.

[3] Pursuant to s 182A of the *Corrective Services Act 2006* (Qld), the appellant must serve 80% of the term of that sentence before he is eligible for release on parole. The appellant was convicted on 19 July 2021 in the Toowoomba District Court and has been incarcerated since that date.

[4] The current appeals seek leave to appeal against:

1. the sentence of nine (9) years imprisonment; and
2. the serious drug offender confiscation order issued in respect of the property of the appellant on 19 July 2021.

Background of the first appeal

[5] The first appeal seeks leave to appeal against the sentence. The appeal is fundamentally based on the parity principle. The appellant contends that the parity principle should apply on the basis that the appellant was sentenced on a distorted or incomplete view of the facts when the second (or co-) offender is sentenced on a more complete truthful perspective of

the same, or similar, events.

[6] As to the second appeal, the appeal against the confiscation order, the appellant appeals prominently on the basis that the confiscation order was not in "the public interest". As such, it is submitted that the primary judge should have exercised discretion not to make the confiscation order and taken into account personal circumstances of the appellant.

Relevant facts relating to the sentencing of the appellant

[7] The circumstances of the appellant and the offence are that the appellant is 40 years old. He received a wholly suspended sentence for a minor stealing charge for petrol theft when he was 18 years old. After that time, he had no criminal convictions (despite an acquittal of a murder charge in 2021) until the current matter. His personal life was described by Counsel as generally chaotic. He apparently failed to keep employment for any reasonable period (despite endeavors) his entire life and had undertaken many jobs, ranging from an apprentice chef, to a taxi driver, to a heavy machinery operator. On most occasions, the appellant would be dismissed during after the usual three-month probationary period. Incarcerated currently, the appellant has received phycological counselling and tests have revealed that he suffers from extreme attention- deficit/hyperactivity disorder, commonly known as ADHD. The appellant has submitted this condition made him exhibit symptoms including difficulty paying attention, recklessness, impatience, mood swings and poor time management skills. As such, he has submitted that this undiagnosed condition was the predominate reason his employment history is poor.

[8] I am however more inclined to feel concerned about the appellant's admissions in relation to his pre-offence drug habit and this carries more weight. The appellant also submitted that he was heavily addicted to crystal methamphetamine, colloquially better known as crystal meth or Ice. The appellant has submitted that five years ago when he was introduced to the substance, he quickly became addicted to it and it "destroyed his life". As a result of his drug habit, his wife left him and since the marriage dissolved, he has had very little contact with his two young children. The appellant submits that this has been "heartbreaking".

[9] The appellant submits that he has completed a drug rehabilitation program whilst in custody and random drug testing results tendered do not indicate that the appellant has reverted back to his prior drug habit. However, as a result of the appellant's prior drug habit, he cannot take methylphenidate or amphetamine. These drugs would otherwise be the prescribed medications for his severe ADHD and he continues to suffer significantly from it. Even at trial, it seems the appellant struggled to sit still for any length of time.

[10] When the offences occurred, the appellant submits he was divorced, lonely and "flat broke". It also seems that that the co-offender, Chloe Decker, took advantage of the appellant. The appellant met the co-offender via an online dating website. Whilst their romantic relations were short-lived, they remained friends and it seems that the appellant remained smitten by the co-offender. It was submitted that the appellant "would do anything" for the co-offender. The co-offender periodically supplied the appellant with crystal methamphetamine in exchange for him performing increasingly illegal and nefarious tasks.

Matters relating to the co-offender

[11] It seems that the co-offender had come to the attention of an anti-drug law enforcement taskforce. She was under significant police surveillance for some time. This included monitoring of her telephone calls, social media and email communications and periodic personal surveillance using undercover operatives and drones. Evidence was obtained that both the appellant and co-offender, over a four-month period in 2019, were trafficking in the drug crystal methamphetamine. Police intercepted many electronic communications by the co-offender self-describing herself as the leader of "The Hells Gang" drug gang and the appellant was her "right hand man". The co-offender had bragged that "The Hells Gangs" had sold many tons of drugs and "were looking to expand their operations internationally".

