

SUPREME COURT OF QUEENSLAND

CITATION: *R v Tresize* [2011] QCA 139

PARTIES: **R**
v
TRESIZE, Luke Everett
(applicant)

FILE NO/S: CA No 323 of 2010
DC No 341 of 2010

DIVISION: Court of Appeal

PROCEEDING: Sentence Application

ORIGINATING COURT: District Court at Townsville

DELIVERED ON: 24 June 2011

DELIVERED AT: Brisbane

HEARING DATE: 23 May 2011

JUDGES: Margaret McMurdo P, Cullinane and Jones JJ
Separate reasons for judgment of each member of the Court, each concurring as to the order made

ORDER: **Application for leave to appeal is dismissed**

CATCHWORDS: CRIMINAL LAW- APPEAL AND NEW TRIAL – APPEAL AGAINST SENTENCE – GROUNDS FOR INTERFERENCE – SENTENCE MANIFESTLY EXCESSIVE – where the applicant pleaded guilty to dangerous operation of a vehicle causing grievous bodily harm with the circumstance of aggravation that he was adversely affected by an intoxicating substance – where the applicant drove dangerously crossing double white lines and causing a collision – where the applicant attempted to leave the scene – where the applicant had a blood alcohol content of 0.19% and 12mg/kg of the active ingredient of cannabis in his blood – where the applicant had a serious traffic history – whether the sentence was manifestly excessive

R v Haydon (1996) 26 MVR 345; [\[1996\] QCA 503](#), considered
R v Ibrahim (2003) 40 MVR 183; [\[2003\] QCA 386](#), considered
R v Roser [\[2005\] QCA 457](#), considered
R v Smith [\[2005\] QCA 26](#), considered
R v Saltmarsh (2007) 46 MVR 573; [\[2007\] QCA 25](#), considered
R v Slater [\[1997\] QCA 042](#), considered

R v Tabakovic (2005) 154 A Crim R 30; [\[2005\] QCA 90](#), considered

COUNSEL: J Trevino for the appellant
M Connolly for the respondent

SOLICITORS: Legal Aid Queensland for the appellant
Director of Public Prosecution (Queensland) for the respondent

- [1] **MARGARET McMURDO P:** I agree with Cullinane J's reasons for refusing this application for leave to appeal against sentence.
- [2] The applicant was sentenced to five years imprisonment with a parole eligibility date fixed after 18 months for this offence of dangerous operation of a vehicle causing grievous bodily harm while adversely affected by an intoxicating substance. The maximum penalty was 14 years imprisonment. The offending had a significant effect on the 21 year old victim, an unskilled worker, who suffered a comminuted fracture of the right wrist which required surgical reduction and placement in a cast for about three months. He noted in his victim impact statement prepared a few weeks before the sentence that his wrist was deformed and he was still suffering pain and having orthopaedic consultations.
- [3] The applicant attempted to leave the scene after the accident. He had a serious traffic history including two entries for driving under the influence of liquor. He also had a criminal history demonstrating past anti-social conduct. At 33 years of age and with his prior traffic and criminal history, the applicant's offending "hooning" behaviour whilst seriously intoxicated which resulted in serious personal harm to an innocent road user and in extensive property damage, was inexcusable.
- [4] What can be said in his favour is that he cooperated with authorities, pleaded guilty at an early stage and sent a letter of apology to the victim through the investigating police officers. These are significant mitigating factors.
- [5] The sentence imposed adequately reflected the exacerbating and mitigating features. It was not manifestly excessive.
- [6] **CULLINANE J:** The applicant seeks leave to appeal against a sentence imposed in the District Court at Townsville on 16 December 2010.
- [7] The applicant pleaded guilty to the offence of dangerous operation of a vehicle causing grievous bodily harm with the circumstance of aggravation that he was adversely affected by an intoxicating substance.
- [8] He was sentenced to imprisonment for five years and a parole eligibility date fixed at 16 June 2012. He was disqualified from holding a driving licence for a period of five years.
- [9] The disqualification was the subject of a challenge in the notice of appeal but was not pursued before us.
- [10] The applicant was born on 1 August 1977.
- [11] A schedule of facts (exhibit 3) was tendered before the learned sentencing judge.

- [12] The relevant events occurred in Townsville.
- [13] The driving, the subject of the charge, took place over some 7.3 kilometres, starting in Stuart Drive and then proceeding along University Drive.
- [14] At about 5 pm on the 11 October 2009, the applicant's silver blue Commodore sedan was seen to drive around the wrong side of the roundabout at the intersection of Edison Street and Stuart Drive, causing a driver coming in the opposite direction to pull off the road to avoid a collision. In the course of this manoeuvre, the applicant's vehicle overtook a car and truck.
- [15] The vehicle proceeded to the intersection of Stuart Drive and University Drive, turning into the latter. It was seen to be travelling along University Drive towards Lavarack Army Barracks. He overtook a vehicle which was travelling at about 80 kph and stopped at a roundabout in front of the entrance to the barracks. Smoke was seen to be coming from the tyres, accompanied by a squealing noise. The applicant was engaged in what is described in the material as "burn outs". He then drove off around the roundabout and weaved in and out of traffic as he proceeded.
- [16] The car entered what is called the Ring Road. The complainant in this matter was travelling as a passenger in a green Holden Commodore in the opposite direction to the applicant. Approximately some 100 to 200 metres before the exit to the University and the General Hospital, the applicant's vehicle crossed the double white lines and swerved into the lane in which the vehicle which the complainant was a passenger, was then travelling. The driver of this vehicle attempted to swerve to avoid a collision but was unsuccessful.
- [17] Following the collision, the applicant's vehicle returned to its correct side and travelled another 350 metres along the road. The applicant attempted to flee but was detained by those present.
- [18] When the police arrived, they noticed the applicant to be unsteady on his feet and he smelt strongly of liquor. His eyes were bloodshot and his speech was erratic and slurred.
- [19] A road side breath test produced a positive result. The applicant was taken to the Townsville general hospital where a sample of his blood was taken. On analysis, he was found to have a blood alcohol concentration of .190 per cent. Analysis also revealed .12mg/kg of the active ingredient of cannabis in his blood.
- [20] The complainant sustained a comminuted fracture of the distal right radius with dorsal angulation and intra articular involvement which required reduction. A Victim Impact Statement (exhibit 5) was tendered. This is dated 25 November 2010.
- [21] The complainant continues to suffer some pain and has limitations upon his capacity to perform physically demanding activities.
- [22] His normal employment was in a security role but this injury prevented him from doing this. All attempts to find other work were unsuccessful because of his injury.
- [23] He had hoped to obtain employment with the Queensland Police Service. He was at the time of the statement, continuing to see an orthopaedic surgeon and there is some doubt about whether he will be able to realise his ambition.

