SUPREME COURT OF QUEENSLAND

CITATION:	*R v Douglas* [2004] QCA 1
PARTIES:	**R** **v** **DOUGLAS, Gillian Jean** (applicant)
FILE NO/S:	CA No 312 of 2003
DIVISION:	Court of Appeal
PROCEEDING:	Sentence Application
ORIGINATING COURT:	Supreme Court at Mt Isa
DELIVERED EX TEMPORE ON:	3 February 2004
DELIVERED AT:	Brisbane
HEARING DATE:	3 February 2004
JUDGES:	McMurdo P and Davies and McPherson JJA Separate reasons for judgment of each member of the Court, each concurring as to the order made
ORDER:	**Application for leave to appeal against sentence refused**
CATCHWORDS:	CRIMINAL LAW – JURISDICTION, PRACTICE AND PROCEDURE – JUDGMENT AND PUNISHMENT – SENTENCE – CIRCUMSTANCES OF OFFENCE – where applicant pleaded guilty to dangerous operation of a motor vehicle and guilty to grievous bodily harm simpliciter but not guilty to grievous bodily harm with intent – convicted of grievous bodily harm with intent and sentenced to six years imprisonment – grievous bodily harm inflicted on pregnant woman – some degree of 'provocation in a non-legal sense' – whether mitigating circumstances adequately taken into account *R v Bryan; ex parte A-G (Qld)* [2003] QCA 18; CA No 410 of 2002, 5 February 2003, considered *R v Dempsey* [2001] QCA 141; CA No 356 of 2000, 17 April 2001, considered *R v Wiggins* [2003] QCA 367; CA No 134 of 2003, 27 August 2003, considered
COUNSEL:	The applicant appeared on her own behalf M J Copley for the respondent
SOLICITORS:	The applicant appeared on her own behalf Director of Public Prosecutions (Queensland) for the

respondent

THE PRESIDENT: On 25 August 2003 in the Circuit Court at Mt Isa the applicant pleaded guilty to dangerous operation of a motor vehicle, count 1; guilty to grievous bodily harm simpliciter but not guilty to grievous bodily harm with intent to do grievous bodily harm, count 2; and not guilty to killing an unborn child, count 3.

The prosecution did not accept the limited plea of guilty in respect of count 2 and a jury trial proceeded in respect of counts 2 and 3.

On 26 August 2003 she was convicted of count 2 but acquitted of count 3. She was sentenced to six years' imprisonment in respect of count 2 and to two years' concurrent imprisonment in respect of count 1. As these offences constituted a breach of a suspended sentence imposed on 25 February 1999 in the Normanton Magistrates Court she was also ordered to serve an additional four months' imprisonment cumulative upon the sentences imposed on counts 1 and 2.

The applicant, who is self represented on this appeal, contends the sentence is manifestly excessive. In her written outline she submits that the learned sentencing Judge did not take into account her preparedness to plead guilty to some offences and that she was acquitted on the charge of killing an unborn child, the offence which first brought her for trial into the Supreme Court.

She further contends that the learned sentencing Judge did not take into account the fact that she has not been in trouble since charged with these offences, her efforts at rehabilitation and other mitigating factors.

In her oral submissions she has placed some emphasis on a claim that she would have pleaded guilty to grievous bodily harm with intent had she understood that that charge had been brought against her. She claims she did not know that the charge had been brought against her until virtually the morning of trial.

The contention she makes is inconsistent with the transcript of the arraignment in which she makes it plain that she pleads guilty to grievous bodily harm simpliciter and not guilty to grievous bodily harm with intent: see p 2 of the Appeal Book Record.

The Appeal Record Book does not contain the full evidence given at trial but the following summary of that evidence has been provided by the respondent. In Normanton on New Year's Eve 2000 the complainant, who was 20 weeks pregnant, attended an hotel where the applicant was also present. After leaving the hotel they argued as to who was the father of the complainant's baby. The argument continued amongst the two women and their friends outside the applicant's house.

The complainant punched the applicant once to the mouth. The applicant got into her car and drove it on to the street causing the group of people to scatter so as to avoid the car. Defence counsel emphasised at sentence that the driving offence took place over a brief two to five minute period and with no intention to hurt or injure others, but in circumstances which she conceded were clearly objectively dangerous especially considering the applicant's drunken state. By the time the police attended in respect of this incident the applicant had left her vehicle and was not to be found. These facts constitute count 1.

Unfortunately for all concerned, the complainant did not follow the sound advice the police gave to her to move on, but loitered outside the applicant's house. The applicant returned to the scene. Somebody called the complainant a slut. The complainant said, "Come here and say that." The applicant came out of her yard armed with two knives. A man took one knife from her. The applicant started to wrestle with the complainant. She was heard to say, "This is what you get for swearing at me." Others intervened when they saw blood on the complainant.

The applicant retrieved her knives. It seems she phoned police, waited for them in her home, gave some assistance to the injured complainant and handed knives to the police.

The complainant suffered a three centimetre deep laceration to her abdomen which, according to her treating doctor, required

a major operation to explore and stitch the wound. She also suffered an eight centimetre deep cut to the right shoulder and some smaller cuts to her fingers. She has made a complete physical recovery but some hours after the incident her pregnancy miscarried. As has been noted, the jury acquitted the applicant of the offence of killing an unborn child. The injuries constituted grievous bodily harm in that loss of life may have eventuated without medical intervention. It should also be remembered that the complainant pleaded guilty to causing grievous bodily harm.

The complainant was treated at Normanton hospital for a period and was then transferred to Mt Isa hospital. Her victim impact statement of 25 October 2001 records that she was in the Normanton hospital for seven hours before being transferred to Mt Isa hospital where she spent three days in intensive care and was treated with morphine. She described herself as temporarily disabled and experiencing nightmares. She suffered financial loss when she was unable to work for five weeks and was at the time of her victim impact statement arguing with her family.

