

SUPREME COURT OF QUEENSLAND

CITATION: *R v Puchala* [2003] QCA 560

PARTIES: **R**
v
PUCHALA, Paul
(appellant)
PUCHALA, Matthew
(appellant)

FILE NO/S: CA No 332 of 2003
CA No 334 of 2003
DC No 352 of 2003

DIVISION: Court of Appeal

PROCEEDING: Appeal against Conviction & Sentence

ORIGINATING COURT: District Court at Maroochydore

DELIVERED EX TEMPORE ON: 11 December 2003

DELIVERED AT: Brisbane

HEARING DATE: 11 December 2003

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

ORDERS:

- 1. In each case of Paul Puchala and Matthew Puchala appeal against conviction dismissed**
- 2. In the case of Matthew Puchala application for leave to appeal against sentence dismissed**
- 3. In the case of Paul Puchala**
 - (a) Leave to appeal against sentence granted**
 - (b) Appeal allowed**
 - (c) Add to the sentence imposed at first instance an order that the sentence be suspended after serving nine months with an operational period of four years**

CATCHWORDS: CRIMINAL LAW – JURISDICTION, PRACTICE AND PROCEDURE – JUDGMENT AND PUNISHMENT – SENTENCE – FACTORS TO BE TAKEN INTO ACCOUNT – CIRCUMSTANCES OF OFFENDER – where appellants father and son convicted of assault occasioning bodily harm – where father sentenced to two and a half years imprisonment – where baseball bat used in assault – where no significant criminal history – where appellant had done a large amount of community work over a lengthy period of time – where suffers disability in his hip – whether sentence

imposed on father manifestly excessive

COUNSEL: The appellant in CA No 332 of 2003 appeared on his own behalf
The appellant in CA No 334 of 2003 appeared on his own behalf
D L Meredith for the respondent

SOLICITORS: The appellant in CA No 332 of 2003 appeared on his own behalf
The appellant in CA No 334 of 2003 appeared on his own behalf
Director of Public Prosecutions (Queensland) for the respondent

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WILLIAMS JA: After a trial in the District Court, Paul Puchala was convicted of two counts of assault occasioning bodily harm with a circumstance of aggravation and one count of wilful damage. He was sentenced to two and a half years imprisonment on each count of assault occasioning bodily harm, and six months imprisonment on the wilful damage count. All sentences were to be served concurrently.

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His son, Matthew Puchala, was convicted of one count of assault occasioning bodily harm with a circumstance of aggravation. He was sentenced to 18 months imprisonment, suspended after six months with an operational period of two years. Both appealed against conviction and sought leave to appeal against sentence.

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When written outlines were submitted, Matthew Puchala indicated that if he did not succeed on his appeal against conviction he did not wish to challenge the sentence. When the appeal were called on certain matters were drawn to the attention of the appellants with respect to grounds of appeal

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which challenged the appropriateness of their legal representation.

After considering issues raised by the Court with them over the luncheon adjournment, both appellants indicated that they wished to withdraw their appeals against conviction. That left for consideration by this Court the application by Paul Puchala for leave to appeal against the sentence that was imposed on him.

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The events giving rise to the convictions were particularly serious but it does appear that they must be assessed against the background of some matrimonial disharmony. Paul Puchala and his wife, Hilary, had separated and there was some on going disputation between them, some of which would appear to involve questions of custody of the boy, Tim, who at the time was aged about 12.

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The offences occurred on the 23rd of August 2001. At that time the two appellants and other persons including the co-accused, Amy Dunford, were living in a house near Cooroy. The complainants, Mr and Mrs Breeze, came to that address on the night in question obviously with intention of raising with the Puchala's issues relating to the matrimonial dispute.

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It is sufficient for present purposes to say that fighting broke out. Mr Breeze appears to have been attacked initially by Matthew and then by Paul. At some stage a baseball bat was used in the fracas, and on the jury findings, it was Paul

Puchala who used that baseball bat to occasion injuries to both Mr and Mrs Breeze.

It is the use of the baseball bat which makes the offences particularly serious. In those circumstances a head sentence of two and a half years imprisonment is well within the range given comparable sentences imposed by Courts for offences of this type.

The real question is whether or not various matters personal to Mr Paul Puchala warrant the Court ameliorating that sentence by ordering that it be suspended at an earlier point of time than the time at which he would become eligible to apply for parole.

