

IN THE HIGH COURT OF AUSTRALIA
BRISBANE OFFICE OF THE REGISTRY

Nos. B 26 of 2011

BETWEEN

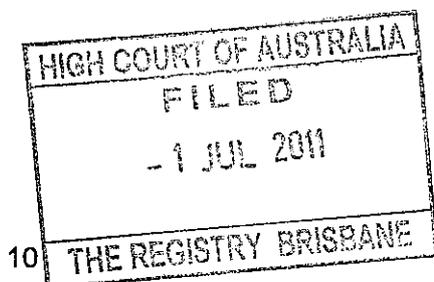
DALE CHRISTOPHER HANDLEN

Appellant

and

THE QUEEN

Respondent



RESPONDENT'S SUBMISSIONS

Part I – Certification

1. These submissions may be published on the internet.

Part II – Statement of Issues

2. The Appellant was convicted of two counts of importing a border controlled drug, one count of possessing and one of attempting to possess a border controlled drug. He was sentenced on each count to life imprisonment to be served concurrently, with a non-parole period of 22 years.
- 20 3. Except as otherwise indicated, the Respondent adopts its submissions made in the related matter of *Paddison v The Queen*, No B 27 of 2011.

Part III – Section 78B of the *Judiciary Act* 1903

4. The Appellant has filed appropriate notices as required by s 78B of the *Judiciary Act*.

Date of Document: 1 July 2011
Filed on behalf of the Respondent by
Commonwealth Director of Public Prosecutions
15 Adelaide Street Brisbane, 4000
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Part IV – Statement of Facts

5. The facts are accurately summarised in the judgment of Holmes JA (with whom Fraser and White JJA agreed) (at [7] – [31]).
6. The following factual matters are noted in addition to those set out in the Appellant’s submissions and in addition to the matters referred to in *Paddison v The Queen*.
7. The activities undertaken by Handlen with the intention of achieving the importations included the following:
- 10 (1) In Canada he discussed with Reed the method to be used to import the drugs¹ and a plan was developed (to conceal drugs within computer monitors) which was ultimately implemented (at [8]);
- (2) Handlen financed the purchase of 480 computer monitors and paid for the lease of a warehouse in Vancouver to which the computers were delivered² (at [8]);
- (3) Thereafter Handlen told Reed that they were ready to start packing the drugs and arrangements were made to meet at the warehouse³;
- (4) Handlen with Reed, Paddison and others secreted the drugs, which were in vacuum sealed packets, within sixteen of the computer monitors⁴ (at [9]);
- 20 (5) Handlen and Reed travelled to Australia prior to the first importation arriving to advance the arrangements necessary at this end.⁵ (at [10]);
- (6) Handlen paid for their travel and living expenses⁶ (at [10]);
- (7) Reed arranged for Nerbas, a friend of his in Queensland, to rent a unit for them to live in (at [10]) and also to register a company so it could receive the shipment when it arrived⁷;
- (8) Handlen informed Nerbas that they were importing drugs⁸ (at [10]);

¹ T 5-16 to T 5-20

² T 5-21 to T 5-22, T 5-24

³ T 5-24

⁴ T 5-24 to T 5-27

⁵ T 5-28

⁶ T 5-33

⁷ T 5-33

⁸ T 5-39 to 5-40

- (9) A storage unit in Queensland was leased by Reed and Nerbas, with Handlen arranging for Paddison to send money for expenses from Canada to Nerbas' bank account⁹ (including expenses for the storage unit and living expenses for Handlen and Reed while in Australia) (at [10][11]);
- (10) Reed arranged for the computers to be shipped to Australia¹⁰ (at [12]);
- 10 (11) After the container of computers arrived in Australia Handlen and Reed were involved in assisting its clearance through Customs (at [12]). Thereafter it was delivered to the storage unit, where Handlen, Reed and Nerbas unloaded the container¹¹ (at [12]);
- (12) A few days later Handlen, Reed and Nerbas returned to the storage unit and identified the sixteen monitors containing the drugs, the drugs were removed from the monitors and initially stored in boxes in the unit¹² (at [13][14]);
- (13) Ultimately Handlen instructed Reed who was to receive the packages of drugs¹³ (at [14]);
- (14) Handlen and Reed returned to Canada¹⁴ (at [15]);
- 20 (15) A "dummy run" importation was undertaken to deflect any attention by Customs (at [16]) and a second drug importation followed shortly thereafter using the same modus operandi as the first importation¹⁵;
- (16) Handlen and Reed returned to Australia before the second drug importation (at [19]); Paddison also travelled to Australia¹⁶ (at [15][16]);
- (17) The Appellant instructed Reed and Nerbas to rent a storage unit into which they moved the monitors that had been used in the first importation¹⁷ (at [17]);

⁹ T 5-38

¹⁰ T 5-41

¹¹ T 5-46

¹² T 5-47

¹³ T 5-49

¹⁴ Exhibit 112, T 5-55

¹⁵ T 5-58

¹⁶ T 5-64, T5-68

¹⁷ T 5-64, T 3-13

- (18) The second drug importation was intercepted by Customs, the drugs were removed and a substitution made, and on 18 September 2006 it was delivered to the storage unit¹⁸ (at [19][20][21][22][23][24]);
- (19) After the container was delivered it appeared to those involved that it may have been tampered with and Handlen instructed them not to deal with it until he had ascertained whether something untoward had occurred in its processing¹⁹ (at [25][26]);
- (20) On 20 September 2006 Handlen instructed Reed and Paddison to inspect the contents of the monitors²⁰ (at [25][26][27]); Handlen was arrested later that day (at [28]).

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8. Reed pleaded guilty to the offences of importing a border controlled drug and gave evidence in the Crown case as to the activities of Handlen and others involved in those importations. Reed, amongst other things, was responsible for arranging the shipping of the drugs for each importation and dealing with persons associated with that process (for example customs brokers etc).
9. There was substantial evidence corroborating his account including evidence of customs brokers engaged to process the containers, travel and accommodation records, bank records, lease documents, telephone calls (lawfully intercepted) featuring all involved (including Handlen), visual surveillance (and film recording of movements of the parties) and a fingerprint of Paddison's on the inside of the casing of a monitor from the second drug importation (at [72]).
10. Handlen did not give evidence at his trial.

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Part V – Relevant Provisions

11. The Appellant's statement of applicable constitutional provisions, statutes and regulations is accepted.

Part VI – Summary of Argument

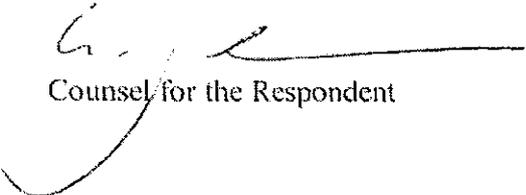
12. The Respondent relies upon the submissions filed in Paddison.

¹⁸ T 3-8 to T 3-10, exhibit 42

¹⁹ T 5-71 to T 5-75, exhibit 58 call 61

²⁰ T 5-74 to T 5-76, exhibit 57, calls 66 and 73

13. It is to be noted the Respondent's submission in Paddison in relation to the count of attempted possession applies to both the attempted possession and possession counts in this matter.
14. The Appeal should be dismissed.



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