[12] The appellant was arrested in a consequent police raid with the co-offender. He failed to co-operate or give any evidence against the co-offender. The appellant was convicted and sentenced on the background that he was a non-cooperative high-ranking member of an emerging criminal drug gang with an extensive volume of drugs sold. That was his belief.

[13] At the co-offender's trial, some months later, a vastly different scenario was revealed. It seems that "The Hells Gang" was a smaller drug gang than the co-offender has represented. It seemed that the co-offender was trying to create a narrative about the gang to increase its reputation and chances of increased membership. As was revealed, the gang actually had only two members, the co-offender and the appellant. Not only this, the drug sales were modest, amateurish and with little chance of "international expansion". The co-offender gave evidence against appellant. Without such evidence, it appears unlikely that the appellant would have been convicted.

[14] The appellant has submitted that the police were embarrassed over the result of their surveillance. Whilst the appellant does not submit that the police surveillance was incorrect,

no steps were taken to verify the information and essentially the exaggeration and ruse of the co-offender was not revealed until the co-offender's trial.

[15] The co-offender also received a sentence of nine years and is currently incarcerated. The co-offender has not appealed her sentence.

Relevant Law

[16] The law relevant to the first appeal is as follows:

> *DRUGS MISUSE ACT 1986 - SECT 5*
> *Trafficking in dangerous drugs*
> *5 Trafficking in dangerous drugs*
> (1)*A person who carries on the business of unlawfully trafficking in a dangerous drugs is guilty of a crime.*
> *Penalty: Maximum penalty—25 years imprisonment.*
>
> *DRUGS MISUSE ACT 1986 - SECT 4BA*
> *Provision about s 4, definition dangerous drug, paragraph (f)*
> *4BA Provision about s 4, definition dangerous drug, paragraph (f)*
> *(1) This section applies if, in a proceeding for an offence against this or another Act, it is relevant to prove that a thing is a dangerous drug under section 4, definition "dangerous drug", paragraph (f).*
>
> *"dangerous drug" means—*
> *(a) a thing stated in the Drugs Misuse Regulation 1987, schedule 1 or 2; or*
> *(b) any part of a plant that is a thing stated in the Drugs Misuse Regulation 1987, schedule 1 or 2; or*
> *(c) a derivative or stereo-isomer of a thing mentioned in paragraph (a) or (b); or*
> *(d) a salt of a thing mentioned in any of paragraphs (a) to (c); or*
> *(e) an analogue of a thing mentioned in any of paragraphs (a) to (d); or*
> *(f) a thing that has, or is intended to have, a pharmacological effect of a thing mentioned in any of paragraphs (a) to (e); or*
> *Example: See also section 4BA for when a thing is intended to have a pharmacological effect of a thing mentioned in any of paragraphs (a) to (e).*
> *(g) a thing mentioned in any of paragraphs (a) to (f) that is contained in—*
> *(i) a natural substance; or*
> *(ii) a preparation, solution or admixture*

In the *Drugs Misuse Regulation 1987,* Schedule 1 includes Methylamphetamine.

It is submitted by the appellant that the authority of *R v Owen* [2015] QCA 46 has bearing and should be followed.

Application of the law to the facts

[17] It was submitted that the primary judge erred in giving insufficient weight to the parity principle such that the sentence imposed left the appellant with a justifiable sense of grievance.

[18] I must then determine the meaning of that principle, "a justifiable sense of grievance". I am assisted by *R v Owen*. I am of the view that clearly an error has occurred. The sentencing of the appellant occurred when the true facts had not been revealed and were not revealed until the co-offender's trial. The parity principle requires that there be equal justice. In this case, the sentences being of an equal length for both the appellant and co-offender clearly showed that did *not* mean equal justice. The co-offender was grossly more culpable than the appellant and as such, appears to have either received a sentence which was too lenient, or it was the appellant's sentence that should have been the lesser. In either event, I am required to assess the due proportion of those sentences and I am obliged to reduce the appellant's sentence accordingly.

