

# SUPREME COURT OF QUEENSLAND

CITATION: *R v Liang* [2014] QCA 87

PARTIES: **R**  
**v**  
**LIANG, Ren Zhi Michael**  
(applicant)

FILE NO/S: CA No 164 of 2013  
DC No 970 of 2012

DIVISION: Court of Appeal

PROCEEDING: Sentence Application

ORIGINATING COURT: District Court at Brisbane

DELIVERED ON: 24 April 2014

DELIVERED AT: Brisbane

HEARING DATE: 16 April 2014

JUDGES: Fraser JA and Boddice and Thomas JJ  
Separate reasons for judgment of each member of the Court, each concurring as to the order made

ORDER: **The application for leave to appeal against sentence is refused.**

CATCHWORDS: CRIMINAL LAW – APPEAL AGAINST SENTENCE – GROUNDS FOR INTERFERENCE – SENTENCE MANIFESTLY EXCESSIVE OR INADEQUATE – where the applicant pleaded guilty to one count of occasioning bodily harm while armed and in company – where the applicant was sentenced to 18 months imprisonment, suspended after serving two months, for an operational period of two years – where the applicant contends the sentence was manifestly excessive in the circumstances – where the applicant contends the judge failed to properly take into account all mitigating features and placed undue emphasis on deterrence – where the respondent contends the sentence was in accord with comparable authority – whether leave to appeal sentence should be granted

*R v Denyer* [\[2009\] QCA 53](#), distinguished  
*R v Kemble* [\[2003\] QCA 190](#), cited  
*R v McLean* (2011) 212 A Crim R 199; [\[2011\] QCA 218](#), distinguished  
*R v Neivandt* [\[2000\] QCA 224](#), cited

COUNSEL: The applicant appeared on his own behalf  
P J McCarthy for the respondent

**SOLICITORS:** The applicant appeared on his own behalf  
Director of Public Prosecutions (Queensland) for the  
respondent

- [1] **FRASER JA:** I agree with the reasons for judgment of Boddice J and the order proposed by his Honour.
- [2] **BODDICE J:** The Applicant seeks leave to appeal a sentence of imprisonment imposed in the District Court at Brisbane on 24 June 2013 after the Applicant pleaded guilty to one count of assault occasioning bodily harm while armed and in company. The Applicant was sentenced to 18 months imprisonment, suspended after serving two months, for an operational period of two years.
- [3] The Applicant contends leave to appeal ought to be granted as the sentence was manifestly excessive in the circumstances. He further contends the sentencing judge failed to properly take into account all matters in mitigation, and placed undue emphasis on the need for a deterrent sentence.
- [4] The Respondent submits leave to appeal ought to be refused as the sentence was in accord with comparable authority, and the sentencing judge demonstrated a careful balancing exercise of the guiding principles in sentencing offenders.

### **Background**

- [5] The Applicant was born on 6 August 1972. He was aged 39 years at the time of the offence, and 40 at the time of sentence. The Applicant had a prior criminal record in Queensland. That criminal record included a conviction for grievous bodily harm some 20 years ago. The Applicant was sentenced to imprisonment for four and a half years for that offence, with a recommendation for parole after serving 18 months. The Applicant also had previous convictions for stealing, fraud, and a failure to appear in accordance with an undertaking.

### **Offences**

- [6] The offence, which was committed on or about 12 October 2011, involved a sustained assault on a male Complainant at his place of employment, a restaurant. The Applicant, in company with a co-accused and another male, arrived at the restaurant and threatened, taunted and abused the Complainant. All were noted to be intoxicated. The Applicant's co-accused then commenced to violently attack the Complainant striking him about the head with many blows both inside and outside the Complainant's premises.
- [7] Whilst the Applicant did not physically strike the Complainant at any time during the confrontation, he was carrying a bottle at the time of its commencement which he used to menace the Complainant and other witnesses. During the confrontation the Applicant also brought the wine bottle he was carrying down on the table immediately in front of the Complainant. The sentencing judge noted this was an act of intimidation.
- [8] The commencement of the assault, which was filmed by a security camera located inside the premises, revealed the Complainant offered no threat to the Applicant's co-offender when he was being punched in the head. He simply covered his face

with his arms. The Complainant was subsequently guided by the shoulder out of the premises and assaulted again.

