PARTIES:	GEOFFREY WAIT
	AND:
	LEONARD DAVID PRYCE
TITLE OF COURT:	In the Supreme Court of the Northern Territory of Australia at Alice Springs
JURISDICTION:	Supreme Court of the Northern Territory of Australia exercising Territory jurisdiction
FILE NO:	SC No 38 of 1995
DELIVERED:	6 September 1995
HEARING DATES:	28 and 29 August 1995
JUDGMENT OF:	MILDREN J

CATCHWORDS:

Criminal Law - Dangerous Act - Driving vehicle into oncoming traffic - Intoxication - as aggravating factor - Whether charge duplicitous - Criminal Code (1983) s154(1)(4)-
Criminal Law - Appeal against sentence - Psychiatric condition - Need for causal connection between condition and criminal conduct - Reduces criminal culpability - Appellant's actions voluntary -
Criminal Law - Appeal against sentence - Circumstances of intoxication, psychiatric condition, deterrence, prospects of rehabilitation properly considered -
Criminal Law - Appeal against sentence - 2 years, 6 months non parole period, 5 years licence disqualification - Manifestly excessive - Set aside - Sentence of 12 months substituted - Fully suspended on entering bond, with conditions - 2 year licence disqualification -

Legislation

Criminal Code 1983 (NT) ss31, 154(1), (4)

Cases

Hoessinger v The Queen (1992) 62 A Crim R 146, mentioned
Channon v The Queen (1978) 20 ALR 1, considered
R v Ashley (unreported decision of Kearney J, (date) 37 of 1990), considered
R v Holtze (unreported decision of Mildren J, (date) 82 of 1993), considered
R v Chick (unreported decision of Angel J, (date) 93 of 1991), considered
R v Seberry (unreported decision of Nader J, (date) 43 of 1991), considered
R v Ireland (1987) 29 A Crim R 353, mentioned
House v The King (1936) 55 CLR 499 at 55, applied
Raggett, Douglas and Miller (1990) 50 A Crim R 41 at 45, applied
Namandali v The Queen (unreported decision of CCA, 11 March 1994), applied
Baumer v The Queen (1988) 166 CLR 51 at 55, (1988) 35 A Crim R 340 at 343, approved
Baumer v The Queen (1989) 40 A Crim R 74 at 88, approved
Veen v The Queen (No. 2) (1987-88) 164 CLR 465 at 476-7, approved
R v Johnston (1985) 38 SASR 582 at 586, mentioned

REPRESENTATION:

Counsel:

Appellant:	Mr G Georgiou
Respondent:	Ms A Fraser

Solicitor:

Appellant:	NT Legal Aid Commission
Respondent:	DPP

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IN THE SUPREME COURT
OF THE NORTHERN TERRITORY
OF AUSTRALIA
AT ALICE SPRINGS

No 38 of 1995

BETWEEN:
GEOFFREY WAIT

Appellant

AND:
LEONARD DAVID PRYCE

Respondent

CORAM: MILDREN J

REASONS FOR JUDGMENT
(Delivered 6 September 1995)

This is an appeal from the Court of Summary Jurisdiction constituted by the learned Chief Stipendiary Magistrate sitting at Alice Springs.

The appellant pleaded guilty to doing a dangerous act, contrary to s154(1) of the Criminal Code, and to the circumstance of aggravation that at the time he was under the influence of intoxicating liquor. The maximum sentence fixed by the Code for this offence is 9 years imprisonment.

The facts, as accepted by the prosecutor, and which were not in dispute, are as follows. On Tuesday 19 July 1994, at 10:30am the appellant attended at the Glen Helen Lodge where he sat down at the bar and commenced drinking Strongbow Dry Cider stubbies. This continued through the afternoon until approximately 4pm. During this period the appellant continually pestered visitors and staff in regard to a rock he wished to sell. At

times he became abusive and offensive in his choice of language and numerous times was advised to settle down by staff.

At about 4pm the appellant due to his level of intoxication was refused service. The manager asked him to leave the premises. The appellant argued the point for about 5 minutes; the end result being that the manager had to grasp him by the back of his shirt and escort him from the premises. Outside the premises the appellant continued to behave in a disorderly manner, swearing at the manager, ranting and raving and walking around in a state of agitation. The defendant then got into the driver's seat of his vehicle, a 2-tonne brown Toyota landcruiser NT registration 374-792.

