

Ellis v R

**7 December 2004, 14 January 2005
(BR) Martin CJ, Angel & Thomas JJ
[2005] NTCCA 1, 154 A Crim R 450**

The applicant pleaded guilty in the Darwin Supreme Court to 46 counts of dishonesty including 15 counts of aggravated unlawful entry of a building, 15 counts of stealing, 1 count of receiving, 13 counts of unlawful aggravated damage to property, one count of aggravated unlawful use of motor vehicle and one count of aggravated robbery.

The appellant was sentenced to a total effective sentence of 12 years imprisonment. A non-parole period of 6 years fixed.

The appellant first came to the attention of the Juvenile Court when aged 13 years when he was dealt with for numerous offence of dishonestly. He next appeared before the Supreme Court in February 2003, pleaded guilty to one count of aggravated robbery, 11 counts of aggravated unlawful entry and 9 counts of stealing. The court took another 10 offences into account. On this occasion the appellant was sentenced to 3 years imprisonment and it was ordered that he be released forthwith on stringent conditions including supervision and curfews. At the time of sentence the appellant had already committed further offences of which the court was unaware. Seven weeks after the appellant had been released on the suspended sentence he committed 11 offences of dishonesty. In July 2003 he was arrested and granted bail with conditions related to drug assessment. Eight days after being released to bail he committed a further 3 offences. The appellant was arrested in August 2003 and remanded in custody. In September 2003 the appellant was granted bail on condition that he participate in a drug rehabilitation program. A little over four weeks later the appellant committed further offences. He was again arrested, granted bail and continued to re-offend. During the spree of offending the appellant caused damaged in the order of \$23,000 and stole property to the value of approximately \$17,500.

Leave to appeal against severity of sentence was granted on 27 July 2004. The application for leave was not opposed by the Crown.

The Court of Criminal Appeal observed that the appellant had abused every opportunity he had been given to rehabilitate and that the sentencing judge had exercised considerable leniency in fixing a non-parole period which was only 50% of the head sentence. The court examined each of the individual sentences imposed and found that none of the individual sentences were excessive and that the sentencing judge had properly considered whether the sentences should be served concurrently or cumulatively. Further, the court was of the view that the sentencing judge had correctly applied the totality principle in that he had reduced the overall sentence from 16 years imprisonment to 12 years imprisonment on account of this factor. In the absence of any error, the critical question for the court was whether the end result of 12 years was manifestly excessive.

In the end the court held, not without considerable hesitation, that the head sentence of 12 years imprisonment was manifestly excessive for a young person (the appellant was aged 18 years at the time of sentence) who had never before been imprisoned. The court unanimously allowed the appeal and reduced the total effective sentence from 12 years imprisonment to 10 years imprisonment. The court achieved this result by reducing from 7 years to 5 years the sentence imposed for the crime of aggravated robbery. A non parole period of 5 years was fixed.