Summary of Judgment

BUCKLEY v THE QUEEN

[2022] VSCA 138

14 July 2022

The Court of Appeal today ruled that mandatory sentencing provisions had 'effectively compelled' a judge to sentence an 18 year old offender to a minimum term of 3 years' imprisonment.

The offender committed the offence of aggravated carjacking, to which a mandatory minimum of 3 years' imprisonment applies. He committed the offence just four weeks after his 18th birthday.

The mandatory sentencing provisions include an exception to the obligation to imprison which applies if the sentencing court is satisfied that 'a special reason exists which would justify' a different disposition. A judge can only find that a 'special reason' exists if he or she is satisfied (relevantly) that there are 'substantial and compelling circumstances which are exceptional and rare' and which would justify a different disposition.

The unchallenged expert evidence provided to the sentencing judge showed that the applicant was exceptionally immature and would be vulnerable in prison, having never been in detention before. Since, however, those circumstances could not be described as 'exceptional and rare', the judge was obliged to send him to gaol for a minimum of 3 years. The head sentence was 3 years and 6 months.

Dismissing the appeal against sentence, the Court (Maxwell P and T Forrest JA) said:

> Mandatory minimum sentences are wrong in principle. They require judges to be instruments of injustice: to inflict more severe punishment than a proper application of sentencing principle could justify, to imprison when imprisonment is not warranted and may well be harmful, and to treat as identical offenders whose circumstances and culpability may be very different. Mandating imprisonment in this way must be seen to reflect the ascendancy of a punitive sentiment and a disregard of the demonstrated benefits of non-custodial orders and — in cases like the present — the vital importance of rehabilitating young offenders.

> In our view, mandatory sentencing reveals a profound misunderstanding of where the community's best interests lie, especially in the sentencing of young offenders. As has been pointed out repeatedly, sending young people to adult gaol is almost inevitably counterproductive. It also reveals a wholly unjustified mistrust of those on whom the sentencing discretion is conferred. Sentencing courts are much better equipped, and much better placed, than legislators to determine what type and length of sentence will satisfy the sentencing objectives in a particular case.

In the Court's view, this was a case which called for a disposition directed at the applicant's rehabilitation:

> The community expects, and needs, sentencing courts to fashion dispositions which will minimise the risk of re-offending. The link between rehabilitation and risk reduction is axiomatic, as is the paramount importance of rehabilitating young offenders. In this case, had it not been for the constraints of the legislation, that objective could have been achieved either by an order detaining the applicant for a period in a Youth Justice Centre ('YJC'), or by a community correction order ('CCO') with tight therapeutic conditions.

The Court concluded as follows:

> Neither a term of detention in a YJC nor the imposition of a CCO is a 'soft' sentencing option. Both involve significant punitive sanctions, but leave open a clear pathway to rehabilitation, should the young offender wish to make that journey.
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> In this case, the judge was prevented by law from considering either a period of detention in a YJC or a CCO appropriately conditioned. This blunt, oppressive sentencing regime is contrary to the public interest and incompatible with modern sentencing jurisprudence.

NOTE: This summary is necessarily incomplete. It is not intended as a substitute for the Court's reasons or to be used in any later consideration of the Court's reasons. The only authoritative pronouncement of the Court's reasons and conclusions is that contained in the published reasons for judgment.