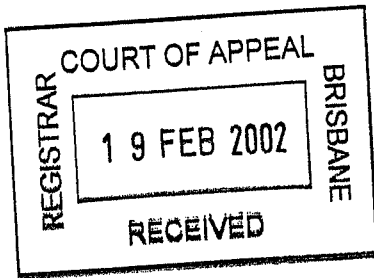


**IN THE COURT OF APPEAL
OF QUEENSLAND**



C.A. No. 358 of 2001

THE QUEEN

- against -

Brett Dean DEMPSEY
(Applicant)

OUTLINE OF SUBMISSIONS FOR THE RESPONDENT - SENTENCE

Items 1- 9 in the outline for the applicant are accepted.

10. **Additional Matters referred to by Sentencing Judge**

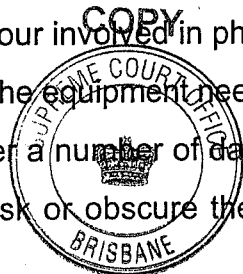
- ◆ the applicant was a professional timber cutter
- ◆ the operation was well planned and commercial in nature
- ◆ before the operation was detected the applicant removed some of the logs and concealed them by burying them at a quarry site
- ◆ when the applicant became aware that he was suspected he denied involvement and took steps to divert attention from himself, hiding his prime mover and trailer which had been used to carry the stolen timber and made a false complaint to police to direct suspicion to another person
- ◆ the investigation was therefore, of necessity, an expensive one
- ◆ the matter was committed for sentence on the morning of a committal when many witnesses had been required for cross-examination
- ◆ the trees selected were very large and very old - some hundreds of years old
- ◆ this was done to maximise the commercial yield to the applicant
- ◆ the logs were sold at \$45000; however the sentencing Judge accepted that the financial return may have been less if sold in accordance with the "usual trading terms"
- ◆ in addition to the serious dishonesty, the environmental harm was serious
- ◆ the natural forest had taken centuries to establish and was considered rare both nationally and internationally



- ◆ the area had a World Heritage status and was considered to be of national and international significance
- ◆ the damage caused was serious and may take in excess of 100 years to repair and will be costly to repair
- ◆ significant other damage was caused to the area by the use of heavy machinery, causing soil disturbance and compaction and damage to immature plant species
- ◆ the applicant was aged 30 years; with no prior similar offences, but some criminal record
- ◆ the applicant should receive a benefit for the plea of guilty but no credit for any remorse
- ◆ the pleas of guilty reflect an appreciation of his inevitable conviction rather than any genuine remorse
- ◆ the need for a deterrent sentence [both general and personal]
- ◆ the offences call for significant sentences of imprisonment

11. **Matters relied on by the respondent**

- ◆ The applicant embarked on a deliberate course of conduct, where he knowingly engaged in the destruction of rare and valuable species of trees. This type of conduct must be distinguished from, and be regarded more seriously than, the recklessly negligent type of conduct that may potentially cause environmental damage.
- ◆ The purpose of the logging was purely commercial.
- ◆ The applicant's experience in the timber industry demonstrates or emphasises the appreciation he must have had for the value [not only in commercial terms] of the trees involved and the consequences of his actions.
- ◆ The applicant engaged in a course of conduct that involved considerable effort, planning and pre-meditation. These aspects include the amount of labour involved in physically logging and carrying the logs away; the use of the equipment needed to carry out the task; the logging was carried out over a number of days; the lengths taken to conceal the cut logs and to mask or obscure the signs pointing to the applicant's involvement; the



crime was committed at night or at other unusual times.

- ◆ The applicant engaged in a deliberate course of deceit and falsehoods to obstruct the investigation and attempt to shift blame to an innocent person.
- ◆ The applicant's plea of guilty while deserving some benefit must be weighed against the strength of the Crown case against him, and the seriousness of the charges.
- ◆ The area was well marked and there can be no question that the applicant appreciated that the subject area was protected.
- ◆ Most significantly in this matter is the rare and valuable nature of the rainforest which was ravaged, and the long-term and likely permanent environmental impact or consequences of the logging. A report prepared details that it is unlikely that the canopy will fully recover and that regrowth and recovery will take over one hundred years.
- ◆ The area is noted to be of both national and international significance.
- ◆ The consequences for the subject area are multi-faceted. They include the damage and degradation of the soils and other plants leading into and away from the logging sites, and at the sites themselves; the logging has also affected the forest canopy and the relationship with the ground vegetation.
- ◆ The applicant has engaged in a selfish act of vandalism for his own commercial benefit. He has acted in flagrant disregard of the law and with contempt for the rights of others to enjoy and appreciate the rainforest both now and in the future.
- ◆ The significance of this area is reflected in one of the criteria for listing on the World Heritage List: the area "contains the most important and significant natural habitats where threatened species of animals or plants of outstanding universal value from the point of view of science or conservation still survive". [see R26]
- ◆ There is a strong need for a deterrent sentence for an offence that has been conducted in such a deliberate fashion, and where there are such serious and long term environmental consequences.
- ◆ It is submitted that having regard to the matters relied on by the respondent and the cases below, that the sentence in this matter can not be regarded as manifestly excessive.



