

SUPREME COURT OF QUEENSLAND

CITATION: *R v Simpson* [2003] QCA 100

PARTIES: **R**
v
SIMPSON, Paul Michael
(applicant)

FILE NO/S: CA No 344 of 2002
DC No 2259 of 2002

DIVISION: Court of Appeal

PROCEEDING: Sentence Application

ORIGINATING COURT: District Court at Brisbane

DELIVERED ON: 14 March 2003

DELIVERED AT: Brisbane

HEARING DATE: 6 March 2003

JUDGES: McMurdo P, Williams JA and Philippides J
Separate reasons for judgment of each member of the Court;
each concurring as to the orders made

ORDERS: **1. Grant the application for leave to appeal against sentence**
2. Allow the appeal to the extent of substituting for the sentence imposed at first instance a sentence of four years imprisonment suspended after 18 months

CATCHWORDS: CRIMINAL LAW – APPEAL AGAINST SENTENCE – APPEAL BY CONVICTED PERSONS – where applicant pleaded guilty to one count of dangerous operation of a vehicle causing grievous bodily harm whilst adversely affected by liquor – where applicant sentenced to five years imprisonment with a recommendation that he be eligible for post prison community based release after 22 months – where applicant disqualified from holding or obtaining a driver’s licence for five years – where applicant did not have prior convictions for driving a motor vehicle whilst under the influence of liquor or a drug – where applicant assisted victim in rehabilitation - whether sentence was manifestly excessive in all the circumstances

R v Breckenridge [2001] QCA 448; CA No 194 of 2001, 16 October 2001, distinguished
R v Haydon [1996] QCA 503; CA No 396 of 1996, 13 November 1996, distinguished
R v King; ex parte Attorney-General (Qld) [1996] QCA 78; CA No 516 of 1995, 20 March 1996, considered

COUNSEL: The applicant appeared on his own behalf
M J Copley for the respondent

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

- [1] **McMURDO P:** The applicant pleaded guilty on 25 September 2002 to one count of dangerous operation of a vehicle causing grievous bodily harm whilst adversely affected by liquor. He was sentenced to five years imprisonment with a recommendation that he be eligible for post prison community based release after 22 months and was disqualified from holding or obtaining a driver's licence for five years. He was also dealt with for breach of a suspended sentence imposed in the District Court on 26 July 1999 and was ordered to serve the three months suspended sentence concurrently. He contends the sentence was manifestly excessive in all the circumstances. The maximum penalty was 14 years imprisonment.
- [2] The applicant was 25 at the time he committed the offence and 26 at sentence. He has a significant criminal history with a steady stream of appearances for relatively minor offences. He was dealt with for drug offences and offences relating to railways and wilful destruction in 1994 and 1995. Of more concern, he was placed on probation for three years in 1995 for assault with intent to steal in company. He was fined for breaching that probation later that year and during 1996 was dealt with for further breaches of community based orders. In 1997 he was fined for stealing and later that year dealt with for breach of both probation and community service and sentenced to six months imprisonment to be served by way of an intensive correction order. In 1999, he was again convicted of stealing and sentenced for breach of the intensive correction order to three months imprisonment wholly suspended for one and a half years. In February 2001, that suspended sentence was extended for a further six months; he was subject to that suspended sentence when he committed this offence. Despite his unsatisfactory criminal history, he had no relevant traffic history.
- [3] On 29 June 2001, he was drinking with his partner Alison Everett and friends at the Pine Rivers Bowls Club from 7.30 pm until midnight when he offered to give them a lift to the Lawnton Tavern. He drove Ms Everett's station wagon away from the club with six passengers, some of whom were also intoxicated. His partner was in the rear luggage section of the station wagon; four passengers were squeezed into the back seat and were not wearing seat belts. The applicant had difficulty driving the vehicle out of the carpark and it was "kangarooing" as he drove it through the gate. He drove slowly to a nearby house where some occupants got out briefly and then returned. He had trouble re-starting the car and his passengers teased him. When he finally managed to re-start the vehicle, he turned left into Sparks Road, Bray Park, and drove towards a roundabout. He sped up to about 80 kph and failed to brake or to negotiate the roundabout, driving straight through it with the right hand side of the car on the raised roundabout. His passengers were jolted and all told him to slow down and stop; his partner told him she had hurt her stomach and he should slow down. He ignored these requests and continued to drive at 80 kph into Ellis Street. A front seat passenger again told him to slow down and punched him in the face. The applicant's response was to take his hands off the steering wheel and punch the passenger. The car veered onto the wrong side of Ellis Street and onto a gutter, narrowly missing a pedestrian. The applicant then attempted to

correct the car by steering to the left but the back right wheel hit a light pole. When the car came to a stop it was extensively damaged and three passengers were injured. The applicant yelled "Everyone get out of the car and run." Three passengers heeded his advice but the others waited for assistance.

