

SUPREME COURT OF QUEENSLAND

CITATION: *R v Wales* [2002] QCA 463

PARTIES: **R**
v
WALES, Shane David
(applicant)

FILE NO/S: CA No 254 of 2002
DC No 321 of 2002

DIVISION: Court of Appeal

PROCEEDING: Sentence Application

ORIGINATING COURT: District Court at Townsville

DELIVERED EXTEMPORE ON: 31 October 2002

DELIVERED AT: Brisbane

HEARING DATE: 31 October 2002

JUDGES: de Jersey CJ, McPherson JA and Mullins J
Separate reasons for judgment of each member of the court, each concurring as to the order made

ORDER: **Application for leave to appeal against sentence refused. A warrant issue for the arrest of the applicant, to lie in the Registry for 7 days prior to any necessary execution.**

CATCHWORDS: CRIMINAL LAW – APPEAL AND NEW TRIAL AND INQUIRY AFTER CONVICTION – APPEAL AND NEW TRIAL – APPEAL AGAINST SENTENCE – APPEAL BY CONVICTED PERSONS – APPLICATION TO REDUCE SENTENCE – WHEN REFUSED – PARTICULAR OFFENCES – GENERALLY – where applicant pleaded guilty to the offence of dangerous operation of a motor vehicle causing grievous bodily harm – where sentence of 16 months imprisonment suspended after 4 months for an operational period of 16 months imposed – where application for leave to appeal against sentence seeking a wholly suspended term of imprisonment – whether sentence was manifestly excessive – where applicant failed to stop at red light and collided with the complainant’s car causing serious injuries to the complainant – where applicant’s conduct characterised as going beyond mere inattention – where applicant was driving a heavily laden truck over the speed limit and consciously attempted to beat the yellow light – where sentence was within the range

R v Hamilton [2000] QCA 286; CA No 75 of 2000, considered
R v Manahan [2000] QCA 382; CA No 207 of 2000, considered

COUNSEL: G Lynham for the applicant
PD Kelly for the respondent

SOLICITORS: Purcell Taylor Lawyers for the applicant
Director of Public Prosecutions (Queensland) for the
respondent

MULLINS J: The applicant pleaded guilty to dangerous
operation of a motor vehicle causing grievous bodily harm. He
was sentenced on 15 August 2002 to 16 months imprisonment
suspended after four months for an operational period of 16
months. He was also disqualified from holding or obtaining a
driver's licence for a period of 18 months. The applicant
applies for leave to appeal against sentence seeking a wholly
suspended term of imprisonment. He has been on bail pending
appeal.

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At 4.50 p.m. on Friday, 6 April 2001 when visibility and road
conditions were good, the applicant was driving his work truck
along Hugh Street in Pimlico Townsville approaching the
intersection with Palmerston Street which was controlled by
traffic lights.

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He saw the amber light and decided to "push the orange light".
When he was about 15 to 20 metres from the intersection he saw
the traffic from Palmerston Street begin to move forward. He
hit the brakes and tried to veer right but collided with the
middle of the driver's side door of the complainant's sedan
and pushed the car across the intersection into a set of
traffic lights.

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The complainant had entered the intersection on a green light.
It was common ground that the traffic light facing the

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applicant had been red for some 2.6 seconds by the time of the collision. The complainant suffered life-threatening injuries and would have died without prompt treatment.

The applicant attempted to render assistance to the complainant before trying to telephone for an ambulance. The complainant's injuries included a closed head injury, six or seven broken ribs, a punctured right lung and nerve end damage to the right lower leg.

The complainant spent six and a half weeks in hospital. He has been left with memory problems and difficulties socialising. The complainant states:

"This accident changed my life. I am no longer the same person as I was."

The applicant's truck weighed 10.14 tonnes and had a load that was estimated by the police to weigh 1 tonne but estimated by the applicant to weigh 6 tonnes. The applicant estimated his speed just prior to the collision was 60 to 65 kilometres per hour which accorded with the police estimate of 64 kilometres per hour. The speed limit at the intersection was 60 kilometres per hour.

The applicant was born on 23 December 1973. He was 27 years old at the date of the offence and 28 years old at the date of sentence. He had no prior criminal history.

The learned sentencing Judge took into account that the applicant had cooperated fully with the police, that he gave

an honest account, that he had a good work history and excellent character, that he had demonstrated remorse endeavouring to assist the victim immediately following the accident, that he had excelled in his chosen sport as a rodeo rider and assisted in the administration of that sport including voluntary work and coaching work, and assisted charities.

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The learned sentencing Judge referred to the applicant's admission that he was pushing the orange light as he approached the intersection which he would have known to be a busy one, that the speed at which the applicant was travelling was too great when driving a truck of considerable weight and that the speed and weight of the truck made it potentially much more dangerous than driving an ordinary vehicle.

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The learned sentencing Judge did not consider the applicant's traffic history to be of any particular significance but did have regard to the serious injuries sustained by the complainant.

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In requiring the applicant to serve some period of actual imprisonment the learned sentencing Judge referred to the need to deter others from like-minded conduct.

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It is submitted on behalf of the applicant that the circumstances of the offence and the factors personal to the applicant warrant the immediate suspension of the whole of the period of imprisonment imposed on the applicant. The

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applicant relies on R v. Hamilton [2000] QCA 286 where the offender was only 18 years old and R v. Manahan [2000] QCA 382 where there was the unusual circumstance of five years elapsing before the offender was charged during which time the offender had reconstructed his life and a further delay of two years before trial. Both these cases involved momentary inattention and not a deliberate course of dangerous driving. Mr Lynham, of counsel, on behalf of the applicant sought in his written submissions to characterise the applicant's conduct as momentary inattention.

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Although the applicant had not engaged in a deliberate course of reckless driving prior to the collision for any length of time, this was not a case of a driver merely failing to observe a red light at an intersection. It is a case of the driver of a heavily laden truck travelling just over the speed limit making the conscious decision of trying to beat the orange light that he observed some distance from the busy intersection.

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The Crown Prosecutor characterised that before the learned sentencing Judge as "culpability that goes beyond mere inattention" and it is apparent that the learned sentencing Judge quite properly proceeded to sentence on that basis. It therefore follows, as was conceded by the applicant's counsel before the learned sentencing Judge, that an actual period of imprisonment was within range even taking into account all that was put forward in favour of the applicant. I therefore cannot conclude that requiring the applicant to serve four

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months of the 16 months' term of imprisonment was in all the circumstances manifestly excessive. I would refuse the application.

THE CHIEF JUSTICE: I agree.

McPHERSON JA: I also agree.

THE CHIEF JUSTICE: The application is refused.

MR KELLY: Your Honour, there's one matter, the application - he was released from custody on the 15th of August 2002 so to deal with that a warrant should issue.

THE CHIEF JUSTICE: Do you want it to lie in the Registry, Mr Lynham?

MR LYNHAM: Yes, if that's okay, your Honour.

THE CHIEF JUSTICE: No problem with that, Mr Kelly?

MR KELLY: No, your Honour.

THE CHIEF JUSTICE: For seven days.

MR KELLY: Yes.

MR LYNHAM: Thank you, your Honour.

THE CHIEF JUSTICE: A warrant will order for the arrest of the applicant to lie in the Registry for a period of seven days prior to any necessary execution.
