SUPREME COURT OF QUEENSLAND

CITATION:	*R v Stevenson* [2004] QCA 470
PARTIES:	**R** **v** **STEVENSON, Timothy James** (applicant)
FILE NO/S:	CA No 373 of 2004 DC No 24 of 2004
DIVISION:	Court of Appeal
PROCEEDING:	Sentence Application
ORIGINATING COURT:	District Court at Dalby
DELIVERED EX TEMPORE ON:	2 December 2004
DELIVERED AT:	Brisbane
HEARING DATE:	2 December 2004
JUDGES:	McMurdo P and Mackenzie and Philippides JJ 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 – APPEAL AND NEW TRIAL AND INQUIRY AFTER CONVICTION – APPEAL AND NEW TRIAL – APPEAL AGAINST SENTENCE – APPEAL BY CONVICTED PERSONS – WHEN REFUSED – GENERALLY – applicant pleaded guilty to one count of dangerous operation of a motor vehicle whilst adversely affected by an intoxicating substance and one count of wilful damage – learned sentencing judge held that sentence of 12 months imprisonment was appropriate penalty – did not declare time spent in pre-sentence custody on various matters as time already served under sentence, but deducted that time from 12 months and sentenced applicant to 41 weeks imprisonment – whether learned sentencing judge should have made a declaration of time already served – whether sentence was manifestly excessive *Penalties and Sentences Act* 1992 (Qld), s 161 *R v Broadbridge* [1994] QCA 278; CA No 195 of 1994, 5 August 1994, cited *R v Coake* [1994] QCA 12; CA No 43 of 1998, 5 February

	1995, cited *R v Fox* [1998] QCA 121; CA No 50 of 1998, 12 June 1998, cited *R v Gehrman* [2002] QCA 261; CA No 192 of 2002, 25 July 2002, cited *R v Massey* [2002] QCA 312, (2002) 132 A Crim R 433, cited
COUNSEL:	The applicant appeared on his own behalf B G Campbell for the respondent
SOLICITORS:	The applicant appeared on his own behalf Director of Public Prosecutions (Queensland) for the respondent

THE PRESIDENT: Mr Stevenson pleaded guilty on 21 September 2004 to one count of dangerous operation of a motor vehicle while adversely affected by an intoxicating substance and one count of wilful damage. He also pleaded guilty to summary offences of obstructing police, driving under the influence of an intoxicating substance, failing to dispose of a needle and possession of a dangerous drug. He was sentenced to 41 weeks imprisonment for the offence of dangerous operation of a motor vehicle whilst adversely affected and to lesser concurrent terms of imprisonment on the remaining counts. He contends in his grounds of appeal that the sentence imposed was manifestly excessive, but from his written outline and his oral submissions, it appears that his sole complaint is that the sentencing judge did not make a declaration under s 161 *Penalties & Sentences Act* 1992 (Qld) ("the Act") that time spent in pre-sentence custody was imprisonment already served under the sentence.

Mr Stevenson was 29 years old at sentence and 28 when he offended. He has some relevant history. In 1992 and 1994 he

was convicted and fined for minor drug offences. In 1999 he was convicted of obstructing a police officer, failing to properly dispose of a needle and syringe, dangerous operation of a motor vehicle and unlawful use of a motor vehicle. He was convicted and sentenced to nine months imprisonment suspended for two years, ordered to pay restitution of $305.95, placed on two years probation and fined. Later that year he was convicted and fined for an offence of wilful damage which predated the offences dealt with earlier that year. In 2000 he breached his probation order and was fined and he was convicted and fined for unlawful possession of a motor vehicle and stealing as a servant. He had a number of speeding offences in 2003 and 2004 and his licence had been suspended more than once for accumulated demerit points. In 1999 he was convicted of disqualified driving and driving whilst under the influence of a drug.

