SUPREME COURT OF QUEENSLAND

CITATION:	*R v Ibrahim* [2003] QCA 386
PARTIES:	**R** **v** **IBRAHIM, Jalil** (applicant)
FILE NO/S:	CA No 162 of 2003 DC No 14 of 2003
DIVISION:	Court of Appeal
PROCEEDING:	Sentence Application
ORIGINATING COURT:	District Court (Southport)
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 – PARTICULAR OFFENCES – DRIVING OFFENCES – where applicant driving a motor vehicle with a BAC of .25 – where speed exceeded 100 km/hr – where motor vehicle accident occurred and another person suffered personal injuries – where applicant had four previous convictions for drink driving and one for failure to supply a specimen of breath CRIMINAL LAW – SENTENCING – where plea of guilty entered – whether section 13 of the Penalties and Sentences Act 1992 (Qld) requires a sentencing Judge to state in open court that he/she has taken the guilty plea into account in imposing sentence – whether section 13 of the Penalties and Sentences Act 1992 (Qld) requires a sentencing Judge to state in open court the fact of and reasons therefore if sentence is not reduced *Crimes (Sentencing Procedure) Act* 1999 (NSW), s 22 *Penalties and Sentences Act* 1992 (Qld), s 13

R v Breckenridge [2001] QCA 448; CA No 194 of 2001, 16 October 2001, considered
R v Lennon [1999] QCA 192; CA No 26 of 1999, 26 May 1999, considered
R v Thompson (2000) 49 NSWLR 385, discussed

COUNSEL: A J Kimmins for the Applicant
D A Holliday for the Respondent

SOLICITORS: Price Roobottom for the Applicant
Department of Public Prosecutions (Queensland) for the Respondent

THE PRESIDENT: Justice Dutney will deliver his reasons first.

DUTNEY J: On the 21st of September 2001 the applicant was apprehended driving a motor vehicle on the Pacific Motorway at Mudgeeraba with a blood alcohol content of .25.

Whilst travelling at a speed in excess of the 100 kilometre per hour speed limit he collided with the rear of another vehicle causing injuries to that driver's back, head, pelvis and leg. The applicant was unlicensed at the time of the incident.

The applicant pleaded guilty to dangerous operation of a motor vehicle with a circumstance of aggravation, that he was adversely affected by an intoxicating substance. He was sentenced to six years' imprisonment and disqualified absolutely from holding or obtaining a drivers licence.

The applicant had no prior criminal history but had four previous convictions for drink driving offences and one previous conviction for failing to supply a breath specimen.

Those offences were committed in 1988, two in 1991, 1999 and 2000. The applicant was unlicensed because he had not reapplied for a licence after his disqualification for the offence in 2000 had expired.

Estimates put the speed of the applicant's vehicle immediately prior to the accident at up to 200 kilometres an hour.

The applicant was 38 years of age at the time of the offence and 39 years of age when sentenced. The injured party was 18 years of age. Apart from the victim impact statement no evidence was put before the sentencing judge as to the consequences of the incident to the third party.

In her statement, however, she describes the dislocation of her neck, structural damage to her spine and a closed head injury in addition to the usual cuts and abrasions. The neck injury required a holobrace, in itself a traumatic experience. She also suffered some facial disfigurement.

Some medical evidence must have existed to justify the allegation that she suffered grievous bodily harm but, as I said, it was not before the sentencing judge.

As a result of the incident the third party refers in her victim impact statement to an inability to work full time as well as financial loss. There has been a significant impact on her social life and she suffers pain and depression.

At the sentencing hearing the prosecution submitted an appropriate range higher than five years. It was submitted that his Honour, the sentencing judge, had the option of imposing a lower head sentence or a recommendation for early release to reflect mitigating factors, principally the time he pleaded guilty.

For the defence a range of five to six years was submitted to be appropriate with a recommendation for early release or suspension.

The sentencing judge indicated in his remarks that he considered the appropriate range to be between five and seven years but towards the higher end. Taking mitigating factors into account his Honour imposed a sentence of six years' imprisonment. In imposing this figure his Honour indicated that this reflected some reduction for a timely plea.

While the sentence imposed is within the range submitted by the applicant's counsel the applicant complains that the discount for a timely plea should, on the authority of the Queen and Thomson, 2000 49 New South Wales Law Reports 385, be within the range of 10 to 25 per cent.

The decision in Thomson was based on a consideration of section 22 of the Crimes (Sentencing Procedure) Act 1999 of New South Wales which is materially the same as section 13 of our Penalties and Sentences Act 1992 and which requires a guilty plea to be taken into account in determining sentence

and permits a reduction in sentence having regard to the time at which the plea is entered.

Subsection (4) requires the sentencing judge to state in open Court that he has taken the guilty plea into account in imposing sentence and if the sentence is not reduced state both that fact and the reasons therefor.

It is not part of the sentencing regime in Queensland to require mathematical precision in making allowances for guilty pleas.

The sentencing judge in this case has complied with the requirements of section 13. What he has not done is indicate what the sentence would have been but for the guilty plea. One is left to infer that it would have been of the order of seven years being the top of the identified range. The reduction from seven years' imprisonment to six years' imprisonment represents a discount of the order of 16 per cent. While larger discounts are sometimes given the extent of the discount is dependent on the facts of each particular case.

The discount here is well within the range considered appropriate by the Court of Appeal in New South Wales. A sentence of seven years' imprisonment was within the range open to the sentencing judge having regard to the seriousness of the present case. A reduction to six years in lieu of any recommendation for early release is, in my view, within the

range of a sound sentencing discretion and should not be disturbed.

Six years without any recommendation following a plea to dangerous operation of a motor vehicle causing grievous bodily harm with a circumstance of aggravation was substituted on appeal for eight years with a recommendation after three and a half years in Lennon 1999 Queensland Court of Appeal 192, 26th of May 1999, in a case of comparable conduct but where the offender did not have the present applicant's deplorable drink driving record.

The mitigating factors in Breckenridge, 2001 Queensland Court of Appeal 448 where a sentence of five years' imprisonment suspended after two years and two months for dangerous operation of a motor vehicle with a circumstance of aggravation after a plea was not disturbed, were greater than they are here and the consequences for the victim, although severe, were not as great as here.

I would refuse the application.

THE PRESIDENT: I agree. I only add by way of emphasis that in Queensland it is not necessary in order to give effect to section 13 of the Penalties and Sentences Act 1992 Queensland for sentencing judges to particularise the exact amount of the reduction in sentence they give to an offender who pleads guilty. Some judges may do so. Others will simply take that

factor into account in a global way together with other mitigating factors.

The question for this Court will always be whether the sentence imposed was, taking into account all the factors including the timely plea, manifestly excessive.

This offence was a very serious example of dangerous operation of a vehicle causing grievous bodily harm whilst adversely affected by alcohol. Here, the blood alcohol level was .25.

The applicant had a dreadful traffic history with four prior convictions for drink driving offences and one for failing to supply a breath specimen. The complainant was very seriously injured. The sentence was not manifestly excessive.

The application for leave to appeal should be refused.

PHILIPPIDES J: I agree.

THE PRESIDENT: That is the order of the Court.