# SUPREME COURT OF QUEENSLAND

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| CITATION: | *R v Lacey* [2005] QCA 431 |
| PARTIES: | **R**<br>**v**<br>**LACEY, Nicholas**<br>(applicant) |
| FILE NO/S: | CA No 292 of 2005<br>DC No 3156 of 2005 |
| DIVISION: | Court of Appeal |
| PROCEEDING: | Sentence Application |
| ORIGINATING COURT: | District Court at Brisbane |
| DELIVERED EX TEMPORE ON: | 23 November 2005 |
| DELIVERED AT: | Brisbane |
| HEARING DATE: | 23 November 2005 |
| JUDGES: | de Jersey CJ, McPherson JA and Mackenzie J<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 – APPEAL AND NEW TRIAL AND INQUIRY AFTER CONVICTION – APPEAL AND NEW TRIAL – APPEAL AGAINST SENTENCE – APPEAL BY CONVICTED PERSONS – APPLICATIONS TO REDUCE SENTENCE – WHEN REFUSED – where the applicant pleaded guilty to dangerous driving causing grievous bodily harm – where the applicant was sentenced to two years imprisonment suspended after three months for an operational period of three years, and was disqualified from holding a driver's licence for four years – where the sentencing Judge held the applicant must serve a short term of actual imprisonment given the driving constituted a deliberate dangerous course of action resulting in serious consequences – where the applicant pleaded guilty notwithstanding prosecution of the case took more than two years, a delay for which the applicant was not responsible – where the applicant was 24 years old, showed genuine remorse, gave active assistance to the injured complainant over a substantial period and had a good employment history |

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| | – where the applicant had three prior speeding charges – whether the sentence was manifestly excessive |
| | *R v Roser* [2004] QCA 318; CA No 265 of 2004, 1 September 2004, distinguished |
| COUNSEL: | A Kimmins for the applicant<br>M R Byrne QC for the respondent |
| SOLICITORS: | The Law Place for the applicant<br>Director of Public Prosecutions (Queensland) for the respondent |

THE CHIEF JUSTICE: The applicant seeks leave to appeal against the sentence imposed upon him following his plea of guilty to a charge of dangerous driving causing grievous bodily harm. He committed the offence on the 9th of August 2003. The learned District Court Judge sentenced him on the 8th of November 2005 to two years' imprisonment suspended after three months for an operational period of three years and disqualified him from holding a driver's licence for four years. He is presently in custody.

It was the Judge's view that the applicant's driving was particularly serious which led the Judge to require the applicant to serve a short term of actual imprisonment. The Judge took that course, notwithstanding other features going the other way, the applicant's plea of guilty more than two years taken over the prosecution of the case for which the applicant was not responsible during which the applicant was left in a state of uncertainty as to his fate, the applicant's age, 24 at the time of the offence, his genuine remorse, including his active assistance to the injured complainant

over a substantial period following the offence and the applicant's good employment history.

The Judge distinguished the applicant's position, being 24 years old at the time of the offence, from that of the younger otherwise comparable offenders who sometimes come before the Courts on such charges. The Judge also saw some relevance in the applicant's having accumulated three speeding charges between 1998 and the year 2000. The Judge had before him a psychologist's report suggesting no need for special deterrence in relation to the applicant, but of course general deterrence is very important in cases like this.

The charge arose from a single vehicle collision with a tree at about 3 a.m. on Dayboro Road, Petrie. The speed limit at the point was 60 kilometres per hour, having reduced from 100 kilometres per hour and 80 kilometres per hour not too far distant from the point of impact. The applicant and the complainant had been involved in an intermittent relationship, but were separated at the time of the offence.

Nevertheless at about midnight the complainant telephoned the applicant asking him to collect her from her father's house and to drive her home. It seems the complainant then fell asleep and a considerable time later awoke and went to the applicant's car which was waiting outside. Neither the complainant nor the applicant has any recollection of the accident.

A person living near the point of the collision awoke at about 3 a.m. to hear the noise of tyres sliding on gravel followed by a loud bang. Accident reconstruction techniques have led to an estimate of the applicant's speed at the time he lost control of the vehicle as in the vicinity of 118 kilometres per hour. The complainant suffered serious injuries, including a pneumothorax, left lateral rib fractures, a fracture of the left scapula, multiple pelvic fractures and a closed fracture of the left femur mid-shaft. She underwent a number of surgical procedures, including the insertion of pins and pelvic traction. The complainant has been left with substantial restriction in the movement of her left hip and knee. The physical and emotional consequences are dealt with in her victim impact statement.

The Judge found it was not a case of momentary inattention. As he said:

> "You were travelling at a substantial speed. That makes this case one which is not what is described as a case of momentary inattention. The travelling at speed for whatever distance, and the distance is not entirely clear, is nonetheless an indication of a deliberate dangerous course of action which takes this case beyond mere momentary inattention."

Mr Kimmins who appeared for the applicant, submitted that the term of imprisonment should have been wholly suspended and that the applicant should have been subjected to a licence disqualification of a shorter period than four years. He relied on the accumulation of circumstances in favour of the applicant which I listed earlier.

I consider the sentencing Judge was entitled to impose the sentence which he did impose. It was not manifestly excessive. I do not consider the features of the time taken over the prosecution and the applicant's remorsefulness, in particular, meant the applicant should have been spared any actual imprisonment.

The case of *R v Roser* [2004] QCA 318 is comparable. In that matter the appeal was allowed and the term fully suspended. That was essentially because of what was described as the "extreme youth" of the applicant – he was only 17 years old - and his lack of any relevant past criminal traffic history.

But in light of the age of this applicant, 24 years old at the time of the offence and the greater maturity and responsibility attending that, the Judge was in my view entitled to require the applicant to serve a term of actual imprisonment to reflect the serious nature of the driving and its consequences and to impose a lengthy term of licence disqualification. It cannot be said the sentence imposed was outside a relevant range.

I would refuse the application.

McPHERSON JA: I agree. It has not been demonstrated to my satisfaction that the sentence imposed in this case was excessive or that the Judge acted on any wrong principle in imposing it.

MACKENZIE J: I also agree. It is clear from the record that the learned sentencing Judge expressly took into account delay as a factor that should reduce the sentence which would be served and also the degree of remorse which had been displayed. I am not satisfied that there was any error in principle in imposing the sentence that was imposed and I therefore agree with the order proposed.

THE CHIEF JUSTICE: The application is refused.

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