

# SUPREME COURT OF QUEENSLAND

CITATION: *R v Hardes* [2003] QCA 47

PARTIES: **R**  
**v**  
**HARDES, Noel Edward Raymond**  
(applicant)

FILE NO/S: CA No 393 of 2002  
DC No 1980 of 2002

DIVISION: Court of Appeal

PROCEEDING: Sentence Application

ORIGINATING COURT: District Court at Brisbane

DELIVERED EX TEMPORE ON: 18 February 2003

DELIVERED AT: Brisbane

HEARING DATE: 18 February 2003

JUDGES: Davies and Williams JJA and Philippides 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 dismissed**

CATCHWORDS: CRIMINAL LAW – JURISDICTION, PRACTICE AND PROCEDURE – JUDGMENT AND PUNISHMENT – SENTENCE – FACTORS TO BE TAKEN INTO ACCOUNT – CHARACTER OF OFFENCE – DRIVING OFFENCES – where applicant convicted of dangerous operation of a motor vehicle causing death, failing to remain at the scene of an accident and showing callous disregard, and dangerous driving – where applicant sentenced to a total of four and a half years imprisonment – whether sentence imposed was manifestly excessive

COUNSEL: The applicant appeared on his own behalf  
R G Martin for the respondent

SOLICITORS: The applicant appeared on his own behalf  
Director of Public Prosecutions (Queensland) for the respondent

WILLIAMS JA: On 4 November 2002, the applicant pleaded guilty to one charge of dangerous operation of a motor vehicle causing death, one charge of failing to remain at the scene of

an accident and showing callous disregard, and one charge of disqualified driving.

He was sentenced to three years' imprisonment for dangerous operation of a motor vehicle causing death, one year imprisonment for failing to remain at the scene and showing callous disregard, and six months' imprisonment for the disqualified driving.

It was ordered that each of the sentences be served cumulatively, effectively meaning that he was to serve four and a half years in custody. There was a recommendation that he be eligible to apply for post-prison community based release after serving one-third of his sentence. He was also disqualified absolutely from holding a driver's licence.

The applicant seeks leave to appeal against the sentence on the ground that it is manifestly excessive and, in material provided to the Court today, the thrust of his submission was that the sentence should be suspended after serving a certain time rather than there being a recommendation for post-prison community based release. That submission was made in the light of the appellant's contention that because of his criminal history he would not be regarded as a suitable candidate for parole.

The offences in question occurred on 10 October 2001. On that day the applicant was driving a motor vehicle at about dusk at a speed which the learned sentencing Judge accepted was below

the speed limit of 60 kilometres per hour which existed on the road in question.

The applicant, as the learned sentencing Judge found, cut a corner in the road where from the applicant's point of view the road curved fairly sharply to the right. The Judge said that the angle was more like a one hundred degree angle.

The applicant's vehicle struck a cyclist who was riding his cycle more or less in the middle of his lane down an incline. Because he was going down an incline, the learned sentencing Judge considered that he may have developed a reasonable speed. The cyclist was on his correct side of the road, and the applicant was on his incorrect side of the road at the time of impact.

The learned sentencing Judge said that he found it difficult to describe the cutting of the corner as momentary inattention. He also said:

"Your departure from driving in the safe manner that is expected was towards the bottom end of what the Courts encounter in dangerous driving offences."

In my view, that is an accurate evaluation of the applicant's driving.

The learned sentencing Judge then said that given comparative sentences they did not support a sentence in excess of three years for the particular dangerous driving in question and that is why he imposed a penalty of three years' imprisonment.

The second offence, that of leaving the scene and showing callous disregard, involved the applicant driving away from the scene without stopping in circumstances where he must have known that he had struck the cyclist. He then concealed his vehicle under a tarpaulin in the garage at the place where he was living, which was not far from the accident scene. When police first interviewed him he attempted to dissociate himself from the offence by pointing to another man who allegedly had borrowed the vehicle and was using it at the material time.

The learned sentencing Judge said with respect to this offence:

"Sound sentencing approach to mark the community's insistence that leaving the scene of an accident where there is an injured person be punished severely."

Again, that is an accurate statement of the Court's approach to offences of this kind.

The learned sentencing Judge then considered whether to make the sentence an overall one, or to make it specific cumulative sentences and he decided to adopt the latter course. It cannot be said that there was any error in his doing so. He regarded this as one of the more serious illustrations of the group offences in question.

The third count, that of disqualified driving, arises from the fact that the applicant had been disqualified by order of a Magistrate only four weeks prior to the incident in question;

that must be regarded as an aggravating feature, particularly when one has regard to the applicant's traffic history.

He was convicted of driving under the influence of liquor with a reading of .117 in November 1997 and, of course, his licence was then taken from him.

APPLICANT: Excuse me. I was never ever sentenced on that. I was never ever convicted of driving under the influence of alcohol. That driving under the influence of alcohol-----

DAVIES JA: Just sit down.

WILLIAMS JA: On the 31st of December 1997 he was convicted of unlicensed driving and fined. Again on the 2nd of January 1998 he was convicted of unlicensed driving and fined. On the 29th of July 2001 he was convicted of unlicensed driving and fined and again on the 12th of August 2001 he was convicted of unlicensed driving and fined. So he does have a bad traffic history.

So far as his other criminal history is concerned the most significant offence was grievous bodily harm in 1991 for which he was sentenced to four and a-half years' imprisonment. His record also shows that he has been imprisoned for offences of unlawful use of a motor vehicle, escaping from custody and a variety of other offences.

The applicant was aged 42 at the time the offence in question was committed. As I have said this was not a matter of momentary inattention but it was not a case of a prolonged course of dangerous driving. The major offence is aggravated

by the fact that it involved unlicensed driving and the applicant did not remain at the scene. In my view a sentence of three years for the dangerous operation of a motor vehicle causing death in the particular circumstances here was at the very bottom of the range for such an offence. In my view the sentences of one year for the failing to remain at the scene and six months for the disqualified driving are not manifestly excessive.

In essence one has to look at the totality of the sentence namely four and a-half years' imprisonment for the offences in question. In my view looking at the overall criminality of what occurred on the occasion in question such a sentence cannot be said to be manifestly excessive. In my view the point raised by the applicant that this Court should suspend the sentence rather than make a recommendation for post-prison community based relief is not of such significance as to warrant this Court interfering. In all the circumstances I would refuse the application.

DAVIES JA: I agree that for the reasons given by Justice Williams the totality of the sentences imposed was not manifestly excessive and that the application should be dismissed.

PHILIPPIDES J: I also agree.

DAVIES JA: The application is dismissed.

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