SUPREME COURT OF QUEENSLAND

CITATION:	*R v Barker* [2015] QCA 215
PARTIES:	**R** **v** **BARKER, William Fredericis** (applicant)
FILE NO/S:	CA No 300 of 2014 SC No 279 of 2012
DIVISION:	Court of Appeal
PROCEEDING:	Sentence Application
ORIGINATING COURT:	Supreme Court at Brisbane – Unreported, 22 October 2014
DELIVERED ON:	6 November 2015
DELIVERED AT:	Brisbane
HEARING DATE:	14 May 2015
JUDGES:	Morrison and Philippides JJA and Carmody J Separate reasons for judgment of each member of the Court, each concurring as to the order made
ORDER:	**The application for leave to appeal is refused.**
CATCHWORDS:	CRIMINAL LAW – APPEAL AND NEW TRIAL – INTERFERENCE WITH DISCRETION OR FINDING OF JUDGE – OTHER CASES – where the applicant pleaded guilty to trafficking in the dangerous drug methylamphetamine and three lesser drug offences and was sentenced to 10 years imprisonment for the trafficking – where police surveillance revealed a large number of wholesale supplies the applicant made but did not identify the amount of drugs sold in some of those transactions – where a search of the applicant's home revealed $995,250.50 in concealed cash, which formed part of the applicant's unexplained income – where the sentencing judge rejected the applicant's explanation for the source of the cash and this finding was not challenged on appeal – whether the sentencing judge erred in finding that the unsourced cash was the proceeds of the applicant carrying on the business of trafficking – whether the sentence of 10 years imprisonment was manifestly excessive *Evidence Act* 1977 (Qld), s 132C *Postiglione v The Queen* (1997) 189 CLR 295; [1997] HCA 26, cited *R v Bost* [2014] QCA 264, distinguished *R v Feakes* [2009] QCA 376, cited

R v Gardner (Senior) [2012] QCA 290, cited
R v Johnson [2014] QCA 79, cited

COUNSEL:	K Fleming QC for the applicant T Fuller QC for the respondent
SOLICITORS:	Noel Woodall & Associates for the applicant Director of Public Prosecutions (Queensland) for the respondent

[1] **MORRISON JA:** I agree with the order proposed by Philippides JA and with the reasons given by her Honour.

[2] **PHILIPPIDES JA:** The applicant seeks leave to appeal against the sentences imposed on his plea to one count of trafficking in dangerous drugs, which concerned the drug methylamphetamine (count 1), one count of possessing an amount of Australian currency obtained from trafficking in dangerous drugs (count 2), one count of unlawfully possessing the relevant substance iodine (count 3) and one count of possessing laboratory equipment for use in the commission of the crime of trafficking a dangerous drug (count 4). In relation to count 1, the applicant was sentenced to 10 years imprisonment. On counts 2, 3 and 4, the applicant received respectively eight years, three years and two years imprisonment. One day of pre-sentence custody was declared.

Grounds of appeal

[3] The Notice of Appeal raises five grounds. Ground (a) contends that the sentence imposed was manifestly excessive. Grounds (b), (c) and (d) are allegations that the sentencing judge erred:

- in finding that the unsourced income was the proceeds of the applicant carrying on the business of trafficking during the period of 1 July 2008 and 23 April 2009;
- in his application of the principle of parity; and
- in his sentencing discretion by failing to identify the applicable sentence prior to the consideration of mitigating factors and failing to specifically identify the value of the reduction in sentence due to the mitigating factors.

[4] Ground (e) alleges that the sentencing judge failed to give proper regard to the applicant's rehabilitation and unlikelihood of reoffending, as well as the personal deterrence that had already been achieved due to the public shaming of the applicant.

Agreed statement of facts

[5] The sentencing of the applicant proceeded on the basis of an agreed statement of facts. The applicant was a primary person of interest of a joint Queensland Police Service and Australian Federal Police drug operation, targeting the supply of methylamphetamine in South East Queensland. In October 2008, the applicant became the subject of telephone intercepts which continued until the end of the operation on 22 April 2009. The intercepts together with physical surveillance and use of undercover law enforcement officers to purchase drugs from the applicant's associates exposed a total of 38 transactions identifiable to four customers (Cochrane, McCormack, Young and Stainer).