Upon starting the vehicle he accelerated rapidly and drove out onto Namatjira Drive heading inbound towards Alice Springs. As he headed along Namatjira Drive, the appellant repeatedly strayed onto the wrong side of the road. At one stage he crossed to the wrong side of the road and over-corrected, nearly rolling the vehicle prior to gaining hold back onto the bitumen. He did not slow down or stop driving as a result of this incident but continued to drive towards Alice Springs.

At about 5.03pm at approximately 16.17 kilometres west of Flynn's Grave, the appellant passed a police van which was parked on the opposite side of the road facing him. This police van completed a u-turn and pursued the appellant until able to sit some 14 metres behind him. At this stage the appellant was maintaining a speed of 120 kilometres per hour. This was checked for a distance of approximately 400 metres. The appellant then became aware of the police car which had activated its beacons and sirens and commenced swerving his vehicle from left to right; covering all the road area from left to right, including the placing of his wheels into the dirt edges.

He completed this move numerous times and then commenced braking heavily, and accelerating heavily. He completed this manoeuvre on three occasions. On one occasion, police had to brake heavily to avoid running into the rear of the appellant. The Police then dropped back a bit so as to not to press the appellant. The appellant continued driving at speed and deliberately drove across and off the right side of the road along the

dirt windrow, over a gutter which intersected the windrow nearly rolling the vehicle in the process. The vehicle leaned to such a degree that three tyres on the rims fell off his roof rack and commenced bouncing along the roadway requiring navigation by police to avoid same.

The appellant then, after crossing a floodway, came close to striking an oncoming cyclist who had to take evasive action. The appellant then began swerving more erratically and appeared to lose control which resulted in the back wheels of the vehicle losing their traction on the bitumen. This resulted in the vehicle swerving to the left, then to the right and a large slur to the left again. As this final slur occurred, the back of the vehicle nearly collected three cyclists who were cycling inbound, travelling on the correct side of the road. The appellant continued at speed heading inbound. During the next 12 kilometres, every time the appellant sighted an oncoming vehicle, he would deliberately drive onto the wrong side of the road and steer directly at the oncoming vehicles, forcing them to take evasive action.

One of these vehicles included a silver Toyota station wagon, NT 374-797, which was required to take evasive action of such a nature that it had to leave the road surface at speed and in fact enter scrub area on the side of the road. A campervan NSW NMP-946 had to brake heavily and swerve off onto the side of the road at a speed resulting in a lot of weight transferral at its front wheels making it hard to control.

On these occasions the appellant came within 40 to 50 metres of having a head-on collision.

Opposite Flynn's Grave the appellant turned left onto a bush track. He then followed the track into some very rough country with police following. Due to the roughness of the country, the appellant evaded police for a short period. He parked his vehicle behind some scrub off a second track and fled on foot. Police a short time later located the vehicle, seized same and returned it to the traffic compound where it was secured and exhibited.

Attempts to locate the appellant during the evening proved negative; the appellant evading police by camping in the scrub. On the morning of Wednesday 20 July 1994 the appellant contacted the police on numerous occasions the gist of which was in relation to the return of his vehicle. At approximately 12.40pm on 20 July, the appellant was arrested by police for the offence of dangerous act. He was conveyed to the police station where he refused to speak with police in a taped record of interview, he made no admissions in relation to the offences charged, other than he had spent a cold night in the bush due to police attempting to locate him. Preceding the above offences, the appellant was observed by numerous persons at Glen Helen Lodge to be consuming alcohol and to be in an intoxicated state.

No point was taken that the charge was duplicitous, and this was not raised at the hearing of the appeal: cf. Hoessinger (1992) 62 A.Crim R. 146 especially at 150-153.

The appellant's prior record of convictions included convictions in the Court of Summary Jurisdiction for driving without a licence, driving an unregistered and uninsured vehicle, driving without due care, and exceed .08. There was one conviction for each of these offences in the period 18 January 1990 to 8 February 1994, as well as very old convictions in 1980 and 1975 for driving without due care and driving unlicenced, respectively.

