SUPREME COURT OF QUEENSLAND

CITATION:	*R v Dietz* [2009] QCA 392
PARTIES:	**R** **v** **DIETZ, Benjamin James** (applicant)
FILE NO/S:	CA No 234 of 2009 DC No 123 of 2009 DC No 124 of 2009
DIVISION:	Court of Appeal
PROCEEDING:	Sentence Application
ORIGINATING COURT:	District Court at Hervey Bay
DELIVERED ON:	18 December 2009
DELIVERED AT:	Brisbane
HEARING DATE:	2 December 2009
JUDGES:	McMurdo P, Muir JA and Daubney J Separate reasons for judgment of each member of the Court, Muir JA and Daubney J concurring as to the order made, McMurdo P dissenting
ORDER:	**Application for leave to appeal is dismissed**
CATCHWORDS:	CRIMINAL LAW – APPEAL AND NEW TRIAL – APPEAL AGAINST SENTENCE – GROUNDS FOR INTERFERENCE – SENTENCE MANIFESTLY EXCESSIVE OR INADEQUATE – the applicant was convicted after a trial of one count of doing grievous bodily harm and pleaded guilty to one count of assault and doing bodily harm – the applicant punched the complainant who then hit his head on the bitumen – the complainant suffered dreadful injuries and has ongoing physical and psychological difficulties – the applicant comes from a supportive family, has no prior criminal history and high rehabilitative prospects – the applicant was sentenced for the offence of grievous bodily harm to six years imprisonment with parole eligibility after serving half that period – whether the judge gave insufficient weight to the applicant's age, prior good history and rehabilitative prospects – whether the sentence was manifestly excessive *R v Amituanai* (1995) 78 A Crim R 588; [1995] QCA 80, considered *R v Bryan; ex parte A-G (Qld)* (2003) 137 A Crim R 489; [2003] QCA 18, considered

R v Dillon; ex parte A-G (Qld) [2006] QCA 521, cited
R v Fisher (2008) 189 A Crim R 16; [2008] QCA 307, considered
R v Horne [2005] QCA 218, cited
R v Kinersen-Smith & Connor; ex parte A-G (Qld) [2009] QCA 153, cited
R v Madden [2005] QCA 439, considered
R v Mladenovic; ex parte A-G (Qld) [2006] QCA 176, cited
R v Tupou; ex parte A-G (Qld) [2005] QCA 179, considered

COUNSEL: M A Green for the applicant
M B Lehane for the respondent

SOLICITORS: Milburn Guttridge Lawyers for the applicant
Director of Public Prosecutions (Queensland) for the respondent

[1] **McMURDO P:** The applicant, Benjamin James Dietz, was convicted after a four day trial of doing grievous bodily harm on 1 December 2007 at Hervey Bay. He pleaded guilty to a related offence of assault occasioning bodily harm, committed earlier on the evening of 1 December 2007 at Hervey Bay. Dietz was sentenced for the offence of grievous bodily harm to six years imprisonment with parole eligibility on 2 September 2012, that is, after serving half that period; and for the offence of assault occasioning bodily harm to a concurrent 12 month term of imprisonment. He applies for leave to appeal against his sentence only in respect of the grievous bodily harm offence, claiming that it is manifestly excessive because the judge gave insufficient weight to his age, prior good history and rehabilitative prospects.

[2] I would grant the application and allow the appeal. These are my reasons.

[3] At trial Dietz made the following admission through his barrister:

> "In the early hours of 1 December 2007 [the complainant] was punched in the head in the vicinity of Moroccos Nightclub. As a result of that punch to the head [the complainant] fell to the ground and hit his head on the bitumen, causing him to bleed. As a result of either the punch or the impact of his head on the ground, or both, [the complainant] suffered the following injuries:
>
> 1. A large right parietal haematoma (a localised swelling filled with blood involving the scalp) on the right side of the head.
>
> 2 A 7mm subdural haemorrhage over the right cerebral cortex (a brain injury causing haemorrhage under the outer protective covering membrane of the brain under the skull)
>
> 3 A significant 10mm midline shift of the brain to the left (shifting of the brain 10mm past its midline line)
>
> 4 Bifrontal cerebral contusions (bruising and swelling of the frontal lobes of the brain) causing some brain tissue to bleed and to become non-viable.

