Hales v Knight [2001] NTSC 58

PARTIES:	HALES, PETER WILLIAM
	v
	KNIGHT, SHANE
TITLE OF COURT:	SUPREME COURT OF THE NORTHERN TERRITORY
JURISDICTION:	SUPREME COURT OF THE NORTHERN TERRITORY EXERCISING TERRITORY JURISDICTION
FILE NO:	JA 34 of 2001 (20014713)
DELIVERED:	17 July 2001
HEARING DATES:	20 June and 13 July 2001
JUDGMENT OF:	RILEY J

REPRESENTATION:

Counsel:	
Appellant:	I Rowbottam
Respondent:	M Carter
Solicitors:	
Appellant:	Office of Director of Public Prosecutions
Respondent:	Withnall Maley and Co
Judgment category classification:	B
Judgment ID Number:	ril0111
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IN THE SUPREME COURT
OF THE NORTHERN TERRITORY
OF AUSTRALIA
AT DARWIN

Hales v Knight [2001] NTSC 58
No. JA34 of 2001 (20014713)

IN THE MATTER OF the *Justices Act*

AND IN THE MATTER OF an appeal against sentence handed down in the Court of Summary Jurisdiction at Darwin

BETWEEN:

PETER WILLIAM HALES
Appellant

AND:

SHANE KNIGHT
Respondent

CORAM: RILEY J

REASONS FOR JUDGMENT

(Delivered 17 July 2001)

[1] This is a Crown appeal against sentences imposed upon the respondent in the Court of Summary Jurisdiction on 24 May 2001.

[2] The respondent pleaded guilty to six offences against the *Traffic Act* and two against the *Misuse of Drugs Act*. All of the offences occurred in the early hours of the morning of Sunday 3 September 2000. At that time the

respondent was observed by police driving a Mitsubishi Colt at speed along Lee Point Road. Police pursued the vehicle. The respondent did not stop but rather sped up in order to evade police. A chase ensued along various streets in the area. The pursuit ended when the vehicle crashed into a clump of palm trees.

[3] The respondent was subsequently shown to have a blood alcohol concentration of 0.107 percent. He was at the time a disqualified driver having been disqualified on 26 April 2000 for a period of seven months. Disqualification followed his conviction for driving with a blood alcohol concentration of 0.126 percent. The vehicle he was driving was unregistered and uninsured. The registration had expired on 28 August 2000.

[4] Counsel who appeared for the respondent at the hearing told the learned Magistrate that his client had been drinking at a friend's house and that he accepted that "he had way too much to drink". The respondent said his driving was an act of stupidity and that he regretted the offending. No other explanation for his conduct was provided to the Court.

[5] At the time of his arrest the respondent was found to have amphetamines in his possession and also a small bag of cannabis plant material. The Court was informed that he had no recollection of these items but accepted that they were in his possession. It was not suggested that he was under the influence of either drug when he drove as he did.

[6] The Court was told that the respondent was aged 22 years. He had completed year 10 at school. He had been engaged in full time employment until June 2000 when he sustained an injury to both of his arms in a motor vehicle accident. He is the father of a 3 year old boy and at the time of offending had the care and control of the child. Whilst he was in hospital following this incident the mother of his son flew to Darwin from Sydney and removed the child from his care. He had not had contact with the child since.

[7] The incident in September 2000 did not cause his injuries but resulted in an aggravation of them. As a consequence he required two bone grafts and, at the time of sentencing, was still wearing a cast.

[8] The Court was told that the respondent had stopped drinking alcohol at the time of sentencing.

[9] In sentencing the respondent the learned Magistrate noted that he had prior offences in New South Wales in 1997 and in 1999 in relation to which he had suffered disqualifications of his driver's licence for periods of six months and twelve months. His Worship commented that the "prior record of driving offences in particular is appalling". He regarded his prior criminal history as indicating a "disregard for the law and for consequences".

[10] The following schedule prepared by the appellant sets out how his Worship dealt with the various matters before him.

Count	Offence	Max/Min Penalties	Penalty Imposed
1	Driving a motor vehicle with a blood alcohol concentration in excess of .08%, namely .107% contrary to s19(2) of the *Traffic Act*	$1000 or 12 mths imprisonment/ minimum 12 mths licence disqualification	$450 fine + $20 VAL Licence disqualification of 15 months
3	Driving in a manner dangerous contrary to s30(1) of the *Traffic Act*	$2000 or 2 years imprisonment/ minimum 6 mths licence disqualification	$400 fine + $20 VAL Licence disqualification of 9 months
4	Driving whilst disqualified, contrary to s31(1) of the *Traffic Act*	12 months imprisonment	3 mths imprisonment, suspended after 1 month
5	Drive unregistered motor vehicle contrary to s33(1)(a) of the *Traffic Act*	$2000 or 12 mths imprisonment	Aggregate fine of $600 + $40 VAL with count 6
6	Drive uninsured motor vehicle contrary to s34(1)(a) of the *Traffic Act*	$10,000 fine/ minimum - $500 fine	As per count 5
9	Possess cannabis in public place contrary to s9(1) and (2)(f) of the *Misuse of Drugs Act*	$5000 or 12 mths imprisonment	Aggregate fine of $250 + $40 VAL with count 10
10	Possess amphetamine contrary to s9(1) and (2)(f) of the *Misuse of Drugs Act*	$2000 fine	As per count 9

