SUPREME COURT OF QUEENSLAND

CITATION:	*R v Noone* [2021] QCA 23
PARTIES:	**R** **v** **NOONE, Darren John** (applicant)
FILE NO/S:	CA No 186 of 2020 DC No 709 of 2019
DIVISION:	Court of Appeal
PROCEEDING:	Sentence Application
ORIGINATING COURT:	District Court at Cairns – Date of Sentence: 3 September 2020 (Morzone QC DCJ)
DELIVERED ON:	19 February 2021
DELIVERED AT:	Brisbane
HEARING DATE:	11 February 2021
JUDGES:	Morrison and Mullins JJA and Lyons SJA
ORDER:	**The application for leave to appeal against sentence is refused.**
CATCHWORDS:	CRIMINAL LAW – APPEAL AND NEW TRIAL – APPEAL AGAINST SENTENCE – GROUNDS FOR INTERFERENCE – SENTENCE MANIFESTLY EXCESSIVE OR INADEQUATE – where the applicant was convicted of one count of grievous bodily harm and sentenced to two years' imprisonment with a parole release date after serving six months and ordered to pay $5,000 in compensation within two years – where the applicant seeks leave to appeal against the sentence on the basis of being manifestly excessive – where the complainant sustained long-term eye injuries, anxiety and other distress, and ceased employment due to the offending – where the applicant argues that he has extreme difficulty paying the restitution given he has been in custody and unemployed – where the applicant wishes to be released early due to his family experiencing difficulties – whether the sentence imposed was manifestly excessive *R v Brand* [2006] QCA 525, considered *R v Stringer* [2014] QCA 342, considered
COUNSEL:	The applicant appeared on his own behalf D Nardone for the respondent
SOLICITORS:	The applicant appeared on his own behalf Director of Public Prosecutions (Queensland) for the respondent

[1] **MORRISON JA:** I have read the reasons of Lyons SJA and agree with those reasons and the order her Honour proposes.

[2] **MULLINS JA:** I agree with Lyons SJA.

[3] **LYONS SJA:**

This application

[4] On 3 September 2020 the applicant pleaded guilty in the Cairns District Court to one count of grievous bodily harm which had been committed on 16 November 2018. He was sentenced to two years' imprisonment with a parole release date fixed at 3 March 2021 after serving six months. He was also ordered to pay compensation in the sum of $5,000 within two years to the Registrar at Cairns.

[5] The applicant, who appears on his own behalf, now seeks leave to appeal that sentence on the basis that the compensation order when combined with the two-year head sentence requiring actual custody of six months makes the sentence manifestly excessive.

Circumstances of the offence

[6] At the time of the offence the complainant was 50 years old and living in a unit in Cairns with her partner. On the evening of the offence the complainant, her partner and a guest were eating and drinking at their unit. That guest then invited the applicant to attend the unit. The complainant left as she did not wish the applicant to attend. When the applicant arrived he drank rum with the complainant's partner and the guest.

[7] An argument subsequently erupted that evening between the complainant's partner and the applicant. A physical fight ensued between the men and, as a result, glass from a broken bottle and blood were strewn across the floor. When the complainant returned to the unit she saw the applicant standing over her partner who was lying on the bloodied floor. The complainant screamed when she saw the scene and confronted the applicant. The applicant then turned around and punched the complainant, once to the mouth. She fell backwards and whilst on the floor the applicant punched her again. The applicant stopped the assault when the other person yelled at him.

[8] The complainant suffered a left orbital blowout fracture with an associated small volume intra-orbital haematoma together with a left subconjunctival haematoma and a left commotion retinae. She underwent surgery in December 2018, but her vision remains impaired and she is now required to wear glasses more often. If left untreated, the fracture of her eye could have resulted in permanent blindness. She was in hospital for a week, and has subsequently suffered anxiety and other long-term distress associated with the incident. She has ceased her employment due to the anxiety she is suffering.

The grounds

[9] In this application, the applicant argues that he has extreme difficulty in paying restitution given he has been in custody for the last five months. He states that at the time of his sentence he was gainfully employed and would have had the ability to pay the amount of restitution within the timeframe set out. However, given that

he has been in custody and has now lost his employment he argues that it will be difficult for him to secure employment once released given the current employment landscape. In this application, he is seeking that the order for restitution be set aside. In particular, he argues that he understood that the restitution was only offered if he did not actually have to serve jail time. The applicant also argues that his family have been experiencing difficulties and he wishes to be released early since his time is now almost served.

Sentencing remarks

[10] The learned sentencing Judge in his sentencing remarks referred to the serious nature of the offence of grievous bodily harm. It was noted that the first blow was reactive to the complainant's screaming and demanding that the applicant leave, but it was clearly of concern that the second punch occurred whilst the complainant was on the floor and was essentially semi-unconscious. The sentencing Judge also noted the impact on the complainant, particularly her diminished feelings of wellbeing, as well as the deterioration of her relationship with her family.

[11] The Crown Prosecutor had submitted at sentence that the applicant had a dated New South Wales criminal history involving two assaults in 1993 for which he had been fined, as well as a Queensland criminal history involving two charges in 2006 for assault/obstruct police and a 2009 entry for common assault and drunk and disorderly behaviour at a Cairns casino. His most recent offence was for public nuisance in 2015. He also had entries for wilful damage and some drug offending. Ultimately, it was submitted that the applicant had a tendency for violent behaviour when intoxicated, and that, based on his criminal history and the escalation of offending, he posed a risk of violence to the community. As he was a mature man of 51, it was submitted that specific and general deterrence were relevant considerations given his impulsive and violent behaviour when intoxicated.