The treatment … required as a result of his injuries was as follows:

1. Endotracheal intubation (placement of a tube in [the complainant's] mouth and down his throat into the trachea for him to be able to breathe) and assisted mechanical ventilation as he was unconscious (mechanical assistance with breathing)

2. Urgent Neurosurgery (surgery on the brain) involving a bifrontal decompressive craniectomy (removing the whole of the front of [the complainant's] skull to relieve pressure caused by extreme swelling of his brain) and a right frontal lobotomy (removal of [the] frontal lobe of the brain).

3. The frontal bone removed from his skull was stored in a subcutaneous pouch in the upper anterior abdomen wall for later reinsertion at cranioplasty once swelling of the brain had resolved.

4. Admission in the Royal Brisbane Hospital and another local hospital from 1 December 2007 to 14 January 2008

5. Admission in the Brain Injury Rehabilitation Unit at the Princess Alexandra Hospital from 15 January 2008 to 15 February 2008 where [the complainant] underwent a comprehensive neurorehabilitation assessment and therapy program.

The effects upon [the complainant] as a result of the injuries were as follows:

1. Initial medical inability to drive a car or work in paid employment, although as at 2 September 2009 [the complainant] is able to both drive and work.

2. Severe pain

3. Severe reduction of [the complainant's] functioning memory over a twenty minute period

4. Cognitive language deficits

5. Reduced high-level balance and co-ordination

The above injuries to and the above effects upon [the complainant] amount to grievous bodily harm."

The sentencing proceedings

[4] Dietz was 20 at the time of his offending and 22 at sentence. He had no prior criminal history.

[5] The prosecutor at sentence made the following submissions. The offences occurred after midnight and sometime before 3.00 am, probably around 2.00 am. Dietz was a persistently violent person on 1 December 2007, punching both complainants during the evening. The consequences for the grievous bodily harm complainant

were "absolutely horrendous". Dietz showed no remorse. He lied to police in an interview. At the committal proceedings, all the witnesses, including the complainant, were cross-examined. After referring to *R v Madden*,[1] he submitted that the appropriate sentence in this case, bearing in mind the two assaults that evening, was six years imprisonment for the grievous bodily harm and a lesser concurrent term, perhaps 12 months, for the assault occasioning bodily harm. The prosecutor also noted that material to be provided by defence counsel and comments in Dietz's police interview suggested that Dietz was trained in boxing so that he would well have known the potential consequences of punching people in the way he did.

[6] The complainant's victim impact statement contained the following information. He was hospitalised for five months undergoing rehabilitation, including occupational therapy, physiotherapy and speech therapy. He was on assorted medication for epilepsy, blood pressure, and pain control, and was also on antibiotics. He has been diagnosed with epilepsy, short term memory problems, high blood pressure and depression. He has lost his sense of smell. His short term memory problems have affected his ability to work. The pain he suffered at the time was like his "head was in a vice". He took morphine until he finally stopped his medication because it was making him drowsy all day and detrimentally affecting his ability to function. His doctor has told him that if he has seizures or fits he will have to take medication in the long term. His skull plate was temporarily removed and placed in his stomach until it was able to be replaced. He has had part of his frontal lobe removed. He has scars across the top of his head from ear to ear (32 cm) and a scar across his stomach (23 cm). He no longer has full vision in the top left hand corner of his eye and his reaction time is not as responsive as it was. This condition, which resulted from the offence, is quadrantanopia. He was unable to drive for a period, but is driving again, although very cautiously. Since the offence, he gets upset easily and often cries. He also gets frustrated and angry. His friends and family have become protective of him when they go out. He was off work for 12 months following the offence and he has only worked three months since. The Commonwealth Rehabilitation Service is helping him return to work. He has been unable to earn as much as before the offence and his impecuniosity has affected the quality of his lifestyle. He attached photographs, tendered during the sentencing process, of his stomach and head, which illustrated the seriousness of his injuries.

