Kanaris v The Queen [2006] NTCCA 1

PARTIES:	KANARIS, Paul Michael
	v
	THE QUEEN
TITLE OF COURT:	COURT OF CRIMINAL APPEAL OF THE NORTHERN TERRITORY
JURISDICTION:	APPEAL FROM SUPREME COURT EXERCISING TERRITORY JURISDICTION
FILE NO:	CA 4 of 2005 (20307761)
DELIVERED:	15 February 2006
HEARING DATES:	15 February 2006
EX TEMPORE JUDGMENT OF:	ANGEL, MILDREN & RILEY JJ

REPRESENTATION:

Counsel:

Appellant:	I. Read
Respondent:	J. Karczewski QC

Solicitors:

Appellant:	Northern Territory Legal Aid Commission
Respondent:	Office of the Director of Public Prosecutions

Judgment category classification:	B
Judgment ID Number:	ril0603
Number of pages:	5

IN THE COURT OF CRIMINAL APPEAL
OF THE NORTHERN TERRITORY
OF AUSTRALIA
AT DARWIN

Kanaris v The Queen [2006] NTCCA 1
No CA 4 of 2005 (20307761)

BETWEEN:

KANARIS, Paul Michael
Appellant

AND:

THE QUEEN
Respondent

CORAM: ANGEL, MILDREN & RILEY JJ

EX TEMPORE
REASONS FOR JUDGMENT

(Delivered 15 February 2006)

THE COURT:

[1] On 25 August 2004 the appellant pleaded guilty to having committed a dangerous act contrary to s 154 of the Criminal Code. The maximum penalty for the offence is imprisonment for seven years.

[2] The offending occurred on 18 January 2003 when the appellant drove his Ford sedan at an excessive speed onto the median strip on Lee Point Road and into the rear of a stationary vehicle, causing serious actual danger to the

life and health of those in the stationary vehicle. One of the occupants of that vehicle suffered grievous harm.

[3] At the time of the offending the appellant was aged 35 years. He drove his Ford sedan inbound along Vanderlin Drive in the median strip lane. As he reached the roundabout at Lee Point Road he made a left-hand turn from the right lane causing a Hyundai sedan to brake to avoid collision. He then accelerated rapidly inbound along Lee Point Road nearly colliding with a taxi. He continued at speed in the middle lane and, as he approached another vehicle in that lane, he swerved right into the median strip lane and then mounted the median strip with his driver's side wheels. He swerved back into the middle lane as he approached another vehicle. He continued inbound, changing lanes several times and passing approximately five other vehicles whilst travelling at speed.

[4] As his vehicle negotiated a slight left-hand bend on the approach to Moil Terrace it veered from the middle lane across the median strip lane where his driver's side wheels mounted the median strip. He continued inbound at speed with his driver's side wheels on the median strip until he collided heavily with the rear of the other vehicle. That vehicle had been waiting to turn right into Moil Terrace. The force of the impact pushed the other vehicle to the opposite median strip where it collided heavily with a light pole.

[5] The occupants of the other vehicle were injured. The driver was admitted to ICU in a critical condition having suffered brain and head injuries, a broken left arm, facial fractures and a pneumothorax. He remained an inpatient for some months. At the time of sentencing it was understood that he had suffered a significant cognitive disability which was likely to be permanent. The other occupant of the vehicle suffered minor injuries including concussion.

[6] The appellant had a number of convictions relating to traffic offences including convictions for speeding, drive in a manner dangerous, drive disqualified, drive at dangerous speed and failing to obey the signal of a police officer. His driving record was appalling.

[7] In November 1999 the appellant had been convicted of supplying heroin to another person and other drug-related offences. He was sentenced to a total of three years and six months imprisonment with a non-parole period of 21 months. He was released on parole on 22 July 2001 and, at the time of the offending the subject of this appeal, was still on parole. The commission of the further offence in breach of the terms of his parole meant that he was required to serve the balance of his sentence of 21 months although, of course, he could again apply for parole at any time.

[8] In the course of her sentencing remarks the learned sentencing judge canvassed all of these matters along with the personal circumstances of the appellant. She sentenced the appellant to imprisonment for a term of four

years with a non-parole period of three years. The sentence was backdated to 25 August 2004 to take account of time spent in custody and the appellant's driver's licence was suspended for a period of five years.

[9] The appellant appeals against that sentence on the ground that it is manifestly excessive. Leave to appeal on other grounds was granted but those grounds were abandoned.

[10] In the course of his submissions counsel for the appellant observed:

> "It is conceded that the driving was appalling and the injuries to the victim were grievous and permanent. Despite the matters outlined in the affidavit material, a perusal of the matters before the learned sentencing judge do not give support to strong prospects of rehabilitation and nor would this appellant be entitled to leniency on account of his poor driving record. It is conceded that matters of general and specific deterrence would carry considerable weight in the exercise of the sentencing discretion."

[11] Those concessions are correctly made.

[12] In effect, the submission made was that a sentence of imprisonment for four years with a non-parole period of three years in circumstances where the maximum penalty was seven years imprisonment was manifestly excessive.

[13] It is fundamental that the exercise of the sentencing discretion is not disturbed on appeal unless error in that exercise is shown. The presumption is that there is no error. An appellate court does not interfere with the sentence imposed merely because it is of the view that the sentence is insufficient or excessive. It interferes only if it be shown that the sentencing judge was in error in acting on a wrong principle or in

misunderstanding or in wrongly assessing some salient feature of the evidence. The error may appear in what the sentencing judge said in the proceedings or the sentence itself may be so excessive or inadequate as to manifest such error. In relying upon this ground it is incumbent upon the appellant to show that the sentence was not just excessive but manifestly so. He must show that the sentence was clearly and obviously, and not just arguably, excessive.

[14] In the circumstances of this matter the sentence imposed by her Honour was comfortably within her sentencing discretion. The appeal is dismissed.

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