

COURT OF APPEAL

**MULLINS P
MORRISON JA
MARTIN SJA**

**CA No 60 of 2023
DC No 41 of 2023**

THE KING

v

SCANLAN, Gregory Michael

Applicant

BRISBANE

THURSDAY, 26 OCTOBER 2023

JUDGMENT

MARTIN SJA: The applicant seeks leave to appeal against an order that he be disqualified from holding or obtaining a driver’s licence for a period of three years from 16 March 2023. The only ground advanced is that the period of disqualification is manifestly excessive.

On 11 November 2018, a Sunday, the applicant left his house in Bulimba at about 2 pm. He was going to the local supermarket to pick up some groceries for a party being held at his house. What he did soon after leaving his house was described by the learned sentencing judge in this way:

“[Y]ou turned from your street into Henderson Street and opened the throttle to the maximum extent with the result that driving along that suburban street where the speed limit was 50 kilometres per hour, you were doing in excess of 150 kilometres per hour.”

His Honour found that the applicant then went around a 90-degree left-hand corner into the next street and was, at least to some degree, in excess of the speed limit. Soon after that, the applicant's vehicle collided with another vehicle, and, as a result, the occupants of that vehicle were severely injured.

The applicant was not charged with any offence with respect to the collision but was charged with dangerous operation of a vehicle. He pleaded guilty to that charge and was sentenced to imprisonment for a period of 18 months, with immediate suspension of that sentence and an operative period of two years. That sentence is not contested. Unless another order had been made, the applicant would, by reason of the conviction, have been disqualified from holding or obtaining a driver's licence for six months pursuant to s 86 of the *Transport Operations (Road User Management) Act 1995*.

The disqualification of the applicant's licence, the subject of this application, was made pursuant to s 187 of the *Penalties and Sentences Act 1992*. That section relevantly provides:

“187 Disqualification from holding Queensland driver licence

- (1) If—
 - (a) an offender is convicted of an offence in connection with or arising out of the operation, or the interference in any way with the operation, of a motor vehicle by the offender; and
 - (b) the court by or before which the offender is convicted is satisfied having regard to the nature of the offence, or to the circumstances in which it was committed, that the offender should, in the interests of justice, be disqualified from holding or obtaining a Queensland driver licence;

the court may, in addition to any sentence that it may impose, order that the offender is, from the time of the conviction, disqualified absolutely, or for such period as is ordered by the court, from holding or obtaining a Queensland driver licence.

- (2) Subsection (1) applies whether or not a conviction is recorded.”

The applicant does not contend that there should not have been an order disqualifying him from holding or obtaining a drivers licence. It is the period of disqualification which is challenged.

The operation of s 187(1) was considered by this Court in *R v Osborne* [2014] QCA 291. In that decision, Henry J, with whom Holmes JA (as she then was) and McMeekin J agreed, said:

[56] Section 187(1) is structured so that those considerations relate expressly to the decision that an offender should be disqualified. They may by implication also inform the decision as to the duration of the disqualification because of the obvious interrelationship between the two decisions. It may for instance be in the interests of justice to disqualify an offender if the disqualification period is to be for two years but not if it is to be for five years.

[57] However, the discretion arising under s 187(1) as to the period of disqualification is broad and not expressed as being confined solely to “the nature of the offence, or to the circumstances in which it was committed.” Other considerations which have been regarded as relevant to that discretion include:

- the need for protection of the public from persons who create danger on the road, particularly those with a pattern of doing so;
- the consequences of the disqualification upon the offender’s future employment prospects;
- the risk that the disqualification period may create a disincentive to rehabilitation on release from custody;
- the extent to which the disqualification period will operate as an additional penalty to other penalties imposed.

[58] As to the latter consideration, in *R v Nhu Ly Macrossan* CJ stressed the desirability of the disqualification serving some purpose other than that served by other available punishments:

“Although the discretion which arises is a broad one, it can be accepted that the disqualification, whilst it will operate as an additional penalty, is not meant to be simply a gratuitous addition to other available punishments. There should be an apparent purpose in disqualification as such, rather than would, say, be served by a heavier fine or a longer prison term.”

