SUPREME COURT OF QUEENSLAND

CITATION:	*R v Sokol* [2011] QCA 20
PARTIES:	**R** **v** **SOKOL, Michael Geoffrey** (applicant)
FILE NO/S:	CA No 272 of 2010 DC No 204 of 2010
DIVISION:	Court of Appeal
PROCEEDING:	Sentence Application
ORIGINATING COURT:	District Court at Southport
DELIVERED ON:	18 February 2011
DELIVERED AT:	Brisbane
HEARING DATE:	11 February 2011
JUDGES:	Chief Justice, Muir and White 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 – APPEAL AND NEW TRIAL – APPEAL AGAINST SENTENCE – GROUNDS FOR INTERFERENCE – SENTENCE MANIFESTLY EXCESSIVE OR INADEQUATE – 31 year old applicant pleaded guilty to unlawful wounding – applicant sentenced to two years imprisonment with parole release date fixed after 8 months – applicant had punched complainant in the face whilst holding a glass in his hand – complainant left with scar – applicant was otherwise a good member of the community and had sought to rehabilitate himself by moving away and refraining from alcohol – applicant was primary income earner for family – whether sentence imposed was manifestly excessive *R v Cui* [2009] QCA 334, distinguished *R v Denyer* [2009] QCA 53, considered *R v Holmes* [2009] NTCCA 16, considered *R v Jones* (2008) 186 A Crim R 191; [2008] QCA 181, considered *R v Kent* [2004] QCA 83, distinguished
COUNSEL:	A J Kimmins for the applicant M B Lehane for the respondent

SOLICITORS: Potts Lawyers (Southport) for the applicant
Director of Public Prosecutions (Qld) for the respondent

[1] **CHIEF JUSTICE**: The applicant seeks leave to appeal against the sentence imposed upon him for the offence of unlawful wounding. On 9 November 2010 he pleaded guilty to the offence, and was sentenced to two years imprisonment with a parole release date fixed at 8 July 2011, that is, after eight months or one-third of the head sentence.

[2] The offence was committed at a leagues club on the Gold Coast on 11 July 2009. The applicant was then 31 years of age. He had no significant prior criminal history. The complainant and the applicant had not previously known one another. The applicant was on the balcony of the club premises. The complainant walked out onto the balcony. The complainant heard the applicant "say something that sounded argumentative". The complainant responded: "and your mamma" (characterized by the learned Judge as "some slight provocation"), and walked past the applicant without looking at him, whereupon the applicant spontaneously punched the complainant in the face, exerting what the Judge termed "considerable force". The applicant was intoxicated, and did not realize that he had a glass in his hand. The glass shattered upon impact, producing a five to seven centimetre laceration to the complainant's temple, requiring suturing in hospital. The laceration healed well, but the complainant is left with a scar, which occasionally produces an itch. He grew his sideburns in order to conceal the scar. The applicant wrote a letter of apology to the complainant on 9 November 2010, which was the day upon which he was sentenced.

[3] The learned Judge noted the applicant's remorse (not of course tied to that "apology"), and that the commission of the offence was out of character for the applicant as an otherwise "good and useful member of the community". He was aware that the applicant had sought to rehabilitate himself by refraining from the consumption of alcohol, and that imprisoning the applicant would remove the "primary income earner" of his partner and child. The Crown Prosecutor submitted that the applicant should be imprisoned for at least two years, with a parole release date or suspension after one-third. While he did not challenge a range of 18 months to two years, defence Counsel submitted that the applicant should be released on parole at once.

[4] The learned Judge referred to the "extreme prevalence" of such offending on the Gold Coast, where he is one of the resident District Court Judges. I note that unfortunately this sort of offending is prevalent broadly throughout the State. Having referred to what was said in *R v Jones* [2008] QCA 181, the Judge sentenced the applicant to two years imprisonment with release on parole fixed at one-third.

[5] Counsel for the applicant submitted that his Honour gave too much weight to the need for general deterrence and too little weight to the applicant's mitigating circumstances, such as his depression following his father's death a year earlier and his protectiveness of his mother, his abstention from alcohol, and his relocation away from the Gold Coast. There is no ground for thinking that his Honour ignored any of those circumstances.

[6] Counsel suggested that his Honour erred in his categorizing the case as a "glassing" without focusing on its particular features, and referred to what Martin CJ said in the Northern Territory Court of Criminal Appeal in *R v Holmes* [2009] NTCCA 16, paras 8 and 9:

> "There is no separate or special category of crime called 'glassing'. The use of glass in committing crimes of violence is but one example of crimes involving the use of a weapon…[i]n determining sentence, each case must be judged according to its particular circumstances and it is misleading to apply the term 'glassing' to all cases in which glass in one form or another is used as a weapon."

[7] Counsel criticized a "generalised approach" towards sentencing for these offences.

[8] All Martin CJ was saying was that these cases are of varying gravity and that a sentencing judge must take all relevant circumstances into account. That is what this sentencing Judge did.

[9] The prevalence of offending, where intoxicated patrons respond irrationally to perceived slights by punching with a fist containing a glass, warrants strongly deterrent sentences. It has even led to a requirement that some hotels and clubs replace glass tumblers with plastic ones. It may be accepted that the applicant would be most unlikely to offend in this way again. But the need to secure general deterrence is extremely important in these cases. That prevalence left it open for His Honour to move towards the upper limit of the appropriate range.

[10] The need for sentences to secure general deterrence in this area is enhanced by the feature that these offences are not infrequently committed by persons who would not otherwise fall foul of the criminal law – energetic young men, in employment, from stable family backgrounds and of otherwise good character, who fail to recognize the risks associated with inebriation.

[11] In *Jones*, the President referred to a range of 18 months to two years for comparable offending. Eighteen months was the head sentence imposed on appeal in *Jones*, where the offender was 23 years old at the time of the offence, by contrast with the applicant's being 31. Also, as Mackenzie AJA observed in *Jones* (p 8),

> "[O]ffences involving the use of glasses as weapons must ordinarily attract a sentence of actual imprisonment. Those minded to engage in disturbances at or near licensed premises should be aware of that."

[12] In *R v Denyer* [2009] QCA 53, the court refused leave to appeal against a sentence of 18 months imprisonment with parole after four months, for similar offending by a 20 year old man against a complainant who had offered some provocation. Denyer had foregone alcohol and submitted to counselling and treatment. Keane JA referred to the need for sentences which involved "a stern expression of disapproval", because of the increasing prevalence of such offending over recent years. I agree.

[13] Counsel for the applicant referred among other cases to *R v Kent* [2004] QCA 83 and *R v Cui* [2009] QCA 334. They are readily distinguishable from the present case. Kent was sentenced to 18 months imprisonment suspended after three months. But he responded to the complainant's having punched him, without provocation, "with full force with her closed fist", and that complainant "suffered

no serious injury". The 25 year old Cui was sentenced on appeal to 18 months imprisonment with parole after two months, but the Court of Appeal was plainly influenced by "the very minor nature of the wounding…and the compelling considerations in mitigation".

[14] Counsel submitted the sentence should be reduced to 18 months with release after three to six months. But I consider the sentence which was imposed was within the range of penalty appropriate for this offending, albeit at its upper limit.

[15] The applicant has not demonstrated that the sentence imposed upon him was manifestly excessive. I would refuse the application.

[16] **MUIR JA**: I agree that the application should be refused for the reasons given by the Chief Justice.

[17] **WHITE JA**: I have had the advantage of reading the reasons for judgment of the Chief Justice and agree with those reasons and the order which his Honour proposes.