[7] Defence counsel made the following submissions. Dietz is one of four children and was part of a supportive family. His siblings had responsible jobs in the community. He was in a relationship with a young woman who was supportive of him and was employed. Dietz had a good work history since leaving school after finishing grade 12. He was in the army for a time but when his girlfriend's father died, he returned to Hervey Bay and ultimately left the army. He then worked as a labourer, becoming skilled in rendering. He successfully established a business as a sub-contractor doing rendering work. He understands that he has a problem with binge drinking and he has now moderated his alcohol consumption. After being charged with these offences, he became stressed and anxious, but with the support of his family he has been able to control these conditions. Defence counsel tendered five references, one from Dietz's mother, and four from other community members, all attesting to Dietz's good qualities and stating that the offences of 1 December 2007 were out of character. One reference noted that Dietz was "a great boxer,

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1 [2005] QCA 439.

trained with the Police Citizens' Boxing Club and fought professionally but always kept his aggression in the ring". Defence counsel submitted the appropriate sentencing range was between four and six years imprisonment. He referred to *R v Fisher*[2] and *R v Amituanai*.[3] After distinguishing *Madden*, defence counsel submitted that the appropriate sentence in this case was four to five years imprisonment with a parole eligibility date or suspension after one-third.

[8] In his sentencing remarks, the primary judge summarised the factual basis on which he was sentencing Dietz. Dietz had been at a nightclub in Hervey Bay and had consumed alcohol. He had a confrontation with the complainant in the assault occasioning bodily harm offence and struck him. Both that complainant and Dietz were ejected from the nightclub. After some time, an episode of general violence erupted in the course of which Dietz struck the complainant in the grievous bodily harm offence a single blow causing him to fall to the bitumen which his head struck with some force. This complainant had nothing at all to do with the general violence. He was, tragically, in the wrong place at the wrong time. The judge noted the serious consequences suffered by this complainant amplified in the victim impact statement. His Honour considered that Dietz had shown no remorse in respect of either incident although he pleaded guilty to the offence of assault occasioning bodily harm. Dietz told falsehoods to the police when interviewed. Dietz was violent towards a number of people over a not insignificant time period. The references tendered suggest this was out of character and that Dietz was not an inherently violent person. Alcohol was probably the cause of Dietz's violence on this occasion. Alcohol-fuelled violence was of grave concern to the courts. Dietz had strong family support and had formed a supportive relationship with a young woman who was in regular employment. He had a sound work history and intended to develop a business as a sub-contractor in the building industry. The sentence imposed must, however, deter Dietz and others from committing offences of this type. It must be severe enough to demonstrate society's condemnation of those who become aggressive in public and who assault other citizens causing them significant injury. The sentence requested by the prosecutor was apposite.

The competing contentions in this application

[9] Counsel for Dietz in this application contends that a review of *Amituanai*, *Fisher*, *R v Tupou; ex parte A-G (Qld)*,[4] *R v Dillon; ex parte A-G (Qld)*,[5] *Madden* and *R v Kinersen-Smith & Connor; ex parte A-G (Qld)*[6] demonstrate that the six year sentence imposed on Dietz is outside the appropriate range for the following reasons. Unlike in *Madden*, Dietz was only 20 years old at the time of the offences and had a good character, and absence of prior convictions, and promising rehabilitative prospects. Although the injuries to the complainant in the grievous bodily harm offence were horrific and warranted a stern deterrent penalty, these mitigating factors also had to be taken into account. In addition, there was no weapon: cf *R v Bryan; ex parte A-G (Qld)*.[7] The injuries resulted from one punch to the head causing the complainant to fall heavily on to a bitumen surface and this impact with the bitumen caused the injuries. Dietz did not further assault the

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2 [2008] QCA 307.
3 (1995) 78 A Crim R 588.
4 [2005] QCA 179.
5 [2006] QCA 521.
6 [2009] QCA 153.
7 [2003] QCA 18.

complainant after he fell to the ground (cf *Fisher* and *Kinersen-Smith*). These factors justified a sentence ranging from four years imprisonment suspended after 20 months to a sentence of six years imprisonment with parole eligibility after two or two and a half years.

[10] Counsel for the respondent in this application supports the sentence imposed at first instance. He emphasises the relevant sentencing principles of deterrence and denunciation; the dreadful injuries suffered by the complainant; that Dietz committed two aggressive assaults within half an hour; showed no remorse; gave a false account to police; cross-examined witnesses at committal and trial; and was apparently a professional boxer who should have appreciated the danger of punching people to the head. He contends the sentence imposed was well within range and is supported by *Madden* and in a general way by *Bryan* and *Tupou*. He pointed out that *Amituanai* was of limited comparability as he offended before the 1997 amendments to the *Penalties and Sentences Act* 1992 (Qld) which support heavier penalties for offences of violence.