[6] The applicant communicated with his customers through coded messages. Police were able to break the code used in the transactions and discern some of the quantities sold over the period of the intercepts:

- There were six identified supplies to Cochrane, totalling 28 ounces of methylamphetamine, with value of $84,000 (in quantities of three, four, five and seven ounces). A search of Cochrane's house revealed a quantity of drugs which was said to have been obtained from the applicant and 63 items of lab gear which Cochrane claimed to be storing at the request of the applicant.
- The applicant made three identified supplies to McCormack totalling 15 ounces of methylamphetamine in quantities of two, five and eight ounces. A search of McCormack's house discovered only cash.
- There were 10 identified supplies to Young. Police were able to discern that in respect of five of those transactions, the total amount sold was 14 ounces with identifiable value of $42,000. The amount purchased in the other five transactions remains unknown.
- The transactions with Stainer (the applicant's most frequent customer) were not carried out using a particular code. Police were able to identify 19 sales, the value of one of which was $18,000. There was a discussion between the applicant and Stainer about a payment of $100,000. Forensic analysis revealed that this amount of money was not paid in cash and, instead, went into the applicant's bank account where it formed part of the forensic accounting investigation. A search of Stainer's house revealed a receipt for $100,000 made out to the applicant, as well as some $39,000 in cash and a small amount of cannabis and methylamphetamine. A search a couple of days later revealed a further $34,180 in cash.

[7] On 22 April 2009, police searched the applicant's property. With the assistance of dogs deployed by customs officers, police discovered $995,250.50 in cash, concealed as follows:

- a bundle of cash totalling $13,550 found in the pockets of a pair of denim shorts in a cupboard;
- a bundle of cash totalling $3,100.50 stashed in a lounge chair stored in a shipping container;
- three packages of cash wrapped in duct tape underneath one of the shipping containers on the property totalling $47,000 (one of these was a bundle provided by Cochrane just prior to the search);
- 14 packages (13 wrapped in tape and one in a clip seal bag together with a set of scales) located underneath another shipping container on the property totalling $146,820;
- two bags of cash found inside the wall cladding of the residential shed on the property totalling $273,880;
- five shopping bags containing cash located in a large plastic drum buried under the gravel near the carport totalling $484,880; and
- three packages of cash located under another shipping container totalling $24,900.

[8] Police also discovered a 5kg bottle of iodine, a container of iodine, a glass adapter, a glass elbow, some lab clamps and a revolver placed in a ceiling cavity.

The applicant's evidence at sentence

[9] At sentence, the applicant argued that he made about $200,000 profit from the sale of drugs and some $800,000 of the $995,250.50 found at his residence was cash he skimmed from his pizza businesses to avoid paying tax. The applicant's evidence was that about 23 years ago he opened a pizza shop at Caloundra, which operated seven days a week. A year or two later, the applicant bought two more shops at Maroochydore and Nambour. The business operated mainly using cash, making $4,000 to $7,000 on Friday nights. The applicant kept a hard copy journal record of the income. Part of the cash was never declared and, instead, the applicant, with the knowledge of his wife, concealed the cash at their house. The applicant operated the store for about 12 years. In 1995, he separated from and subsequently divorced his first wife. At this point, the applicant's involvement in the pizza businesses was more or less over. He continued running the Caloundra store and later purchased the Nambour store from his wife. The applicant maintained those two stores for a year or two and then sold them.

[10] Sometime between 1996 and 1998, a year after the sale of the pizza business, the applicant opened a car yard business at Currimundi with a business partner. The applicant and his partner invested $60,000 each in start-up capital. The applicant continued to take away some of the cash and store it. Unlike the pizza business, he spent some of the cash to buy land and other property for the car yard business. At the time he started the car business, the applicant estimated that he had about $800,000 in cash stockpiled. The applicant operated the car business up until the time just before his divorce from his second wife in about December 2007. At the time of the separation, he did not disclose the cash and kept it for himself. After the land of the car business was sold, the applicant left Australia for about six to 12 months because his mother passed away.