The appellant, who was aged 37 years at the time of the offence, had a long history of psychiatric illness since his teenage years. His counsel relied upon a psychological report prepared by a clinical psychologist, Mr Michael Tyrrell. This report provided details of the appellant's psychiatric history, and stated that the appellant suffered from s schizophrenic condition, either schizophrenia with paranoid features or severe schizo-typal personality, exacerbated by substance abuse including alcohol sensitivity. Although this diagnosis was clearly outside of Mr Tyrrell's field of expertise, no objection was taken to it by the prosecutor, and the learned Chief Magistrate correctly accepted Mr Tyrrell's findings and opinions, although he was clearly aware that, as a clinical psychologist, Mr Tyrrell was not qualified to offer that opinion.

Mr Tyrrell's report dealt with the circumstances of the offence and the connection with the appellant's psychiatric disorder. He noted that the appellant had suffered from a "mounting feeling of tension and depression which appears to have reached psychotic proportions in the days leading up to the incidents ... he had no sleep for the preceding four days, living on coffee, stimulants and very little else. In his deteriorating state he ceased using his anti-psychotic drug approximately three days before the incident. He self medicated instead with stimulants, as above, which he states has a calming effect on his thinking. Such a paradoxical effect of stimulate drugs is well recognised in attention deficit disorders and could also apply to Mr Wait's condition. That is, he has learned to self-medicate on stimulants."

Mr Tyrrell concluded: (p.4)

> "His alcohol sensitivity combined with his disturbed mental state and the toxic combined effects of all the substances he had taken to manage his emerging psychotic symptoms explains the erratic behaviour which ensured (sic - ensued?) and of which he claims poor recall."

At p6, Mr Tyrrell said:

> "Mr Wait suffered mounting psychotic tension, typical of the reaction of one who suffers a chronic schizophrenic condition when under stress. Also typically, he elected then to cease taking his anti-psychotic medication and to self-medicate with stimulants and other substances to hazardous levels ...
>
> His behaviour at and from Glen Helen was highly related to:
>
> - his carrying excessive tension loads that he could not talk through in response to an unsatisfactory work venture;
> - the insidious onset of a depressive condition related to schizophrenic process;
> - his extreme lack of sleep and
> - his stimulant abuse over days or weeks.

> On the basis of history to hand Mr Waits' diagnosis involves a schizophrenic condition complicated by personality disordered elements and sensitivity to alcohol and other substance abuse.
>
> Such a condition needs compliance to long term treatment, within a structured residential environment, with prescribed psychotropic drug treatment, everyday problem solving skills training, supportive counselling with focus on learning through consequence, crisis intervention services and skills training of relatives and "significant others" to co-operate with long term treatment strategies.
>
> Such treatment services are available in Alice Springs though the Department of Health and Community Services Community Mental Health Program..."

In addition the appellant called evidence from Margaret Waite, the appellant's mother, a registered nurse of more than 30 years' experience. She informed the court about her son's treatment, admissions to psychiatric words in hospital, periods of drug abuse, lifestyle, work and general background, as well as other matters. The learned Chief Stipendiary Magistrate accepted her evidence.

The appellant's counsel referred the learned Chief Magistrate to the appropriate authorities dealing with sentencing in cases of this kind. The thrust of his submission was that the appellant was able to cope quite well on his own and did not need to be placed in a live-in facility, that he had his own flat and his family were able to look after him on a daily basis; that imprisonment would result in loss of his flat and his employment; that he is not an intractable offender; that imprisonment would be counter productive; that the interests of the community would be served by ensuring that he obtained appropriate treatment in the community; that a deterrent sentence was not warranted; and that the court should deal with the appellant by way of an order that required supervision as well as treatment. The prosecutor did not urge the learned Magistrate to impose a custodial sentence. She pointed out that no cohesive management program was as yet in place to ensure that the appellant remained on his medication, and suggested the possibility of a pre-sentence report to specifically address the degree of super which could be organised between the Community Health Service and the Department of Correctional Services.

