SUPREME COURT OF QUEENSLAND

CITATION:	*R v Rangeley* [2003] QCA 116
PARTIES:	**R** **v** **RANGELEY, Steven Keith** (applicant)
FILE NO/S:	CA No 22 of 2003 DC No 489 of 2002
DIVISION:	Court of Appeal
PROCEEDING:	Sentence Application
ORIGINATING COURT:	District Court at Maryborough
DELIVERED EX TEMPORE ON:	18 March 2003
DELIVERED AT:	Brisbane
HEARING DATE:	18 March 2003
JUDGES:	McPherson JA, Davies JA and White J Separate reasons for judgment of each member of the Court, each concurring as to the order made
ORDER:	**Application dismissed**
CATCHWORDS:	CRIMINAL LAW – JURISDICTION, PRACTICE AND PROCEDURE – JUDGMENT AND PUNISHMENT – SENTENCE – CIRCUMSTANCES OF OFFENCE CRIMINAL LAW – PARTICULAR OFFENCES – OFFENCES AGAINST THE PERSON – OTHER OFFENCES AGAINST THE PERSON – ACTS INTENDED TO CAUSE OR CAUSING DANGER TO LIFE OR BODILY HARM - SENTENCING– applicant sentenced to two-and-a-half years imprisonment suspended after nine months with an operational period of three years for one count of grievous bodily harm – whether sentence manifestly excessive *R v Camm* [1999] QCA 101; CA No 431 of 1998, 1 April 1999 *R v Francisco* [1999] QCA 212; CA No 59 of 1999, 8 June 1999
COUNSEL:	D Murray for the applicant S G Bain for the respondent
SOLICITORS:	Ryan & Bosscher for the applicant Director of Public Prosecutions (Qld) for the respondent

WHITE J: The applicant for leave to appeal against sentence was convicted on his own plea of guilty to one count of grievous bodily harm which occurred at Hervey Bay on the 28th of September 2001.

He was sentenced in the District Court on 29 January 2003 to two and a half years imprisonment suspended after nine months with an operational period of three years. The applicant contends that the sentence was manifestly excessive having regard to the circumstances of the offence including the spontaneous nature of a single blow, the violence offered to the applicant prior thereto and his own injuries, and in light of two particular authorities which were placed before the learned sentencing Judge; Camm, CA 431 of 1998 and Francisco, CA 59 of 1999.

The complainant was the owner and manager of a country club in Hervey Bay where the offence occurred. Earlier in the evening the applicant had caused a disturbance by going into the ladies toilet area to continue an argument with his wife. There was evidence that the applicant was intoxicated at the bar and the complainant was heard to refuse to serve him further alcohol and invited him to take the courtesy bus home.

The applicant, apparently having left the building, decided to return and on a second occasion caused a disturbance in the ladies toilet. Mr Harding, the complainant, was seen to be bringing him out of that area. Dr Hanelt, a local medical

officer, was a witness to the proceedings. He went to assist Mr Harding and took hold of the applicant and got him to the ground. When told to settle down the applicant agreed and Dr Hanelt let him get up.

The applicant immediately punched the complainant with his closed right fist on the complainant's left cheek and appeared to knock him out straight away. The complainant fell backwards and hit the back of his head on the tiled floor.

The learned sentencing Judge sentenced the applicant on a version given by his counsel that the applicant had been "crash tackled" to the floor by Dr Hanelt and in so doing opened his head in two places which subsequently required 15 staples. A pre-existing degenerative condition in his spine was aggravated.

The complainant's injuries and their sequelae were quite serious. Dr Michael Weidman, a neurosurgeon, concluded in his report.

> "Mr Harding suffered a head injury as a result of the incident on the 28th of September 2001. He fell on the back of his head suffering an occipital skull fracture. There was also a fractured nose as a result of the blow to his face. He also suffered contre coup injuries to his frontal lobes and left temporal lobe. It is also likely that he has suffered damage to his olfactory tracts. The pattern of injuries is commonly seen together.
>
> I believe that his loss of the sense of smell is due to the injury. It is total and permanent. His problems with short term memory would be consistent with having suffered an injury of this nature. His general irritability and difficulty handling stressful situations

> would also be considered consistent with having suffered this injury. He may have a very slightly increased risk of suffering from post traumatic epilepsy in the future although has not done so to date. His capacity to make important business decisions may be affected. In the event that he has to find alternative employment I believe he would have some difficulties although not necessarily be unemployable."