[11] In 2008 or 2009, the applicant started a construction company where he was working at the time of the police raid in April 2009. The applicant alleged that the cash found on his premises was largely from the businesses and he had earned over $100,000 from drug sales. In cross-examination, the applicant agreed that he did not keep a record of his drug dealings and that he had established relationships with customers a few months before the police intercepts. The applicant maintained that despite the car business posting a loss, he and his son took money out of the business.

[12] The applicant was also cross-examined in relation to a sample of 656 notes taken from the total stockpile of 20,083 notes. The applicant accepted that many of the notes were from 2008/2009. His credit was challenged and it was put to him that his memory was selective. In re-examination, the applicant maintained that he had few or no drug dealings before 25 October 2008.

The evidence of the applicant's former family

[13] The applicant's ex-wife and ex-step daughter from his second marriage gave evidence that, during the time the applicant owned the pizza shops and car yard, they located a sum of cash in a dryer at home and also saw the applicant with sums of cash. The step daughter indicated that the cash stockpile was concealed in a cavity in the dryer that appeared to be half a metre by half a metre in size.

[14] The applicant's ex-step son also gave evidence. He worked for one year at the pizza shops as a manager and agreed that they made "good money". He accepted in cross-examination that the cash they took home from the pizza shops was for the purpose of checking that the till and cash balanced.

The evidence of the forensic accountant

[15] The report of Ms Hamer, a forensic accountant, assessed the applicant's income for the period 1 January 2008 to 23 April 2009. The unexplained income for that period was $1,775,928.55. In cross-examination, Ms Hamer stated that she saw no evidence of cash holdings prior to 1 January 2007 but agreed she could not say how long the notes had been stored. She could not find a source for that money. For the period 1 January 2008 to 30 June 2008, Ms Hamer discovered unexplained income of $151,000. For the period 1 July 2008 to 23 April 2009, the unexplained income was some $1.6 million, which included the $995,250.50 found at the applicant's property.

The sentencing judge's findings on the contested sentence

[16] The facts on sentence were contested in three respects. In ruling on each matter, his Honour was mindful of the requirement of s 132C of the *Evidence Act* 1977 (Qld).

[17] The first area of contest concerned the length of the trafficking period. The second concerned whether the applicant also trafficked approximately 2,000 ecstasy tablets. The third factual contest concerned whether the whole amount of $1,775,928.55 from unknown sources for the period 1 January 2008 to 23 April 2009, which included an amount of $995,250.50 found on the applicant's property during the execution of a search warrant on 22 April 2009, should be found to be moneys from trafficking.

[18] The findings as to the first two areas of dispute were not the subject of challenge. It is sufficient to note that, in relation to the second matter, the sentencing judge considered that the respondent had not presented a credible witness or any other evidence to support the allegation that there was trafficking of 2,000 additional tablets of ecstasy. As to the period of the trafficking, the sentencing judge found that the Crown had not discharged the onus of proving that the trafficking period commenced on 11 May 2007. However, the sentencing judge also rejected the contention that the commencement of the charged trafficking should be found to be the date the telephone intercepts were commenced, 27 October 2007. His Honour remarked that it would stagger belief that the period of trafficking did not commence months before the telephone intercepts. His Honour concluded, taking into account the applicant's own evidence that he had trafficked for some months prior to the telephone intercepts and the forensic report of Ms Hamer, that the applicant was engaged in the business of trafficking from at least 1 July 2008.

[19] In respect of the third issue, the sentencing judge reduced the quantum of the unsourced income to $1.61 million, bearing in mind the shortened trafficking period, and found that the cash of $995,250.50 located on the property was derived from the trafficking. The sentencing judge had regard to the forensic evidence of Ms Hamer for the period 1 January 2008 to 23 April 2009:

> "… [that being] the period following the sale of the [applicant's] car business. The property from which the business was conducted sold for $2.3 million dollars on the 12th of December 2007. I note the [applicant's] evidence that this was not the sale of the car business, but rather the

> property from which the business was conducted. He alleged that further car deals were conducted after this date. Although, he admits that he did not continue to attend those premises for the purposes of conducting the car business. Of the unsourced funds, Ms Hamer analysed this for two periods. The first period was from the 1st of January 2008 to the 30th of June 2008 … which is in the amount of $151,000. The second period, being 1 July 2008 to the 23rd of April 2009, which includes an amount of $1.6 million dollars. This encompasses the $995,250.50 seized from the [applicant's] property when the search warrant was executed."

