

SUPREME COURT OF QUEENSLAND

CITATION: *R v Packwood* [2006] QCA 369

PARTIES: **R**
v
PACKWOOD, Alisa Maree
(applicant)

FILE NO/S: CA No 169 of 2006
DC No 233 of 2005

DIVISION: Court of Appeal

PROCEEDING: Sentence Application

ORIGINATING COURT: District Court at Mackay

DELIVERED EX TEMPORE ON: 25 September 2006

DELIVERED AT: Brisbane

HEARING DATE: 25 September 2005

JUDGES: Holmes JA and Jones and Atkinson JJ
Separate reasons for judgment of each member of the Court, each concurring as to the orders made

ORDER: **Application refused**

CATCHWORDS: CRIMINAL LAW – APPEAL AND NEW TRIAL AND INQUIRY AFTER CONVICTION – APPEAL AND NEW TRIAL – APPEAL AGAINST SENTENCE – APPEAL BY CONVICTED PERSONS – where applicant pleaded guilty to a number of dangerous driving offences and two counts of serious assault – where the applicant was under the influence of drugs at the time of the offence – the offences committed fell within the worst category of dangerous driving offences – where the applicant put the lives of police officers and the general public at risk – where there was evidence of significant drug rehabilitation – whether the sentence of three years and nine months with a recommendation for post-prison community-based release after 18 months was manifestly excessive

COUNSEL: The appellant appeared on her own behalf
B Farr for the respondent

SOLICITORS: The appellant appeared on her own behalf
Director of Public Prosecutions (Queensland) for the respondent

HOLMES JA: I will ask Justice Atkinson to deliver the first judgment.

ATKINSON J: The applicant, Alisa Maree Packwood, was sentenced in the District Court in Mackay on 17 May 2006. On that date she pleaded guilty to one count of stealing and one count of fraud on indictment number 232 of 2005, and one count of dangerous operation of a motor vehicle whilst adversely affected and two counts of serious assault on a second indictment; number 233 of 2005.

On each count on indictment number 232 of 2005 she was sentenced to six months imprisonment. She was sentenced to three years, nine months imprisonment on each of the counts on indictment number 233 of 2005 with a recommendation for post-prison community-based release after serving 18 months. All sentences were to be served concurrently. It was further ordered that she be disqualified from holding or obtaining a motor vehicle licence absolutely.

Her notice of appeal shows an application for leave to appeal against the sentences imposed on indictment number 233 of 2005; being the three years and nine months imprisonment imposed for dangerous operation of a motor vehicle whilst adversely affected and two counts of serious assault. The sentence of three years and nine months imprisonment took account of three months imprisonment that was imposed on the applicant in the Magistrates Court on 27 September 2005 in

relation to dishonesty offences which occurred subsequently to the offences on the indictment. The Judge reduced the head sentence he otherwise would have imposed by three months to take account of that.

The circumstances of the offences of dangerous driving and assault occurred over the course of the morning of 1 December 2004. At about 7.10 on that morning, the police officers were conducting a search of a house in a suburb of Mackay. During that search, a motor vehicle driven by the applicant - a white Sigma - pulled up outside the house and then quickly drove off. One of the police officers involved in the search of the house was Sergeant Male. He quickly got into his police vehicle and gave chase to the Sigma. He eventually caught up with her several kilometres later. When he got within 70 metres of her vehicle he activated revolving strobe lights on the police vehicle and flashed his vehicle headlights to indicate that she should stop. However, she did not stop. A chase then occurred which continued over a distance of approximately 50 kilometres. During that time the applicant engaged in many different types of dangerous driving. I am indebted to the careful and detailed submissions of Mr Farr for the details of that dangerous driving:

(1) she drove her vehicle across centre white lines and travelled on the incorrect right side of the roadway, whilst travelling around a blind corner having no vision of potential oncoming traffic on two occasions.

(2) On three occasions the applicant's vehicle negotiated a right-hand bend whilst on the incorrect side of the road.

(3) She drove her vehicle at times in the middle of the roadway, partially on the incorrect side to prevent the police officer from drawing along side her.

(4) On a number of occasions the police vehicle drew along side the applicant's vehicle. On the first occasion she veered sharply to her right in front of the police vehicle and attempted to push it off the road into an adjacent creek. Had the police officer not applied his brakes, the vehicles would have collided.

(5) On the second occasion when the police vehicle drew along side her vehicle she again attempted to run the police vehicle off the road. Once again, Sergeant Male had to take evasive action to avoid a collision.

(6) The third time the police officer's vehicle drew along side her vehicle she again drove in front of the police vehicle, requiring him to brake heavily to avoid a collision.

(7) On the fourth occasion when the police officer drew along side her vehicle, he indicated that she should pull over and she mouthed the word, "No" in response. At that time the police officer could see a semi-trailer travelling in the opposite direction several hundred metres away. The police officer again indicated for her to pull over and she responded

by veering towards the police vehicle, forcing the police officer to travel further onto the incorrect side of the roadway. He then necessarily had to brake and veer back onto the correct side of the roadway to avoid a collision with the approaching semi-trailer.

(8) On the fifth occasion when the police vehicle drew along side her vehicle, the applicant applied the brakes of her vehicle so heavily that it caused them to lock up. She then attempted to make a right-hand turn behind the police vehicle but the two vehicles collided. The police officer then braked and stopped the police car in front of her vehicle to prevent her from driving away. He alighted from his vehicle and ran towards the applicant to stop her from driving off. She however, reversed her vehicle onto the footpath. While the police officer was standing in front of her vehicle, at the distance of only a metre to a metre and a half between them, she responded to his demands to stop by saying, "No, fuck off", revved the engine loudly, allowed her vehicle to roll off the grass footpath and then accelerated her vehicle towards the police officer. The officer instinctively put his hands out in front of him and onto the bonnet of the vehicle shouting for the applicant to stop. She nevertheless continued to accelerate and he had to take evasive action by stepping to his left to avoid heavy contact. As he stepped to his left, the applicant continued to steer towards him. He was struck to the right leg and hip area and was then forced to step further to his left to avoid being run over by her

vehicle. Had the police officer not taken such evasive action, her vehicle would have run over him.

