

SUPREME COURT OF QUEENSLAND

CITATION: *R v Lam* [2026] QCA 149

PARTIES: **R**
v
LAM, Dung
(applicant)

FILE NO/S: CA No 299 of 2025
DC No 2171 of 2025

DIVISION: Court of Appeal

PROCEEDING: Sentence Application

ORIGINATING COURT: District Court at Brisbane – Date of Sentence: 13 November 2025 (Troy ADCJ)

DELIVERED ON: 14 August 2026

DELIVERED AT: Brisbane

HEARING DATE: 15 July 2026

JUDGES: Mullins P, Brown JA, Freeburn J

ORDER: **Application for leave refused.**

CATCHWORDS: CRIMINAL LAW – APPEAL AND NEW TRIAL – APPEAL AGAINST SENTENCE – GROUNDS FOR INTERFERENCE – SENTENCE MANIFESTLY EXCESSIVE OR INADEQUATE – where the applicant pleaded guilty to two counts of possessing a dangerous drug (cannabis) in a quantity exceeding 500 grams – where the applicant was sentenced on each count to four years imprisonment suspended after 16 months to be served concurrently – where the offending related to 184.02 kilograms of dried cannabis contained within heat-sealed bags found at the applicant’s home and another property owned by the applicant – where the value of the cannabis was in a range of \$1.4 million to \$2.2 million and the applicant possessed the cannabis for a commercial purpose – where the applicant contends the head sentence and custodial period are manifestly excessive – where the applicant contends the learned sentencing judge did not give full weight to all matters in mitigation – whether the sentence is manifestly excessive

Adams v The Queen (2008) 234 CLR 143; [2008] HCA 15, considered

Barbaro v The Queen (2014) 253 CLR 58; [2014] HCA 2, cited

R v Alt [\[2022\] QCA 182](#), considered

R v Broad & Prior [\[2010\] QCA 53](#), considered

R v Burling & Gill [\[2011\] QCA 51](#), applied

R v Le [2019] QCA 57, considered
R v Lindsay; R v Lindsay [2013] QCA 381, considered
R v Shepherd; R v Kyriakou [2001] QCA 181, considered
R v Stamatov [2018] 2 Qd R 1; [2017] QCA 158, considered
R v Stuck [2008] QCA 165, considered
R v Turner (2023) 14 QR 401; [2023] QCA 108, considered
R v Van Wensveen [2014] QCA 225, considered

COUNSEL: S J Keim SC, with R B Carroll, for the applicant
 C M Cook for the respondent

SOLICITORS: Cridland & Hua Lawyers for the applicant
 Director of Public Prosecutions (Queensland) for the respondent

- [1] **MULLINS P:** I agree with Brown JA.
- [2] **BROWN JA:** On 12 November 2025 the applicant was convicted in the District Court of two counts of possessing a dangerous drug, cannabis, in a quantity exceeding 500 grams following his pleas of guilty. The applicant was sentenced, concurrently, on each count to four years imprisonment which was to be suspended after the applicant had served 16 months, being one third of the head sentence. The applicant's de facto partner, Ms Tran, was sentenced on the same day following a plea of guilty to permitting use of a place for possessing a dangerous drug in excess of 500 grams on the basis she was a joint occupier of their home which was used as a place to store cannabis. She was sentenced to 18 months imprisonment wholly suspended for an operational period of two years.
- [3] The applicant seeks leave to appeal against the sentence imposed by the learned primary judge on the sole ground that the sentence imposed was manifestly excessive in all of the circumstances.

