SUPREME COURT OF QUEENSLAND

CITATION:	*R v Wickett* [2003] QCA 57
PARTIES:	**R** **v** **WICKETT, Joshua Stephen** (applicant)
FILE NO/S:	CA 359 of 2002 DC 2081 of 2002
DIVISION:	Court of Appeal
PROCEEDING:	Sentence application
ORIGINATING COURT:	District Court at Brisbane
DELIVERED EX TEMPORE ON:	20 February 2003
DELIVERED AT:	Brisbane
HEARING DATE:	20 February 2003
JUDGES:	McMurdo P, Mackenzie and Philippides JJ Separate reasons for judgment of each member of the Court, each concurring as to the order made
ORDER:	**Application refused**
CATCHWORDS:	CRIMINAL LAW – APPEAL AND NEW TRIAL – APPEAL AGAINST SENTENCE – APPEAL BY CONVICTED PERSONS – where applicant convicted of dangerous operation of a motor vehicle causing grievous bodily harm – where applicant sentenced to two and a half years imprisonment, suspended after 12 months, with an operational period of 4 years – whether sentence manifestly excessive *R v McGuire; ex parte A-G* [2002] QCA 439; CA No 197 of 2002, 18 October 2002, applied
COUNSEL:	BW Farr for the applicant R G Martin for the respondent
SOLICITORS:	Barbi & Associates for the applicant Director of Public Prosecutions (Qld) for the respondent

THE PRESIDENT: The applicant pleaded guilty on the 25th of October 2002 in the District Court at Brisbane, by way of ex officio indictment, to one count of dangerous operation of a

motor vehicle, causing grievous bodily harm, whilst adversely affected by alcohol.

He was sentenced to two and a half years' imprisonment, suspended after 12 months, with an operational period of four years and his driver's licence was absolutely disqualified. He contends the sentence is manifestly excessive.

The facts of the offence were as follows; at 4.19 p.m. on 26 September 2000, the applicant was driving a car in the underground car park at Southbank Parklands. His front seat passenger, who was a friend, and two other mates, had been drinking at the Plough Inn.

The car park was three quarters full and pedestrians were moving about in it. The applicant reversed his car out of a parking bay and headed in the wrong direction to leave the car park. He was taking corners too quickly. He drove past witnesses on a ramp at excessive speed and his tyres squealed as he took corners. He stopped the car quickly and then revved the engine in three or four short sharp bursts, before taking off extremely quickly, with a squealing of tyres. This caused the car to fish tail. When the applicant attempted to counter steer, the car crashed into a concrete pylon. The applicant's head struck the windscreen.

His passenger, the complainant in this offence, sustained numerous injuries, including a fracture of the lower pole of the left patella, with disruption of the extensor mechanism of

the left knee, abrasions to the left forearm and abrasions to the iliac crest. Without treatment, he would have been left with a permanent injury to his left knee. It seems he has now recovered.

The applicant moved his car to a parking bay and he and the complainant walked to the TAFE College, where some friends took them to the Mater Hospital. At 5.30 p.m. a specimen of blood was collected from him and he was found to have a blood alcohol reading of point 15.

The applicant was driving on a New South Wales provisional licence and had been disqualified from holding a Queensland licence. It seems that police lost contact with him for a time, not through any deliberate evasion on his part, but located him again on 11 July 2001, in respect of another matter and then charged him with this offence.

The applicant had a significant criminal history. In Queensland, he was convicted of stealing in 2001 and placed on probation. He subsequently breached that probation and was fined. He also had a relevant traffic history in Queensland, some of which occurred after this offence. That history included convictions for disqualified driving in March 2001, careless driving, driving without due care and attention in 2000 and driving under the influence of liquor, with a blood alcohol reading of point 045, whilst on a provisional licence.

In addition, he had a series of relatively petty convictions for offences of dishonesty, drugs and malicious damage in New South Wales, mainly in various Children's Courts. He also had a New South Wales traffic history, which included a prior entry for driving with a middle range concentration of alcohol in 1998.

He was 21 at the time of the offence.

The applicant's counsel at sentence, tendered a report from consulting psychiatrist, acting professor Caroline Quadrio, who has been treating the applicant since 1997 for his problems relating to sexual and drug abuse, for which his mother and her de facto, who introduced him to drug taking were responsible. Dr Quadrio formed the view in 1997 that he was then suffering from chronic post traumatic stress disorder, resulting from the sexual abuse by his mother. On the day of the offence, he had had a fight with his long term girlfriend, which distressed him greatly and was the reason for his heavy drinking. In the accident, he suffered a severe whiplash injury, but avoided the use of opiates in treatment because of his previous heroin addiction. His girlfriend subsequently died of a heroin overdose after this offence. He has recently worked in the trucking industry, until he tore a ligament. He was at sentence in receipt of a disability pension. He was especially fearful of receiving a custodial sentence because of his concern of being sexually assaulted in prison. He has formed a new relationship with a young woman

from a stable background and has built a decent life for himself with the support of his father in Sydney.

A reference was also tendered from an employer, which indicated he had current employment available to him and was well thought of by his employer. His father has attended this hearing today and has handed up a statement confirming the sad background of his son and emphasising his present support for his son.

The learned primary Judge rightly noted the concerning fact that this dangerous driving occurred whilst the applicant was under the influence of alcohol, in the confined space of a busy underground car park. There was a real potential for serious injury to others in the applicant's conduct.

The applicant relies on the case of R v. McGuire; ex parte Attorney-General [2002] QCA 439; CA No 197 of 2002, 18 October 2002, to establish that the sentence imposed was manifestly excessive. McGuire pleaded guilty to a similar offence, though the facts were of course different. At first instance, he was given two years' imprisonment, fully suspended, with an operational period of four years and fined $7,000 with two years to pay and disqualified from holding or obtaining a driver's licence for four years. He had a blood alcohol level of .16 per cent. Unlike this applicant, he had no criminal history, but he did have a significant traffic history, including, like this applicant, previous convictions for drink driving. McGuire had a good work history and was also

involved in community work. He too had grown up in a dysfunctional environment and had very good prospects of rehabilitation. He pleaded guilty at an early stage by way of ex officio indictment and expressed remorse. The Court found the sentence imposed was manifestly inadequate and instead imposed a sentence of two years' imprisonment, suspended after serving six months. In doing so, the Court specifically referred to the moderating effect of an Attorney-General's appeal, in imposing that sentence.

McGuire and the other cases referred to in it, in my view, clearly demonstrate that the sentence imposed here was not manifestly excessive, and was within a sound exercise of the sentencing discretion. Very often young first offenders are sentenced to short periods of imprisonment for offences like this, because of the importance of deterrence when sentencing for offences of dangerous driving causing injury whilst under the influence of alcohol. I would refuse the application for leave to appeal against sentence.

MACKENZIE J: I agree.

PHILIPPIDES J: I also agree.

THE PRESIDENT: That is the order of the Court.