The learned Chief Magistrate indicated that he would consider whether or not to order a pre-sentence report and that he would reserve his sentence until he returned to Alice Springs later in the month. He told counsel for the appellant that he doubted whether a pre-sentence report would make much difference, and would "hear further submissions as to what exact day-to-day mechanisms would prevail if Mr Waite was released - or day-to-day arrangements would prevail for the purpose of ensuring that he remains on medication in such a way that its highly unlikely this kind of behaviour is going to occur again."

When the matter resumed on 26 May 1995, after appearances had been announced, his Worship did not invite any further submissions, but proceeded to sentence the appellant to 2 years's imprisonment, fixed a non-parole period of 6 months, and disqualified him from driving for 5 years.

The appellant's counsel did not seek to remind His Worship that he had expected to be heard further before sentencing. That matter is not raised as a ground of appeal in this Court.

The grounds of appeal as amended are as follows:

> "1. The sentence imposed in all the circumstances of the case is manifestly excessive.
>
> 2. The learned Chief Magistrate gave insufficient weight to the Appellant's psychiatric illness.
>
> 3. The learned Chief Magistrate erred in ruling that for a psychiatric illness to mitigate sentence there must be a direct and substantial causal connection between the condition and the behaviour in question.
>
> 4. The learned Chief Magistrate erred in failing to take into sufficient account the appellant's prospects of rehabilitation."

Ground 2

It is convenient to deal with this ground first. The first submission of counsel for the appellant, Mr Georgiou, was that his Worship misinterpreted Mr Tyrrell's report. He submitted that the report showed that the appellant's behaviour in self-medicating and ceasing his treatment was caused by his psychiatric condition, whereas the learned Chief Magistrate found that these decisions were made by the appellant himself and that he had to accept responsibility for them. It is clear that his Worship took the view that he could not conclude that the appellant was incapable of controlling himself in this regard; and that the evidence did not show that his schizophrenia was the sole cause or necessarily even the major cause of his drug abuse (consuming liquor and coffee and ceasing his medication). Whilst the report of Mr Tyrrell refers to those matters as 'typical' behaviour of a person with this condition when placed under stress, I consider that it has not been demonstrated that the learned Magistrate was in error in reaching those conclusions. The plea of guilty to the charge and circumstance of aggravation was inconsistent with any suggestion of involuntariness. Although s31 does not apply to offences against s154, the appellant could not have been convicted if his actions were involuntary. Mr Tyrrell's observation that such behaviour is 'typical' does not show that it was involuntary. On the other hand, the learned Chief Magistrate did not ignore the appellant's susceptibility to give in to this type of conduct when stressed. His Worship specifically observed that "he made the decision against a background of mounting pressure and stress which undoubtedly placed him in a very difficult position..." Mr Georgiou suggested that his Worship erred because he assumed that the appellant was capable of an informed, calculated and rational decision, but I am not persuaded that it has been demonstrated that the learned Chief Magistrate went that far. I am not satisfied that this ground of appeal has been made out.

Ground 3

The learned Chief Magistrate said:

> "... in this case I'm satisfied that there has been an underlying psychiatric condition. It is clear and I'm satisfied that he has suffered from a mental illness .... that fact is not of itself sufficient necessarily to mitigate or alter

> sentence and of course that's what the authorities say. There must be a direct and substantial connection between the condition and the behaviour in question. Here there is a connection between the underlying condition and the defendant's actions leading to the events on 19 July 1994. There was the underlying condition; there was lack of sleep; there was a cessation of his anti-psychotic medication and there was heavy consumption of alcohol ..."

Mr Georgiou submitted that this passage in his Worship's sentencing remarks disclosed error. He submitted that it was sufficient if there is a causal connection between the illness and the offending. In Channon v R (1978) 20 ALR 1, the Federal Court of Australia on appeal from this court considered the relevance of a psychiatric condition to the sentencing process. The court was a particularly strong court as it was constituted by Brennan, Deane and Toohey JJ. Brennan J (as he was then) regarded it as sufficient if the condition contributed to the criminal conduct, thereby reducing moral culpability for the offence: see pps 4, 5. Toohey J thought it sufficient if the condition played "some part"in the commission of the offence. The expression 'direct and substantial connection' used by his Worship appears to require a stronger causal link than is suggested by Channon. But it is clear that his Worship did regard, what he called 'the underlying condition' and the connection that it had with the crime as being mitigating. Indeed his Worship specifically looked at the extent to which the appellant was morally responsible for his actions, having regard to his condition. On this topic his Worship said:

> "He was not responsible for the fact that he had a psychiatric illness. He was responsible for taking some of the decisions, although his responsibility, I think, has to be seen to be somewhat reduced given the background of that illness. But he is not entirely free from moral acceptability in this matter at all...."