Circumstances of the offending

- [4] The circumstances of the offending were reduced to an agreed statement of facts tendered at the sentence. At the time of the offending, the applicant was living with Ms Tran in Boondall. The applicant and his partner came to the attention of police during surveillance of a person of interest, Mr X, who was trafficking dangerous drugs. Police observed Mr X frequently attended the applicant's home and another property in Boondall which the applicant also owned.
- [5] On 8 May 2024, police executed a search warrant at the applicant's home. At the home, police located 95.8 kilograms of cannabis contained within heat-sealed bags, in addition to other items related to the weighing and packaging of the cannabis. On the same day, police executed a search warrant at the applicant's other Boondall property. At that property, police located another 88.22 kilograms of cannabis contained in heat-sealed bags and \$131,030 in cash inside a grocery bag in the bedroom. Across the two properties, the applicant had possession of 184.02 kilograms of cannabis. The applicant's fingerprints were located on the heat-sealed bags. It was agreed as part of the statement of facts that the applicant was to be sentenced on the basis he possessed the cannabis for a commercial purpose.
- [6] The applicant declined to participate in an interview with police and was transported to the Brisbane Watchhouse where he was charged.

Sentence hearing

- [7] At sentence the Crown submitted that:
- (a) the applicant was a close and trusted associate of Mr X;
 - (b) the applicant was to be financially remunerated for storing the cannabis;
 - (c) the high maximum penalty of 20 years reflects the seriousness of the offence;
 - (d) the street value of the cannabis was in a range of \$1.4 and \$2.2 million, giving general deterrence great importance;
 - (e) that the applicant, as a warehouseman or custodian, was not at the top of the criminal venture and did not stand to make the most money but was nevertheless a vital part of the operation;
 - (f) the penalty had to give effect to general deterrence and denunciation of what was objectively serious drug offending;
 - (g) there were limited authorities which concerned possession of cannabis on this scale; and
 - (h) a sentence of between 6-7 years imprisonment was within range for the offending with parole eligibility set after one third of the sentence.
- [8] The defence contended that the sentence that should be imposed should be one of 18 months to two and a half years. In particular it was noted that the applicant had no prior criminal history and had acted as a warehouser of the cannabis and the monies located at the two addresses for a short period of time.
- [9] Defence counsel submitted as mitigating features that the applicant had struggled with schooling given he could not speak English, the family having followed his father who arrived as a refugee, and after leaving school had worked in a number of different roles. He and his wife opened nail salons, one of which was permanently closed some time prior to the offending after the shopping centre it was located in flooded. Insurance did not cover all the costs that they had expended, and money was still owed in relation to the original fitout loan. The applicant and his wife suffered other financial pressures due to covid-19 and looking after a sick relative. They had two properties subject to mortgages and two car loans. They had two teenage children.
- [10] The defence submitted that there were no truly comparable decisions to the applicant's offending. It submitted that the offending was less serious than growing cannabis. Defence counsel discussed a number of cases in submitting a proposed sentence of two to two and a half years would reflect the applicant's criminality and contended it was open for the sentencing judge not to order actual custody given the applicant's lack of criminal history, that there was no evidence of the applicant having made any substantial financial gain, his commitments to caring for his children and family and that the offending occurred during a period of financial stress.

The sentence

- [11] The sentencing judge carefully considered all the relevant matters including:
- (a) the nature of the offending;

