SUPREME COURT OF QUEENSLAND

CITATION:	*R v Fripp* [2003] QCA 4
PARTIES:	**R** **v** **FRIPP, Kim Gordon** (applicant)
FILE NO/S:	CA No 345 of 2002 DC No 2644/02 DC No 1535/02 DC No 1874/02 DC No 2055/02
DIVISION:	Court of Appeal
PROCEEDING:	Sentence Application
ORIGINATING COURT:	District Court at Brisbane
DELIVERED EX TEMPORE ON:	29 January 2003
DELIVERED AT:	Brisbane
HEARING DATE:	29 January 2003
JUDGES:	McPherson and Davies JJA 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 is dismissed**
CATCHWORDS:	CRIMINAL LAW – JURISDICTION, PRACTICE AND PROCEDURE – judgment and punishment – sentence – factors to be taken into account – miscellaneous matters – remission, parole and prisoner classification – effect of parole recommendation – whether relevant that prison may not give effect to recommendation
COUNSEL:	The applicant appeared on his own behalf CW Heaton for the Crown
SOLICITORS:	The applicant appeared on his own behalf Director of Public Prosecutions (Queensland) for the respondent

McPHERSON JA: This is an application for leave to appeal against an effective sentence of imprisonment for 4 years with a recommendation for parole after two years which was imposed

in the District Court in September last year following a plea of guilty to 10 counts of indictable offences and seven summary charges. There was an additional summary offence as to which the applicant was admonished and discharged.

The indictable and some or all of the summary offences were committed during the period from 16th October 2000 to 15th April 2002, most of them in or after November 2001. Stated broadly, all of the indictable offences involved motor vehicles except for two involving drugs. There were six counts of unlawful use of different motor vehicles and two counts of stealing vehicles or their parts. The vehicles were taken from places where the owners had left them outside their homes or places of work. Most of the vehicles were recovered shortly afterwards, some in a damaged condition. The most serious offences were, as the learned sentencing Judge observed, counts 8 and 10 which were charges of dangerous driving. In each of those instances in April 2002 when directed by police to stop or pull over, the applicant sped off, involving the police in chases in the course of which the applicant attained speeds of 130 km/h or 140 km/h in the 60 km/h zones and in traffic conditions which involved a considerable risk of death or serious injury to the driving public. Because of the danger presented to members of the public, the police were forced to give up the chase; but later succeeded in catching up with the applicant, in one case apparently pursuing him on foot with police dogs.

Count 10 arose out of such a case. On 15th April 2002 the complainant Mrs Sargeant was driving her vehicle out of a suburban supermarket at about 10 in the morning when the applicant collided with the rear of her vehicle. He was then driving the vehicle stolen from Broadbeach two days before, which is the subject of count 9. As a result of that collision, that vehicle (which was not insured) was a write-off causing a loss to the extent of $16,000 to the owner. Mrs Sargeant's car suffered damage to the extent of $9,600. What was much more serious is that she sustained personal injuries which caused her grievous bodily harm. In addition to incidental bruising of the right arm and left chest wall she suffered a fractured dislocation of the 5th and 6th cervical vertebrae, a fracture of the 5th thoracic vertebra and incomplete tetraplegia below C5, resulting in permanent weakness in her right hand. She underwent two surgical operations, one on the day of the incident and at the time of sentencing was due for a third.

She is now able to walk again but only with the aid of a stick or frame. She has experienced severe pain and is unable now to do many of the things that she did before, such as picking up her grandson, walking the dog, dancing, driving and shopping, cooking, cleaning, gardening and aerobics. For a 66-year-old woman these disabilities represent a serious loss of the amenities of life. She's unable to dress at a normal pace, tires very quickly and has lost her appetite. Her husband was compelled to give up his full-time employment in order to care for her. The impression I have formed from

reading her victim impact statement is that she does not exaggerate her disabilities but on the contrary is fairly stoical about them.

The applicant was 24 years old at the time of the offences in April 2002 and 25 when sentenced. He had a normal childhood as a member of a family which was not disadvantaged. He has a record of previous criminal offences including convictions for possession of drugs, receiving, many for unlawful use of motor vehicles and wilful damage.

He has breached his bail on at least two occasions in the past and was on bail on the charge in count 8 at the time of committing the offence in count 10 which took place within a fortnight of his release on bail on the earlier offence. He is also in breach of a suspended sentence which was imposed as a result of breach of an intensive drug rehabilitation order. He has a traffic record involving some 41 offences arising out of 26 separate incidents including 16 occasions of driving while disqualified as well as careless driving, speeding in built-up areas and stating a false name and address. He has an addiction to amphetamines and one of the drug charges against him on this occasion was a failure to properly dispose of a syringe filled with blood which he left in one of the cars he took. He was of course also absolutely disqualified from driving as part of the penalty imposed here.

Even taking account of his pleas of guilty, I do not consider that the effective head sentence of four years' imprisonment

was excessive. The dangerous driving was not the result of momentary inattention or anything of that kind. On two separate occasions he deliberately drove fast and dangerously in an effort to evade the police who because of the danger to the public were compelled to give up the chase on both occasions.

It was fortunate he did not kill someone. The table of sentencing comparatives shows that in such circumstances offences of this kind may be visited with sentences of the order of some three years or more. The decision in The Queen v. Wilde, ex parte Attorney-General CA 283 of 2002, 16th November 2002, suggests a marked upward trend in the penalties to be imposed in these cases. When the number of offences charged in the other counts in this indictment and the summary offences are added to the most serious offence in count 10 of dangerous driving causing grievous bodily harm to Mrs Sargeant and taken with the applicant's previous traffic history and criminal record, I do not consider that the sentence imposed by the Judge in this case can be considered manifestly excessive.

Before us, the applicant, who appeared in person, submitted that his real complaint was that the recommendation for parole of two years was not likely to be given effect by the prison authorities. That may be so and it to some extent accords with our impressions of the present policy of Corrective Services.

The recommendation is, however, no more than a recommendation and it does not bind the Corrective Services. We cannot in any way ensure that it does. What was said by the applicant in relation to it was that his sentence should perhaps have been formulated in a form which, instead of recommending parole, provided for the suspension of the sentence at some stage before the full four year term was served.

As to that, it is not clear to my mind that the learned sentencing Judge was really pressed with that option at the hearing; but if he was, it would have been a complete answer to it to say that the applicant in this case has been given a considerable number of chances in the past, and has in one way or another shown that he does not abide by the conditions that are imposed as a requirement of his being given those chances.

Indeed, as I have already mentioned, he was on bail at the time the last of these offences were committed, and that itself demonstrates his unwillingness to abide by the conditions of rehabilitative regimes that have been imposed on him or granted to him in the past.

In all the circumstances I can see no error in the Judge's sentencing remarks or discretion and I would accordingly dismiss the application for leave to appeal.

DAVIES JA: I agree.

MULLINS J: I agree.

McPHERSON JA: The order of the Court is that the application for leave to appeal against sentence is dismissed.