The Prosecutor at sentence told the primary Judge that Mr Stevenson had been in custody from the time of the commission of the offences on 13 November 2003 until 27 January 2004, a period of 76 days, but because he had also been charged with other offences which had been later discontinued, s 161 of the Act could not apply because he had not been held in custody in relation to proceedings for the offence and for no other reason. The offences with which Mr Stevenson was initially charged but which were subsequently discontinued included attempted murder and serious assault. These offences were related to the series of offences on which the sentence the subject of this application was passed and were discontinued

in the Dalby Magistrates Court on 26 March 2004. He was also initially charged with offences of entering or being in premises with intent to commit indictable offences and common assault which were unrelated to the present series of offences and which were alleged to have been committed on another occasion. These were discontinued on 21 May 2004. His Honour at sentence indicated that he would treat the presentence custody of 76 days as a period of 11 weeks and whilst he would not make a declaration under the Act, he would deduct the presentence custody from the sentence imposed.

The facts of the offences that concern this Court are as follows. Two police officers were working at the Dalby police station at about 12.30 a.m. on 13 November 2003 when a woman came to the front counter. She said she had taken an overdose of Valium and Panadol and wanted a place to stay for the night. She was glassy-eyed, appeared groggy, was having difficulty standing, was slurring her speech and wasn't making sense. Mr Stevenson also attended the police station at this time and had some connection with the woman. He told police he did not want trouble, they were staying at the Windsor Hotel and he wanted her to come back there with him; she suffered from mental disorders and had injected amphetamines earlier that evening. He appeared agitated and antagonised and was fidgety and moving his hands rapidly. His face was flushed and he appeared annoyed with the woman. The officers explained to Mr Stevenson that they would have to take the woman to hospital, but before they could do so, she walked outside and disappeared. Mr Stevenson became concerned about

her whereabouts, removed some keys from the fork of a tree and drove off in a Nissan four wheel drive utility.

Police found the woman sitting at a table in a nearby service station. Mr Stevenson drove his vehicle into the car park about three metres away from them. He said in an angry and agitated voice, "Come on, Katrina, come with me. Don't go with them. They'll only end up putting you away." The police officers tried to reassure him that they wanted to take her to hospital for observation. Mr Stevenson angrily told the woman that she did not have to go with the police and she could come with him. She walked with the police towards the police station. He continued to urge her to come away with him and not to go with the police who he called "arseholes." He was clearly very angry and the police officers were concerned about his conduct. He drove through a red light towards the police officers, who began to walk faster, taking the woman with them. Mr Stevenson stopped his car nearby, continued to abuse the police and urged Katrina not to go with them. As they walked into the car park of the police station they heard an engine revving and turned to see Mr Stevenson's vehicle turn sharply and move straight towards them. One police officer yelled to Mr Stevenson "Stop, stop" but he continued to drive his vehicle towards them. The police officer drew his service pistol and aimed it at Mr Stevenson, yelling twice, "Stop, or I will shoot." The other police officer took hold of the woman.

Mr Stevenson's vehicle stopped suddenly about two metres in front of them at the entrance to the police car park. One police officer went to the driver's side door and told Mr Stevenson to get out, but Mr Stevenson gripped the steering wheel with both hands and leaned across the seat towards the passenger side with his feet wedged firmly against the driver's side floor. The police officer tried to extricate him from the vehicle and eventually used capsicum spray. Mr Stevenson then became disoriented, was removed from the vehicle and arrested.

He was interviewed by police and admitted injecting methylamphetamine at about 8 p.m. that evening. He said he was a daily user of amphetamines. He said he was driving twice as fast as he should have been when he drove the vehicle. Police asked him whether his driving at high speed towards them and the woman was dangerous. He responded, "Totally out of control, absolutely out of control". He said it was not however his intention to run anyone down, but to have the police shoot him. He told police that he was in a:

> "drug induced, depression with the situation at hand of this mentally ill person that's been in my life for 8.5 years and the psychological father of her child. It's fair to say sir, I've had enough".