Background of the second appeal

[19] Following the conviction of the appellant, a serious drug offender confiscation order ("the confiscation order") was successfully obtained. The appellant now appeals against the making of that order.

Facts relating to the Confiscation order

[20] The appellant, apart from one asset, is of very moderate means. He has a motor vehicle worth approximately $5,000. He has limited other personal effects. He owns one half of a house which had been left to him on his mother's death. It appears he would have sold the property many times, however it is jointly owned with his sister, Tamara Thorne. His sister has consistently refused to allow any sale, loan over, or other change with respect to the property. The one-half share of the property is valued at $190,000. The effect of a successful confiscation order will be that share shall vest in the Crown.

[21] Although the appellant on occasion delivered drugs using his motor vehicle and sometimes used the home for exchanges on drug sales, I am of the view that neither the

home nor the motor vehicle were materially relevant in the commission of the trafficking offence. I am persuaded that the appellant used the home mostly as his residence.

[22] The appellant has submitted that on his release from prison he is likely to be unemployable. Without his home, he submits that he will be an even poorer financial position and have to rely solely on government benefits. He also submits that the value of that property would otherwise eventually pass to his children when he dies and this has been prevented by the confiscation order.

Relevant Law

[23] The relevant law is contained in the *Criminal Proceeds Confiscation Act 2002* (Qld). I am satisfied that all of the qualifying matters and timeframes under the legislation have been satisfied. S93ZZB(2) is then relevant:

> *S 93ZZB(2) However, the court may refuse to make the serious drug offender confiscation order if the court is satisfied it is not in the public interest to make the order.*

[24] The appellant submits that this appeal turns on the meaning of "public interest". Those words are not defined in the Act.

[25] It has been submitted, and I agree, that the cases of *State of Queensland v Deadman* and *Osland v Secretary to the Department of Justice* are of assistance.

Application of the law to the facts

[26] Although not obliged to, I can take into account the personal circumstances of the appellant. This is supported by the case of *Deadman*. I do not believe that the primary judge took the appellant's likely circumstances into account when he is eventually released from jail, nor considered the impact the confiscation order will have on the appellant's children. Limited contact with the appellant's children may be worse if the half share of the house is confiscated, and there will also be an eventual financial impact on the children if that asset is lost. The children are currently aged ten and seven years old.

[27] Due consideration may be given to the case of *Osland*. This is a case on the matter of public interest. It is however a matter on dissimilar grounds. It involved an application for release of governmental documents under freedom of information legislation and whether that would be either in, or contrary to, the public interest.

[28] On a review of the *Osland* decision, whilst it is a High Court authority, I am of the view

it relates predominantly to the Freedom of Information matter. Whilst the majority decision is binding on this Court, I must observe that I find the judgment of Kirby J., as the most illuminating. In that judgment he agrees with the decision on the majority in relation to the "public interest". I agree that it is impossible to precisely define the term.

[29] A stated object of the *Criminal Proceeds Confiscation Act 2002* (Qld) in s.4 is to remove the financial gain and increase the financial loss associated with illegal activity. Kirby J. suggests in his judgment that the text and structure of the Act should reflect the object of the Act, read against the background of its history. Reading these together, I am persuaded that not so much the financial gain, as this seems limited to nil, but to increase the financial loss of the appellant is a valid exercise of discretion. Clearly the appellant has suffered personally following his participation in the illegal activities, however a confiscation order would make it very clear, publicly, that not only was justice done, it was seen to have been done.

[30] I am of the view that, whilst the making of the confiscation order will almost certainly have a lasting impact on the appellant and his young children, the public interest is greater than a few individuals. Therefore, I am not persuaded that allowing the confiscation order was inappropriate or unreasonable in the circumstances.

[31] It is ordered that:

(1) leave to appeal against sentence is granted. The appellant's sentence is set aside and a new sentence imposed as follows: with respect to the trafficking charge – to be imprisoned for a period of 8 years and 11 months;

(2) the second appeal be dismissed. The order of the primary judge with respect to the confiscation order made under s 93ZZB of the *Criminal Proceeds Confiscation Act 2002* (Qld) be upheld.