

SUPREME COURT OF QUEENSLAND

CITATION: *R v Steensen* [2003] QCA 490

PARTIES: **R**
v
STEENSEN, Michael Lenard

FILE NO/S: CA No 201 of 2003
SC No 108 of 2003

DIVISION: Court of Appeal

PROCEEDING: Sentence Application

ORIGINATING COURT: Supreme Court at Mackay

DELIVERED EX TEMPORE ON: 7 November 2003

DELIVERED AT: Brisbane

HEARING DATE: 7 November 2003

JUDGES: McPherson JA, and Chesterman and Mullins JJ
Separate reasons for judgment of each member of the Court, each concurring as to the orders made

ORDER: **Application dismissed**

CATCHWORDS: CRIMINAL LAW – JURISDICTION, PRACTICE & PROCEDURE – JUDGMENT & PUNISHMENT – OTHER MATTERS – QUEENSLAND – whether declaration of serious violent offence made sentence manifestly excessive

COUNSEL: C Callaghan (Solicitor) for the applicant
M Copley for the respondent

SOLICITORS: Callaghan Lawyers for the applicant
Director of Public Prosecutions (Queensland) for the respondent

McPHERSON JA: The appellant was indicted on a charge of attempting to murder Robert Crossley (count 1) or in the alternative of wounding him with intent to do grievous bodily harm (count 2) and of wounding Daniel Patullo (count 3). He pleaded guilty at the beginning of the trial to counts 2 and 3 but went to trial on count 1 (attempting to murder Crossley).

The jury found him not guilty of count 1 and that left him to be sentenced on counts 2 and 3 to which he had pleaded guilty.

His Honour sentenced the appellant to imprisonment for five years on count 2 with a declaration that it involved a serious violent offence and to a concurrent term of 12 months on count 3. The effect of the declaration is that the appellant will not be eligible for parole until he has served 80 per cent of the five year sentence as against two and a half years if no such declaration had been made. A period of 74 days in presentence custody was declared to have been served under those sentences.

The evidence at the trial was that on the evening of 30th March 2002 the appellant tried to enter a nightclub at Airlie Beach, North Queensland, where he lived. The security guard Mr Patulla (the victim in count 3) refused him entry because he was drunk. The appellant became aggressive saying he knew how to handle security guards, but a companion pulled him away. Crossley (the victim in count 2) came over to support Patulla. The appellant said he knew where Crossley lived and was going to get him. He then caught a taxi home informing the driver that he had a bad time with a bouncer and would "fix him up".

He went into his house and obtained a knife with a 20 centimetre blade and then drove back to the club in his own car arriving about half an hour later. After looking for the two complainants he drove off, parked and returned on foot.

He approached Crossley from behind and stabbed him in the shoulder. When Crossley fell down he made two more stabbing lunges at him. Patulla intervened and was cut in the arm in the course of trying to protect himself from being stabbed in the chest. Crossley had, by then, retreated, but the appellant followed him and lunged at him with the knife cutting him, it would appear, in the hand. Patulla hit him over the head with a piece of bamboo and the two of them succeeded in disarming and restraining him.

The wound to Crossley's back was five centimetres deep and 10 centimetres to the left of his spine below the shoulder blade. Patulla sustained a wound four centimetres deep and three centimetres long above the wrist. It pierced the skin but not the subcutaneous muscle. Possibly because the evidence was confined by the issues at trial there is no firm evidence of the permanent physical or psychiatric effects of these wounds on either victim beyond, of course, the fact that the injury to Crossley was potentially life-threatening. Judging, however, by the contents of the victim impact statement, Crossley was not surprisingly, affected psychologically by his experience and says that he has since sold the security business of which he was, in fact, the proprietor.

In sentencing for these offences the learned Judge rightly took a serious view of the appellant's conduct. He stressed the deliberation and persistence of the appellant in returning with the knife after he had been warned off, and the facts that it was a cowardly attack on Crossley launched from

behind, and that he had made a number of further attempts to stab him. It was, indeed, fortunate that he did not kill either of the complainants. The applicant is a 31 year-old motor mechanic who had been living with a woman as his wife in an apparently permanent relationship. At the time of the offence she had recently left him taking the furniture and household goods with her. This seems to have provoked the outbreak on the part of the applicant which led to his offences in this case. Those two, that is he and his partner, have since made up and have decided to marry when the applicant is released from prison. For some time, even before that breakup between them, he had in fact been suffering from depression for which he was taking medication. He is a man with a good work record and no relevant convictions. Others speak well of him and of his services to the community. The appellant's real problem, however, is alcohol which he has been, for a number of years, using to excess.

He was drunk on the evening in question, apparently because of his wife's departure, and it was because of that condition that he was turned away from the nightclub and told to come back some time later. There is little doubt that it was his drunken state that led to him acting as he did. References from local residents speak of his generally conciliatory disposition and responsible behaviour in community affairs.

Before this Court it was submitted on the applicant's behalf that the head sentence of five years was excessive and a number of comparable cases were cited in support of that

argument. The deliberate use of a knife, especially one of the dimensions of this, and in a public place, to inflict wounds on complete strangers is always visited with a heavy penalty because of its potentially lethal consequences.

Here there were two victims who were simply engaging in doing their duty of protecting members of the public at the premises from injury at the hands of aggressive drunks like the applicant. I have not been persuaded that even if account is taken of the pleas of guilty at the trial to counts 2 and 3 the sentence of five years' imprisonment was excessive or beyond the limits of a proper sentencing discretion for an offence involving intention to do grievous bodily harm committed in the circumstances disclosed here.

The remaining question is whether the addition of the declaration was such as to make the sentence imposed excessive. The offence was, on any view of it, certainly both serious and violent, and it is also true to say that the sentence of five years was pitched at the lowest level at which a declaration of this kind might have been made. It has, as I have noted, the consequence of the appellant will not be considered for parole until he has served four instead of two and a half years of his sentence.

It is also true that the offence seems to have been out of character and it is accepted that the appellant pleaded guilty and is said to have shown real shame and remorse for what he has done. Nevertheless, in my view, taking all these matters

into account, it was certainly not beyond a proper exercise of discretion for the Judge to make the declaration in this case. It is not excessive in the circumstances as I have detailed them and it is not possible, in my opinion, to say that his Honour exercised his discretion on any wrong basis or took into account or left out factors which would vitiate his discretion.

That being so, I do not think it is open to us on appeal to interfere with the declaration or to allow the appeal against sentence in that respect. In consequence, I would, for myself, dismiss the application for leave to appeal.

CHESTERMAN J: I agree.

MULLINS J: I agree.

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