(9) As the vehicle passed in front of him, the officer grabbed hold of the windscreen wiper and the driver's rear-view mirror but the applicant continued to accelerate and the officer was forced to release his grip. The applicant then accelerated and travelled in a southerly direction along the Bruce Highway.

(10) The police officer once again gave chase in his vehicle. Again, he could see that a semi-trailer was heading towards them with a distance of several hundred metres between them. The applicant started to steer her vehicle towards the police vehicle, forcing the police vehicle further into the path of the semi-trailer. In order to prevent a collision, the police officer backed off, once again to pull in behind the applicant's vehicle. The driver of that semi-trailer also had moved his vehicle to his left for safety reasons.

(11) The officer, at this stage, discontinued the pursuit, de-activated his lights and siren and pulled back to a distance of approximately a hundred metres behind the applicant's vehicle. Whilst following from this distance, the officer saw the applicant throw property out of her vehicle.

(12) The applicant continued to drive south at approximately 120 kilometres per hour and then overtook some other vehicles. On each occasion that she overtook these vehicles, she swerved

back on to the correct side of the road in a dangerous manner, causing the overtaken vehicle to take evasive action to avoid collision.

(13) The police officer then overtook her vehicle in order to warn oncoming traffic of the hazard she was creating. He did so on her left hand side. She responded by driving her vehicle to the left, forcing him to drive the police vehicle up onto the grass shoulder. During this overtaking manoeuvre, the applicant made a handbrake turn just in the middle of the manoeuvre causing the rear wheels to lock up. She then drove off in the opposite direction and the police officer followed her.

(14) Once again the officer was concerned for oncoming traffic and he again overtook her vehicle to warn of the danger that she presented. Once in front of her vehicle, the officer slowed his vehicle in an attempt to slow her down. She responded, however, by driving her vehicle into the back of his several times.

(15) Ultimately, the applicant's vehicle was brought to a stop with her front wheels on a right-hand lock up against the cement rail of a bridge with the motor stalled. The officer approached her vehicle, at which time she started her engine, turned the front wheels to the left and accelerated towards the police officer. He was then sandwiched between the rear driver's side of the police car and the front passenger side of the applicant's vehicle, and in order to prevent a severe

crushing injury, ran beside her vehicle as she accelerated forwards. The front passenger side of the applicant's vehicle collided with the open driver's door of the police vehicle causing damage, and the officer was then crushed between that door and the applicant's vehicle. After that, the police officer with the help of another police officer, was able to open a passenger door of the applicant's vehicle and physically restrain her. When asked why didn't she stop, she replied, "I promised my kids I wouldn't be in gaol for Christmas."

The police officer suffered major bruising and soreness to his right upper arm and severe pain to his hips which subsided after a two-week period, and a pre-existing lower back injury was aggravated by this incident. It was fortunate indeed that he was not more seriously injured. Two police vehicles were damaged in the course of the applicant's driving. Her driving was also a serious danger to other users of the highway.

Analysis of the applicant's blood showed that she was gravely affected by drugs at the time of this offending. The readings were 0.02 milligrams of amphetamine, 0.37 milligrams of methylamphetamine and 0.010 milligrams of the major inactive metabolite of cannabis. The learned sentencing Judge referred to medical opinion that those levels of amphetamine and methylamphetamine rendered her incapable of operating a motor vehicle rationally. She told us on appeal, and it is not unlikely given her level of intoxication, that she has completely forgotten what occurred on that day. At the time

of offending, she was on probation and disqualified from driving.

The applicant appeared for herself on this hearing and expressed remorse and recognised the seriousness of her offending, and asked in her written submissions for an opportunity to do a drug-rehabilitation course. In the written submission, she asked that we replace the sentence imposed with six months imprisonment followed by six months drug rehabilitation followed by three years and six months probation. That is not a sentence which is available under Queensland law. Even if a sentence were able to be structured to have a similar effect, that is to misunderstand the role of the Court of Appeal. This is an appeal Court, not a second sentencing Court. The role of this Court is to correct errors in sentencing and not just to impose another sentence.

Were there any errors in this case? The learned sentencing Judge quite correctly took the view that this offending fell into the worst category of dangerous driving, for which the maximum penalty is five years. He sentenced her at the lower end of the range for that category of offending because of her attempts at rehabilitation which were movingly addressed in a letter from her daughter. He also took account of her persistent criminal history and truly appalling traffic history. His Honour also took the view that the assaults of the police officer were serious examples of that offence because they involved the use of a motor vehicle and that he was, in fact, hit and injured. The plea of guilty was

recognised in the recommendation for post-prison community based release.

It could not be said that the sentence, which reflected the overall criminality, was excessive. I would refuse the application for leave to appeal. It is desirable, probably even essential, that the applicant does a live-in drug rehabilitation course but that is a matter that can, and should, be taken up by her with the parole authorities.

HOLMES JA: I agree. I would simply add the observation that the offences were clearly the product of amphetamine use. The applicant seems genuinely committed to drug rehabilitation which is certainly in her interests, and more importantly, in her children's interests. I would urge the prison authorities to do anything they can to assist to that end.

JONES J: Yes. I agree with the remarks of the presiding Judge and Justice Atkinson.

HOLMES JA: The application for leave to appeal against sentence is refused.
