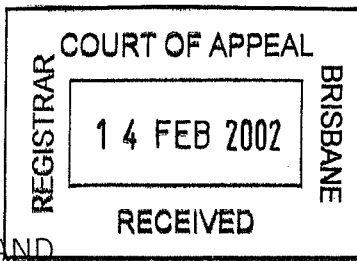


IN THE COURT OF APPEAL
SUPREME COURT OF QUEENSLAND



C.A. NO. 358 of 2001

THE QUEEN

v.

BRETT DEAN DEMPSEY

(Applicant)

SENTENCE FORM - APPLICANT

1. Date of offence

On a date unknown between 20 December 2000 and 2 January 2001.

2. Nature of offence

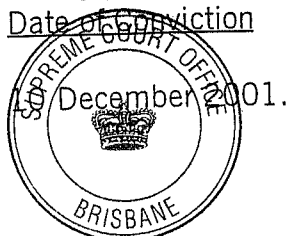
Count 1 Destroy forest products: s.56(1) **Wet Tropics World Heritage Protection and Management Act 1993.**

Count 2 Stealing with a circumstance of aggravation: s.398(1) **Criminal Code.**

3. Court and Judicial Officer

District Court, Brisbane; White DCJ.

4. Date of conviction



5. Date of Sentence

10 December 2001.

6. Age and date of birth of offender

31 years; DOB: 22 September 1970.

7. Sentence imposed

12 months' imprisonment.

8. Prior Criminal History

The applicant's criminal history is at p.25 of the Appeal Record. The only offences contained in the history are:

May 1994	Assault occasioning bodily harm (6/5/94)	Fined \$600.00. No conviction recorded
5 December 1996	Carried in a public place a weapon capable of being discharged (6/9/96)	Convicted and fined \$400.00.

9. Circumstances of offence in respect of which application is brought

The applicant is a self employed timber cutter.

In the period 20 December 2000 to 2 January 2001, the applicant cut down and removed 25 trees in an area of approximately 1 hectare of Wet Tropics World Heritage listed rain forest in the region of the Upper Barron River between Herberton and Malanda.



The species of trees removed were Queensland Maple, Maple Silkwood, Northern Silky Oak and Black Walnut. The largest tree felled and removed was a Black Walnut estimated to be over 300 years old. Most of the other trees removed were estimated to have been in excess of 100 years old.

At a public auction of the logs held by DPI Forestry, the timber yielded \$45,000.00 (R.10). However, the sentencing Judge accepted that the applicant's expectation was considerably less.

The offences were discovered following reports of suspicious activity in the area. Vehicles had been seen and heard at times considered to be unusual.

On 1 January 2001, the matter was reported to a forestry ranger. He was provided with the registration number of a vehicle which was a Nissan utility owned by the applicant.

The forestry ranger discovered a number of items of heavy equipment including a skidder (which is used to push felled trees). There was also a Caterpillar loader.

The forestry ranger travelled to the applicant's residence. The applicant denied any knowledge of the matter. He was specifically questioned as to the whereabouts of his Mack prime mover. He said that it was en route to Brisbane being driven by Steve Jenkins. This information was subsequently established to be false. The



vehicle was actually hidden away and Jenkins had no involvement in the offences.

Subsequently it was discovered that the skidder had been removed from the forest area. However, a trail of debris led to a residence at Kaban. The equipment on the skidder included a spanner which bore the applicant's initials (BD).

The vehicle was seized. The equipment used in the rainforest had left distinctive soil deposits in the tracks (rhyolite soil).

The applicant's Mack prime mover was subsequently located in a shed near Ravenshoe. Upon examination, the forestry officer discovered traces of rhyolite soil on the vehicle. The owner of the shed told police that the applicant had said that he wanted to wash the vehicle to get rid of traces of illegal logs he had carried on it. Despite that, the forestry ranger was able to find pieces of rainforest timber jammed in cavities in the vehicle.

The following day, the police spoke to the applicant, but he again denied any involvement in the matter.

The forestry ranger went to a quarry near Ravenshoe which was an area he knew had the rhyolite soils. He discovered bulldozer tracks and a piece of black walnut and maple bark were visible. An excavator was used to dig up the area where the police located the logs buried in a 1 metre deep pit.



On 25 January 2001, the applicant reported to police that he had been attacked by Steve Jenkins (an allegation which was subsequently established to be false).

10. Additional matters referred to by sentencing judge

- (a) The operation was well planned and commercial in nature;
- (b) The investigation was, of necessity, an expensive one;
- (c) A committal hearing was scheduled with many witnesses required for cross-examination (36 witnesses R.9, I.10). On the morning of the committal hearing, the applicant indicated an intention to plead guilty and was committed for sentence to this Court;
- (d) The logs were sold at auction for \$45,000.00 although the sentencing Judge accepted that the applicant's own expectation of financial return was considerably less;
- (e) In addition to the serious dishonesty of the offences, the environmental harm has been serious;
- (f) The applicant is given credit for the plea of guilty but no credit for any remorse;
- (g) The need to deter the applicant and others is of significant importance.

11. Matters relied on by the applicant

- (a) The applicant committed the offences in circumstances where his work as a self-employed timber cutter had been diminishing and as was submitted by his solicitor "financially things have been getting very tough." (R.13,



l.55);

- (b) The applicant had no previous convictions for any offences of significance;
- (c) The learned sentencing judge has failed to give sufficient weight to the applicant's plea of guilty which was entered at the committal hearing on 25 September 2001 (see exhibit 9 at R.35; Chronology of Events).

12. Comparable Cases

R v. Moore [2001] QCA 431

13. Grounds upon which application is based

The sentence is manifestly excessive.

14. Sentence which should be imposed

12 months' imprisonment suspended after the applicant has served 73 days (the period he will have served at the time of hearing on 22 February 2002).

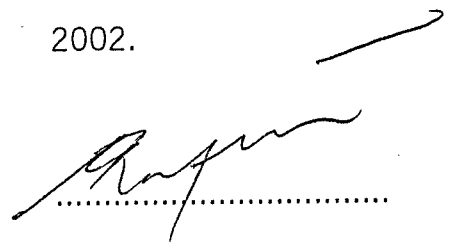
DATED the

14th

day of

February

2002.



A.J. Rafter

Counsel for the Applicant