- (b) that he knowingly possessed a commercial quantity of 184.02 kilograms of cannabis and knowingly allowed Mr X to store the cannabis at his two properties with the knowledge that Mr X may have been involved in selling the cannabis for a number of months before 8 May 2024, the day the police carried out the search warrant;
 - (c) that he personally handled the packaged cannabis and had a close association with Mr X from March 2024 until 8 May 2024 and held a trusted role being responsible for the storage of cannabis and cash and other drug paraphernalia;
 - (d) that the cannabis had a value in a range of \$1.4 million to \$2.2 million;
 - (e) that he was financially remunerated for his role;
 - (f) the cases that he was referred to, noting that there were limited authorities, in particular of the Court of Appeal, which assisted in the particular circumstances of the case, and the maximum penalties;
 - (g) accepting that given negotiations that had occurred which resulted in the removal of more serious charges, the applicant entered early pleas of guilty, for which he received full credit;
 - (h) that the applicant was 40 at the time of offending with no previous convictions and was otherwise of good character;
 - (i) he was a valued member of the community in respect of the business the applicant operated with his partner;
 - (j) that the applicant and his partner had been commendably industrious;
 - (k) the applicant had suffered some financial setbacks;
 - (l) the responsibilities to his two teenage children and the pain that a period of imprisonment of the applicant, or still more, both the applicant and Ms Tran would cause; and
 - (m) a number of positive references from friends and associates, in support of the applicant.
- [12] The sentencing judge considered that given the value of the cannabis involved, general deterrence was very important in the sentence imposed, as was personal deterrence, observing that the applicant's motivation for offending must have been financial. While he accepted the applicant had financial setbacks, he did not consider he was in acute financial difficulties at the time and that even if there were debts of others he was assisting to repay that would afford only minimal mitigation. He observed the applicant had other assets and sources of income at his disposal. The sentencing judge considered that the only rational inference from the agreed facts was that the applicant knew the general quantity of the cannabis and that it had significant value if it was to be sold in Queensland. While the sentencing judge accepted the applicant's role was as a warehouse man or custodian, he observed that "the role of a custodian can often be an important element in the dissemination of drugs into the community."
- [13] Allowing for all matters in mitigation and that a term of imprisonment is a sentence of last resort, the sentencing judge considered the offending was too serious to permit any other treatment than a substantial term of imprisonment with an actual custodial

period. He considered that the range put forward by the Crown given the statement of facts was “unrealistically high” and the range put forward by the defence was “unrealistically low” given the quantity, the value, the applicant’s trusted and important role, and his, albeit unquantified, financial gain.

Contentions

- [14] The applicant contends his sentence is manifestly excessive given that:
- (a) an analysis of the most comparable cases indicates that the head sentence of four years should have been significantly less and that the time required to be served should have been less than a third of the head sentence; and
 - (b) the sentencing judge did not have sufficient regard to a number of matters in mitigation raised by defence counsel at sentence. Those matters are identified as the very short period of time the applicant possessed the cannabis, that the applicant’s references not only supported the sentencing judge’s finding of good character but also supported the applicant’s express remorse and rehabilitation, and that the offending occurred against the background of significant financial stressors.
- [15] The respondent submits that there was no error in the sentencing judge’s approach and that the sentence is not manifestly excessive, given the serious nature of the offending involved.

Principles

- [16] There is no allegation of specific legal error by the sentencing judge.
- [17] In order to establish a sentence is manifestly excessive, it is not enough to establish that a sentence was different or even markedly different from sentences imposed in other matters. It must be demonstrated that the difference is such that the Court “is driven to conclude that there must have been some misapplication of principle”,¹ or that the sentence is “unreasonable or plainly unjust”.²

Is the sentence manifestly excessive?

- [18] As the sentencing judge stated, the cases which were relied upon before him were not on all fours with the applicant’s circumstances.
- [19] Taking account of the fact that none of the cases were comparable to the present, a review of the cases does not suggest that the present case is one where the sentence would cause the court to conclude that there must have been a misapplication of principle.³
- [20] Both parties at sentence acknowledged that there were no truly comparable cases.
- [21] The applicant relies on a statement of Margeret McMurdo P⁴ in *R v Burling & Gill*,⁵ where her Honour stated at [14]:

¹ *R v Pham* (2015) 256 CLR 550 at 559 [28] per French CJ, Keane and Nettle JJ.

² *R v MCT* [2018] QCA 189 at [240] per Morrison JA.

³ *R v Pham* (2015) 256 CLR 550 at [28].

⁴ Philippides J agreeing, Chesterman JA agreeing in the result.

⁵ [2011] QCA 51.

“True it is that, critical to the assessment of the criminality of an offender who is to be sentenced in an illegal drug network is finding the offender’s role and level of criminality. In determining the appropriate sentence, this may be a more important factor than the quantity of drugs involved: *Melikian v The Queen*.”