Conclusion

[11] This case is yet another example of the ruination of the lives of two young people, and the lives of their families, through the serious consequences of alcohol-fuelled gratuitous violence. The completely innocent complainant of the grievous bodily harm offence has suffered dreadfully as a result of Dietz's actions. He will continue to carry the physical and emotional consequences flowing from the injuries he suffered in the offence for the rest of his life. Until 1 December 2007 when Dietz committed this offence and the assault occasioning bodily harm, Dietz was a young man with no prior convictions and with a promising future. He had a sound upbringing and continues to have the support of a loving family. He had a solid work history with promising prospects and had formed a long-term relationship with a responsible young woman. His commission of the offence of unlawful grievous bodily harm means that he must be sentenced to a significant period of imprisonment as a deterrent to him and to others who behave in such an anti-social way. As *Amituanai* recognises, when a victim of the criminal offence of grievous bodily harm is seriously injured, the penalty imposed must reflect the extent of the injuries suffered by the victim. Although it may be doubtful whether drunken young men, as Dietz clearly was on 1 December 2007, will consider such things, the sentence imposed must be sufficiently severe to at least attempt to discourage such conduct and to express the community's severe disapprobation of it in the strongest terms.

[12] Nevertheless, this Court continues to emphasise the community interest in the rehabilitation of young offenders with limited criminal histories: *R v Horne*,[8] *R v Mladenovic; ex parte A-G (Qld)*,[9] *R v Mules*,[10] *Kinersen-Smith*.[11] Carrying out the balancing exercise between these competing considerations often makes the sentencing process difficult. It is particularly so in this instance.

[13] The cases relied on as comparable by both parties provide some general assistance in determining the appropriate range, but none of them precisely match the combination of aggravating and mitigating circumstances that exist in this case.

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8 [2005] QCA 218 at [5]-[6].
9 [2006] QCA 176 at [27].
10 [2007] QCA 47 at [21].
11 [2009] QCA 153 at [26]-[28].

[14] The complainant in *Amituanai* suffered grave brain damage at least as serious as in this case, from a single act of violence. Amituanai came from a close and supportive family and he achieved well at school, both academically and in sport. He was 26 years old and so was older than Dietz. He had completed his final examinations for a degree in public administration. Unlike Dietz, Amituanai pleaded guilty and Dietz, of course, assaulted two victims in separate assaults on the same night. Amituanai was sentenced to three years imprisonment with a recommendation for parole eligibility after nine months. This Court determined his sentence was not manifestly excessive. But as the respondent rightly points out, that sentence was imposed before the 1997 amendments to the *Penalties and Sentences Act* requiring judicial officers to take a sterner approach in respect of offences of violence. It is of limited use in determining the range in this case.

[15] In *Bryan*, the Attorney-General appealed against a sentence of four years imprisonment suspended after 12 months with an operational period of five years for doing grievous bodily harm. This Court allowed the appeal and substituted a sentence of six years imprisonment, noting that a sentence of six or seven years imprisonment with a serious violent offence declaration would have been within range. Bryan had no previous criminal history for violence but had some prior convictions for property offences. He was 21 at the time of the offence to which he pleaded guilty. He attacked an innocent passer-by in a public street with a knife, seriously threatening the complainant's life. The complainant suffered three wounds: an extensive wound to the lower left chest extending through the skin and muscle and exposing the complainant's heart and lung; a 10 cm long wound to the upper left arm which extended through the skin and into the muscle; and a laceration three centimetres long on the upper left arm. The main wound to the chest missed a major artery by only three millimetres and caused a laceration to the lung. The complainant suffered permanent numbness to the left lower arm and back. The use of a knife in three separate stabbing motions makes *Bryan* a more serious example of grievous bodily harm. Dietz's culpable actions which caused such serious injury involved only one punch to the complainant's head and this must be reflected in the sentence.

[16] In *Tupou*, the injuries suffered by the complainant were not as serious as in this case. Tupou who was 25 when he committed the offence of grievous bodily harm, was older than Dietz; but Tupou pleaded guilty and cooperated fully with the authorities. He punched the complainant initially, and whilst he was on the ground punched him again and went to kick him. Unlike Dietz, Tupou had some convictions for street offences and was on a 12 month good behaviour bond at the time of the grievous bodily harm offence. The Attorney-General persuaded this Court to increase Tupou's sentence from three years imprisonment suspended after nine months to three years imprisonment suspended after 15 months.

