SUPREME COURT OF QUEENSLAND

CITATION:	*R v Chant* [2007] QCA 390
PARTIES:	**R** **v** **CHANT, Landon Douglas** (applicant)
FILE NO/S:	CA No 256 of 2007 DC No 380 of 2007
DIVISION:	Court of Appeal
PROCEEDING:	Sentence Application
ORIGINATING COURT:	District Court at Brisbane
DELIVERED ON:	16 November 2007
DELIVERED AT:	Brisbane
HEARING DATE:	2 November 2007
JUDGES:	McMurdo P, Jerrard JA and Dutney J Judgment of the Court
ORDER:	**Application for leave to appeal refused**
CATCHWORDS:	CRIMINAL LAW – APPEAL AND NEW TRIAL AND INQUIRY AFTER CONVICTION – APPEAL AND NEW TRIAL – APPEAL AGAINST SENTENCE – APPEAL BY CONVICTED PERSONS – APPLICATIONS TO REDUCE SENTENCE – WHEN REFUSED – GENERALLY – where the applicant pleaded guilty to dangerous operation of a motor vehicle causing grievous bodily harm while adversely affected by an intoxicating substance – where the applicant sentenced to three and a half years imprisonment with parole eligibility fixed 14 months after sentence – where the applicant contended that the sentence should have been suspended after 14 months – where the applicant made an early plea of guilty that was taken into consideration as a mitigating factor at sentencing – where the applicant contends that the sentencing judge erred by placing too much weight on the effect on the victims and too little weight on the applicant's prospects for rehabilitation – whether the judge erred in balancing those factors *Penalties and Sentences Act 1992* (Qld), s 160B, s 160C
COUNSEL:	A T Glynn SC for the appellant R G Martin SC for the respondent

SOLICITORS: Robertson O'Gorman for the appellant
Director of Public Prosecutions (Queensland) for the respondent

[1] **THE COURT**: On 7 September 2007 Mr Chant pleaded guilty in the Brisbane District Court to a count of dangerous operation of a motor vehicle causing grievous bodily harm to another, while adversely affected by an intoxicating substance. He was sentenced to three and a half years imprisonment with a parole eligibility dated fixed at 7 November 2008, 14 months after the sentence was imposed. He applies for leave to appeal against his sentence, contending the judge erred in not suspending the sentence after 14 months.

[2] The offence was committed on 15 January 2005 at around 10.30 pm at night, in the Brisbane suburb of Kenmore Hills. A blood sample taken at 12.10 am early the next morning revealed that Mr Chant then had a blood alcohol concentration of 0.124%. It also showed he had diazepam, an anti-anxiety agent and its metabolites, in his blood. The diazepam had been prescribed for his anxiety and was within the therapeutic range, consistent with recent ingestion. The alcohol alone would have impaired his driving. The diazepam had an added impairing effect. He was the holder of a provisional licence and so was required by law to have a zero blood alcohol concentration when driving.

[3] Mr Chant had been at a party at a house some five to eight minutes drive from his home. He had intended to stay the night there. Others at the house decided to go into the city leaving Mr Chant alone. He made the decision to drive his Mitsubishi Pajero home. He was seen to be driving on the incorrect side of the road shortly after leaving the house he was visiting. He also travelled on the wrong side of the road when driving up a steep rise. He then failed to safely negotiate an intersection and crashed into the complainant's house. The vehicle came to rest in her bedroom to which she had retired with her husband. The accident caused extensive property damage. A civil claim for $162,000 has recently settled. Of much more concern was the physical and emotional harm to the complainant and her husband.

[4] The complainant was particularly seriously injured. She suffered multiple fractures of her spine, bilateral lung contusion, a lacerated liver, and a right pneumohaemothorax. She was transferred to an orthopaedic ward on 21 January 2005 where she spent six weeks with complete spinal immobilisation in a brace. She suffered side effects, including a deep vein thrombosis and a pulmonary embolism. She remains at risk of further deep vein thrombosis and impaired venous return from her lower limbs due to the previous deep vein thrombosis. The complainant's husband suffered lesser but still significant injuries. These included facial lacerations, crushed teeth, and bruising and abrasions to his neck and body. Victim impact statements from the complainant and her husband attested to the catastrophic effect on them of Mr Chant's offence.

[5] Mr Chant asked ambulance officers at the scene to look after the people in the house first. He appeared to be genuinely remorseful. He ultimately declined to be interviewed by police. A committal hearing was conducted in which the witnesses, other than the complainant and her husband, were cross-examined. His lawyers initially thought some defences may be open including whether the vehicle had a mechanical fault. Once Mr Chant received legal advice that he had no viable defence he gave instructions to plead guilty. The matter was always listed for

sentence in the District Court. The learned sentencing judge rightly treated the guilty plea as a significant mitigating factor.

[6] Mr Chant was 23 at sentence and 21 at the time of the offence. The maximum penalty was 10 years imprisonment. There was no pre-sentence custody. He had no directly relevant prior convictions or traffic history. In 2003 he was placed on a good behaviour bond and ordered to pay $1,500 compensation without conviction for two assaults occasioning bodily harm. These offences occurred in a tavern when someone made what he understood was a gratuitous but significant insult to him.