[12] The two decisions of *R v Brand*[1] and *R v Stringer*[2] were relied on by the Crown. The decision of *Stringer* involved a surprise punch in a nightclub which resulted in a fractured jaw. On appeal, a sentence of three years' imprisonment was reduced to two years' imprisonment with a parole release date fixed after serving six months for a young offender who was 23 years old. As the counsel for the respondent notes, given that there were two punches involved, the first of which knocked the complainant to the ground and the second of which occurred while she was on the ground, implies that there was some force and it resulted in some serious consequences to the complainant. It was submitted that similar decisions supported a sentence of between 18 months and three years' imprisonment.

[13] In coming to an appropriate sentence, the sentencing Judge took into account the plea of guilty and the cooperation of the applicant. Specific reference was also made to the applicant's work ethic and the fact he had been held in high regard by his co-workers. The references tendered on his behalf indicated that when he was sober, the applicant was not aggressive, was respectful, a hard worker and a good parent. The Judge also accepted that the applicant had expressed remorse.

[14] Ultimately, the sentencing Judge sentenced the applicant to two years' imprisonment, with a parole release date fixed after six months, indicating it was

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1 *R v Brand* [2006] QCA 525.
2 *R v Stringer* [2014] QCA 342.

little less time than the time that would have otherwise have been set and the basis for that was the plea of guilty. The applicant does not argue that the head sentence imposed was excessive and indeed a review of the authorities relied on at sentence indicates the sentence imposed was appropriate. It was in fact towards the lower end of the range and was within the range argued for by defence counsel who stated:[3]

> "In relation to the comparative sentences, there's no dispute that the range for grievous bodily harm for this level of injury would be somewhere between 18 months to three years imprisonment".

[15] In his written submissions defence counsel had relied on two decisions from the Court of Appeal of *R v O'Grady; Ex parte Attorney-General (Qld)*,[4] *R v Lese*,[5] together with three District Court sentences of *R v Hopwood*,[6] *R v Drummond*[7] and *R v Walker*,[8] to submit that the appropriate sentence was a period of imprisonment of two and a half years wholly suspended and a compensation payment of $5,000 to the complainant. I note however that the submission by his counsel was that the sentence imposed should be at the higher end of the range on the basis that that full credit could be given at the bottom end of the sentence, allowing a sentence to be fashioned which would see him immediately released.

[16] It was clear that the sentencing Judge had carefully considered the submissions of both the Crown and defence counsel and accepted that the applicant was of otherwise good behaviour except when he had consumed alcohol. The Judge also noted the impact that imprisonment would have on the applicant and his family and that he had maintained steady employment and behaved well since the offence had occurred. When the sentencing Judge ordered the payment of restitution of $5,000, he specifically stated that he was allowing payment to be made within two years so that he would have time to manage the payments. He also indicated that it would also serve to remind him of the damage he had inflicted on someone else's life because of his actions.

[17] It would seem that the applicant essentially argues that the imprisonment, both the actual time to be served and the head sentence, as well as the amount of compensation ordered, makes the sentence unduly excessive.

[18] It is clear that the sentence imposed was within the range argued for by both counsel and towards the lower end of the range contended for by the applicant's own counsel. Whilst actual custody was ordered, there can be no doubt that actual custody was appropriate given the criminal history of the applicant which included violence. It is also significant that the offence involved the unprovoked striking of a woman to the face whilst on the ground and that serious injuries resulted. Against the background of the applicant's criminal history, there was clearly a basis for an actual period of imprisonment to be served and I note that the fixing of the parole release date was at the six-month mark rather than the normal one-third mark which would have required him to serve eight months.

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3 Transcript of Proceedings, *R v Darren John Noone* (District Court of Queensland at Cairns, 709/2019, Morzone QC DCJ, 3 September 2020) 1-16 lines 16-18 (M Longhurst).

4 *R v O'Grady; Ex parte Attorney-General (Qld)* [2003] QCA 137.

5 *R v Iese* [2017] QCA 68.

6 *R v Hopwood* (District Court of Queensland, Dick SC DCJ, 16 February 2015).

7 *R v Drummond* (District Court of Queensland, Ryrie DCJ, 4 February 2014).

8 *R v Walker* (District Court of Queensland, Smith DCJ, 2 May 2014).

[19] At sentence, defence counsel argued in his submissions that one of the factors of mitigation was that there was an offer of compensation of $5,000, adding that if the sentence were wholly suspended, he would be able to pay compensation within six months. There was no indication that the offer of compensation could only be made if he remained in employment by not going into custody.

[20] Accordingly there can be no basis for an argument that the sentence imposed and the compensation ordered deems the sentence manifestly excessive. It is not only a sentence which was within range, but also a sentence involving an amount of restitution with a period of time to pay which was also appropriate in the circumstances given he was to serve six months in custody.

[21] At the hearing of the application the applicant indicated that whilst he intended to pay the amount of compensation as soon as possible, he was concerned he might not be able to do so with the eighteen months remaining after his release. Counsel for the respondent helpfully stated that should that concern become a reality then arrangements could be made for a longer period of time to make the payment with the State Penalties and Enforcement Bureau.

[22] The application for leave to appeal against the sentence should be refused.