[20] His Honour concluded:

> "[E]ven if, I accept it in part that there were some cash reserves … [for] the first period of the 1st of January 2008 to the 30th of June 2008, the unsourced funds identified by Ms Hamer was only an amount of $151,000. There remains the amount of $995,000 found on the property which constitutes part of the overall unsourced funds of $1.61 million for the period 1 July 2008 to the 23rd of April 2009."

[21] The sentencing judge did not accept the evidence of the applicant as to the source of the $1.61 million. His Honour referred to the applicant's evidence that the source of these funds arose not just from trafficking but also from cash or cash reserves which he had from previous businesses conducted by him. In that regard, the applicant's evidence was:

> "... The first business conducted by him that he referred to was a pizza business which, in relation to one of the stores, he sold to his first wife in 1995. They separated in or about 1995. The wife got one store; he got another store. He then purchased a second store. He gave evidence that he held onto these pizza businesses for approximately 12 months. Doing as best he could, he identified that he sold both pizza businesses in or about 1996 or 1997. He states that he used to take cash out a bit from the businesses in order to pay the mortgage. The difficulty I have with any suggestion by the [applicant] that these large amounts of unsourced funds constitutes part of the cash reserves from the pizza business is that that business was sold in or about 1996 or 1997, and the search warrant that identified the moneys of $995,000 was, in fact, executed in 2009. That is, it was executed more than 12 years later.

[22] His Honour also outlined the following evidence given by the applicant:

> "After he sold the pizza businesses in or about 1996 or 1997, he then had a period of approximately 12 months prior to obtaining further employment. There was no direct evidence from [the applicant] as to what was his source of income and how much cash or cash reserves from the pizza business he used in the course of this period. A year after the pizza business was sold, he entered into a business called Ocean View Wholesale. Subsequently, he started a car business and in relation to that car business, he says he had over $800,000 in start up capital. He put $60,000 from the pizza business into the start up capital for the car business. In relation to the car businesses, he says that purchases occurred usually by either credit card, financing, cheque, or on occasions, cash.

> From the cash sales of this car business, he is said to have obtained cash reserves which, with his pizza business cash reserves, he gave an estimate of approximately $820,000 in relation to the unsourced funds. This evidence cannot be accepted.
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> In relation to the car business, the 30th of June 2006 tax return showed a $250,000 loss in relation to the business. Some of the explanation given for this loss was the return of capital to the [applicant's] son, who had previously invested in the business. It is difficult to see how a return of capital would constitute part of the operating losses of a business. But in any event, [the applicant] made it clear that, in the course of selling the car business, his relationship with his second wife was breaking down over a period of approximately one and a half years. To use his word, he took 'his eye off the ball', and the business became less than profitable and was operating at a loss.
>
> Again, in those circumstances, it is difficult to see, from the pizza business and from the car sales business, how [the applicant], without being involved in trafficking, could have unexplained and unsourced funds in the sums identified in Ms Hamer's report.
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> In both instances where he divorced his first wife and his second wife, [the applicant] made it clear that both wives knew about his use of cash in the businesses. Various persons were called in relation to this to corroborate the fact that cash was available both in the pizza business and in the car sales business. [The applicant] gave evidence that, even though both his first and second wives knew of the cash nature of the businesses with which he and his wives were involved, the cash constituted no part of any property settlement under the provisions of the Family Law Act. It follows, then, that I do not accept the evidence given by the [applicant] in relation to the source of funds as being cash reserves which he had saved from both the pizza business and the car sales business."

[23] Having rejected the applicant's evidence, his Honour proceeded to consider the circumstances of the known drug trafficking. The structure in place at 27 October 2008, when the police intercepts commenced, involved a "close-knit, fully operational criminal syndicate", with the applicant dealing with four persons, namely, Cochrane, McCormack, Stainer and Young, also known as Kelly.