I consider that in these circumstances it has not been shown that his Worship fell into error. Accordingly, ground 3 is dismissed.

Ground 4

It was submitted, by Mr Georgiou that the learned Chief Magistrate ought to have concluded that the appellant was not an intractable offender, or that the community would be best protected by ensuring that he received treatment which was available to him, and could have been made the subject of a conditional release order under s5 of the Criminal Law (Conditional Release of Offenders) Act; instead, his Worship undervalued his prospects of rehabilitation because he had not yet any treatment regime in place. Mr Georgiou, in support of this submission, referred to the failure to order a pre-sentence report, or hear further submissions on the arrangements which might prevail if he were to be released immediately.

The learned Chief Magistrate was correct in finding that there was no evidence that the arrangements suggested by Mr Tyrrell were in place. Indeed the submission of Mr Georgiou suggested to him that, to the extent that this involved his living in a "structured residential environment", this was not appropriate, as he functioned well enough when in remission under his current residential arrangements. I do not think it has been demonstrated that the learned Chief Magistrate overlooked or undervalued the appellant's prospects of rehabilitation. His Worship specifically referred to the appellant's prospects of being assisted with psychiatric counselling whilst in prison, and the fact that he has prospects if the regime suggested by Mr Tyrrell is set up and adhered to. That appears to have been a major factor in fixing a non-parole period of 6 months, which his Worship described as "low", having regard to the length of the head sentence. In my opinion this ground is not made out.

Ground 1

Mr Georgiou submitted that in all the circumstances, the sentence was manifestly excessive. He referred me to a number of sentences by judges of this court involving convictions for this offence, where the dangerous act involved driving a motor vehicle. In the case of Ashley (37 of 1990) Kearney J imposed a sentence of 8 month's imprisonment, but suspended it upon the defendant entering into a home detention order

for 12 months, and disqualified his licence for 12 months . In that case, the defendant, who faced a maximum of 5 years imprisonment, was angry with the driver of another vehicle, and deliberately rammed it from behind whilst it was proceeding along a road, causing it to go out of control. No one was injured, although there were 5 occupants in the vehicle. The defendant was aged 24 at the time of the offence, was in steady employment, and was married with two children whom he supported. Kearney J accepted that he was not a person who displayed reckless indifference to the safety of others, and had no intention to injure anyone, and his actions were not premeditated, but his actions were caused by uncontrollable anger which was out of character. The defendant had some prior convictions for traffic and stealing offences.

In the case of Holtze, (82 of 1993) I imposed a sentence of 3 years suspended after 3 months upon entering into a 3 year good behaviour bond together with a licence disqualification for 5 years. I recommended psychiatric treatment whilst in prison. In that case the defendant drove on the Stuart Highway with two intoxicated passengers sitting on the bonnet. The vehicle was travelling at 100kph when one of the passengers lost his balance, fell underneath the vehicle and was killed. In that case the maximum sentence the defendant faced was 10 years' imprisonment. The defendant was remorseful, co-operated fully with the police and had a zero blood alcohol reading. He was 21 years old, and had suffered major depressive episodes since the accident, was unlikely to offend again, and was a first offender.

In R v Chick (SC13/91) Angel J imposed a sentence of 2 years suspended forthwith upon entering into a 2 year good behaviour bond. In that case the defendant faced a maximum penalty of 11 years' imprisonment, the defendant was intoxicated and caused grievous harm to a passenger in his vehicle when the vehicle left the road and collided with a pole. The defendant was a first offender, aged 20 years old, was a student who had ambitions to become an airline pilot, and was in a unique position to fulfil that ambition.

