

# SUPREME COURT OF QUEENSLAND

CITATION: *R v Williams* [2020] QCA 46

PARTIES: **R**  
**v**  
**WILLIAMS, Connie-Lee Rose**  
(applicant)

FILE NO/S: CA No 71 of 2019  
DC No 10 of 2019

DIVISION: Court of Appeal

PROCEEDING: Sentence Application

ORIGINATING COURT: District Court at Bundaberg – Date of Sentence: 28 February 2019 (Moynihan QC DCJ)

DELIVERED ON: 17 March 2020

DELIVERED AT: Brisbane

HEARING DATE: 5 February 2020

JUDGES: Sofronoff P and McMurdo JA and Boddice J

ORDER: **The application for leave to appeal be refused.**

CATCHWORDS: CRIMINAL LAW – APPEAL AGAINST SENTENCE – GROUNDS FOR INTERFERENCE – SENTENCE MANIFESTLY EXCESSIVE OR INADEQUATE – where the applicant pleaded guilty to one count of dangerous operation of a vehicle, causing death while adversely affected by an intoxicating substance and excessively speeding – where the applicant was sentenced to nine years’ imprisonment with a declaration that she had been convicted of a serious violent offence – where the applicant applies for leave to appeal the sentence on the ground that the consequences of the declaration of a serious violent offence rendered the sentence manifestly excessive – where the applicant engaged in a protracted course of dangerous driving causing the death of two people – where the applicant had no criminal history – whether the sentence was manifestly excessive

*Penalties and Sentences Act* 1992 (Qld), s 161B(3)

*R v Henderson; Ex parte Attorney-General Queensland* [2013] QCA 63, cited

*R v Moody* [2016] QCA 92, cited

*R v Thomas* [2015] QCA 20, cited

*R v Tout* [2012] QCA 296, cited

COUNSEL: D A Holliday for the applicant  
J D Finch for the respondent

**SOLICITORS:** Legal Aid Queensland for the applicant  
 Director of Public Prosecutions (Queensland) for the  
 respondent

- [1] **SOFRONOFF P:** I agree with Boddice J.
- [2] **McMURDO JA:** I agree with Boddice J.
- [3] **BODDICE J:** On 28 February 2019, the applicant pleaded guilty to one count of dangerous operation of a vehicle, causing death whilst adversely affected by an intoxicating substance and excessively speeding.
- [4] On 28 February 2019, the applicant was sentenced to imprisonment for nine years. It was declared she had been convicted of a serious violent offence, with the consequence that 80 per cent of that nine year term was required to be served before eligibility for parole.<sup>1</sup>
- [5] The applicant applies for leave to appeal her sentence. The sole ground of appeal is that the consequences of the declaration she had been convicted of a serious violent offence rendered the nine year sentence manifestly excessive in all the circumstances.

### **Background**

- [6] The applicant was born on 2 April 1984. She was aged 33 years at the time of the offence and 34 years at sentence. She had a limited traffic history and no criminal history.

### **Offence**

- [7] On 20 September 2017, the applicant was driving a motor vehicle on the Bruce Highway, north of Gin Gin. The vehicle contained two passengers, the applicant's husband, aged 41 years, and the applicant's son, aged five years.
- [8] At a time after 7.30 am on 20 September 2017, the motor vehicle being driven by the applicant left the roadway and impacted at high speed with a culvert and subsequently a tree. Both the applicant's husband and son lost their lives. Each was ejected from the motor vehicle upon impact. Neither was wearing a seatbelt at the time of impact.
- [9] An investigation of the collision established that the motor vehicle had failed to negotiate a sweeping curve and left the road at a minimum speed of 171 kilometres per hour. Immediately prior to leaving the roadway, the applicant was observed to engage in a protracted course of dangerous driving. Other road users had been required to take evasive actions to avoid a collision.
- [10] At the time of the collision, the applicant was travelling upon a sealed bitumen road, divided by audible double continuous lines. The weather was fine and clear. The road surface was dry. Visibility was good. The motor vehicle was in satisfactory mechanical condition. A subsequent examination found no faults which would have contributed to the incident.

