# SUPREME COURT OF QUEENSLAND

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| CITATION: | *R v Price* [2005] QCA 52 |
| PARTIES: | **R**<br>**v**<br>**PRICE, Barry John**<br>(applicant) |
| FILE NO/S: | CA No 30 of 2005<br>DC No 262 of 2005 |
| DIVISION: | Court of Appeal |
| PROCEEDING: | Sentence Application |
| ORIGINATING COURT: | District Court at Brisbane |
| DELIVERED EX TEMPORE ON: | 4 March 2005 |
| DELIVERED AT: | Brisbane |
| HEARING DATE: | 4 March 2005 |
| JUDGES: | McPherson JA and White and Douglas JJ<br>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 – PARTICULAR OFFENCES – DRIVING OFFENCES – CULPABLE OR DANGEROUS DRIVING CAUSING DEATH OR BODILY HARM – GENERALLY – applicant truck driver ignored give-way sign and collided with van – driver of van killed and passenger injured – accident caused by 'momentary inattention' – sentence two years' imprisonment suspended after four months upheld<br><br>*R v Balfe* [1993] QCA 014; CA No 444 of 1997, 20 February 1998, cited<br>*R v Manners, ex parte A-G* [2002] QCA 301; CA No 176 of 2002, 20 August 2002, cited<br>*R v Roser* [2004] QCA 318; CA No 265 of 2004, 1 September 2004, considered<br>*R v Wilde, ex parte A-G (Qld)* [2002] QCA 501; (2002) 135 A Crim R; cited |
| COUNSEL: | B W Farr for the applicant |

M J Copley for the respondent

SOLICITORS: Director of Public Prosecutions (Qld) for the applicant
Ryan & Bosscher for the respondent

McPHERSON JA: The applicant, Barry John Price, pleaded guilty on 21st February 2005 in the District Court in Brisbane to the offence of dangerous operation of a motor vehicle causing death and grievous bodily harm.

He was sentenced to two years' imprisonment to be suspended after four months for an operational period of two years. He was also disqualified from holding or obtaining a licence for two years.

Mr Price is a 60 year old truck-driver by occupation. He was 58 at the time of the accident on 26 May 2003. At 4:20 a.m. the applicant was driving a prime mover on Orchard Road, Richlands towards the intersection of Pine Road. A bread delivery van driven by the deceased was travelling along Pine Road also towards this intersection. Both vehicles had their lights on. The applicant failed to observe a give-way sign and collided with the bread delivery van. The force of the collision propelled the bread van through a fence and into a stand of trees alongside the road. Both occupants of the van, who were not wearing seat-belts, were flung from the vehicle. The driver of the bread van was killed. He was found dead at the scene by some ambulance officers. The passenger suffered severe head and chest injuries and was detained in hospital

for some six months or so after the incident, although he appears to have made a reasonable recovery since then.

The applicant, who also suffered injury in the collision, has no memory of the accident or of why he did not see the give-way sign or the vehicle approaching and did not check his speed on moving towards the intersection. A witness to the incident said that the applicant's prime mover was travelling at about 60 kilometres per hour. The trial judge was satisfied that the accident was the result of what he called "momentary inattention", though it is perhaps a more favourable assessment of his driving than I would be prepared to make.

On any view, he was plainly careless when driving a very heavy vehicle. There was one give-way sign on Orchard Road that the applicant should have observed as he approached the intersection. There were also give-way markings painted on the road at the intersection itself although these were worn and partly obscured by gravel which had fallen on the road surface.

The applicant has two very old and largely irrelevant convictions. More significant is his history of driving offences. On three occasions, he has been convicted of failing to obey traffic signals or signs. These consisted two incidents of disobeying traffic lights, one in 1991 and one in 1994; and also in 1998, failing to allow sufficient time to vehicles already on the highway when attempting to merge with

traffic. There have also been 13 occasions between 1981 and 2001 when the applicant was convicted of speeding. Mr Farr, who appeared for the applicant, submitted that this record is unexceptional for a professional driver who has travelled around about the six million kilometres over a 40 year period. However, it must be noted that, as a professional driver of a very heavy vehicle, the applicant was under a special duty to exercise care when driving and to obey traffic rules.