[17] In *Fisher*, the 19 year old applicant attacked a 35 year old man walking home alone. After knocking him to the ground, Fisher punched and kicked him to the head and back and was assisted in this by his three co-offenders. The complainant suffered serious physical and psychiatric injuries, though not to the extent of the present complainant's grave injuries. Fisher pleaded guilty but, unlike Dietz, he had a prior criminal history, including offences of dishonesty although none of violence. This Court considered that Fisher should be punished at the higher end of the appropriate range (three to four years) and that the sentence imposed at first instance (four years imprisonment with parole eligibility after one-third) was not manifestly excessive.

[18] In *Madden*, the applicant was convicted after a trial of doing grievous bodily harm and sentenced to six years imprisonment. He committed the offence during the operational period of a suspended six month term of imprisonment and whilst on probation. He was 39 years old and he attacked, without any provocation, an apparently intoxicated man causing serious head injuries of a comparable gravity to the injuries suffered by the complainant in the grievous bodily harm offence in this case. Madden had four previous convictions for assaults. Unsurprisingly, this Court considered his sentence was not manifestly excessive.

[19] The maximum penalty for the offence of doing grievous bodily harm is 14 years imprisonment. The offence does not involve any element of intention to harm. The dreadful injuries suffered by the completely blameless complainant in this case make the offence a serious example of the crime of grievous bodily harm. It is, however, not in the most serious category of that offence as Dietz's attack involved a single blow to the head. The serious injuries resulted when the unfortunate complainant hit his head hard on the bitumen. Dietz did not continue to attack him after he fell to the ground. Dietz did not use a weapon. The respondent suggested that Dietz was a professional boxer and that this was an aggravating feature. This issue was touched upon but not investigated at sentence. The use of the word "professional" in the reference tendered on Dietz's behalf is equivocal. The judge, sensibly in my view, did not place any emphasis on this matter in determining the sentence. Nor should this Court.

[20] Dietz did not have the mitigating benefit of cooperation with the authorities, a plea of guilty, or remorse. In those circumstances, the cases to which we have been referred suggest a head sentence in the range of four to six years imprisonment was apposite. Dietz's unblemished record prior to the commission of the two offences on 1 December 2007 meant that a serious violent offence declaration was not appropriate. The sentence imposed on him must, as this Court in *Kinersen-Smith* most recently recognised, give effect to Dietz's youth, prior good history and promising prospects of rehabilitation. This can be done by sentencing at the lower end of the appropriate range or by sentencing at the higher end but setting a parole eligibility date earlier than the usual half way point. The six year sentence imposed by the learned primary judge did not, in my view, give adequate weight to Dietz's youth, prior good history and promising prospects of rehabilitation. This error means that the application for leave to appeal against sentence should be granted, the appeal allowed and this Court should now re-sentence Dietz.

[21] *Madden* supports a head sentence of six years imprisonment for a serious example of grievous bodily harm like the present offence. Unlike Dietz, Madden was a mature man who committed the offence whilst on probation and a good behaviour bond for offences of violence; he had four prior convictions for assaults. Dietz's unsatisfactory relationship with alcohol is undoubtedly why he committed the offences of violence on 1 December 2007. The serious consequences for the present complainant and the need to ensure that Dietz's rehabilitation is thorough and complete so that the community is protected well into the future, favour a sentence at the higher end of the range, but with a slightly earlier than usual parole eligibility date. This sentence gives appropriately full weight to Dietz's youth, prior good history and promising rehabilitation but also ensures that if he does not fulfil that promise, he will be returned to jail to serve his six year sentence. If, as presently seems likely, he is successful in his rehabilitation, he will, during the

course of his parole, become a useful member of his family and the wider community.

ORDERS:

1. Application for leave to appeal against sentence granted.

2. Appeal allowed, but only to the extent of setting aside the parole eligibility date of 2 September 2012 and substituting a parole eligibility date of 2 September 2011.

[22] **MUIR JA:** I have had the benefit of reading the President's reasons for judgment and gratefully adopt her analysis of the facts, discussion of the proceedings at first instance and summary of argument on appeal. I am also obliged to her Honour for her analysis of the comparable cases. I regret, however, that I am not persuaded that the sentence imposed by the learned primary judge was manifestly excessive as a result of his failure to set a parole eligibility date earlier than 2 September 2012 (the mid-point of the sentence).