[11] The matter came before me on 20 June 2001 but was adjourned to enable the appellant to provide further information. When the hearing resumed on 13 July 2001 Mr Rowbottom, for the appellant, advised that the appellant's appeal was to be confined to the sentence imposed in respect of count 3, being the offence of driving in a manner dangerous to the public. It was the case for the Crown that the penalty imposed for that offence was manifestly inadequate.

[12] The principles governing the determination of Crown appeals based on inadequacy of sentence are well settled and are referred to in various judgments of the Court of Criminal Appeal. Sentencing is a matter of discretion and there is a strong presumption that the sentences imposed are correct. For a court to interfere the Crown must demonstrate that the sentences are so obviously inadequate that they are unreasonable or plainly unjust. I have been referred to the judgments of the Court of Criminal Appeal in *R v Raggett* (1990) 50 A Crim R 41 and *R v Nagas* (1995) 5 NTLR 45. Those principles have application to appeals from the Court of Summary Jurisdiction to this Court; *Thomson v Mamarika* (1993) NTSC 116.

[13] The appellant complains that the manner of driving was at the higher end of the scale for an offence of driving in a manner dangerous. The factors that I have mentioned above all indicate the seriousness of the driving. The agreed facts reveal that the respondent drove at speed through the suburbs of Darwin. He was pursued by police in a vehicle that had its siren and flashing lights activated. Later in the pursuit another police vehicle became involved. In all he was pursued along eleven suburban streets and through the loading area of a local shopping centre. At times the vehicle swerved from side to side on the suburban streets and corners were taken at speed. Vehicles parked in the streets were narrowly avoided. The respondent lost control of the vehicle on four occasions and at times the vehicle traveled on two wheels. The respondent was aware that he was driving whilst

disqualified and in an unregistered and uninsured vehicle. He has been separately dealt with for those matters. However it is relevant to note that this was an act of dangerous driving deliberately undertaken in order to evade police. The episode only came to an end when the vehicle driven by the respondent narrowly missed a large delivery truck and then mounted the kerb and collided with a clump of palm trees. It did not cease through any action on the part of the respondent. When the police arrested the respondent he was in a very agitated state.

[14] The information before the learned Magistrate revealed that the respondent had suffered disqualification of his driver's licence on at least 3 occasions. On his last appearance before the court in April 2000 the respondent had been disqualified from holding a licence for a period of 7 months. His prior convictions included driving without due care and driving in a manner dangerous. He is not to be punished again in relation to those matters. However his bad driving record limits the scope for extending leniency to him. He has not been deterred by penalties previously imposed.

[15] Although it does not fall into the 'most serious' category, this was a serious example of the offence of driving in a manner dangerous to the public. There was substantial risk to the police involved in the pursuit, to any person who may have been on the streets or in a motor vehicle in the area at the time and to the two passengers in the respondent's motor vehicle. Principles of both personal and general deterrence must be accorded significant weight in cases such as this.

[16] The appellant points out that the maximum penalty for this offence is imprisonment for 2 years or a fine of $2000. In this case the penalty imposed was a fine of $400 plus a victim's assistance levy. That fine was to be cut out whilst the respondent was serving the penalty of one month imprisonment imposed upon him in respect of driving disqualified. The licence disqualification imposed upon him was for a period of 9 months.

[17] In my opinion the circumstances of this offence clearly called for a sentence of imprisonment. The inadequacy of the sentence imposed on this count is plain. It is manifestly inadequate.

[18] The Appeal in relation to count 3 is allowed.

[19] There has been no challenge to the other sentences imposed by his Worship and I do not propose to interfere with them. In relation to this offence I bear in mind the matters raised before the court below and taken into account by his Worship. I will not repeat those matters. I also bear in mind the principle of 'double jeopardy' and that the respondent has served the sentence of imprisonment imposed upon him in respect of count 4. He was recently released from custody. To have him returned to prison to serve an additional sentence would be unjust in all the circumstances; *Everett v The Queen* (1994) 181 CLR 295 at 305.

[20] I confirm the sentences imposed by his Worship in respect of counts 1,4,5,6,9,and 10. In relation to count 3 the sentence will be set aside and the respondent sentenced to imprisonment for a period of 3 months. That

sentence will be deemed to have commenced on 24 May 2001 and served concurrently with the sentence of imprisonment imposed in respect of count 4. The sentence will be suspended with effect from 24 June 2001. The operational period for the purposes of s40(6) and s43 of the *Sentencing Act* will be eighteen months from 24 May 2001. I have borne in mind that the fine of $400 has been attended to. There will be a period of licence disqualification of nine calendar months dated from 24 May 2001.

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