

13/73

SUPREME COURT OF VICTORIA — COURT OF CRIMINAL APPEAL

R v HANSON

Winneke CJ, Starke and Barber JJ

10 May 1973

CRIMINAL LAW – SENTENCING – ESCAPING FROM LAWFUL CUSTODY – ACCUSED FACING MORE THAN FIVE YEARS' IMPRISONMENT – ACCUSED SAID TO BE SUFFERING FROM A SENSE OF GRIEVANCE AT THE TIME OF THE ESCAPE – ACCUSED SENTENCED TO TWO YEARS' IMPRISONMENT – AVERAGE SENTENCES FOR ESCAPING FROM CUSTODY IS FROM 2½ MONTHS TO SIX MONTHS' IMPRISONMENT – APPLICATION FOR APPEAL AGAINST SENTENCE GRANTED – SENTENCE SET ASIDE – ACCUSED SENTENCED TO SIX MONTHS' IMPRISONMENT.

HELD: Appeal against sentence allowed. Accused sentenced to be imprisoned for six months. The average sentence for escaping from lawful custody is between 2½ months up to six months' imprisonment. Each case must be determined on its own merits but some consistency in sentencing is desirable. Having regard to the circumstances of the case, the sentence of six months' imprisonment was appropriate.

WINNEKE CJ: The judgment of the court in this case will be delivered by Mr Justice Starke.

STARKE J: *[After setting out the facts of the charge of escaping from lawful custody and the background of the accused, dismissing the appeal against conviction and referring to relevant sentencing matters, His Honour continued]* ... I turn then to the application for leave to appeal against sentence. In that application the accused says:

"I consider that the sentence of the court on me by the presiding Judge Mr Justice Dunn, at Bendigo Supreme Court was excessively severe despite the mitigating circumstances surrounding the charge, and also the sentence was extremely harsh in comparison to that handed out by other courts for a similar offence."

The sentence in fact imposed by the learned Judge upon the applicant was one of two years' imprisonment. His Honor, in giving his reasons for sentence, amongst other things said this:

"I am prepared to act on the basis that at the time you escaped you were suffering under a sense of grievance, and it would appear as far as the material before us is concerned, that you were subject to some treatment not strictly in accordance with the regulations. I take those matters into account in your favour."

The learned Judge went on to say later on that it would be improper for a Judge to ignore the prevalence of the offence in passing sentence.

We think that as with many offences, the crime of escaping from lawful custody can vary in degree of seriousness. Some escapes may be very serious indeed, for instance, in the case of escapes where the prisoner uses force or violence or weapons, a very severe sentence may be called for, perhaps even a sentence of the maximum fixed under the statute. Other cases may be of a very low degree of seriousness, such as when a lad in a youth training centre, being lonely and finding himself suddenly and without premeditation took it into his head to run away. In between those two extremes are a very great number of cases which one could postulate.

The learned Prosecutor for the Queen has been good enough to get out certain figures for us. From the beginning of 1971 until today he has a sample of sixteen cases of escaping from custody, which is about one-third of the total number in that period. The average sentence is two and a half months and the greatest is six months. A great number of the sentences imposed was a sentence of three months. The prisoner himself prepared a list of sentences and in his list

was a sentence earlier this year at Geelong where Gillard J apparently imposed a sentence of two years, but made eighteen months of that sentence concurrent with a sentence the prisoner was undergoing. We have no information as to the details of that case.

There can be no question that the prevalence of an offence is a matter which a Judge can and should take into account when sentencing a prisoner, and in this case His Honor expressly said that he did so. On the basis, without accepting it as necessarily correct, that in recent years this offence has become more prevalent; nevertheless, it is to be remembered that the applicant made his escape in 1969 and it seems to us that this is a circumstance that should be taken into account in his favour.

Whilst accepting that each case must be determined on its own merits, some consistency in sentencing is desirable, and we emphasise that any order we make today in this appeal is not intended to lay down a basis or standard for Judges who are sentencing other prisoners for this offence in the future. In this case it cannot be said, we think, that the Judge has acted on any wrong principle of law, nor do we think it can be said that he has taken into account things that he should not have taken into account, or failed to take into account things that he should have taken into account. Nevertheless, having particularly in mind the material relating to sentences for the same offence put before us by the Crown, we cannot escape from the conclusion that the learned Judge's discretion has in some way which we are unable to specify miscarried in this case, and accordingly we must exercise our own discretion under s568, and if we feel it proper, fix a different sentence.

In this case it is neither, we think one of the very worst nor one of the least bad cases; there are things that can be said both for and against. That he was suffering under a sense of grievance can be said in his favour. That no violence was used or threatened can be said in his favour. On the other hand, as against him it can be said that this was a premeditated escape and that he took advantage of a privilege granted to him by the Governor to make that escape, and in so doing may jeopardise similar privileges being granted in future at this or other prisons. We think, as a matter of general principle, that where a man escapes he must always expect to serve something additional to the sentence that he is undergoing, and the sentence which will be finally pronounced by the Chief Justice will, of course, be cumulative to the sentence he is undergoing.

In all the circumstances of this case, we are of the opinion that a proper sentence is one of six months' imprisonment.
