SUPREME COURT OF QUEENSLAND

CITATION:	*R v Jones & Bradshaw* [2003] QCA 230
PARTIES:	**R** v **JONES, Gregory Scott** **BRADSHAW, Russell Maitland** (applicants/appellants)
FILE NO/S:	CA No 50 of 2003 CA No 51 of 2003 DC No 470 of 2002
DIVISION:	Court of Appeal - Cairns Circuit
PROCEEDING:	Sentence Application
ORIGINATING COURT:	District Court at Townsville
DELIVERED EX TEMPORE ON:	27 May 2003
DELIVERED AT:	Cairns
HEARING DATE:	27 May 2003
JUDGES:	Davies JA and Cullinane and Jones JJ Separate reasons for judgment of each member of the Court, each concurring as to the orders made
ORDER:	**In each case:** **1. Application for leave to appeal against sentence granted** **2. Appeal against sentence allowed only to the extent of altering the sentence imposed by suspending the sentence immediately**
CATCHWORDS:	CRIMINAL LAW - JURISDICTION, PRACTICE AND PROCEDURE - JUDGMENT AND PUNISHMENT - SENTENCE - FACTORS TO BE TAKEN INTO ACCOUNT - where applicants pleaded guilty to assault occasioning bodily harm - where applicants sentenced to eight months imprisonment suspended after two months for operational period of 18 months - where offence involved gratuitous violence - where applicants had no relevant criminal history - where applicants expressed remorse - whether sentence imposed was outside the range of a sound sentencing discretion *R v Neivandt* [2000] QCA 224; CA No 414 of 1999, 9 June 2000, considered *R v Sheret* [2002] QCA 162; CA No 308 of 2001, 10 May 2002, considered
COUNSEL:	J D Henry (Cairns) for applicants/appellants

D R MacKenzie (Cairns) for respondent

SOLICITORS: Legal Aid Queensland for applicants/appellants
Director of Public Prosecutions (Queensland) for respondent

DAVIES JA: These are applications for leave to appeal against a sentence by two applicants who pleaded guilty in the District Court on 17 March this year, in each case to assault occasioning bodily harm in company. That is, in company with one another. I mentioned that specifically because there was a third offender, Valenti, who was charged with grievous bodily harm in respect of the same complainant, who went to trial and was ultimately convicted after trial and sentenced in respect of that offence. The offences occurred on 8 January 2002.

The sentence which was imposed on 19 March 2003 at the end of Valenti's trial was, in the case of each of these applicants, eight months' imprisonment suspended after a period of two months for an operational period of 18 months. There was a declaration of presentence custody of one day between 18 February and 19 February 2003.

The applicants were both young men. Jones was about 22 at the time of the offence, and Bradshaw was 23. The complainant whom they assaulted was aged about 29. Neither of the applicants has any relevant criminal history. Each had been convicted of minor offences for which they had been fined, but there was nothing particularly relevant.

There had apparently been some ill-will between the complainant and Valenti resulting from an earlier episode, and

Bradshaw, one of the present applicants, had been with Valenti on the night before the commission of this offence when they visited the complainant's premises, because of some apparent abuse held by the complainant when they drove past.

There was an episode in the house in which Bradshaw was kicked in the stomach, burnt with some boiling water and threatened with a knife, the knife being wielded by the complainant. Jones had also previously been in a vehicle passing the complainant's house where some threats had been issued.

On the day of the offence, the two applicants and Valenti were riding in a vehicle driven by another man. They stopped when they saw the complainant who made a rude gesture to them. They then got out of the car and walked over to the complainant. It appears, as best one can gather from the evidence which was before the learned sentencing judge, that they went to him with a view to assaulting him. Bradshaw, in fact, said in the police interview that he "wanted to give the lad a hiding". However, neither of them went on very long with their assaults.

As appears from the evidence, Jones hit the complainant about three times with a closed fist, on each occasion to the face, and Bradshaw said he hit the complainant only once with a closed fist. It was Valenti who then went on with an assault against the complainant, as a result of which the complainant suffered a broken jaw, and consequent grievous bodily harm with which Valenti was charged.

It is unclear precisely what the bodily harm was which the applicants together inflicted, but it was obviously such bodily harm as one would ordinarily expect from punches to the face of that kind.

Each of the applicants expressed remorse, and the learned sentencing judge found that each of them was remorseful. Each of them had good work histories, and as I have mentioned, neither had any previous convictions of any significance. They were, as I have also mentioned, young men.

On the other hand it is certainly correct, as Mr MacKenzie has mentioned, that Courts have tended in recent times to take a more serious view of offences involving gratuitous violence, which this was, and one cannot but view seriously offences of this kind, assaults with the intention of, in effect, inflicting some punishment on the complainant who was defenceless and made no attempt to defend himself against a joint assault by the applicants. They were vicious and cowardly assaults.

On the other hand, they were not such as to inflict a great deal of harm on the complainant, or of long duration. It is unnecessary to refer to comparable decisions at great length, but Mr Henry, for the applicant, has pointed in particular to two cases which it seems to me have some parallels here. One is R v Neirvandt, [2000] QCA 224,CA No 414 of 1999, and the

other is R v Sheret, [2002] QCA 162, CA No 308 of 2001. The facts in those cases have some similarity to the facts in this, and indicate to me rather that a wholly suspended sentence is the sort of sentence which should have been imposed in this case, and that in view of the circumstances pertaining to each of the applicants personally, that a sentence which included a term of actual imprisonment was beyond the range of a sound sentencing discretion.

I also mentioned in passing to Mr MacKenzie, for the respondent, a decision which this Court gave yesterday, of Sailor,[2003] QCA 229, CA No 55 of 2003, which dismissed an Attorney's appeal against a sentence of an intensive correction order for conduct which, on any view of the matter, was very much more serious than that in this case.

In my view, therefore, the appropriate sentence would have been one of eight months' imprisonment, wholly suspended. I should also add that each of the applicants has now spent three days in prison. The one day referred to by the learned sentencing judge in his sentencing remarks and the orders which he made, and a further two days before each was granted bail.

I would therefore grant each of the applications and allow the appeals against sentence, only to the extent of altering the sentence imposed by suspending in each case the sentence immediately.

CULLINANE J: I agree.

JONES J: I agree.

DAVIES JA: Those are the orders of the Court.
