

DISTRICT COURT OF QUEENSLAND

CITATION: *Barnes v Commissioner of Police* [2023] QDC 255

PARTIES: **CARLY JOY BARNES**
(Appellant)
v
COMMISSIONER OF POLICE
(Respondent)

FILE NO/S: 3226/23

DIVISION: Appellate

PROCEEDING: Appeal

DELIVERED ON: 14 December 2023 (ex tempore)

DELIVERED AT: Brisbane

HEARING DATE: 14 December 2023

JUDGE: Farr SC DCJ

ORDER: **1. Appeal allowed.**
2. The sentence be varied such that the parole release date is changed from 2 February 2024 to 14 December 2023.

CATCHWORDS: CRIMINAL LAW – APPEAL – Justices Act 1886 – section 222 – appeal against sentence – where the appellant pleaded guilty to nineteen substantive offences committed within a one month period and to two contraventions of a probation order– whether the sentence imposed was manifestly excessive – where the appellant entered an early plea of guilty - where the Magistrate failed to take into consideration the pre-sentence custody that the appellant had served – whether the sentence was within an appropriate range.

LEGISLATION: *Justices Act 1886* (Qld)
Penalties and Sentences Act 1992 (Qld)

COUNSEL: T Schafer for the appellant
A Thomas for the respondent

SOLICITORS: Legal Aid Queensland for the appellant
Commissioner of Police for the respondent

Introduction & background

- [1] This is an appeal pursuant to section 222 of the *Justices Act 1886* (Qld). The appellant pleaded guilty on the 3rd of October 2023 to nineteen substantive offences committed within a one-month period from the 2nd of July 2023 to the 3rd of August 2023 and to two contraventions of a probation order.
- [2] At the time of that sentence, the Magistrate also ordered that the appellant serve the unserved portions of three suspended sentences that had been imposed on the 18th of May 2023. They were sentences of nine months, three months and one month, respectively. I note that at the time those sentences were imposed they were ordered to be suspended, and they were ordered to be served concurrently with each other.
- [3] Curiously, the order for the one-month term of imprisonment and the three-month term of imprisonment was an incorrect order, because at the time of sentence the appellant had served 95 days in pre-sentence custody for those matters. In other words, she had served more than the one month and the three months. The Magistrate at sentence on the 18th of May declared that 95 days but, nevertheless, made the order that was made. I understand that that sentence hearing has since been reopened so that that mistake can be corrected.
- [4] That reopening occurred sometime after the sentence on the 3rd of October 2023 that brings this matter before this Court. The effect of the sentence on the 18th of May 2023 was that the appellant, as at the 3rd of October 2023, had only one suspended term of imprisonment operational, that being for nine months minus the 95 days that she had served in pre-sentence custody.

Setting of the parole release date

- [5] The appeal today is not opposed, so I do not need to go through the law that relates to section 222 appeals. In this matter, the Magistrate imposed a sentence of 12 months imprisonment on the charge of dangerous operation of a motor vehicle, that charge being considered the most serious of the charges faced by the appellant. The appellant had served a period of 62 days in pre-sentence custody which was declared, but the Magistrate then set a parole release date as at the 2nd of February 2024. The effect of that order was that the appellant was required to serve six months of the 12-month head sentence. It was accepted that the appellant had entered early pleas of guilty to each of these charges, and it is apparent that the

Magistrate was in error in setting the parole release date that she set, because she failed to take the pre-sentence custody into account when determining the appropriate date in that regard.

- [6] Given that this was a matter dealt with by way of early plea of guilty, it would have been appropriate for a parole release date to be set after the appellant had served one-third of the sentence, and, in fact, that seemed to be the approach that the Magistrate intended to take. That would result in a parole release date being set on the 2nd or 3rd of December 2023. The setting of that parole release date has rendered the sentence which was imposed in respect of that charge excessive in the circumstances, and it is appropriate that this Court vary the sentence in an appropriate way. The sentence imposed on the remaining charges were all of a lesser duration or of a non-custodial nature and play no role in the overall sentence of imprisonment.

Errors contained in verdict and judgment record

- [7] This is a matter that has been, upon reading it, littered with mistake and inaccuracy, including in relation to the verdict and judgment record which has been prepared as a consequence of the defendant's appearance in the Magistrates Court on the day in question. Those that are responsible for the preparation of verdict and judgment records need to take particular care to ensure that the record accurately reflects the order made by the judicial officer. That did not occur on this occasion. As I have indicated, there are numerous mistakes, and one gets the distinct impression that the person who prepared the verdict and judgment record entered what that person considered the Magistrate intended to do, something which is strictly prohibited. I intend now to identify the errors and direct that the verdict and judgment record be corrected.
- [8] In relation to each of the charges of contravening a probation order, the verdict and judgment record records that a sentence of one month imprisonment in respect of each offence was imposed. That is incorrect. The sentence pronounced was a \$600 fine for both breaches, that being a total of \$600. In relation to a charge of stealing which occurred on the 2nd of July 2023, the verdict and judgment record records that the sentence imposed was one month imprisonment to be served cumulatively.

That is incorrect. The order was one month imprisonment to be served concurrently.

- [9] In relation to three offences of driving without a licence, demerit points suspension, those offences occurring on 15 July 2023, 30 July 2023 and 4 July 2023, the verdict and judgment record states that in respect of each offence the appellant was fined \$800 and she was disqualified from holding or obtaining a driver licence for a period of 18 months. That is incorrect. The order that was made in respect of those three charges was an \$800 fine, that is, a total of \$800, and she was disqualified from holding or obtaining a driver licence for a period of six months.
- [10] In respect of each charge, those six-month periods of time, are to be served cumulatively, making a total disqualification period of 18 months.
- [11] On a charge of unlawful use of a motor vehicle said to have occurred on the 3rd of August 2023, the verdict and judgment record states that a sentence of nine months imprisonment to be served cumulatively was imposed. That is incorrect. The order was nine months imprisonment to be served concurrently. And in relation to the resentencing in respect of three offences of contravening a domestic violence order, which were the offences that related to the breach of probation orders, the verdict and judgment record discloses that a \$600 fine was imposed in respect of each of those offences on resentencing. That is incorrect. The order that was imposed in respect of each of those offences – those offences having occurred on 20 August 2022, 22 October 2022 and 19 October 2022 – was one month imprisonment in respect of each offence.
- [12] As I have indicated, where the Magistrate remains silent on whether sentences are to be imposed cumulatively or concurrently, the operation of sections 155 and 156 of the *Penalties and Sentences Act 1992* (Qld) deems that the sentences are to be imposed and served concurrently. That, then, also has application to the sentence which the Magistrate imposed when dealing with the breach of suspended sentence. Her Honour found that – the breach proved and ordered that it would not be unjust – and found that it would not be unjust to order that the appellant serve the balance of the unserved portion and so ordered.

[13] That, on my calculation, is a period of approximately six months. She made no order that it is to be served cumulatively, and it is to be treated under the legislation to be served concurrently with all other orders made on the day. The result is that on the day of sentence the appellant was sentenced to a total of 12 months imprisonment, that relating to the charge of dangerous operation of a motor vehicle. Insofar as that charge is concerned, I vary the sentence which was imposed for the reasons I have already indicated such that the parole release date is changed from the 2nd of February 2024 to today, the 14th of December 2023.

Orders

1. Appeal allowed.
2. The sentence be varied such that the parole release date is changed from 2 February 2024 to 14 December 2023.