DISTRICT COURT Appeal No 2 of 2002

APPELLATE JURISDICTION

JUDGE HOWELL

DANIEL JOHN McCOY Appellant

and

SENIOR CONSTABLE RODNEY IAN ERRINGTON Respondent

TOOWOOMBA

..DATE 24/01/2002

JUDGMENT

HIS HONOUR: On the 9th of May 2001, the appellant pleaded guilty to a charge of dangerous operation of a motor vehicle. It was a serious offence of dangerous driving involving, as it did, drag racing.

The appellant was 18 years old at the time of sentence.

The police prosecutor, referring to the history of the appellant, said the only entry he had was driving a defective vehicle.

The solicitor appearing for the appellant said:

> “Any order of compensation with a default period would be a de facto custodial sentence against my client. He simply doesn't have the capacity to pay. He will be unemployed as of today with the loss of his licence. I've informed him that he must lose his licence.”

The resulting property damage amounted to $16,651.10. That means that compensation that could be asked for would be that amount.

The police prosecutor stated that “out of that sum RACQ Insurance have paid $3,000 in relation to the Astra motor vehicle. So that leaves an ultimate balance of $13,651.10”, with the police prosecutor saying prior to that, “in total the compensation sought in relation to this matter is $13,651.10.” That arguably is a misunderstanding of what the Court of Appeal has said is appropriate.

The Court of Appeal has stated that the total compensation ordered should be $16,651.10 and be made payable to the actual complainant. If there has been an insurance payment to such complainant, on the principles of subrogation the insurance company is to be repaid the particular sum, but the order is made payable to the actual complainant, with the Crown to notify the insurance company in case the complainant suffers amnesia.

The learned Magistrate in fact made an order for the $13,651.10 compensation, in default six months' imprisonment, such to be paid within 12 months.

The appellant in fact did not give notice to the respondent within one calendar month after the said decision of the Magistrate, thereby not complying with s.222(2)(a)(i) of the Justices Act. However, the appellant seeks leave pursuant to s.222(2)A of the Justices Act for an order extending time for service of the notice.

The interests of justice would clearly suggest that leave be given if appropriate. The responsible attitude of the respondent in this case is that the respondent does not resist the making of such order, if such is open in law. Perhaps the most accurate way of describing the respondent's attitude is that the respondent abides by the order of the Court.

The matter is one of discretion for the Judge to whom the application is made. I am aware, even under the previous legislation which placed a greater onus on the appellant, of occasions when a Judge has exercised his discretion favourably to the appellant. The appellant has satisfied me that in the very special circumstances of this case that leave should be granted.

The full order of the learned Magistrate was a $500 fine, the said compensation, and driving licence disqualification of nine months.

The appellant's fundamental concern is in relation to the compensation as aforesaid, with its inevitable serious consequences. The appellant's solicitor submits compensation can never, and could never, be paid and such order always meant inevitable imprisonment. Crown counsel does not oppose an order whereby the appeal is allowed, there be a fresh order, and with the compensation order being amended and/or removed.

In my view, the appropriate order would be to allow the appeal and for the offence to place the appellant on probation for three years, with an order that he perform 240 hours' unpaid community service.

The Magistrate convicted, so a conviction would be recorded.

I would not interfere with the licence disqualification period.

It is to be remembered that this was a serious case of dangerous driving for one that is tried summarily.

As the appellant's consent is required for probation, and for community service, he has to be present to have the order articulated, the order explained to him, and he has to consent.

This application was brought on at short notice because my sittings finishes tomorrow. The appellant is in St George. I am sitting in Dalby next week, and it would seem that he will be able to be in Dalby next week.

The community service is an important part of the order because it has a punishment component, and the appellant is doing something useful for the community. It is more appropriate that he perform that order in preference to having the current compensation order, which would, as I am informed, inevitably finish in a gaol term. It is to be remembered that the learned Magistrate was desirous of there being a noncustodial order.

Accordingly, my order, subject to the said consent is that:

- The appeal is allowed.

- The order for the original offence is three years' probation plus 240 hours' unpaid community service, with the appellant disqualified from holding or obtaining a driver's licence for a period of nine months.

There will be no order as to costs.

The matter is adjourned to be mentioned in the Dalby District Court next week, as I said, for the purpose of the accused consenting to the probation and community service orders.