The applicant has a criminal history including three offences for violence, the most relevant and recent being a conviction on 16 June 1997 in the Hervey Bay Magistrates Court for assault occasioning bodily harm in circumstances not dissimilar from the present arising out of an altercation in a bar. He was convicted and fined $500.

The applicant has property offences and numerous offences for drugs. He is aged 43 and has responsibility for a number of children. References were tendered below attesting to his involvement in community matters. He was unemployed but did some irregular work.

Mr Murray for the applicant particularly refers to the cases of Camm and Francisco as indicating an appropriate range which he contends the sentencing Judge ought to have applied. In Camm the applicant was aged 47, married with four children and had no previous criminal history. The complainant woke the appellant and remonstrated with him for the state in which the cottage in which he was living on the appellant's land had been left, it being implied that in some way the appellant was responsible for its dirty state. There was an altercation during which the appellant threw the complainant out of the door so that he landed on a concrete driveway below. The

complainant suffered a fractured left hip which was treated with a pin and plate. Complications arose from the operation which caused him to be placed in intensive care.

The applicant was sentenced to three years imprisonment to be suspended after nine months after a trial. After a review of the authorities the Court of Appeal concluded that the sentence imposed on the appellant for what was described as "heedless aggression" was outside the permissible range and substituted a sentence of two years imprisonment suspended immediately with an operational period of three years. The applicant had spent four and a half months in prison.

In Francisco the applicant was sentenced after trial to two years imprisonment. He was a security officer employed at a hotel who had earlier that evening evicted the complainant from the premises. As the complainant was apparently attempting to re-enter the applicant turned and struck him in the face. He was knocked backwards down the two steps that led up to the entrance of the hotel. The back of his head struck the pavement resulting in extradural hematoma.

At the time of the offence that applicant was a 29 year-old man of good character with no previous convictions. He had worked as a security officer for a number of years and had not previously revealed any tendency towards gratuitous violence. The complainant had been left with some loss of balance although the Court noted that the particulars of residuary

effects of the assault were not available. The Court referred to Camm.

It noted that the circumstances relevant to fixing a sentence in a grievous bodily harm case vary enormously. The Court concluded that the unlawful conduct fell towards the lower end of seriousness and the applicant's antecedents were favourable. The Court substituted a sentence of two years imprisonment with an operational period of three years and ordered the sentence to be suspended upon delivery of judgment, which meant that the applicant had spent 113 days of the sentence in custody.

The learned sentencing Judge below acted on the facts as outlined by counsel for the applicant. He took note of the applicant's injuries and the effect of the complainant's injuries on his life. His Honour referred to comparable cases and an increasing community concern regarding incidents of violence offences in the community.

He approached the sentencing exercise by deciding that a head sentence of 36 months would be appropriate. He then took into account the plea of guilty by reducing that sentence to 30 months. He made allowance for the applicant's personal particulars, including his remorse, that he suffered injuries himself and his responsibility to his partner and their children.

Mr Murray submits that it was an illusory benefit because the starting point of three years was too high, suggesting instead

that an appropriate sentence relying on Francisco and Camm was one of two years to be suspended after four months with an operational period of three years.

His Honour recognised the violence with which the applicant struck the complainant and the permanent and serious consequences for him as to which - see R v. Amituanai 1995 78 Australian Criminal Reports 588.

The applicant is a man with previous convictions for violence unlike both applicants in Camm and Francisco. This offence occurred whilst the applicant was on a two year probation order with respect to the possession of drugs and Weapons Act offences. In those circumstances the starting point in my view was not in error. Whilst his Honour might have given a greater allowance for the plea of guilty by a few months, not to have done so did not in my view mean that the sentence imposed below lay outside the acceptable range. I would refuse the application.

McPHERSON JA: I agree.

DAVIES JA: I agree.

McPHERSON JA: The order is that the application for leave to appeal is refused.
