

COURT OF APPEAL

DAVIES JA
WHITE J
WILSON J

CA No 192 of 2002

THE QUEEN

v.

SCOTT IVOR GEHRMAN

Applicant

BRISBANE

..DATE 25/07/2002

JUDGMENT

DAVIES JA: This is an application for an extension of time within which to apply for leave to appeal against sentence. The applicant, Scott Ivor Gehrman, was sentenced on the 18 April this year and his application for an extension of time was filed on the 11 June. He was therefore about a month out of time.

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He has given a number of explanations for his delay, none of which, in my opinion, is satisfactory. He said that initially he was persuaded that he should not appeal because his barrister mentioned the possibility that the sentence might be lengthened on appeal. He said that he was also persuaded by others not to appeal and that it was only recently when talking to apparently some prison officers that he formed the view that he had some prospects of appealing.

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The sentence is one of 12 months imprisonment, suspended after six months, with an operational period of two years for the offence of dangerous operation of a motor vehicle with a circumstance of aggravation, that circumstance being that he was adversely affected by alcohol. That offence carries a maximum penalty of five years imprisonment.

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The circumstances as outlined in the sentencing remarks of the learned sentencing judge indicate that this was quite a serious offence of dangerous operation of a motor vehicle, in the sense that whilst plainly very much under the influence of alcohol the applicant drove at speeds up to 120 kilometres an hour in the streets of Rockhampton. It may be said by way of

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JUDGMENT

mitigation, if that is what it is, that this was late at night. Nevertheless, it was extremely dangerous and it is fortunate, I suppose, that no one was killed or injured in consequence of his conduct. He managed to elude the police through the way in which he manoeuvred his vehicle and the speed at which he travelled and was later apprehended in the bar of a hotel.

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The applicant has a previous criminal record as well as, importantly, a previous conviction in 1995 for driving under the influence of alcohol. He has, in addition, convictions for breaking, entering and stealing in 1982, possession of a concealable firearm in 1983, wilful interference with a Telecom installation in 1984 and going armed so as to cause fear in January 2001. He also has some convictions of traffic offences of speeding in 1995, 1998 and 2001.

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The learned sentencing judge referred to the decision of this Court in R v. Coake [1999] QCA 12, CA No 403 of 1998, 5 February 1999, the facts of which are, in my view, quite similar to this case, although it may be accepted that the circumstances in that case were a little more serious than those here. This Court held that a sentence of two years imprisonment in that case was within range. In those circumstances it seems to me the applicant, even if we were to accept his explanation for delay, has no reasonable prospects of success on an application for leave to appeal against sentence and I would consequently refuse his application.

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WHITE J: I agree.

WILSON J: I agree.

DAVIES JA: The application is refused.