(footnotes omitted)

- [22] The applicant contends that through that lens the comparable cases, even if not as analogous as one would like, support a finding that the sentence is manifestly excessive. While “low-level couriers generally receive a lesser sentence than those at a higher level in the drug hierarchy”,⁶ this does not obviate a heavier sentence if warranted by other sentencing considerations.
- [23] It is uncontroversial that where offending is linked to an illegal drug network, the role of the offender is an important factor in assessing the level of criminality of the offender and may be a more important factor than the quantity of drugs involved.⁷ In the present case the applicant’s role was as a “warehouseman” or “custodian” of the drugs in question for the drug trafficking operation. The applicant was not however charged on the basis that he was part of the drug trafficking operation. What is also relevant in that context is that the sentencing judge found that the applicant was a trusted associate of Mr X, who was engaged in drug trafficking, given the applicant handled and stored the large amount of cannabis charged and also held cash and other drug paraphernalia.
- [24] An analysis of the cases does not lead to a conclusion that the sentence imposed is manifestly excessive.
- [25] The Crown contends that the case of *R v Le*⁸ is the most comparable. It involved a 20 year old defendant who pleaded guilty to one count of possessing the dangerous drug cannabis in a quantity in excess of 500 grams. The suitcases which he had brought with him acting as a courier were found to contain a total of 34.5 kilograms of cannabis. He was imprisoned for a period of two and a half years suspended after eight months for an operational period of three years. Unlike the present case, the defendant in that case suffered depression and anxiety at the time of the offending which a clinical psychologist considered was likely to have impacted on his capacity for reasoning and judgment and thereby was relevant to his culpability for his offending. He also had an early plea of guilty and a lack of criminal history. The period of imprisonment also reflected the offender’s youth. That is not a factor in the present case.
- [26] Notwithstanding those mitigating factors, the Court of Appeal held that the sentence was not manifestly excessive. The sentence imposed in *Le* was for what was approximately a fifth of the amount of drugs in the present case. There is not a significant difference between a courier and a warehouseman. *Le* does provide some support for the present sentence.
- [27] The case of *R v Broad & Prior*,⁹ particularly the sentence imposed upon Mr Prior, is of some relevance to the present, notwithstanding it involved a more serious charge

⁶ *R v WCI* [2025] QCA 131 at [9] (Mullins P, Bradley JA and Morrison AJA), citing *R v Burling & Gill* at [14].

⁷ [2011] QCA 51 at [14] per McMurdo P.

⁸ [2019] QCA 57.

⁹ [2010] QCA 53.

of trafficking. Mr Prior was sentenced in respect of one count of trafficking and possession. He was sentenced to four and a half years imprisonment with a parole eligibility date set at just over 12 months on a trafficking charge. In that case, Mr Prior was in effect a warehouseman of cannabis and held a trusted position. He collected drugs on some eight occasions from a supplier and held them overnight at his home until they were collected by his co-defendant who was also convicted of trafficking. He was entrusted by the co-defendant to make payments for the drugs received, and he held and passed over very large amounts of cash. He was given some remuneration for his role which was said not to be significant in comparison to the value of the drugs. He only had a minor criminal history and was otherwise of good character. He had held constant employment and was married with children. He was a consumer of cannabis as an analgesic prior to his offending, but his offending was not the result of any drug addiction and was purely financial. He was remorseful and pleaded guilty in a timely fashion. He provided police with a full account of his involvement in the offence. In particular, he cooperated with police by providing information about the amounts he was paid for his role. The Court of Appeal considered that Mr Prior's original sentence did not reflect the limited part he played in the criminal enterprise. The Court reduced Mr Prior's sentence to four years with parole eligibility after 10 months. In terms of criminality, Mr Prior does not seem to have carried out a significantly greater role than the applicant in the present case. While Mr Prior's offending was more serious than the applicant's in this case, the sentence imposed on Mr Prior, in circumstances where he cooperated with the police, does not support the sentence imposed in this case being manifestly excessive given the fact that the applicant's possession was commercial in nature, the amount of cannabis was large, he was financially motivated to carry out the offences and did not have the benefit of cooperation.

