SUPREME COURT OF QUEENSLAND

CITATION:	*R v Juric* [2003] QCA 132
PARTIES:	**R** **v** **JURIC, Joseph Mark** (applicant)
FILE NO/S:	CA No 431 of 2002 DC No 478 of 2002
DIVISION:	Court of Appeal
PROCEEDING:	Sentence Application
ORIGINATING COURT:	District Court at Maroochydore
DELIVERED ON:	25 March 2003
DELIVERED AT:	Brisbane
HEARING DATE:	19 March 2003
JUDGES:	de Jersey CJ, Williams JA and Atkinson J Separate reasons for judgment of each member of the Court, each concurring as to the orders made
ORDERS:	**1. Application for leave to appeal should be granted** **2. Appeal allowed** **3. Sentences imposed at first instance varied only to the extent of setting aside the sentences of two and a half years imprisonment on each of counts two and three and in lieu thereof substituting 18 months imprisonment**
CATCHWORDS:	CRIMINAL LAW – JURISDICTION, PRACTICE AND PROCEDURE – JUDGMENT AND PUNISHMENT – SENTENCE – FACTORS TO BE TAKEN INTO ACCOUNT – TOTALITY – where applicant convicted of three charges of serious assault – where assaults included spitting in faces of police officers – where offences committed in breach of suspended sentence – where suspended sentence activated and sentences of two and a half years for the assaults imposed cumulatively – whether sentences for assaults manifestly excessive – whether the accumulation of sentences offended totality principle *R v Reuben* [2001] QCA 322; CA No 99 of 2001, 7 August 2001, considered
COUNSEL:	A J Moynihan for the applicant B G Campbell for the respondent

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

[1] **de JERSEY CJ:** I have had the advantage of reading the reasons for judgment of Williams JA. I agree with the orders proposed by his Honour, for the reasons he expresses.

[2] **WILLIAMS JA:** On 12 December 2002 the applicant was convicted in the District Court on three charges of serious assault (assaulting police) committed on 1 January 2002. Those convictions constituted a breach of a suspended sentence originally imposed on 25 February 2000. The learned sentencing judge ordered that the 10 month suspended sentence be activated, and made the sentences imposed for the offences committed on 1 January 2002 cumulative thereon. Those sentences were 18 months imprisonment for the first count of assault (striking a police officer in the face) and two and a half years imprisonment on each of the second and third counts (spitting blood and saliva into the faces of two police officers).

[3] The applicant now seeks leave to appeal against the totality of those sentences. Mr Moynihan of counsel who appeared for the applicant quite properly conceded that it was a proper exercise of sentencing discretion to activate the whole of the unexpired portion of the suspended sentence and also to make the term of imprisonment for the serious assaults cumulative on that suspended sentence. His submission that this court should interfere with the sentences imposed was based on two propositions:

(i) the two and a half year sentences of imprisonment were outside the established range for offences of the type in question;

(ii) the accumulation of the sentences offended the totality principle enunciated in *Mill v R* (1988) 166 CLR 59 at 63.

[4] The assaults occurred on New Year's Eve at the Caloundra RSL Club. The applicant, who was intoxicated, was involved in an incident with a security officer and two police officers thereafter attended at the scene. The applicant was restrained and walked towards a police car. He managed to get an arm free and struck one of the officers in the face; that was count one. Then he spat blood and saliva into the face of that officer, and also into the face of the other officer restraining him; that conduct constituted counts two and three.

[5] Other relevant circumstances were that the conviction was after a trial during which the applicant demonstrated no remorse, and he had a very extensive criminal history.

[6] The applicant's criminal history covered offences in Victoria from 1984 to 1990, which included some assaults on police. The Queensland criminal history contains a number of relevant convictions beginning in November 1991. The following is a summary of the relevant Queensland convictions:

18 November 1991	Two charges of resisting police and assault. These offences involved the applicant struggling against police who were attempting to apprehend him. Sentenced to one month's

	imprisonment and 12 months probation.
7 April 1992	Amongst other offences, two counts of assault for which he was convicted and fined $180.00.
17 July 1996	Possession of a weapon whilst not being holder of a licence. Fined, on that and other charges, $440.00.
22 July 1996	Two counts of wilful destruction of police property and three charges of serious assault on a police officer. Sentenced to two months imprisonment suspended for a period of two years.
25 October 1996	Behave in a disorderly manner and obstruct police. At first instance he was sentenced to 60 days imprisonment but on appeal to the District Court an intensive correction order with community service was substituted.
22 September 1998	Two counts of assault. This was a home invasion type offence; the applicant was armed and assaulted persons in their own house. He was sentenced to imprisonment for nine months which was wholly suspended for two years. That suspended sentence was subsequently activated and he served nine months imprisonment.
31 March 1999	There were a range of offences including two of assaulting police, one assault occasioning bodily harm and two counts of wilful damage of police property. The applicant violently struggled with police who had required him to supply a specimen of breath; after being placed in the police vehicle he kicked one of the officers in the face. On another charge, the applicant argued with his girlfriend and rammed her head into a car door. He then violently struggled with police attempting to apprehend