- ◆ It is submitted that the sentencing Judge in considering the sentence clearly took into account the applicant's pleas of guilty and recognised that some credit was deserved for such pleas. [R22 line 48]
- ◆ It is submitted that in such a case, involving deliberate, planned conduct over a number of days, that the applicant's lack of relevant prior convictions would hold little weight in the overall sentencing exercise.

12. Comparable Cases

Whilst there have been no previous prosecutions under the relevant legislation, it is submitted that other cases dealing with environmental issues have reflected the need for significant sentences to reflect the courts' and the community concern about such issues.

It is submitted that the following matters may provide some assistance in considering the appropriate sentence in this matter. The cases largely involve cases of pollution by various methods. It is submitted that the present case can be regarded more seriously having regard to the deliberate nature of the applicant's conduct as compared to the negligent or reckless conduct of those involved in the pollution type cases. Often in those cases the offenders were sentenced on the basis of the "potential" harm to the environment rather than the "actual" harm caused. In some matters the environmental damage was limited or contained.

In the present matter, the damage to the environment was intentional, premeditated, direct and immediate.

R.v. Sykes Dodds DCJ; District Court at Maroochydore;
indictment number 47 of 2000; 20 June 2000

- The prisoner was convicted after a trial of causing serious environmental harm.
- The maximum penalty was a fine of 4165 penalty units and/or imprisonment for five years.
- The offence involved the disposal of effluent from a caravan park into national park area.



- A fine of \$75 000 and costs of \$27 386 were ordered
- A sentence of 18 months imprisonment; wholly suspended for an operational period of 2 years was imposed.
- The sentencing Judge remarked that he would have been inclined to have the offender serve an actual term of imprisonment, if not for the submissions of the Crown prosecutor.

R. v. Wright, Regan and Sanj

Daly DCJ; District Court at Cairns; 4 April 1997

- This matter involved a case of environmental pollution; tipping a truck loaded with 10 000 litres of sewerage down the side of a mountain adjacent to heritage listed rainforest.
- Pleas of guilty were entered.
- It was noted that there would “inevitably be adverse affectson fauna and flora” resulting from the damage.
- Due to some remedial action [some performed by the offenders] the permanent damage was not as serious as originally considered.
- Deterrence was noted to be of paramount importance [see paragraph 2 page 3]
- The community’s regard for the environment was noted.
- The primary offender was ordered to pay a fine of \$25 000 [in default six months imprisonment]; the other offenders who played minor roles were ordered to perform community service.

R.v. Vitek-Boden

Dodds DCJ; District Court at Maroochydore; 31 October 2001

[This matter is currently listed for appeal against conviction and sentence in this Court]

- The offender was convicted after a trial [in the face of an overwhelming Crown case] of computer hacking charges and offences of environmental harm relating to the Maroochy Shire’s sewage pumping system.



- The offences arose from a grievance towards the Council and another party. It was not the sole purpose of the offender to cause sewage overflows and environmental harm.
- An effective head sentence of two years was imposed; costs of \$13 110 were ordered.

R. v. Moore [2001] QCA 431; CA 162 of 2001

- The applicant was an executive officer of a company found guilty after a trial of a series of pollution type offences; by failing to comply with storage conditions of a toxic chemical which caused damage [or potentially could cause damage] by entering into waters.
- The applicant did not intend to harm the environment but knew of the risks involved.
- A sentence of 18 months imprisonment was imposed and was not disturbed on appeal.
- The applicant was regarded as showing virtual contempt for the law.

Williams/Environmental Protection Agency v. Malaysia International Shipping: Magistrates Court at Cairns; 6 February 2001

- This matter involved the running aground of the Malaysian shipping container on the Great Barrier Reef off Cairns [a World Heritage listed site].
- The environmental impact included the physical damage to the reef itself, the death of marine life during the explosions needed to remove the vessel, the release of a toxic substance from the paintwork from the ship which kills coral and can interfere with the reproductive systems of marine life, and hinders the growth of marine and plant life.
- The company undertook to pay the "restoration" costs for the site.
- The maximum penalty for the company was \$624 375.
- The company, in effect, accepted liability for the actions of the crew in failing to act properly and steer the vessel away from the reef in time.
- There was no deliberate misconduct or intention to cause damage by the crew].
- A fine of \$400 000 was imposed.



13. **Range within which sentence should have been imposed**

12 – 18 months imprisonment.

14. **Sentence which should have been imposed.**

The correct sentence was imposed.

15. **Other Matters**

This outline is filed late. The outline for the applicant was received late on 15 February 2002. I apologise for the delay.



S. G. Bain
Crown Prosecutor
19 February 2002