- [28] In the case of *R v Alt*,¹⁰ the defendant pleaded guilty to one count of trafficking in a dangerous drug and one count of possession of a dangerous drug in excess of 500 grams as well as one count of possessing property obtained by supplying a dangerous drug. He was sentenced on the trafficking count to three and a half years imprisonment suspended after serving 12 months. The sentence for trafficking represented his overall criminality. He did not appeal the head sentence, but rather took issue with the custodial sentence contending it was manifestly excessive. In that case the defendant was involved in the importing of 59.8 kilograms of cannabis with a co-offender. He was one of the principal offenders. The offending was connected with the fact that he had a long-standing drug problem, but the applicant was also motivated by profit. He was not a youthful offender. The trafficking was confined to a period of three weeks. He had made steps towards rehabilitation. The sentence was not held to be manifestly excessive. While the offender in *Alt* pleaded guilty to trafficking, a more serious offence than the applicant in this case, the sentence does not suggest a misapplication of principle by the sentencing judge in this case, particularly given the amount of cannabis involved was more than three times the amount involved in *Alt*. Nor was the head sentence in that case the subject of appeal.
- [29] The applicant also sought to rely on *R v Shepherd; R v Kyriakou*.¹¹ The offenders in that case, each of whom were 45 years of age, were crop sitters who were paid well to tend a large cannabis crop, which they had done for some ten weeks. They were sentenced to three years imprisonment to be suspended after twelve months for

¹⁰ [2022] QCA 182.

¹¹ [2001] QCA 181.

production of cannabis with a circumstance of aggravation. While the applicant sought to assert their offending involved greater criminality than the applicant's role as a warehouser, any comparison between the two is of limited assistance, given the different stages of readiness of cannabis for the market and the actual commercial value. There is a significant difference between sitting a crop yet to be picked and processed into the form of a marketable drug and warehousing a drug of a significant street value that is packaged and ready to go onto the market.

- [30] In the case of *R v Lindsay; R v Lindsay*,¹² a father and son were sentenced. The sentence of the father is not of any real relevance given his very different circumstances of repeat offending and having offended whilst on bail. His son however was sentenced to three years imprisonment for production of a dangerous drug in excess of 500 grams which was cannabis. He had become involved in the production of cannabis with his father after his own son had been diagnosed with a brain tumour and he could not work. He was dependent on his father's income. He had only a minor criminal history. His release date provided for him to be released after nine months, below the one-third mark. The sentence of three years was not regarded as manifestly excessive. The production offending related to 1514 cannabis plants. The crop had a potential street value of over \$1 million. Unlike the present case, the sentencing judge appropriately noted that the estimated street value was obviously a matter of potential rather than reality.¹³ The production was said to be in its "embryonic stages". While the son in *Lindsay* had a more direct level of involvement in the production of a significant amount of cannabis, the applicant in the present case was storing a large amount of cannabis, packaged and ready for the market, and of a greater value. The personal circumstances of the son giving rise to his involvement were extenuating circumstances weighing in favour of a lesser sentence.
- [31] In the case of *R v Turner*,¹⁴ the defendant pleaded guilty to producing a dangerous drug (cannabis) in excess of 500 grams, possessing things used in connection with producing a dangerous drug and possessing a dangerous drug (cannabis) in excess of 500 grams. He was sentenced to two and a half years imprisonment for count 1 and two years for count 3 (which was the possession charge), with parole release after six months. The sentence was appealed on the basis that the custodial component was manifestly excessive.
- [32] The length of the custodial sentence was clearly influenced by the fact that the applicant in *Turner* had a serious medical condition. Further, no consideration was given to the head sentence in that case. The cannabis was also, at least in part, produced so the defendant could self-medicate for his own pain, rather than being produced for a purely commercial purpose.
- [33] Similarly, the case of *R v Van Wensveen*¹⁵ is of limited relevance to consideration of the sentence of the applicant given it was with respect to a defendant sentenced for commercial cannabis production of 2868 plants. The defendant in that case was sentenced to three years with a parole release date just under twelve months. The three year head sentence was not regarded as manifestly excessive.

¹² [2013] QCA 381.

¹³ [2013] QCA 381 at [12].

