SUPREME COURT OF QUEENSLAND

CITATION:	*R v Jones* [2003] QCA 474
PARTIES:	**R** **v** **JONES, Paul Anthony** (applicant)
FILE NO/S:	CA No 326 of 2003 DC No 1552 of 2003
DIVISION:	Court of Appeal
PROCEEDING:	Sentence Application
ORIGINATING COURT:	District Court at Brisbane
DELIVERED EX TEMPORE ON:	30 October 2003
DELIVERED AT:	Brisbane
HEARING DATE:	30 October 2003
JUDGES:	McPherson JA and Mackenzie and Wilson JJ Separate reasons for judgment of each member of the Court, each concurring as to the order made
ORDER:	**Application for leave to appeal dismissed**
CATCHWORDS:	CRIMINAL LAW – JURISDICTION, PRACTICE AND PROCEDURE – JUDGMENT & PUNISHMENT – SENTENCE – FACTORS – CHARACTER OF OFFENCE – GENERALLY – whether short period of custody can be said to be excessive for assault of this type
COUNSEL:	K M McGinness for the applicant M J Copley for the respondent
SOLICITORS:	Legal Aid Queensland for the applicant Director of Public Prosecutions (Queensland) for the respondent

McPHERSON JA: On the 8th of October last, the applicant pleaded guilty in the District Court at Brisbane, to a charge of occasioning bodily harm. He was sentenced to imprisonment

for 18 months, suspended after serving three months, for a period of two and a half years.

He applies for leave to appeal against sentence, on the ground that the sentence was excessive. The substance of the complaint is that it was wrong to impose any term of actual imprisonment on the applicant.

The circumstances leading to the offence are that on 26 August 2002, the complainant drove to a building in the West End, where he had his office, and parked his car against the wall in the underground car park. The complainant chose a place, perhaps because it was the only one available, that was reserved for someone else.

He was evidently not away for long, but, when he returned, he found his car had been parked in by someone else, possibly the legitimate occupier of the parking space.

The next thing he recalls, or the last thing he recalls, is seeing the applicant approaching him, but he remembers nothing else.

The applicant himself had driven into the same car park, where he had a permanent car parking space of his own. He found that it had been occupied by another, who was not the complainant in this matter. He also saw the complainant, and noticed that the complainant had parked his car where he

should not have been, and was sitting in his car sounding the car horn.

The applicant approached the complainant and an argument of some kind ensued, in which the applicant struck the complainant twice in the face.

The second blow was powerful, causing the complainant to fall back and to hit his head on a car behind him and then on the concrete floor where he fell.

The medical evidence is that reasonable force must have been used in inflicting the blow that brought the complainant to the ground.

As a result, the complainant sustained an extensive comminuted fracture of the skull and an underlying extradural haematoma. He was in hospital for approximately one month. Fortunately for everyone, his injuries have largely resolved with the passage of time.

At sentencing there was some remaining problem with his gait or walk and perhaps with his spine, but it was accepted that these would settle in time.

It was on this basis that a plea of guilty was accepted to the charge of assault occasioning bodily harm, in satisfaction or in preference to the original charge of grievous bodily harm.

He was sentenced on that lesser basis. Some circumstances existed that went in mitigation. On the previous day, the applicant's car had been written off in a serious accident and he was not in the mood for drivers who disregarded the rights of others.

Parking spaces, it must be said, arouse strong feelings of territorial aggression, even among some quite rational people. By sounding his horn, the complainant was aggressively demanding attention to his own self-imposed plight, at a time when it is said the applicant was trying to telephone tow away assistance to clear his own parking space.

After punching the complainant, the applicant had at least the decency not to clear off, but to dial triple 0 and call an ambulance and he waited with the complainant for the ambulance to come.

He confessed to the police that he had hit the complainant, but at first also told them some admittedly false account that the complainant had tried to kick him several times.

His victim, it should be observed - and this is a factor that goes against the applicant - was a man aged 70 years of age, although the applicant said that he thought he was only about 60. The applicant himself was a burly man.

The applicant was 44 years old at sentencing. He has always worked and supported himself and has two adult children. He

has a science degree from Deacon University and a health academy qualification. He works long hours as a personal trainer, from a studio in the building where the incident occurred.

Previously, he has worked as a general manager and for some years as a bouncer, as well as working for two years as a prison guard. His record does show two previous convictions, for dishonesty, in 1982, but he has no prior history of violence of any kind.

It is not often one can feel much sympathy for people who use violence on others and, in doing so, inflict severe injury, although the applicant may have been fairly tested in the circumstances I have outlined here.

He was fortunate indeed that the complainant has recovered so completely from the effects of the assault. The real question before us on appeal is, however, not whether the learned sentencing Judge could properly have imposed a sentence that would have avoided sending the applicant to prison, but whether the short period of custody imposed on the applicant in this case, can be said to be excessive for an assault of such force as to knock the victim down and fracture his skull. In my opinion, it is not possible to answer that question in the affirmative.

The sentence imposed cannot be considered to be excessive having regard to the effects that followed, nor to the blow

that was struck by the applicant in assaulting the complainant.

I would, in the circumstances, dismiss the application for leave to appeal against sentence.

MACKENZIE J: I agree.

WILSON J: I agree.

McPHERSON JA: The application for leave to appeal is dismissed.