He said:

> "[B]efore I decided to put my foot down, I knew farewell [sic] you are walking across the road in the lights of the ute, you were grabbing for your gun, I knew farewell [sic] the moment I rode [sic] towards the driveway you

> were going to pull the gun out and you were going to shoot at me".

When asked about his intention, he said he wanted the police to "Drop me dead so I don't have to put up with the misery." When directly asked whether he was attempting to use the police as a form of suicide he said, "I was entrapping you into a situation where you'd be forced to kill me."

His blood was tested for alcohol and drugs and he was found to have a drug concentration of 0.01 mg/kg of amphetamine and 0.16 mg/kg of methylamphetamine.

Later, Mr Stevenson damaged a chair against the door of the watch house cells.

When police searched his hotel room, they found a number of clipseal bags containing an off-white crystal substance weighing 0.0147 grams and containing methylamphetamine.

Mr Stevenson's counsel at sentence described him as a young man from a broken home, self sufficient from 14 years of age, who commenced using cannabis when he was about 17, and speed when he was about 21. He then met the woman who figures in this episode, Katrina. They developed a dependency on each other and on amphetamines. He describes her as a destructive influence in his life. He stopped using drugs in 1998 but commenced to use them again when he reunited with Katrina, who is now deceased. He has formed a new relationship, is off drugs, is a regular churchgoer and has made successful

attempts to rehabilitate himself. He was employed at sentence as a labourer and bobcat driver. His counsel submitted that a head sentence of 18 months imprisonment was appropriate, but that it should be suspended after a short period of imprisonment to reflect his plea of guilty and his cooperation with the administration of justice.

The learned sentencing Judge rightly referred to the aggravating circumstances of the driving offence, namely that whilst Mr Stevenson did not intend to run down anyone, this was a real possibility because of his impaired ability to control the vehicle in his drug induced state. His Honour determined the case was not an appropriate one for a suspended sentence, but that he would give credit for cooperation, the plea of guilty and the attempts at rehabilitation by reducing the sentence to be imposed to 12 months imprisonment from which his Honour then deducted 11 weeks for the time spent in presentence custody.

The sentence is well within the appropriate range. See for example *R v Broadbridge* [1994] QCA 278; CA No 195 of 1994, 5 August 1994, *R v Coake* [1999] QCA 12; CA No 43 of 1998, 5 February 1999 and *R v Gehrman* [2002] QCA 261; CA No 192 of 2002, 25 July 2002.

I turn now to the contention that his Honour should have made a declaration under Section 161(1) of the Act which relevantly provides:

> "If an offender is sentenced to a term of imprisonment for an offence, any time that the offender was held in custody in relation to proceedings for the offence and for no other reason must be taken to be imprisonment already served under the sentence, unless the sentencing court otherwise orders."

The final phrase of that subsection plainly maintains the untrammelled discretion which existed before the commencement of the Act and allows a sentencing Court to take into account time spent in pre-sentence custody as a mitigating factor reducing the sentence imposed. The Judge in his sentencing remarks plainly and clearly explained his reasons for not making the declaration and for "otherwise ordering" and gave full allowance for the period in custody by deducting it from the sentence he otherwise would have imposed: compare *R v Skedgwell* [1999] 2 Qd R 97. The learned Judge was right to decline to make the declaration under Section 161 of the Act, because some of the offences for which Mr Stevenson was in pre-sentence custody were unrelated to those offences for which he was ultimately sentenced. See *R v Fox* [1998] QCA 121; CA No 50 of 1998, 12 June 1998 and *R v Massey* [2002] QCA 312, (2002) 132 A Crim R 433.

Mr Stevenson's real complaint seems to be that had the declaration been made, he would have received conditional release from prison three and a half weeks earlier and would have been eligible for reintegration leave earlier. This does not, however, make the sentence unlawful, nor does it make the sentence manifestly excessive. His contention is without substance.

The application for leave to appeal against sentence must be refused.

MACKENZIE J: I agree.

PHILIPPIDES J: I also agree.

THE PRESIDENT: That is the order of the Court.