[24] The sentencing judge noted the evidence that cash exchanged in the drug transactions was packaged in a particular way, which involved wiping the money, bundling it with paper towel and vacuum sealing it with a plastic bag twice over. This description was consistent with the packaging of the $15,000 received by the applicant immediately before the searches of his house. In that regard, his Honour observed:

> "In relation to Cochrane, for the relevant period there were six supplies for approximately $84,000. Significantly, in relation to that last supply, this took place on the 19th of April 2009. Cochrane told police that he bundled cash in a particular way. The last supply was for $15,000. This was wiped and bundled with a paper towel over it. Cochrane then sealed it in a plastic bag by using a vacuum seal, and his method was to seal it twice.

> A bundle of cash, totalling $15,000 and packaged in this way, was found underneath a container on the property of [the applicant] during the search that took place a few days later on the 22nd of April 2009. In addition, it was found sealed with black duct tape over the packaging which was added by the [applicant]. This was how the drugs would be supplied to customers, in containers sealed with duct tape.
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> In relation to his dealings with McCormack, there were three supplies for eight ounces, five ounces and two ounces. For Stainer, in the relevant period, there were 19 supplies, one for $18,000. For Kelly, there were 10 supplies for a total of $42,000."

[25] The sentencing judge considered that the manner in which the applicant maintained his concealed cash was significant, because, in his Honour's view, the applicant would not have gone to the lengths he did simply to avoid detection from the Commissioner of Taxation. His Honour observed:

> "… What is also significant in terms of the unknown source of this cash is the way that the cash itself was maintained on the [applicant's] property.
>
> I do not accept the submission that – for the mere purposes of tax avoidance from businesses that were sold as early as 1996 or 1997 or, indeed, December 2007 – that to avoid detection from the Commissioner of Taxation, the [applicant] would have gone to the steps to which he did for the purpose of secreting money.
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> In that respect, when police executed a warrant on the [applicant's] property, the cash was located as follows. A bundle of cash totalling $13,550 was found in the pockets of a pair of denim shorts in a cupboard. A bundle of cash stashed inside of a lounge chair, stored in a shipping container, totalling $3,100. Three packages of cash wrapped in duct tape underneath one of the shipping containers on the property totalling $47,000. This included the $15,000 supplied by Cochrane to which I have already referred. 14 packages – 13 wrapped in tape and one in clip sealed bag, together with a set of scales – located underneath another shipping container on the property totalling $146,820. Two bags of cash found inside the wall cladding of the residential shed on the property totalling $273,880. And five shopping bags containing cash located in a large plastic drum buried under the gravel near the carport totalling $484,880. And three packets of cash located under another shipping container totalling $24,900.
>
> The [applicant] himself quite correctly accepted that the trafficking did not commence on the first day that telephone intercepts were engaged, namely, 27 October 2008. In his own cross-examination, he admitted that it would have commenced one or two months before or, indeed, that he had 'things in place' for the purposes of the operation.

[26] Taking those matters into consideration, his Honour concluded:

> "… I am satisfied by reference to the level of unsourced funds for the period 1 July 2008 to the 23rd of April 2009 that it is appropriate to make a finding of fact that the period of trafficking for which the

> [applicant] will be sentenced will be the period in count 1 of 1 July 2008 to the 23rd of April 2009, making it clear that the extent of the operation and the description of the extent of the operation May be referred to the amount of unsourced cash for that period, which is an amount of approximately $1.61 million, including the $995,000 found on the [applicant's] property."

Error as to the finding concerning the amount derived from trafficking

[27] On appeal, senior counsel for the applicant quite properly made a number of concessions. There was no dispute as to the finding that the trafficking commenced on 1 July 2008, nor as to the unexplained income calculations provided by Ms Hamer. The applicant also conceded that it was open to the sentencing judge to reject the evidence of the applicant as to how he had accumulated the money in question. It was accepted that the sentencing judge directed himself correctly as to the standard of proof. The applicant's complaint, however, was that the respondent had not put forward sufficient evidence to prove that the whole of the $995,000 was obtained from the trafficking offending.