In R v Seberry (SCC 43/91) Nader J imposed a sentence of 4 years with an 18 month non-parole period upon the driver of a motor vehicle who whilst intoxicated, failed to

give way to vehicles on his right at a busy intersection at peak hour, and collided with a motor cyclist, killing him instantly. In that case the maximum sentence which the defendant faced was 14 years imprisonment. The defendant was a 28 year old labourer, married with 2 children, with a drinking problem and with prior convictions for traffic offences. His Honour was referred to the case of Ireland (1987) 29 A.Crim R. 353 where a schedule of sentences was referred to by the Court of Criminal Appeal (see pps 373-379 of the report).

The purpose of this exercise was to show that a sentence of actual imprisonment is not always imposed for offences against s154, but I do not consider that these cases indicate much more than that. Breaches of the section due to the driving of motor vehicles can occur in vastly differing circumstances. Indeed the maximum penalty can be 5 years, 7 years, 9 years, 10 years, 11 years or 14 years depending on which circumstances of aggravation are proved. 40. Reference to these cases does not show that there is a tariff and that the sentence is outside of the tariff. Where no specific error is identified, in order for this ground to succeed, this Court must be satisfied that the sentence imposed was "unreasonable or plainly unjust": House v The King (1936) 55 CLR 499 at 505; or that the sentencing magistrate has over valued the nature and circumstances and gravity of the offence and/or undervalued the relevant mitigating circumstances. This is essentially a subjective judgment largely intuitively reached by the appellate court as to what punishment is appropriate in the light of all the admissible considerations affecting the case at hand, and drawing upon its own accumulated knowledge and experience: see Raggett, Douglas and Miller (1990) 50 A.Crim R. 41 at 45. It is akin to Lord Denning's 'Oh, my Gosh' test, because, it is not enough that this court might have imposed a lower sentence. A sentencing magistrate has a wide discretion; the sentence he imposed must be manifestly excessive, not merely one which this court would regard as higher than it itself would impose.

The learned Chief Magistrate described the appellant's driving as, objectively speaking, "probably towards the higher end" of the scale of offending. He said:

> "You do not get driving much more dangerous, much worse, much more irresponsible than that on the roads in any State including this one."

He went on to observe that

> "... the act was, of course, aggravated and very considerably aggravated as a matter of culpability and as a matter of danger, by the fact that he was under the influence of intoxicating liquor."

Mr Georgiou submitted that the fact of the intoxication was a mitigating circumstance, but withdrew that submission when I pointed out to him that the Court of Criminal Appeal in Namandali v The Queen (unreported ed, 11 March 1994) had upheld my own view that voluntary intoxication could never be a mitigating circumstance in relation to this offence. Although His Worship was entitled to take the view that the intoxication aggravated the offence, given his subsequent finding that the intoxication was contributed by his psychiatric condition and the mounting tension, pressure and stress he was suffering, I would not have thought it open to conclude that the intoxication 'very considerably aggravated, as a matter of culpability', this offence. The appellant's driving was no doubt very dangerous, but the nearest his vehicle came to any of the other oncoming vehicles was 40-50 metres. Nevertheless four other vehicles and four cyclists were forced to take evasive action, and one vehicle had to leave the road entirely and enter the scrub. In addition he was very pursued by a police vehicle and although driving at 120kph he braked heavily on several occasions to prevent the police from stopping him, causing the police to break heavily on one occasion to prevent them from running into him. Fortunately no-one was injured and no damage was caused. In those circumstances, the objective danger, although high, was clearly not at the highest end of the scale. His Worship noted his prior driving record which he described as 'a relatively poor one in the sense that it showed a persistent irresponsible attitude towards his obligations as a driver.' The appellant's prior record was not such in my opinion, as to have made his culpability for this offence greater. The learned Chief Magistrate did not think so either; he treated it as no more than a factor which meant that he could not get the benefit of being a first offender. His Worship, after referring to the maximum sentence which the legislature had fixed, held that the circumstances were such that it was 'clearly appropriate to reduce by a considerable proportion, a sentence which might otherwise have been imposed upon (the appellant) for this extremely serious case of dangerous act.' Given that the head sentence he fixed was one of 2 years' imprisonment,

if the learned magistrate had reduced the sentence by a considerable proportion as he says he did, it is clear that his Worship thought that the appropriate sentence would otherwise have well-exceeded his jurisdictional limit of 2 years.