- [24] The applicant has a serious traffic history. He has two convictions for careless driving, one count of failing to keep left of continuous double dividing lines, five offences of speeding and two of driving whilst under the influence of liquor. The latter were in 1995 and 1999 respectively.
- [25] He has convictions for a number of offences of assault and some drug offences.
- [26] The learned sentencing judge described the case as "a very serious example of this type of offence, because you drove at high speed, you recklessly accelerated and decelerated the vehicle, you deliberately drove on the incorrect side of the road, it was a protracted driving event over more than seven kilometres, you had a high blood-alcohol concentration and you had illicit drugs in your system."
- [27] His Honour went on to make the justifiable point that death was a real risk for all road users sharing the road with him on that day.
- [28] Counsel for the prosecution referred the learned sentencing judge to the case of *R v Roser* [2005] QCA 457. We were referred to a number of other cases involving serious instances of dangerous operation of a vehicle over some distance.
- [29] Counsel who appeared for the applicant referred to the various factors to be taken into account in imposing sentence in an offence of this kind referred to by Jerrard JA in *R v Tabakovic* [2005] QCA 90 at para 29 and made his submissions by reference to those and other factors.
- [30] In *R v Roser* (supra) Keane JA said at para (22):
- "[A] head sentence of four and a half years was within the appropriate range for a case in which the harm caused to another, while permanent and serious, does not amount to a major physical handicap, and where the offender has a bad history of drunken driving."*
- [31] In *R v Smith* [2005] QCA 26 a sentence of four and a half years imprisonment had been imposed for dangerous operation of a vehicle. The applicant drove on the incorrect side of the road for some distance, causing several near collisions before his vehicle struck another vehicle, was sentenced to 4.5 years. The applicant's blood alcohol concentration was a little higher than the case here. He was 39 at the time of the offence. The application for leave was refused.
- [32] In *R v Saltmarsh* [2007] QCA 25, the Court dismissed an application for leave to appeal against a sentence of four years and nine months where a grossly intoxicated driver (a blood alcohol reading of 0.28) collided with a pedestrian on a footpath leaving him with serious disabilities. The driver, then aged 32, accelerated away without stopping but the vehicle's number plate was taken and the police located the vehicle and the applicant at a school.
- [33] We were also referred to cases in which significantly higher sentences were imposed. In *R v Slater* [1997] QCA 042, a sentence of seven years imprisonment was imposed in respect of three offences of dangerous operation of a vehicle whilst adversely affected by alcohol. One of these resulted in a conviction of grievous bodily harm. The series of offences arose from the one course of driving over a significant distance. The circumstances of this case might be regarded as somewhat more serious than in the present case.

- [34] I would also make reference to *R v Ibrahim* [2003] QCA 386 and *R v Haydon* [1996] QCA 503. In the former, a term of six years imprisonment was imposed and in the latter, five years. Chesterman J in *R v Smith* (as he then was) thought the circumstances of these two cases broadly comparable in *R v Smith* [supra]. In *Ibrahim* the offender drove at a grossly excessive speed and collided with the rear of a vehicle causing serious injury to the driver of the other vehicle. He had a blood alcohol level of 0.25% and had four previous convictions for drink driving offences dating back to 1988. He was unlicensed at the time of the accident. In *Haydon* the applicant who had a blood alcohol reading of 0.213 per cent drove at an excessive speed and lost control of his vehicle, colliding with an oncoming vehicle. Two of the occupants of the other vehicle suffered permanent injuries. The applicant had four convictions for drink driving offences dating back to 1979.
- [35] The seriousness of the present case cannot be overstated. The applicant engaged in a course of driving over some 7.3 kilometres which placed at serious risk those travelling on the roadway. He engaged in deliberate conduct described by counsel for the respondent as "hooning" and ultimately collided head-on on the wrong side of the road with an approaching vehicle. He had a significant blood alcohol level.
- [36] The applicant is 33 and has a serious history of offending against the traffic code. His behaviour on this day, taken with his history, demonstrates a contempt for other users of the road.
- [37] Whilst it might be contended that the sentence was towards the upper end of the range, there is no basis for concluding it was manifestly excessive.
- [38] I would dismiss the application for leave.
- [39] **JONES J:** I have read the reasons of Cullinane J. I respectfully agree with those reasons and the order proposed.