[28] The applicant's submissions relied heavily on a document that was said to represent a calculation of the amounts trafficked. It was based on two possible methods for estimating the amount of money gained from drugs. The first method was based on the intercepted transactions, as detailed in the agreed schedule of facts. The combined value of the known amounts received in the intercepted transactions during the period from October 2008 to 22 April 2009 was $228,000. Extrapolating that figure to 1 July 2008, the applicant contended that the total amount received from the trafficking offending was approximately $264,000. The second method involved taking the known periods of supply to each of the applicant's four customers and calculating the average per month value of the transactions for those periods. It is assumed then, that the applicant transacted at that average rate with each of his customers for the whole 10 month period of offending from 1 July 2008 to 22 April 2009. After multiplying each average amount by 10 and adding the four results together, the amount received from trafficking is estimated at $526,500.

[29] The document suffers from a number of deficiencies. One obvious difficulty with the analysis put forward in the document is that it overlooks that there were unidentifiable quantities trafficked, as stated in the agreed statement of facts. It also proceeds on an assumption that the amounts trafficked remained constant. There is a particular difficulty in relying on the document in the case of the transactions involving Stainer. It proceeds on the basis of 19 sales of an estimated $3,000 per ounce but the agreed statement of facts stated that the transactions with Stainer (the applicant's most frequent customer) did not involve a particular code. While the police were able to identify 19 sales, only one sale was for $18,000. Similar difficulties arise in relation to the transactions involving Young. Senior counsel rightly conceded that Young thus fell outside the "neat parameters" on which the calculations in the document were based.

[30] Given that there were intercepted transactions denoted as "unknown amount" in the schedule of agreed facts, and the applicant's evidence as to the source of the unexplained funds was not accepted, it was open to the sentencing judge to infer that an amount much greater than $526,500 was derived from trafficking. The applicant's counsel accepted that a figure in the vicinity of $600,000 was open, if the applicant's calculations were adjusted to take into account the transaction of $18,000 extrapolated over 10 months.

Further, the value of the transactions involving Young was based on four identifiable transactions of three ounces and one of two ounces with a total value of $42,000. There were five sales, however, in which the amounts sold could not be identified. If those sales were of only two ounces (rather than the three ounces which formed the bulk of the identifiable sales) an additional $72,000 for the 10 month period may be inferred. That would take the calculations in the applicant's document to over $700,000.

[31] I do not consider that, as maintained by the applicant, it was not open to the sentencing judge to conclude that $995,000 was derived from the trafficking. The sentencing judge was entitled to have regard to the circumstance of the packaging of the money in inferring that it was derived from drug offending rather than tax evasion. Accepting the serious consequences for the applicant in drawing such an inference, it was open to the sentencing judge to be satisfied on the balance of probabilities that the $995,000 was obtained from drug trafficking. Indeed, as the sentencing judge rejected, as a matter of probability, that the funds came from legitimate businesses and having regard to the manner in which the cash in question was kept on the applicant's property and that the applicant pleaded to engaging in trafficking, there can be no basis for challenging the sentencing judge's conclusion.

The sentencing remarks

[32] The sentencing judge proceeded on the basis that the applicant was a wholesale supplier of drugs to four individuals for commercial gain over a period of nearly 10 months. This was evidenced by unexplained wealth or unsourced income for the relevant period of approximately $1.6 million, including the $995,000 secreted on the applicant's property. The takings from the trafficking were hidden in a sophisticated manner and only detected by the use of Customs dogs. His Honour noted that there were a number of trappings of wealth, including a six bedroom house under construction and $46,000 spent on jewellery.

[33] His Honour took into account the applicant's timely plea which assisted in the administration of justice by obviating the expense of a trial and the fact that there was a full hand up committal. His Honour did not consider the applicant to be remorseful. His Honour found, "but for being caught, [the applicant] May well have continued [his] enterprise". His Honour noted that, in cross-examination, the applicant sought to limit the nature of his involvement in the drug trafficking business.

[34] The sentencing judge also had regard to the delay in the matter and that the applicant had been on bail for an extended period during which he had not offended. The applicant had a limited criminal history and had previously not breached any orders. He was a person of otherwise good character and had taken his family responsibilities seriously. His Honour referred to the shaming effect the applicant's conduct had on him as a high profile businessman.

[35] At the time of the offending, the applicant was 45 years of age. There was no explanation in terms of his antecedents as to what had brought him to the point of engaging in serious criminal conduct. The applicant was not drug dependent. The only motivation that could be identified was financial gain. An appropriately deterrent sentence was required reflecting the trafficking in the highly addictive drug methylamphetamine, which was destructive on families and the community. His Honour noted there was no evidence of any violence in the way the applicant conducted the trafficking business. The applicant did, however, involve others in the trafficking business.