Finally, his Worship imposed a licence disqualification for 5 years, observing that 'the community is entitled to be protected from (the appellant's) use of the roads for a substantial time.' Elsewhere in his reasons his Worship indicated that he had considered the possibility of a suspended sentence but concluded that the case was "pre-eminently one calling for at least some role to be played by the matters of deterrence although they are to be substantially reduced, bearing in mind the background and condition to which I have referred..."

However, as the High Court observed in Baumer v The Queen (1988) 166 CLR 51 at 55; (1988) 35 A.Crim R. 340, at 343;

> "Section 154 of the Code is an unusual section. As Maurice J. observed, it is not specifically aimed at driving. It casts a wide net, so as to cover all acts or omissions endangering the life, health or safety of any member of the public where the risk ought to have been clearly foreseen and the act or omission avoided. The offence so created can therefore cover an enormous range of conduct from the comparatively trivial to the most serious. The maximum penalties prescribed are to be seen and applied in that light."

The next matter to which reference should be made is the length of the disqualification imposed. It is to be observed that the appellant had only once previously suffered a licence disqualification. That was in 1990 when his licence was disqualified for 6 months. All his previous driving offences involved only fines, and in one case, a conviction without penalty. In Baumer (1989) 40 A.Crim R. 74 at 88, Martin J, as he was then, observed:

> "The power to disqualify must primarily be seen as a means of keeping off the road a person who has demonstrated that he cannot be trusted in his driving of a motor vehicle. That is for the protection of the public, as well as serving as a punishment and deterrent ... I consider that the combined force and effect of imprisonment and disqualification needs to be considered in the circumstances of the offence and the offender."

The only members of the Court, Nader and Kearney JJ expressed their agreement with Martin J on the issue of licence disqualification. 48. As the High Court in Veen v The Queen (No 2) (1987-88) 164 CLR 465 at 476-77 observed:

> "a mental abnormality which makes an offender a danger to society when he is at large but which diminishes his moral culpability for a particular crime is a factor which has two countervailing effects: one which tends towards a longer custodial sentence, the other towards a shorter. These factors may balance out, but consideration of the danger to society cannot lead to the imposition of a more severe penalty than would have been imposed if the offender had not been suffering from a mental abnormality."

In this case, the appellant was not shown to be a danger to society when at large; he functions normally when in remission and his condition is capable of being controlled by appropriate programs. To the extent that the learned Magistrate had doubts about his ability to control his condition, a lengthy licence disqualification was appropriate. Nevertheless, as Martin J observed, a licence disqualification involves also a punishment and acts as a deterrent, and having regard to the length of the disqualification, the head sentence, and the non-parole period fixed, the conclusion I have reached is that the total sentence is manifestly excessive. Whilst a sentence of imprisonment is warranted I consider that this is one where a fully suspended sentence is justified. As has been said many times before, a fully suspended sentence is nevertheless a sentence of imprisonment. Bad though the driving may have been, the limited role which general and personal deterrence plays in a case such as this, is adequately met by an appropriate head sentence. The threat of imprisonment is as much a deterrent to the appellant in this case as an actual custodial sentence: cf. the observations of King CJ in Johnston (1985) 38 SASR 582 at 586, referred to by the High Court in Baumer (1988) 35 A.Crim R. 340 at 345.

I accept the broad thrust of the appellant's submission that a bond containing conditions designed to ensure that the appellant seeks and obtains appropriate psychiatric treatment is desirable and appropriate for the protection of the community.

The appeal is allowed. The sentence and licence disqualification imposed by the learned Chief Magistrate is set aside. In lieu thereof the appellant is sentenced to 12 months' imprisonment, fully suspended upon the appellant entering into a recognisance, self, in the sum of $1,000 to be of good behaviour for two years upon the following conditions:

1. That the appellant be subject to the supervision of the Director of Correctional Services or his nominee.

2. That the appellant undergo such psychiatric treatment and/or counselling as the Director or his nominee lawfully requires.

3. That the appellant obey the requirements and directions of the Director or his nominee as to residence, counselling, psychiatric treatment and employment.

4. That the appellant abstain from consuming alcoholic beverages.

In addition, the appellant is disqualified from holding or obtaining a licence to drive a motor vehicle for 2 years.