SUPREME COURT OF QUEENSLAND

CITATION:	*R v Quinn* [2003] QCA 417
PARTIES:	**R** **v** **QUINN, Chelsy Mary** (applicant)
FILE NO/S:	CA No 241 of 2003 DC No 305 of 2003
DIVISION:	Court of Appeal
PROCEEDING:	Sentence Application
ORIGINATING COURT:	District Court at Cairns
DELIVERED EX TEMPORE ON:	22 September 2003
DELIVERED AT:	Brisbane
HEARING DATE:	22 September 2003
JUDGES:	Davies JA, Jones and Holmes JJ Separate reasons for judgment of each member of the Court, each concurring as to the order made
ORDER:	**Application dismissed**
CATCHWORDS:	CRIMINAL LAW – APPEAL AND NEW TRIAL AND INQUIRY AFTER CONVICTION – APPEAL AND NEW TRIAL – APPEAL AGAINST SENTENCE – APPEAL BY CONVICTED PERSONS – APPLICATIONS TO REDUCE SENTENCE – WHEN REFUSED – GENERALLY – where applicant dangerously operated a motor vehicle while intoxicated and caused grievous bodily harm – whether sentence was manifestly excessive
COUNSEL:	P J Callaghan for the applicant R G Martin for the respondent
SOLICITORS:	Legal Aid Queensland for the applicant Director of Public Prosecutions (Queensland) for the respondent

HOLMES J: On 20 June 2003 the applicant pleaded guilty on an ex officio indictment to one count of dangerous operation of a

vehicle causing grievous bodily harm with a circumstance of aggravation, that at the time of the offence she was adversely affected by alcohol, her blood alcohol concentration being in excess of 150 milligrams per 100 millilitres of blood. She was sentenced to three years' imprisonment suspended after 12 months with an operational period of three years, and disqualified from holding or obtaining a driver's licence for a period of two years. She also pleaded guilty to a summary offence of driving a vehicle under the influence, for which no further penalty was imposed. She seeks leave to appeal against her sentence on the dangerous operation of a vehicle charge.

The circumstances of the offence were these. On the evening of 24 October 2002, over a five hour period, as the applicant admitted to police, she drank a bottle of white wine and five vodka and pineapple juice drinks. She and her boyfriend, Mr Ferry, had gone to the Cairns Casino but, while there, had a disagreement. Mr Ferry set out to walk home, but the applicant picked him up in her car as he walking home. Having got into the car, he realised that the applicant was intoxicated and twice asked her, unsuccessfully, to stop the car so that he could get out. The applicant then drove through a stop sign at an intersection at a speed in excess of 70 kilometres per hour and collided with another vehicle, a minibus taxi, which rolled over. According to Mr Ferry, they had earlier that night driven through the same intersection. The applicant commented that she never stopped at the stop sign at the intersection because she considered it to be on

the wrong road. The collision occurred about 2 a.m. A breath test of the applicant about an hour later gave a reading of .188 per cent.

The occupants of the minibus suffered minor injuries. Mr Ferry sustained a badly fractured left arm requiring the insertion of plates and screws. He was left with a permanently disfigured shoulder with constant pain and little mobility in his arm. He had stopped work as a cabinet maker.

The applicant was born on 14 April 1977 and was 25 at the time of the offence. She had no criminal history of any consequence. Her traffic history included one fine and loss of points in 2002 for exceeding the speed limit. At the time of sentence she was working as a hotel receptionist. Her relationship with Mr Ferry had ended but she had formed a new relationship resulting in a pregnancy. She was, and is, due to give birth in October 2003, and it was likely that she would be without her family or her de facto partner for that event.

Counsel for the Crown on sentence submitted that Court of Appeal authorities showed that the “normal tariff” was a head sentence in the range of three to four years, often suspended after a period of between 18 months and two years. Defence counsel agreed with the proposition that the range for the head sentence was three to four years.

Counsel for the applicant here argues that the sentence is manifestly excessive. He says that while he has no argument with the head sentence, the purposes of deterrence and punishment would have been served by a sentence which involved suspension after a period of six months. He relies particularly on a statement from McGuire ex parte the Attorney-General (2002) QCA 439:

> "Bearing in mind that this is an Attorney's appeal and the moderating effect of that, in my view, a sentence of two years' imprisonment suspended after serving six months adequately recognises the important mitigating factors in this case while still imposing the necessary deterrent sentence."

That appears in the judgment of the President, with whom the rest of the Court agreed. However, that statement does not purport to set some absolute for the achievement of deterrence in such cases, and it is necessary to have regard to the variables there. It was an Attorney's appeal. There were particular mitigating factors, among other things a number of references of a compelling nature in relation to the applicant there. All that one can say is that it is one instance of a deterrent sentence. I do not think that it establishes some binding precedent.

In this case, there were features strongly in the applicant's favour by way of her plea on an ex officio indictment and her previous good character. Against her are the degree of intoxication, her wilful conduct in refusing to stop the car despite Mr Ferry's requests, the fact that she deliberately,

and not merely negligently, drove through a stop sign at speed and the serious injury to Mr Ferry.

On the whole, while it is clearly not a lenient sentence, I do not think that it can be said that it is outside the range of a proper exercise of sentencing discretion. I would refuse the application for leave to appeal.

DAVIES JA: I agree.

JONES J: I agree.

DAVIES JA: The application is dismissed.