

# SUPREME COURT OF QUEENSLAND

CITATION: *R v Pahoff*[2002] QCA 525

PARTIES: **R**  
**v**  
**PAHOFF, Aaron Douglas**  
(applicant)

FILE NO/S: CA No 286 of 2002  
DC No 365 of 2002

DIVISION: Court of Appeal

PROCEEDING: Sentence Application

ORIGINATING COURT: District Court at Brisbane

DELIVERED EXTEMPORE ON: 2 December 2002

DELIVERED AT: Brisbane

HEARING DATE: 2 December 2002

JUDGES: McMurdo P, Helman and Philippides JJ  
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**

CATCHWORDS: CRIMINAL LAW – JURISDICTION, PRACTICE AND  
PROCEDURE – JUDGMENT AND PUNISHMENT –  
SENTENCE – where applicant convicted of one count of  
breaking and entering and stealing, one count of dangerous  
operation of a motor vehicle and one count of obstructing  
police – where conviction recorded for dangerous operation  
of a motor vehicle only – whether recording of conviction  
outside sentencing discretion – whether manifestly  
excessive

*Penalties and Sentences Act* 1992 (Qld), s 12(2)  
*R v Briese; ex parte A-G* [1998] 1 Qd R 487; considered

COUNSEL: C J McGrath for the applicant (*pro bono*)  
R G Martin for the respondent

SOLICITORS: Director of Public Prosecutions (Queensland) for the  
respondent

PHILIPPIDES J: This is an application for leave to appeal against sentence imposed upon the applicant upon his plea of guilty to one count of breaking and entering a motor vehicle

and stealing, one count of dangerous operation of a motor vehicle and one count of obstructing police.

The applicant was sentenced to 18 months' probation, ordered to perform unpaid community service for 200 hours and ordered to pay compensation in the sum of \$95. A conviction was recorded in relation to the offence of dangerous driving only and the applicant was disqualified from holding or obtaining a driver's licence for 12 months. The applicant seeks to appeal the sentence on the ground that it was manifestly excessive in that a conviction was recorded.

The circumstances of the offences were as follows. On 23 October 2001 at about 10.30 p.m., the applicant broke the window of a locked vehicle which had been left at a car park at Forest Lake, Brisbane, and stole a car stereo from the vehicle. This constituted the offence of breaking, entering and stealing. The theft was observed by three men who pursued the applicant, who drove off in his mother's vehicle.

The three had noticed the applicant acting suspiciously. They pursued him over a distance of approximately six kilometres. The applicant was observed to travel at speeds of up to 150 kilometres per hour along main arterial roads and through built-up areas. He crossed double white lines, drove on the wrong side of the road several times and, on one occasion, drove with his lights off.

The applicant accepted in his police interview that he had driven at speeds of up to 120 to 140 kilometres per hour. The applicant's driving was such that the persons who were following him and who were in contact with the police were told by the police to desist from following. This constituted the offence of dangerous operation of a motor vehicle.

The offence of obstructing police involved a scuffle with the police officer when the applicant was later located at his mother's home.

The applicant is 18 years of age and was 17 at the time of the offences. He has no previous convictions. He was newly licensed and in the final stages of year 12.

In imposing the sentence, the learned sentencing Judge took into account the applicant's age, his lack of criminal history, the admissions he made to police when questioned, his plea of guilty, his remorse and the fact that the applicant had recently experienced many distressing events in his life. His Honour also considered that although the dangerous driving did not result in injury, it was a serious example of dangerous driving which had the potential to cause injury or death.

The learned sentencing Judge also took into account the effect that recording a conviction for an offence of dishonesty might have on the applicant's employment prospects in ordering that no conviction be recorded for the offences of breaking,

entering and stealing and obstructing a police officer, but that a conviction be recorded for the offence of dangerous driving.

The circumstances listed in section 12(2) of the Penalties and Sentences Act 1992 as appropriate for consideration in determining whether or not to record a conviction are: the nature of the offence, the offender's character and age, the impact that recording a conviction will have on the offender's economic or social well-being and his chances of finding employment. In R v. Briese; ex parte Attorney-General [1998] 1 QdR 487 it was held that in exercising its discretion as to whether to record a conviction or not, the Court must balance the public interest in having notice of a criminal history against the interests of the offender and his or her prospects for rehabilitation.

The respondent submitted that the sentence imposed was appropriate in all the circumstances. Although the respondent conceded the aggravating features of alcohol or actual damage or injury were absent, it was submitted that the dangerous driving was a bad example of its type. The respondent pointed out that the considerations which weigh against recording a conviction for an offence of dishonesty do not apply with the same force to other sorts of convictions. In any event, it was submitted that the driving offence was a far worse example of its type and had far worse consequences than the breaking offence.

Before this Court the applicant had the benefit of assistance from counsel who appeared on a pro bono basis. It was submitted on behalf of the applicant that the learned sentencing Judge's discretion miscarried in that recording a conviction was manifestly excessive in light of the following:

(a) The applicant's young age and lack of any criminal or traffic history;

(b) The nature and circumstances of the offence which, although involving dangerous driving, had occurred at a time when the road was virtually deserted in circumstances where the applicant was being chased by three other men who were not police, leaving a real apprehension as to what they might do if he were stopped;

(c) The significant mitigating factors in the applicant's personal life. It was said that the applicant had a troubled upbringing and difficult personal circumstances at the time of the offences. The applicant's father had repeatedly attempted suicide, of which the applicant had witnessed the aftermath. At the time that the offences occurred, the applicant's father was suffering from terminal cancer and his mother had been hospitalised several days prior to the offences with the possibility that she might die. The applicant was also under the pressure of the final stages of year 12 and had no certain employment or future. He also felt overwhelmed by responsibility for his family;

(d) The impact of recording a conviction on the applicant's employment's prospects. After finishing year 12, the applicant worked as a small motor vehicle apprentice for a few months but had lost that position after the employer became aware of the charges the applicant was facing. The applicant's counsel submitted that the charges appear to have been a major factor in the termination of the applicant's apprenticeship. Counsel submitted that that pointed to the real impact which the recording of a conviction would have for the applicant;

(e) The applicant's strong prospects of rehabilitation, as evidenced by the psychological report of Ms Salerno which had been tendered at sentencing.

In the circumstances of this case, I do not consider that the learned sentencing Judge erred in the exercise of his discretion in ordering that a conviction be recorded. The conviction recorded was not for an offence of dishonesty and is unlikely to impact on the applicant's future prospects as might have been the case if an offence of dishonesty had been involved. The dangerous driving was serious and the recording of a conviction was within the sentencing discretion. I would refuse the application.

THE PRESIDENT: I agree.

HELMAN J: Notwithstanding Mr McGrath's able submissions, I agree that the application should be refused and I agree with the reasons of Justice Philpides.

THE PRESIDENT: The order is the application for leave to appeal against sentence is refused and Mr McGrath the Court thanks you for your assistance in this matter.

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