

79C/1980

SUPREME COURT OF VICTORIA — COURT OF CRIMINAL APPEAL

R v COMBEY**Starke, Anderson and Fullagar JJ****5 February 1980****SENTENCING - IMPORT HEROIN INTO AUSTRALIA - 285.2 GRAMS OF HEROIN IMPORTED - SENTENCED TO 15 YEARS WITH A MINIMUM OF 12 YEARS - NEED FOR DETERRENCE - NO ERROR.**

STARKE J: This is an application for leave to appeal against sentence. The applicant was presented in the County Court on 31st May on an indictment which alleged that he did contrary to s233B(1)(b) of the *Customs Act* 1901 import into Australia prohibited imports namely narcotic goods containing 285.2 grams of the narcotic substance heroin. On 24th August 1979 he was brought up for sentence and the learned Judge imposed the sentence upon him of fifteen years with a minimum of twelve years. At that time the maximum sentence for this class of offence was twenty-five years' imprisonment and/or a fine of \$100,000.

The learned Judge commenced by saying, rightly in my opinion, that if this criminal activity is to be regarded as a trade it was a cruel and pitiless trade. With those observations I entirely agree. He then adverted to the seriousness of the offence, and nobody could gainsay that it is one of the most serious offences confronting the Courts today. He then referred to the fact that the element of deterrence was a major consideration in this offence. I will come back to that, but I might say in advance that I entirely agree with that observation. He then pointed out that whatever he may be called – a courier or whatever else – the applicant was the actual importer of the prohibited drug. He then pointed out, as is obviously the case, that it was a deliberate offence, a planned offence. He knew what he was doing. It did not happen and could not have happened on the spur of the moment. Finally he pointed out that as well as doing justice to the applicant it was his duty to protect the community against the operations of people such as the applicant.

All these things in my view were properly to be considered in the exercise of the learned Judge's discretion. The experience over the years has shown that the principals, in the sense that I am using that expression, are rarely caught. The people who are caught are the couriers. They are the people who very largely enable this trade to be conducted in Australia. They are the people who actually import the prohibited substance into Australia. They are the people who make it possible for the principals to conduct their nefarious business.

If, then, the Courts by their example and this Court by giving a lead to the trial judges are able to largely cut off the supply of these vultures who conduct the industry at the top, then we will have struck a blow for the numerous unhappy individuals who throughout this country are dying of heroin addiction. I am of opinion that in this case, in this class of crime above all other classes of crime, deterrence is the main consideration, not the only consideration but the main consideration which the Courts should bear in mind. There are many crimes where the press and others cry out for these Courts to impose heavier sentences because such sentences would deter the would-be criminals. In the case of some other crimes I myself have private and personal reservations as to whether heavier and heavier sentences really do deter people from committing them but in this class of case there can be no doubt of it. The person who is approached in Australia to go overseas and bring in drugs has plenty of time to think about it. He knows that he has to run the gauntlet of customs inspection when he returns. He must and I am sure does weigh the prospects. If one of the things he weighs is that he is going to get a very heavy and severe sentence if apprehended, he may well be persuaded in my view from undertaking the operation at all and accordingly I think that the learned Judge was right in placing the weight he did place on deterrence.

What I have said is not to say that I think that the principal if caught should get the same

penalty as the courier. That does not follow at all. Depending on the circumstances he may of course get the same or he may get considerably more. It is clear on the evidence that the applicant was not an addict. One can perhaps have sympathy in some cases where an addict accepts this sort of operation in order to get money to feed his habit, but in this case, as in so many cases, the applicant was only motivated by greed; all he wanted was money that he could spend upon himself. Mr Faris submitted that the psychiatric evidence and the mother's evidence clearly indicated that he was a weak character, that he was susceptible to being used, that he suffered from chronic depression, that he had a considerably inadequate personality, that he was dependent on a strong mother, and generally speaking that he was an unusually dependant person.

All those things I think must be accepted as being true, but there is no suggestion that he had any psychiatric disability. There is no suggestion that he did not have the capacity to enter into the agreement that he did enter into, and the only way it can be regarded, in my opinion, is that he was a man who was an obvious mark for the people who employed him. But those things of themselves do not in my opinion entitle him to leniency.

I am of opinion that the time has come for the message to be clearly spelt out by this Court to those who are minded to endeavour to run the gauntlet that if they are caught they will be visited with the most severe and harsh penalties. In this way it may be hoped that such people will be deterred and the drug traffic in this country will diminish.

ANDERSON J: I agree with what the learned presiding Judge has said.

FULLAGAR J: I agree in the reasons and the conclusions of the learned presiding Judge. I do not accept the proposition that a "mere paid agent" should necessarily and in all circumstances receive a lesser sentence than some employer of that agent who stood to gain more money from the transaction and ownership of the imported drugs. Such a proposition seems to me to be insupportable in logic and would unnecessarily hamper a sentencing judge in the exercise of the discretion of sentencing. In my opinion, the most that can be deduced from the cases in this Court is that the question whether the accused was one or the other is a matter to be looked at and given substantial or little or no weight as all the circumstances of the case may require.
