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WILLIAM HENRY BALDRY

v.

THE QUEEN

JUDGMENT
(ORAL)

GIBBS C.J.

MURPHY J.

WILSON J.

BRENNAN J.

WILLIAM HENRY BALDRY

v.

THE QUEEN

The applicant, who was convicted of thirty-six counts of house-breaking, was sentenced to ten years imprisonment with hard labour on each count to be served concurrently. In addition, the trial judge made a declaration under s.659A of the Criminal Code of Queensland that he be an habitual criminal. An application for leave to appeal against sentence was dismissed by the Court of Criminal Appeal and an application for special leave to appeal is now made to this Court.

In support of the application it has been submitted to us correctly, that the effect of s.32(1)(b) and s.32(1A) of the Offenders Probation and Parole Act, 1959 to 1974, of the State of Queensland, and of s.53(1) and s.53(2)(b)(i) of the Offenders Probation and Parole Act, 1980, which have now replaced the earlier provisions, is that the applicant must complete the term of his sentence of imprisonment before he becomes eligible for parole. It may, however, be assumed that the sentence will be complete when the term, less any period of remissions, has been completed. After completion of the sentence the applicant would not become eligible for release on parole until he had been detained for a further period of two years unless, in the meantime, the Court or a judge acting under s.659G of the Criminal Code recommended his discharge and the Governor acted on the recommendation, or the Governor in Council otherwise determined.

The learned presiding judge in the Court of Criminal Appeal referred to an argument advanced by the applicant in person as to the effect of regulations made under s.659I of the Code upon which no reliance is now placed by Mr Derrington who appeared before us for the applicant. The learned presiding judge did not refer to the effect of the Offenders Probation and Parole Act which was apparently not then relied on by the applicant, although the provisions of s.32 of the Offenders Probation and Parole Act, 1959 to 1974, were referred to the Court by counsel for the Crown.

It was rightly conceded before us by Mr Vasta for the Crown that the effect of the provisions of the Offenders Probation and Parole Act was a proper matter for consideration by the Court. Under the former legislation in New South Wales, whose effect in this respect was similar to that of the present Queensland legislation, the practice arose of imposing what would be a light sentence, if taken by itself, for the crime in question, to enable the period of detention as an habitual criminal to commence as soon as reasonable after the imposition of the sentence: see Reg. v. Roberts (1961) S.R.(N.S.W.) 681, 684. In our opinion, this is a proper approach, but it appears that it was a consideration to which the Court of Criminal Appeal did not advert in the present case, no doubt because no argument was advanced by the applicant to that effect. If the court had applied this

principle it might well have effected some reduction in the sentence of ten years imprisonment imposed for each offence.

This Court has repeatedly said that it should not interfere with a question of sentence unless the case involves some point of law of general application or importance, or there has been a gross violation of the principles which ought to guide discretion in imposing sentence. Here there was certainly no gross violation of principle, because the applicant was convicted of numerous serious crimes and already had a very bad criminal record. However, the case does involve a point of law of general application, namely that when an offender is declared to be an habitual criminal, consideration should be given to imposing, as the sentence for the offence of which he is convicted, a somewhat lighter sentence than would otherwise have been imposed, so that the commencement of the period of detention as an habitual criminal will not be unduly delayed.

For these reasons the application should be granted, the appeal allowed and the matter remitted back to the Court of Criminal Appeal to reconsider the application in the light of these observations. Perhaps it should be added that it is not necessary that the Court of Criminal Appeal

be composed of the same judges as heard the matter. That will be a matter for the Supreme Court itself. The Court orders accordingly.

This and the previous three pages comprise our joint reasons for judgment in William Henry Baldry v. The Queen.

IN THE HIGH COURT OF AUSTRALIA

WILLIAM HENRY BLADRY

V.

THE QUEEN

REASONS FOR JUDGMENT

Judgment delivered at BRISBANE

on 24th June 1982

RM.72/20133