The applicant was 32 years old at sentence and 30 at the time of the offence.

She had some relevant criminal history. In the Mt Isa District Court on 11 July 1994 she was placed on a 12 month good behaviour bond for going armed in public in a manner as

to cause fear. In the Normanton Magistrates Court on 30 January 1997 she was convicted of assault occasioning bodily harm whilst in company and sentenced to 100 hours community service with restitution of $300. In the same Court on 25 February 1999, she was convicted of being drunk and disorderly in licensed premises and two counts of assault occasioning bodily harm, again in the early hours of New Year's Day, as a result of which she was placed on two years probation and sentenced to four months imprisonment wholly suspended for two years with $300 compensation.

The current offences, as I have already observed, constituted a breach of that suspended sentence occurring just under two months before the expiry of the operational period.

The Prosecutor at sentence said that the pleas of guilty were offered only on the day of trial. The matter was listed originally for sentence by way of an ex officio plea 18 months before the trial but was delisted when the applicant chose to exercise her right to trial. Consequently there was a delay in organising committal proceedings. The Prosecutor contended that this showed no remorse.

The Prosecutor conceded, however, that there was "some degree of provocation in a non-legal sense" on the part of the

complainant who admitted she behaved with immaturity. He submitted that the applicant's use of the motor vehicle and the knife, together justified a sentence of a little less than seven years imprisonment and that consideration should be given to making a declaration that the applicant was convicted of a serious violent offence in respect of count 2.

The applicant was in a steady de facto relationship and had in her care at sentence her 14 year old child who is currently being cared for by her partner.

The applicant completed a Year 12 level of education at Atherton High School and had an impressive work history as a receptionist, an ATSIC student support officer at TAFE, and with Century Zinc Mine as a dump truck operator where she was working when these offences were committed.

Tendered references state that she was the first Gulf community indigenous female to join the truck training program and that her success in that role has led other Gulf community Aboriginal women to follow her lead. That reference also noted that the applicant's Court commitments in respect of this matter, combined with her heavy work commitments, placed her under considerable stress. This was exacerbated in 2002 by a medical condition which required her to take extensive

time off work. The writer expressed the company's preparedness to re-employ the applicant if and when she was medically fit and able and there was a suitable vacancy.

A number of other excellent references from community members were tendered on her behalf which attested to her hard work, willingness to contribute to the community and her normally, happy, reliable and helpful nature.

In July 2003 she completed the Ending Offending program, an alcohol education program for indigenous people and other life skill programs. She has additionally completed a number of employment related courses including intermediate rural skills, courses in video conferencing and video link site co-ordination, an advanced Diploma in Business with specialisation in accounting and a certificate in office administration.

Additionally she has done voluntary work at Normanton State School, the Normanton Hospital as a community service officer in Normanton and as an administrator, teacher and tutor at TAFE.

The applicant's counsel at sentence emphasised that her involvement in these offences caused her a great deal of

stress because she understood the inevitability of a term of imprisonment. She also suffered from ovarian cysts which were removed in 2002 and as a result of which she will be unable to have children. This has had a devastating effect upon her. The combined effect of these matters resulted in her leaving her employment with Century Zinc.

Her counsel emphasised that she does not regularly abuse alcohol and was generally to be considered to be a good community member. Unfortunately she has been a binge drinker. This night she became heavily intoxicated and alcohol is undoubtedly the reason for her change of personality in committing these offences. Despite her intoxicated state, she was the first to ring the police after the incident and she waited inside her home for the police to arrive. She has made efforts at rehabilitating herself through completing the courses noted above. All her offending behaviour has occurred during drinking binges. Defence counsel contended that an effective head sentence of five to six years imprisonment was appropriate, but submitted there should be no declaration under Part 9A *Penalties and Sentences Act 1992* (Qld).

The learned primary Judge imposed a sentence consistent with that submission. His Honour correctly noted the serious aspects of the applicant's offending and the need to deter the

use of knives, especially where there is an intent to cause grievous bodily harm through their use.

His Honour also took into account the references tendered on the applicant's behalf and her attempts at rehabilitation which he noted as commendable and deserving of recognition. The learned sentencing Judge also noted that, in determining not to declare the applicant convicted of a serious violent offence in respect of count 2, he was taking into account the non legal provocation referred to by the Prosecutor.

The learned primary Judge took adequate note of the considerable mitigating circumstances here. Despite those circumstances, the seriousness of the offences, especially the use of a knife in public whilst the applicant was under the influence of liquor to intentionally inflict grievous bodily harm on a woman whom she knew was pregnant, when combined with the applicant's maturity and her previous criminal history, amply justified the sentences imposed. See *R v Dempsey* [2001] QCA 141; CA No 356 of 2000, 17 April 2001; *R v Brian; ex parte Attorney-General* [2003] QCA 18; CA No 410 of 2002, 5 February 2003 and *R v Wiggins* [2003] QCA 367; CA No 134 of 2003, 27 August 2003. I note that the latter two cases in which sentences comparable to that imposed here were passed,

concerned the lesser offence of grievous bodily harm simpliciter.

I sincerely hope the applicant is able to continue her promising attempts at rehabilitation and to again use her considerable skills in the future to assist her family and community. If she is able to avoid binge drinking, she almost certainly will.

For the reasons I have given, however, it cannot be said that the sentence imposed was in any way manifestly excessive. It follows that in my view the application for leave to appeal against sentence should be refused.

DAVIES JA: I agree.

McPHERSON JA: I also agree.

THE PRESIDENT: That is the order of the Court.