[7] The prosecutor at sentence contended that a penalty of three to four years imprisonment should be imposed.

[8] Defence counsel at sentence, Mr Glynn SC, who also appeared in the present application, emphasised the following matters. Mr Chant was not speeding. The offence was caused by a momentary lack of control, the product of his intoxication. He came from a supportive family but had been unsettled since leaving school. He was not successful at his university studies and was an apprentice mechanic at the time of the accident. He was so severely affected by the accident he had not worked since. More recently, he had improved enough to work but did not obtain employment because he knew he would be going to prison and did not want to let down his employer. He had formed a relationship with a responsible young woman. When he is released from prison they plan to travel together to Western Australia where he has prospects of employment in a mining area. References from family and friends supported the submission that he was remorseful, insightful about his offending, had made substantial efforts at rehabilitation and had promising prospects. Mr Chant had suffered a double fracture to his jaw as an assault victim in 2004 when he was set upon by a group of young men. He was significantly affected by that assault and had lived in a state of fear for a period, still sleeping with a baseball bat beside his bed. Mr Glynn submitted that although the sentencing range was three to four years imprisonment, a sentence should be imposed of three years imprisonment suspended after 12 months to reflect the many mitigating circumstances. Alternatively, a release date on parole could be fixed after 12 months. Mr Glynn emphasised the benefit to Mr Chant of a fixed release date so that he could make definite plans to rebuild his life.

[9] In sentencing, the judge made the following observations.

> "Now, the effect on the victims, of course, as I expect will be the case here although I have not been specifically told so, but one might expect that inevitably and understandably, victims will compare their position of having their future really ruined, with yours - being a young man, being able to get on with your life and hopefully, through rehabilitation, make some success of your life. Well, that is something which is understandable and something which a court takes into account in the sense that that is something which might bear upon the victims.
>
> Of course, it is no part of the proper sentencing process to attempt to balance out the effects on them with the effect a sentence should have on the driver. That would be quite improper and I simply indicate that to indicate that that is something else which will press

> upon them, no doubt. Whatever sentence I impose one might expect people in their situation would consider it not to be sufficient.
>
> Well, now, rehabilitation, of course, is a desirable process and the courts should foster that as much as they can with their sentences, but I do not think it is appropriate for me specifically to structure the sentence to facilitate some plans that you have but certainly rehabilitation is important, I accept that.
>
> But in the end result, the effect on the victim named in the indictment, and also on her husband, are such that I am quite satisfied that a sentence in about the middle of the range that the Crown has submitted is appropriate. I am also satisfied that, having regard to all of the circumstances, that I should fix a parole eligibility date.
>
> I cannot, if I impose more than three years, fix a fixed parole date but I decide to take this course rather than suspend and I am satisfied I should do that. I am satisfied that you need some support after you come out of prison and so in those circumstances I am obliged to fix a parole eligibility date."

[10] Mr Glynn in this application does not contend the sentence imposed was manifestly excessive. He argued, however, that the judge's reasons quoted above show that his Honour erred in placing too much weight on the effect on the victims and too little weight on Mr Chant's rehabilitation. He submitted that the judge further erred in failing to structure a sentence that provided a fixed release date rather than a mere parole eligibility date. As a fixed release date cannot be ordered for sentences involving more than three years,[1] he asked this Court to allow the appeal and vary the sentence by ordering a suspended sentence after 14 months.

[11] Mr R Martin SC submitted for the respondent that the sentencing judge was confronted with the case of a young man who had made a grave error of judgment with alcohol, who had a previous court appearance for an offence of violence in a hotel and who had suffered some significant psychological sequelae as a result of an assault upon him. It was open to the sentencing judge to conclude that it was appropriate for Mr Chant to have some greater supervision than would be provided by a suspended sentence.

[12] There is considerable merit in that submission. Although the sentence urged on his Honour by Mr Glynn at first instance was within range, so too was the sentence imposed. Mr Glynn frankly and rightly recognised this in his submissions to this Court. Mr Glynn has failed to establish that his client will not be released at or close to his parole eligibility date. This is not, for example, a case in which it is suggested that Mr Chant will be required to complete programs or courses whilst in prison and that their unavailability is likely to jeopardise his parole eligibility date. On the contrary, if his prospects appear as positive at the time of his parole eligibility as they did at sentence and now, he would seem an excellent candidate for release on parole. But in any case, Mr Glynn has not shown the judge erred in any

[1] *Penalties and Sentences Act 1992* (Qld), ss 160B and 160C.

way in considering the effect of the offence on the victims, in balancing this against Mr Chant's rehabilitative prospects and needs, and in finally determining that he would benefit from the support available to him through his release on parole rather than unsupervised on a partially suspended sentence. As there has been no error the application must be refused.

[13] We would refuse the application for leave to appeal.

ORDER: Application for leave to appeal refused.