[23] I accept that the applicant, unlike the offender in *R v Bryan; ex parte A-G (Qld),*[12] did not use a knife and struck the complainant only once. However, Williams JA, with whose reasons the other members of the Court agreed, considered that a "sentence in the range six to seven years was the minimum that could be considered as the head sentence."[13] He also remarked that a declaration that the offence was a serious violent one would often be justified in circumstances such as those present in *Bryan*.

[24] Although the injuries inflicted on the victim in *Bryan* were potentially life threatening, they did not appear to have caused him lasting damage which materially detracted from either his employability or quality of life. The same cannot be said for the injuries sustained by the applicant's victim. His employment prospects, once good, are now extremely modest at best. To state some of the effects of his injuries is to make plain how dramatically his quality and enjoyment of life has been diminished. He suffers from epilepsy, short-term memory loss, high blood pressure and depression. He has lost his sense of smell, has cognitive language deficits and reduced coordination and has lost full vision in the top left-hand corner of his eye. Not surprisingly, the complainant experiences emotional difficulties.

[25] The applicant may have struck only a single blow, but it was a blow struck by a person revealed by the evidence to be a proficient boxer, and it came after the applicant had been behaving aggressively for a considerable period and had already knocked another man to the ground.

[26] The injuries suffered by the victim in *R v Tupou; ex parte A-G (Qld),*[14] although extensive, did not approach in seriousness those suffered by the applicant's victim. In *Tupou*, the Chief Justice, with whose reasons the other members of the Court agreed, made it plain that the sentence of three years suspended after 15 months, imposed after a plea of guilty, was moderated because it was imposed on an Attorney-General's appeal.

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12 (2003) 137 A Crim R 489.

13 (2003) 137 A Crim R 489 at 496.

14 [2005] QCA 179.

[27] *R v Madden*[15] offers no guidance for present purposes. The Court of Appeal was not called on to determine a possible maximum. The Chief Justice merely observed that, "… there could be no sensible suggestion that imprisonment for six years … was manifestly excessive."

[28] In *R v Fisher*,[16] the issue before the Court was also whether the sentence was manifestly excessive. The sentence in that case of four years with a parole eligibility date set after one-third of the sentence had been served was imposed after a plea of guilty. The injuries suffered did not approach in severity those now under consideration.

[29] In my respectful opinion, the following observations of Thomas and White JJ in *R v Amituanai*[17] have particular relevance for present purposes:

> "… we have noted the proposed reasons of Pincus JA and agree with his Honour's analysis, including the observation that generally speaking when one inflicts serious violence to the head of another the risk of catastrophic results must be shared by the offender as well as the victim. An appropriate sentence must be one that will discourage and deter such resorts to violence. It must also bear in mind that vindication is one of the many functions of the sentencing process, and it is an evident matter in the present case. Unless courts are seen to inflict real punishment, victims and their families may be tempted to exact their own form of revenge."

[30] As the sentence imposed was within the exercise of a sound sentencing discretion, I would order that the application for leave to appeal be dismissed.

[31] **DAUBNEY J**: Like Muir JA, I am indebted to the President for her comprehensive statement of the background to this matter and this exposition of the arguments advanced in the hearing of this application.

[32] I am, however, not at all persuaded that it has been demonstrated that the sentencing discretion miscarried such as to warrant the grant of leave to appeal, and in that regard I am in complete agreement with the reasons of Muir JA.

[33] This unprovoked attack on an innocent bystander has left the complainant with serious injuries which have permanently and dramatically diminished his quality of life. None of the authorities which the President and Muir JA have analysed support the notion that the head sentence of six years imposed in this case was excessive such as to warrant the grant of leave to appeal.

[34] The only question, then, is whether it has been demonstrated that the learned sentencing judge's discretion miscarried when he fixed the parole eligibility date at the halfway mark of the sentence, i.e. after three years. Bearing in mind that this sentence was imposed after a trial, and that the learned sentencing judge expressly took account of the matters of good character, young age and lack of prior convictions when sentencing, it cannot, in my view, be said that his Honour acted on some wrong principle or failed to take account of some relevant factor when exercising the sentencing discretion.

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15 [2005] QCA 439.

16 (2008) 189 A Crim R 16.

17 (1995) 78 A Crim R 588 at 596 – 597.

[35] Accordingly, for the reasons given by Muir JA, I would dismiss the application for leave to appeal.