	him. He was sentenced to 12 months imprisonment.
25 February 2000	These charges involved an assault on his father and stepmother in their home. He was convicted of one count of assault and one count of assault occasioning bodily harm. The sentence imposed was imprisonment for 12 months suspended after serving two months with an operational period of two years.
9 March 2001	Two charges of obstructing police for which he was convicted and fined $2500.00.

On 14 June 2001, because of a breach of the suspended sentence imposed on 25 February 2000, the operational period with respect to that sentence was extended by a further 12 months. That in turn was breached by the commission of the assaults now under consideration and it is that sentence which was activated by order of the sentencing judge here.

[7] It can therefore be seen that the applicant has an extensive history of violence, particularly directed at police officers. Given that history, and the fact that he was not entitled to any discounting because of, for example, an early plea of guilty, his counsel recognised that the sentence imposed should be towards the top of the applicable range.

[8] The charges were laid pursuant to s 340(b) of the Criminal Code and the maximum penalty applicable thereto is imprisonment for seven years. It should be noted that by the amending legislation of 1997 the maximum penalty in relation to such offences was increased from three years to seven years.

[9] Mr Moynihan relied on a number of decisions of this court dealing with similar types of assaults against police officers. One difficulty is that quite often offences of the type in question are associated with other, frequently more serious, offences and the penalties imposed with respect to the offences in question are affected by other sentences imposed at the same time. But it can be said that, making due allowance for such factors, prior to the 1997 amendment the general trend appeared to be to impose sentences of less than 12 months, often requiring the offender to actually serve about three to four months, for offences involving spitting on police officers. The only comparable sentence either counsel could refer to since 1997 was *R v Reuben* [2001] QCA 322. In that case the applicant had pleaded guilty to one count of serious assault, biting a police officer in the execution of his duty, and other summary offences. He was sentenced to eight months imprisonment, suspended after three months, with an operational period of two years in respect of the serious assault. He had a short criminal history but it did involve a conviction for assault occasioning bodily harm for which he was fined and ordered to pay compensation. He had also been found guilty of another charge of unlawful assault

but no conviction was recorded. The subject offence occurred on Palm Island after the offender had been involved in a domestic incident. The bite was to the police officer's knee; it left a mark but did not break the skin. In the course of his reasons Davies JA, with whom the other members of the court agreed, said:

> "The episode involved was a serious one in the sense that there was an element of biting and, as was pointed out during the course of argument, that is a serious offence in the sense that there is a risk of disease if the biting breaks the skin, and it was more by good luck than anything else that that did not occur in this case.
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> There are some analogies between a biting offence and a spitting offence involving a police officer but there are, of course, differences, one of which is that spitting can often be a premeditated or calculated offence whereas biting, certainly in this situation was not premeditated. Spitting has a degrading aspect to it and it also has the aspect of contempt shown for the authority of the police, at least in some cases."

[10] As the Court of Appeal found there was an error of law in the sentencing process, it proceeded to re-sentence the offender. The court considered that a term of actual custody was called for, but, as the offender had already served 15 days in custody pursuant to the original sentence, the sentence imposed by the Court of Appeal was three months imprisonment wholly suspended with an operational period of 18 months.

[11] The sentence imposed by this court in *Reuben* could well be regarded as towards the lower end of the appropriate range. Given the aggravating circumstance of the extensive history of violence particularly directed at police, and the absence of any discounting factors, there is no authority truly comparable with the situation now under consideration. Importantly there is no decision of this court supporting a sentence of two and a half years imprisonment for the offences in question. Counsel for the prosecution before the learned sentencing judge submitted that the appropriate penalty was 18 months imprisonment and Mr Moynihan did not strongly argue against a sentence at that level.

[12] In my view, particularly when regard is had to the totality of the applicant's sentence, including the cumulative 10 month period of the activated suspended sentence, a sentence in excess of 18 months for the assault offences is manifestly excessive.

[13] In the circumstances the application for leave to appeal should be granted, the appeal allowed, and the sentences imposed at first instance be varied only to the extent of setting aside the sentences of two and a half years imprisonment on each of counts two and three and in lieu thereof substituting 18 months imprisonment.

[14] **ATKINSON J:** I agree with the reasons for judgment of Williams JA and with the orders he proposes.