- [4] Ms Everett, who was 20 years old, was very seriously injured. She suffered multiple fractured ribs with flail chest and right pulmonary contusions; bilateral haemo pneumothoraces; right sided hemiparesis, secondary to traumatic dissection of left internal carotid artery resulting in thrombosis in the territory of the brain supplied by that vessel; upper gastro intestinal bleeding secondary to those injuries and the anti-coagulation required for treatment of the carotid artery injury; and a fracture of the right transverse process at approximately the 8th thoracic vertebral level. Initially, she was in intensive care with intubation for her chest injuries and subsequent upper gastro-intestinal endoscopies to assist in management of her bleeding upper bowel. She was discharged from the brain injuries rehabilitation unit two months later, but required day hospital rehabilitation for her extensive injuries. She was then still exhibiting weakness of the right limbs, (right hemiplegia), as well as ongoing cognitive difficulties including with her memory.
- [5] Another passenger, Courtney Bird, suffered fractures to her pelvis and left clavicle. She was hospitalised for two or three days and was confined to bed for six weeks and had difficulty walking. She took pain killers for a further four weeks and at sentence was still experiencing pain when she stood for prolonged periods at work.
- [6] A third passenger, Nathan Denny, suffered soft tissue injuries to his right hand and a possible fracture of one of the metacarpals. He was off work for two weeks and continued to have ongoing pain and weakness in his right hand for a period.
- [7] The applicant was found to have a blood alcohol concentration of .263 two hours after the accident.
- [8] The applicant's partner remains supportive despite the dreadful injuries she received at his hand. There are two children aged 4 and 3 from an earlier relationship of Ms Everett in their family unit. The applicant was Ms Everett's fulltime carer when she was released from hospital and he has assisted her throughout her rehabilitation. In caring for his partner and assisting in her rehabilitation, he has had to face directly the grim consequences of his offending. Ms Everett states that she has now fully recovered from her injuries although there is no medical evidence to support that assertion. She and her children find the applicant's incarceration difficult.
- [9] The applicant was in employment at the time of sentence and financially supporting his partner and her children. He comes from a stable family background although as a youth he went through an unsettled period during which he offended, as set out above. He entered an early plea of guilty and expressed remorse.
- [10] Defence counsel at sentence relied heavily on the matter of *R v King; ex parte Attorney-General*.¹ King was sentenced to 12 months imprisonment to be served by way of an intensive correction order and was disqualified from holding a driver's licence for five years for driving a motor vehicle dangerously causing grievous bodily harm with a blood alcohol concentration equal to or exceeding 150 mgs/100 ml of blood. She was 30 at sentence and 28 at the time of the offence. She drove a

¹ [1996] QCA 78; CA No 516 of 1995, 20 March 1996.

car in the early hours of 24 December 1994 with a blood alcohol level of .28 per cent; the car collided with a tree. Her passenger was seriously injured and would have died without medical intervention. He suffered multiple fractures of the ribs, scapula and pelvis; a large pneumothorax and a haemo thorax; the right upper and left lobes of the lung collapsed; he had a haematoma in the right kidney and much abrasion and bruising. The court noted that, as here, the maximum term of imprisonment was 14 years. King was an unlicensed driver; she drove the vehicle after a third person in the vehicle, Newly, had been apprehended by the police for drink driving. She had no significant criminal or traffic history other than a conviction for unlicensed driving. She pleaded guilty after the commencement of the trial. The court observed that in such circumstances a substantial custodial sentence should ordinarily be imposed. King's personal circumstances included an unfortunate deprived background and she was the mother of four children by different fathers and had custody of the two boys aged eight and nine; she was having difficulty coping and placed the children in the custody of another couple shortly before this offence occurred; in September 1995, she regained custody of the boys but her sister was able to look after them if she was imprisoned. Giving full weight to the mitigating circumstances, the court allowed the Attorney-General's appeal to the extent of substituting a sentence of three years imprisonment with a recommendation for parole after 12 months.

- [11] The applicant, who represents himself, has referred us to information about a number of single judge decisions which he has gleaned from newspaper reports or from other prisoners. These are of no assistance.
- [12] In supporting the sentence imposed, the prosecution relies on the matters of *R v Breckenridge*² and *R v Haydon*.³ In *Haydon* a sentence of five years imprisonment with no recommendation for early parole was found not to be excessive. Haydon had a blood alcohol level of .213 and a history of driving offences, including numerous convictions for drink driving from 1979-1989 with blood alcohol levels ranging from .139 to .2. He undertook a protracted course of dangerous driving at speed with many near misses with other vehicles before colliding with the complainants' vehicle. Both complainants suffered permanent orthopaedic injuries. In *Breckenridge* a five year sentence suspended after two years and two months was also found not to be manifestly excessive. Breckenridge was 42 years old and had six prior convictions for driving a motor vehicle under the influence of alcohol. His blood alcohol level was .235. He hit the complainant's vehicle on the wrong side of the road and at excessive speed. Breckenridge suffered from bi-polar disorder and claimed to be in a manic phase at the time of the offence. The complainant suffered a shortened leg and complete loss of ankle movement.
- [13] There is no doubt that the applicant's conduct was serious and that it had serious consequences, not only for the applicant's partner, but also for two other passengers who were injured. It is fortunate that such reckless driving whilst grossly intoxicated did not cause even more injury. The learned primary judge was right in noting that a deterrent sentence was warranted in this case. There is, however, an important distinction between this case and *Breckenridge* and *Haydon*, namely, this applicant did not have prior convictions for driving a motor vehicle whilst under the influence of liquor or a drug. This fact, his early plea of guilty and his genuine

² [2001] QCA 448; CA No 194 of 2001, 16 October 2001.

³ [1996] QCA 503; CA No 396 of 1996, 13 November 1996.

remorse in circumstances where he has assisted the complainant in her rehabilitation and his imprisonment continues to cause her some distress and hardship make the sentence imposed manifestly excessive. Nevertheless, the very serious aspects of the offence which I have already noted, demand both a substantial head sentence and actual period of imprisonment. I would grant the application for leave to appeal against sentence and allow the appeal to the extent of substituting for the sentence imposed at first instance, a sentence of four years imprisonment suspended after 18 months.

- [14] **WILLIAMS JA:** I have had the advantage of reading the reasons for judgment of the President. I agree with those reasons and with the orders therein proposed.
- [15] **PHILIPIDES J:** I agree with the reasons of McMurdo P and with the orders proposed.