SUPREME COURT OF QUEENSLAND

CITATION:	*R v Bagust* [2003] QCA 385
PARTIES:	**R** **v** **BAGUST, Adam Wayne** (applicant)
FILE NO/S:	CA No 182 of 2003 DC No 124 of 2003
DIVISION:	Court of Appeal
PROCEEDING:	Sentence Application
ORIGINATING COURT:	District Court at Townsville
DELIVERED EX TEMPORE ON:	3 September 2003
DELIVERED AT:	Brisbane
HEARING DATE:	3 September 2003
JUDGES:	McMurdo P, Dutney and Philippides JJ 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 – JUDGMENT AND PUNISHMENT – SENTENCE – FACTORS TO BE TAKEN INTO ACCOUNT - where applicant pleaded guilty to dangerous operation of a motor vehicle and other summary offences – where applicant sentenced to six month's imprisonment to be served by way of an intensive correction order and disqualified from holding or obtaining a drivers licence for 12 months – whether sentence manifestly excessive *Penalties and Sentences Act* 1992 (Qld), s 9(2)
COUNSEL:	K M McGuinness for the applicant D A Holliday for the respondent
SOLICITORS:	Legal Aid Queensland for the applicant Director of Public Prosecutions (Queensland) for the respondent

THE PRESIDENT: The applicant pleaded guilty on the 8th of May 2003 to one count of dangerous operation of a motor vehicle on 5 October 2002. He was sentenced to six month's imprisonment to be served by way of an intensive correction order and disqualified from holding or obtaining a driver's licence for 12 months. He also pleaded guilty and was sentenced with the following summary offences, also occurring on 5 October 2002: disqualified driving, driving an unroadworthy motor vehicle, driving an unregistered motor vehicle and driving and uninsured motor vehicle. He was not further punished for those offences.

He contends the sentence imposed on the offence of dangerous driving was manifestly excessive. The applicant had no relevant criminal history but had been fined on 17 September 2002 for behaving in a disorderly manner. His traffic history included a conviction for unlicensed driving and driving under the influence of alcohol with a blood alcohol level reading of .053 on 13 April 2002 for which he was fined $300 and disqualified from driving for six months. He was also disqualified from driving at the time he committed this offence.

On 5 October 2002 police had received complaints about an unregistered and noisy vehicle performing burnouts in the area of Minehane Street Cluden. Police officers were in that area dealing with an unrelated matter when they heard an extremely loud noise and observed a red sedan coming from the end of Minehane Street at excessive speed. The vehicle turned right

into Racecourse Road turning in front of another vehicle stopped at a stop sign, missing it by about a metre. The red vehicle was unregistered and without windows, windscreen or lighting.

The police immediately operated their flashing lights and sirens and drove to intercept the vehicle which they followed along Racecourse Road, a 60 kph area, at speeds greater than 70 kph. The incident occurred at about 11.30 a.m. but there was no other traffic on the road at this time. The applicant's vehicle approached a series of sharp 'S' bends in the road and attempted to negotiate them without slowing. The vehicle lost control, slid sideways off the road onto the dirt shoulder and swung dramatically to the right for 20 to 30 metres before correcting itself and returning to the road. It continued east along Racecourse Road until police pulled it over. The applicant was driving.

He took part in a police interview and volunteered that he had been going too fast to negotiate the bends and lost control of the vehicle. He agreed he had not been driving in a safe manner and gave stupidity as his reason for his manner of driving. He agreed his driving could be considered dangerous, especially as he had a passenger in the vehicle at the time. The vehicle was stored at the home of a friend of the applicant who was also the passenger in the vehicle. It was the applicant's intention to drive it to an area of vacant land with bush tracks and to drive it in a manner known as bush-bashing. The route to the area where this was to take

place was through a less populated area. The applicant said he was not aware he was being followed by a police vehicle with lights and siren activated and as soon as he became aware of this he stopped the car.

The maximum penalty for this offence is three year's imprisonment.

The applicant, who was 18 at sentence, lives at home with his parents. He had a regular casual job employed by a roofing sub-contractor. A police officer called to give evidence at the sentence, described the applicant as coming from a really good family and that he and his brother were "good kids".

The learned sentencing judge was concerned about the applicant's previous traffic history and that he was driving this unsafe vehicle without a licence at an excessive speed in the circumstances.

On the facts, the penalty imposed was heavy for a youthful first offender with good prospects. On the other hand, the driving of this type by a disqualified driver has the potential for deadly consequences and the applicant had previously shown disregard for the law in respect of his traffic history and his persistence in driving a vehicle whilst unlicensed or disqualified.

Ms McGinness, who appears for the applicant today and who has placed before the Court everything that could be said in his

favour, suggests that a principle of sentencing applicable here under s 9(2) *Penalties and Sentences Act* 1992 (Q), namely "(a)…

(i) a sentence of imprisonment should only be imposed as a last resort; and
(ii) a sentence that allows the offender to stay in the community is preferable"

has not been met in that an intensive correction order was imposed.

In my view, an offender is not sentenced to a period of imprisonment for the purposes of s 9(2)(a) *Penalties and Sentences* Act 1992 (Qld) if sentenced to a period of imprisonment to be served by way of an intensive correctional order or a fully-suspended sentence.

Had the applicant been required to serve any period of actual imprisonment, the sentence would, on the facts, have been outside a sound exercise of discretion, but that is not the effect of the global sentence imposed here, not only on this offence but also on the multiple summary offences to which the applicant pleaded guilty.

There was no evidence placed before the sentencing judge, or indeed this Court, to suggest that the recording of convictions for offences of this type would have any detrimental effect on the applicant's future prospects.

In the end, I am not persuaded that the sentence imposed here was manifestly excessive. I would refuse the application for leave to appeal against sentence.

DUTNEY J: I agree.

PHILIPPIDES J: I also agree.

THE PRESIDENT: That is the order of the Court.