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<sup>1</sup> Section 161B(3) of the *Penalties and Sentences Act* 1992 (Qld).

- [11] The applicant, who was restrained by a seatbelt, sustained injuries as a consequence of the impact. Blood specimens taken from the applicant upon arrival at hospital revealed the presence of both amphetamines and methylamphetamine at levels likely to affect the applicant's ability to safely drive a motor vehicle. A search of the motor vehicle located a clip seal bag containing 1.65 grams of pure methylamphetamine.

### **Sentence hearing**

- [12] The applicant's plea of guilty to the offence was entered on the basis that the applicant accepted she had deliberately engaged in a course of dangerous driving over a protracted period, which was hazardous to the safety of herself, her passengers and other road users. That dangerous driving included driving on the wrong side of the road, over double white lines, whilst excessively speeding and being significantly adversely affected by methylamphetamine, in circumstances where the applicant was aware that her passengers, including her young son, were not restrained by seatbelts.
- [13] A victim impact statement was tendered at sentence from the father of the applicant's husband. He spoke of the devastation caused by the loss of a son and grandson.
- [14] A psychological report was tendered by defence counsel. That report noted that the applicant had been raised in a healthy, secure and encouraging family environment but that the applicant's relationship with her late husband had been physically, mentally and emotionally abusive. There was also a history of alcohol and substance abuse.
- [15] The psychologist's assessment revealed symptomology consistent with dissociative behaviours, flat and impaired affect, impaired judgment and decision-making and risk taking behaviours and impulsivity. The psychologist opined that the applicant's presentation was consistent with a diagnosis of a dissociative disorder and post traumatic disorder. The symptomology was also strongly suggestive of a possible traumatic brain injury, in particular frontal lobe damage.

### **Sentencing remarks**

- [16] The sentencing Judge acknowledged that the applicant had pleaded guilty at an early stage to a serious offence. Her dangerous driving involved executing an overtaking manoeuvre when it was not safe to do so, travelling at an excessive speed on the wrong side of the road and crossing double white lines when vehicles were approaching in the opposite direction. That dangerous driving had resulted in the death of two people, both of whom suffered massive and horrific injuries upon impact. The applicant had herself also suffered significant injuries.
- [17] The sentencing Judge described the applicant's driving as involving the deliberate engagement in an extended course of reckless and dangerous driving on a major highway, endangering a number of people, with catastrophic consequences, particularly to her husband's family. This dangerous driving occurred in circumstances where the applicant was found to have both amphetamine and methylamphetamine in her blood, at levels enough to adversely affect her driving. Her observed conduct at the scene was also consistent with amphetamine use.

- [18] The sentencing Judge had regard to numerous mitigating factors: that the applicant was 33 years of age at the time of the offence, with no criminal history and a limited traffic history; that the applicant had pleaded guilty in a timely way, facilitating the administration of justice; that the applicant had expressed remorse; that the applicant's history and presentation were consistent with the presence of a number of psychological disorders, with the possibility of a potentially undiagnosed head trauma; that the applicant had herself suffered significant physical injuries and had to live with the loss of both her husband and her son; and that the applicant was separated from her two daughters and that this ongoing separation would have an adverse impact upon the applicant and her daughters.
- [19] After considering the purposes of sentencing and comparable authorities, the sentencing Judge ordered the applicant be imprisoned for nine years and declared the offence a serious violent offence. In making that declaration, the sentencing Judge said:

“The factors I consider that make it a more serious example of the offence and warrant the declaration are: the extended distance over which you drove dangerously, the inherently dangerous nature of the manoeuvres you made on a number of occasions, the number of innocent members of the community you exposed to the real risk of serious injury or death by your deliberate and reckless conduct, that you allowed your son to travel unrestrained in the vehicle when you determined to drive the way you did whilst adversely affected by methylamphetamine and your deliberate and reckless conduct has taken the lives of two people.”