[36] The sentencing judge referred to *R v Feakes*,[1] as suggesting a range of 10 to 12 years for drug trafficking in schedule 1 drugs on a scale commensurate with the applicant's offending.

[37] In relation to issues of parity, his Honour considered the circumstances of the offending by the co-accused, McCormack, distinguished it from the present case. McCormack received a sentence of seven years imprisonment with a parole eligibility after two and a half years. However, that reflected the lower level at which McCormack trafficked (a total of 15 ounces of methylamphetamine) supplied to him by the applicant.

[38] His Honour did not consider that the sentences imposed on Cochrane and Stainer to be of assistance. Both of those offenders made admissions involving a high level of cooperation. They were also sentenced in relation to offending that did not involve the applicant.

Parity issues

[39] Although the applicant did not formally abandon the ground going to parity, it was accepted that it was difficult to see how it could be said that there was relevant similarity between the applicant's offending and that of his co-accused.

[40] As was stated in *Postiglione v The Queen*,[2] by Dawson and Gaudron JJ:

> "The parity principle upon which the argument in this Court was mainly based is an aspect of equal justice. Equal justice requires that like should be treated alike but that, if there are relevant differences, due allowance should be made for them. In the case of co-offenders, different sentences may reflect different degrees of culpability or their different circumstances. If so, the notion of equal justice is not violated." (footnotes omitted)

[41] For the reasons outlined by the sentencing judge, I do not consider that there was any error in relation to parity issues.

Was the sentence manifestly excessive?

[42] The applicant contended that, even if the whole of the $995,000 was derived from trafficking, the sentence of 10 years imprisonment on count 1 was manifestly excessive and that the sentence that ought to be have been imposed was one of nine years. In that respect, the applicant placed most reliance on *R v Bost*.[3]

[43] That case concerned a plea to trafficking in methylamphetamine and other dangerous drugs over a three year period by an offender characterised as a syndicate leader. He had a criminal history that included periods of imprisonment. There was unexplained income of about $620,000. Bost's offending attracted a sentence of nine years imprisonment with a serious violent offence declaration.

[44] However, in oral submissions, senior counsel for the present applicant conceded that if the whole of the $995,000 was found to have been derived from trafficking there would be difficulty in equating the applicant with *Bost*. That concession was properly

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1 [2009] QCA 376.
2 (1997) 189 CLR 295 at 301.
3 [2014] QCA 264.

made. It is difficult to see how *Bost* supports the sentence urged by the applicant. In the present case, the applicant trafficked greater quantities of methylamphetamine over a shorter period. Additionally, in *Bost*, Fraser JA, with whom the other members of the Court agreed, considered that an appropriate notional sentence, after taking into account Bost's plea, was 15 years imprisonment. When regard is had to the factors going to mitigation in the present case, the sentence imposed on the applicant cannot be seen to be manifestly excessive. Indeed, the sentence imposed in the other case relied on in written submissions, *R v Gardner (Senior)*,[4] supports the sentence imposed on the applicant. When regard is had to the statements in *Feakes*, which were adopted in *R v Johnson*,[5] the sentences imposed were clearly within the sound exercise of the sentencing discretion.

[45] In imposing the sentence of 10 years, the sentencing judge was mindful of the effect of such a sentence, which automatically attracts a serious violent offence declaration. His Honour approached the sentencing process correctly as an integrated one.

[46] In relation to grounds (d) and (e), it was not necessary for his Honour to specifically identify the applicable notional sentence prior to a consideration of mitigating factors. His Honour clearly identified that the plea was taken into account by way of reduction in sentence. I do not consider that it can be maintained that the sentencing judge failed to give proper regard to the applicant's rehabilitation and the personal deterrence resulting from his public shaming.

Order

[47] The application for leave to appeal should be refused.

[48] **CARMODY J:** This is an application for leave to appeal against sentences imposed in respect of several convictions for trafficking in prohibited substances and other drug-related offences.

[49] I agree with the reasons for decision and proposed orders of Philippides JA.

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4 [2012] QCA 290.
5 [2014] QCA 79.