The applicant pleaded guilty to an ex officio indictment and has exhibited remorse for the consequences of his acts. He showed concern for the fate of the occupants of the other vehicle and has suffered psychologically as a result of the accident. He has a good work record and lived with and cared for his elderly mother. His wife died four years ago and this is something that still affects him considerably. He has also been diagnosed with diabetes since the accident. All these features attract considerable sympathy, but it is impossible to ignore the much more serious consequences that have been visited upon the relatives of the deceased as a result of his carelessness. The effect on the deceased's happily married wife of 23 years and his family have, as might be expected, been devastating.

It has been submitted before us today that the sentence is manifestly excessive and that the sentence that should be imposed is one of two years' imprisonment suspended after serving 11 days with a declaration of 11 days pre-sentence custody from 21st February to 4th March 2005. No issue is, of

course, taken with the disqualification of the applicant from holding or obtaining a drivers' licence for two years and that might affect his employability if indeed he is to continue after this incident to wish to drive for a living.

The applicant submits that the failure of the deceased and the injured complainant to wear seat belts provides a unique and relevant mitigating feature. He notes the possibility that the circumstances of death or grievous bodily harm might have been avoided if the occupants of the van had been wearing seat belts. There is, in my view, nothing but speculation to support such a proposition, especially having regard to the force of the impact and the collision. It is claimed that, whilst the sentencing judge took this factor into account in combination with others, his Honour did not consider it to be a specific mitigating feature and, so it is said, insufficient weight was therefore accorded to that consideration.

Mr Farr has referred us to a number of cases in which wholly suspended sentences have been imposed in cases of dangerous driving causing death or grievous bodily harm. However, as I remarked in a recent case, it is correct to say that since the Court of Appeal's decision in *R v Wilde; ex parte Attorney-General* [2002] QCA 501;(2002) 135 A Crim R in November 2002, there has been a marked upward trend in the penalties imposed in these cases. Both of those two decisions to which I referred had more serious features than in the present case and I am not using them except to demonstrate the point about the upward trend.

In both of them, much heavier custodial sentences were imposed for what were more serious examples of dangerous driving.

One recent case to which we were referred is *R v Roser* [2004] QCA 318. The applicant there pleaded guilty to dangerous operation of a motor vehicle causing grievous bodily harm. The Court of Appeal by a majority, with Williams JA dissenting, reduced his sentence of 12 months' imprisonment to be suspended after serving three months to one of a wholly suspended sentence. Mr Roser had no criminal or traffic history but he was only 17 years old at the time of the offence. He drove, without permission, his mother's car on a sealed semi-rural road at speeds of up to 120 kilometres per hour where the limit was 40 kilometres per hour. Upon seeing a car travelling in the opposite direction, he braked, skidded and collided with the car head-on causing the occupant serious injury. He accepted responsibility for his actions immediately phoning for assistance, cooperating with the police and showing great remorse. Unlike the applicant here, it was a case of deliberate dangerous driving. It must be said, however, for reasons which I suppose are obvious, that young men who cause injuries of this kind in these circumstances have been treated much more leniently than older drivers who ought to realise the responsibilities that rest upon them.

In the respect that the offence here involved momentary inattention and driving a heavy vehicle with fatal consequences, this case bears some resemblance to *R v Balfe*

[1998] QCA 014 and *R v Manners; ex parte Attorney-General* [2002] QCA 301, in each of which much heavier sentences were imposed than here. The effective sentences respectively in each of those cases were three years and, in the second one, 11 months. It may be that this suggests, as I think it does, that the Court has been demanding and is demanding a higher standard of responsibilities and care in driving a heavy vehicle of the kind that was involved here, and it is natural to do so when one sees the serious consequences that arise from carelessly driving such vehicles.

In all the circumstances, it is my opinion that the comparatively short period of imprisonment in this instance cannot be regarded as an erroneous exercise of the sentencing discretion. I would therefore refuse the application for leave to appeal against sentence.

WHITE J: I agree.

DOUGLAS J: I agree.

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