It appears that in 1979 Paul Puchala was seriously injured in a motor vehicle accident and received significant orthopaedic injuries. Initially it appeared he may never be able to work again but through some hard work on his part he was able to get various jobs as a builder supervisor or manager.

He sustained a fall in 1993 and on that occasion injured his hip badly, rendering him unable to work in his former capacities. Thereafter it is accepted that he embarked on working for the community obtaining various positions.

His counsel before the sentencing Judge outlined a number of those positions in broad terms and the applicant has particularised those activities in some more detail in his

written outline. It is accepted that for about six years he was a community service supervisor for the Noosa Community Corrections manager.

During that time he spent some 30 to 50 hours per week working free of charge supervising the work of persons subject to such community service orders. In addition he has been president of the Cooroy Sports Complex and various soccer clubs and youth clubs in the neighbourhood. He has been involved in raising funds for a number of those sporting organisations.

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The issue with his hip was mentioned by counsel before the sentencing Judge. The learned sentencing Judge was told that he suffered continuing effects from his hip injuries since 1979, through 1993, and that he'd had hip replacement operations in 2000 and 2002.

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The on going disabilities were referred to in a very general way as involving disability to his legs and hips, with his leg popping out of the joint quite frequently. Counsel said earlier this year he spent a few months on his back in bed connected to drips because of infections associated with his hip replacements.

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It seems that he suffered some serious golden staph infections in relation to the previous hip surgery. That is a matter which has been stressed by Mr Paul Puchala in support of his application for leave to appeal against sentence. It does appear that he has a significant hip disability. It appears that as a result of the staphylococcal infection there is loss

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of some bone in the area and his hip has dislocated on regular occasions. The applicant in submissions before us spoke of it dislocating some five times since he's been in gaol since 19 September 2002.

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Counsel for the prosecution accepted in this Court that because of the hip disability he would, to use the colloquial expression, do his time harder in gaol because of his significant disability. It is probably also fair to say that whilst he is in the same prison as his son he will get some support from his son but when his son is discharged after serving six months he will of course lose that support.

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In my view it is significant that the experienced sentencing Judge in his brief sentencing remarks did not advert to the consequences of the injury when it came to the applicant spending time in gaol. In my view there was insufficient weight given to that consideration. As I have said the time that this applicant spends in goal will be the equivalent of a much longer period than compared with a person of normal robust health.

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As I have already said because of the serious nature of the assault offences in particular the use of an offensive weapon the head sentence of two and a half years should stand but in my view, taking into account the factors personal to the applicant in particular the fact that he has no significant criminal history, his valuable community work over a lengthy period of time and more significantly the disability that he

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suffers from his hip and the effect that it will have on time served in gaol I am of the view that there should be added to the sentence imposed an order that the sentence be suspended after he has served nine months thereof and the operational period should be fixed at four years.

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The orders that I would therefore propose are in each case of Paul Puchala and Matthew Puchala appeal against conviction dismissed. In the case of Matthew Puchala application for leave to appeal against sentence dismissed. In the case of Paul Puchala grant leave to appeal against sentence, allow the appeal and add to the sentence imposed at first instance an order that the sentence be suspended after serving nine months with an operational period of four years. That will cover all counts.

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CHESTERMAN J: The assaults of which the applicant Paul Puchala was convicted were rightly described by the trial Judge as prolonged and vicious. The use of a baseball bat, especially against a woman, was deplorable. The sentence cannot in my view be criticised but for the physical disability of the applicant. For the reasons given by Mr Justice Williams the Court should conclude that imprisonment for him will be especially arduous. For that reason alone I agree with the order proposed.

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McMURDO J: I agree with the reasons given by Justice Williams and the orders he proposes.

WILLIAMS JA: Now, Mr Puchala, I'll just explain that to you so that you're fully appraised of it. Your sentence will be suspended after you serve nine months. Then you will be subject to a good behaviour bond in effect for a period of four years. That means if you commit any further offence during that operational period you will be required or called upon to serve the balance of your sentence which is 21 months. So that should be an incentive to you to ensure that no further offences are committed during that operational period.

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APPELLANT PAUL PUCHALA: Thank you, your Honour.

WILLIAMS JA: There's nothing further required in relation to that, Mr Meredith?

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MR MEREDITH: No, your Honour.

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