¹⁴ [2023] QCA 108.

¹⁵ [2014] QCA 225.

- [34] The Crown submitted some assistance may be obtained from cases dealing with possession of other dangerous drugs that are not cannabis but which fall within Schedule 2.
- [35] This Court in *R v Stamatov*,¹⁶ extrapolating the principles set out by the High Court in *Adams v The Queen*,¹⁷ determined that in the context of trafficking, where the legislature categorised drugs into different classes, i.e. Schedule 1 and Schedule 2, offences involving drugs within the same schedule with similar offending conduct should attract the same or a similar penalty.¹⁸ The categorisation of drugs into different schedules also applies to the offence for possession of dangerous drugs. The penalties for drugs in Schedule 2 should be similar to those applying to other dangerous drugs in the same schedule. Thus, some regard can be had to cases involving possession of Schedule 2 drugs in sentencing for other drugs also found in the schedule.
- [36] In *R v Stuck*,¹⁹ a 25 year old defendant with no criminal history was sentenced to four years imprisonment suspended after 18 months on a late plea of guilty. He had no prior convictions. His guilty pleas concerned two counts of aggravated possession of a Schedule 2 drug relating to some 1050 tablets of MDMA and MDEA. There was 17.6 grams of MDEA and 62 grams of MDMA in the tablets. At the time of sentence MDMA was a Schedule 2 drug, as was (and still is) cannabis. Like the applicant, his possession was commercial, but the value of the drugs that he possessed was significantly less than that which was possessed by the applicant. The sentence was not found to be manifestly excessive.
- [37] The cases set out above serve as some guide. In *Barbaro v The Queen*, French CJ, Hayne, Kiefel and Bell JJ stated:²⁰
- “... in seeking consistency sentencing judges must have regard to what has been done in other cases. Those other cases may well establish a range of sentences which have been imposed. But that history does not establish that the sentences which have been imposed mark the outer bounds of the permissible discretion. The history stands as a yardstick against which to examine a proposed sentence. What is important is the unifying principles which those sentences both reveal and reflect...”
- (footnotes omitted)
- [38] The quantity of cannabis which was stored by the applicant was significant, with a significant street value. It was not however the only factor weighing in favour of a sentence reflecting the need for deterrence and denunciation. While the applicant was not involved in the trafficking operation per se, he was a trusted associate of the individual involved in trafficking and played an important role in assisting that person by acting as warehouseman of the cannabis. Of particular significance is the fact that the possession was a commercial possession for which the applicant was remunerated. The applicant knew that the packages were drugs and likely destined for sale. It was not offending borne out of ignorance of the amount of drugs involved or its intended purpose for sale.

¹⁶ [2017] QCA 158.

¹⁷ (2008) 234 CLR 143.

¹⁸ (2008) 234 CLR 143 at [10]-[11]; See also *R v Baker* [2018] QCA 209 at [32].

¹⁹ [2008] QCA 165.

²⁰ (2014) 253 CLR 58 at [41].

- [39] The offending called for a significant sentence in terms of deterrence, both general and personal, as well as denunciation by the community. Cannabis is a prevalent drug and at the time of the offending the applicant was a mature man. The mitigating circumstances in the applicant's favour were limited to his early pleas, previous unblemished life, employment record and family stability and needs, some financial difficulty at the time and expression of remorse. The mitigating factors did not require some additional reduction beyond the third of the sentence in custody, although it would have been open to do so. Neither the head sentence nor the period of custody imposed by the sentencing judge were manifestly excessive and outside the proper exercise of the sentencing discretion.
- [40] The applicant sought to rely on the fact that possession of the drug was only charged as one day. That was the day on which it was found by police. It is a neutral factor. There was no evidence as to the duration of the possession but in any case in the context of possession it is not a matter of any real significance.
- [41] The applicant has not shown that the sentence was afflicted by any reasonably arguable error. In the circumstances leave to appeal should be refused.
- [42] The order of the Court should be:
1. Application for leave refused.
- [43] **FREEBURN J:** I also agree with Brown JA.