### **Submissions**

- [20] The applicant submits the sentence imposed was manifestly excessive.
- [21] The circumstances of the offence did not involve sufficiently serious features to warrant the imposition of a sentence of nine years imprisonment, with a declaration that the applicant had been convicted of a serious violent offence. Further, the sentence imposed was not towards the lower end of the otherwise available range of sentences, notwithstanding the imposition of that declaration.
- [22] The sentence also failed to adequately take into account the applicant's plea of guilty, lack of criminal history and minor traffic history, the applicant's own significant injuries and symptoms, the impact of incarceration upon the applicant's remaining children, and the potential that incarceration will be more difficult for the applicant having regard to her psychological conditions.
- [23] The respondent submits the sentence imposed was not manifestly excessive.
- [24] The sentence fell within an appropriate exercise of the sentencing discretion and the applicant's lengthy course of dangerous driving involved features properly warranting the exercise of a discretion to declare it a conviction of a serious violent offence.
- [25] The objective seriousness of the applicant's offending was such that the sentence imposed cannot be said to be so unreasonable or plainly unjust that it is beyond a proper exercise of the sentencing discretion.

### **Consideration**

- [26] The applicant does not contend the sentencing Judge made any specific error in imposing sentence. Accordingly, her contention that the sentence imposed was

manifestly excessive will only be established if the applicant can demonstrate that the sentence was so markedly different from sentences imposed in comparable authorities that there must have been a misapplication of principle, or that a conclusion can be reached that the sentence is unreasonable and plainly unjust.<sup>2</sup>

- [27] The applicant's dangerous driving involved not only a protracted course of driving which placed other members of the public at significant risk. It involved a deliberate course of driving at excessive speed on the wrong side of a busy highway in areas where there were present double white lines, at a time when the applicant was adversely affected by intoxicating substances and aware that each of her passengers were unrestrained in the motor vehicle. Such a course of conduct was rightly described as involving an occasion of serious dangerous driving.
- [28] A consideration of comparable authorities<sup>3</sup> supports a conclusion that a proper exercise of the sentencing discretion for such a serious occasion of dangerous driving would have included a sentence of imprisonment of at least ten years, with the consequence that there would have been an automatic declaration the applicant had been convicted of a serious violent offence.
- [29] Whilst *Henderson* involved an offender with a much more extensive criminal and traffic history, who used the motor vehicle as a weapon, the engaging in a deliberate course of driving at excessive speed on the wrong side of the road for an extended period whilst adversely affected by illicit substances, is rightly to be characterised as an occasion of dangerous driving involving such serious conduct as to warrant a sentence of at least ten years' imprisonment.
- [30] Against that background, the imposition of a sentence of nine years' imprisonment, with a declaration the applicant had been convicted of a serious violent offence, is properly to be characterised as a sentence at the lower end of the sentences applicable to this serious offending. Such a sentence properly reflected the consequences of a declaration that the applicant had been convicted of a serious violent offence. It was neither unreasonable nor plainly unjust.
- [31] The making of the declaration also fell within a sound exercise of the sentencing decision. The factors identified by the sentencing Judge were relevant to the exercise of that discretion. Having regard to those factors, there is no basis upon which to conclude that the exercise of the discretion to make that declaration miscarried or that the consequence of that declaration rendered the sentence imposed manifestly excessive.

### **Conclusions**

- [32] The applicant has not established that the sentence imposed for a serious example of protracted dangerous driving, with catastrophic consequences, evidences a misapplication of proper sentencing principles or resulted in a sentence which can be properly characterised as unreasonable or plainly unjust.

### **Orders**

- [33] I would order the application for leave to appeal be refused.

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<sup>2</sup> *R v Tout* [2012] QCA 296 at [8].

<sup>3</sup> *R v Moody* [2016] QCA 92; *R v Henderson*; *Ex parte Attorney-General (Qld)* [2013] QCA 63; and *R v Thomas* [2015] QCA 20.