### **Sentencing remarks**

- [9] The Applicant and his co-offender were sentenced on the basis they, as a group, had attacked an unarmed man who offered no resistance. It was found to be a cowardly attack which was irrational and persistent. The Applicant's co-offender, who also pleaded guilty to the offence of assault occasioning bodily harm while armed and in company with each other, was found to be the main assailant against the Complainant. He had a history of violence. He was sentenced to two years imprisonment, with a date for release on parole fixed at 12 January 2014.
- [10] In sentencing the Applicant, the sentencing judge noted the Applicant was a mature man with a good work history. His employer was supportive of him. He also provided for a young family. The sentencing judge also noted the Applicant had entered an early plea of guilty, and had undertaken further co-operation with the investigation, including making admissions to police. The sentencing judge further noted the Applicant did not physically strike the Complainant but that by his plea of guilty he acknowledged he was a party to the attack on the Complainant.
- [11] After noting the Applicant's criminal history including the previous offence of violence some 20 years ago, and accepting the Applicant's culpability in the attack was significantly less than that of his co-offender, the sentencing judge found the Applicant's culpability was best reflected in a sentence of 18 months imprisonment. Having regard to his personal circumstances, which were found to be more favourable than his co-offender's, the sentencing judge suspended that sentence of imprisonment after a period of two months, for an operational period of two years.

### **Discussion**

- [12] A sentence of 18 months imprisonment for what was a cowardly and premeditated attack on an unarmed person in their place of employment cannot be said to be manifestly excessive, having regard to comparable authority.<sup>1</sup> This is particularly so having regard to the Applicant's prior conviction for violence, which also involved a premeditated attack on an unarmed victim. Whilst that offence occurred some 20 years ago, it is relevant that a sentence of imprisonment on that occasion did not deter the Applicant from engaging in yet another incident of premeditated violence on an unarmed person.
- [13] The Applicant complains the requirement he serve a period of actual imprisonment renders the sentence manifestly excessive as he is a person in employment, with obligations to his elderly mother and his two young children. To be required to serve a period of imprisonment will result in a loss of his employment, depriving him of the ability to support his family.
- [14] Due consideration should always be given to whether it is appropriate to require an offender to serve what will be only a short period of actual imprisonment, having regard to the consequent effect on any employment and family obligations. However, the cowardly attack engaged in by the Applicant was such that requiring the Applicant serve a period of actual imprisonment was well within the discretion of the sentencing judge.

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<sup>1</sup> *R v Kemble* [2003] QCA 190; *R v Neivandt* [2000] QCA 224.

- [15] Further, the period set, at only two months, was extremely favourable to the Applicant having regard to his past history and the circumstances of his involvement in the offence. The requirement to serve two months actual imprisonment was not manifestly excessive in all the circumstances.
- [16] The Applicant was released on bail on 3 July 2013. He has therefore served nine days in custody. Whilst requiring him to return to custody to serve the remaining 51 days will result in a significant burden on his family, the remaining period of 51 days is not insignificant. The principle identified in *R v Neivandt*, as enunciated by Keane JA (as his Honour then was) in *R v Denyer*<sup>2</sup> has no application as the period left to be served is far from trivial.
- [17] I would refuse the application for leave to appeal against sentence.
- [18] **THOMAS J:** I agree with the reasons for judgment of Boddice J and the order proposed by his Honour.

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<sup>2</sup> [2009] QCA 53 at [28]; cited with approval in *R v McLean* (2011) 212 A Crim R 199 at [33].