[59] Section 9(1)(a) of the *Penalties and Sentences Act* 1992 (Qld) provides in summary that the purposes of sentencing are punishment,

rehabilitation, deterrence, denunciation and community protection. It follows that the observations of Macrossan CJ ought not be read as indicating that an order disqualifying an offender from holding or obtaining a driver's licence may not serve the legitimate purpose of punishing the offender. However where the duration of a disqualification order exceeds what is necessary for the other purposes of sentencing, care must be taken to ensure its duration does not give rise to a punishment which is unjust overall.” (Citations omitted)

In *R v Osborne*, the applicant had been convicted of one count of dangerous operation of a vehicle, causing death and grievous bodily harm. He was sentenced to three and a-half years' imprisonment, suspended after 14 months, and he was disqualified from holding or obtaining a driver's licence for five years. On appeal, it was ordered that the term of imprisonment be suspended after serving nine months, and the disqualification period was reduced to two years. Justice Henry noted that:

“[60] ...as serious as the applicant's offence was, he did not have a past pattern of dangerousness towards other road users. Having regard to his maturity, his generally good driving history and his genuinely guilt-ridden reaction to the consequences of his offence, the likelihood of his driving presenting a risk to community safety in the future is low.”

The applicant's circumstances are quite different. The consequences of his dangerous driving were not as horrendous. The sentencing judge referred to the collision and the impact upon the occupants of the other vehicle but did not take that into account when arriving at the period of disqualification. Unlike Mr Osborne, the applicant has an appalling history of traffic offences. At the time of the offence, the applicant was 45 years old and, at the time of sentencing, 50 years old. He had no criminal history but a history of offences under relevant traffic legislation. He had been fined for speeding offences on 49 occasions. His licence had been suspended on six occasions and cancelled on three occasions as a result of an accumulation of demerit points. At the time of this offence he had again accumulated demerit points and was two months into a good behaviour period of 12 months, whereby he could avoid having his licence cancelled provided he committed no further traffic offences.

At the time of sentencing, evidence was provided on his behalf with the intention that it demonstrate that he was undertaking a more cautious approach to driving since the offending

and that he had acquired some insight. That is difficult to reconcile with the fact that while he was on bail for the offence we are now considering, he again committed traffic offences by exceeding the speed limit by more than 13 kilometres an hour but less than 20 kilometres an hour on occasion, and, on another occasion, he failed to stop at a red traffic light.

The sentencing judge took into account that the applicant had a business which employed five people and required him, as an assessor of insurance claims, to travel from place to place in order to conduct his business. The absence of a licence was not something which would be insurmountable. The applicant had, at the time of sentencing, made arrangements for a staff member to drive him around. The applicant did not contend that there should be no disqualification beyond the statutory minimum under the *Transport Operations (Road Use Management) Act*. The sentencing judge also took into account that the applicant had been injured in the collision which occurred on that day and that he had continuing health problems.

His Honour considered the matters raised in *R v Osborne* and found that the applicant's traffic history demonstrated that there was a need to protect the public; that the consequences of the disqualification would have some impact on the business he conducted; that there was no risk that the disqualification period might create a disincentive to rehabilitation on release from custody; and that while the length of the disqualification period would create an additional penalty, it did not significantly dilute the necessity for a reasonably lengthy disqualification. The sentencing judge took into account all the matters relevant to consideration of an appropriate disqualification period and was not influenced by any irrelevant matters. The weight which his Honour gave to each of the relevant matters cannot be separately discerned or measured and is part of the ordinary process of sentencing.

I would refuse leave to appeal.

MULLINS P: I agree.

MORRISON JA: I also agree.

MULLINS P: The order of the Court is: Application for leave to appeal is refused.

Adjourn the Court.