Dial v Trenerry [2001] NTSC 52

PARTIES:	DIAL, Leighton John
	v
	TRENERRY, Robin Laurence
TITLE OF COURT:	SUPREME COURT OF THE NORTHERN TERRITORY
JURISDICTION:	SUPREME COURT OF THE NORTHERN TERRITORY exercising Territory jurisdiction
FILE NO:	JA13 of 2000
DELIVERED:	28 June 2001
HEARING DATES:	25 May 2001
JUDGMENT OF:	MARTIN CJ

CATCHWORDS:

APPEAL

Justices – appeal against sentence – driving at a speed and in a manner dangerous to the public – Justices Act 1928 (NT).

REPRESENTATION:

Counsel:

Appellant:	I Cantrill
Respondent:	M Carey

Solicitors:

Appellant:	Withnall Maley
Respondent:	DPP

Judgment category classification:	B
Judgment ID Number:	mar0117
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Mar0117

IN THE SUPREME COURT
OF THE NORTHERN TERRITORY
OF AUSTRALIA
AT DARWIN

Dial v Trenerry [2001] NTSC 52
No. JA13 of 2000

BETWEEN:

LEIGHTON JOHN DIAL
Appellant

AND:

ROBIN LAURENCE TRENERRY
Respondent

CORAM: MARTIN CJ

REASONS FOR JUDGMENT

(Delivered 28 June 2001)

[1] Appeal against sentence. The appellant pleaded guilty before the Court of Summary Jurisdiction at Darwin for that on 30 May 1999 that he drove a motor vehicle on various public streets in Darwin at a speed and in a manner dangerous to the public. Upon conviction he was sentenced to three months imprisonment suspended after two months. The magistrate fixed an operational period of two years and disqualified him from holding or obtaining a driver's licence for a period of 18 months as from the date of the conviction.

[2] The grounds of appeal, in brief:

(a) The learned magistrate erred in finding the appellant pleaded guilty at the last opportunity.

(b) The learned magistrate erred in failing to take into account the findings made in the appellant's favour after hearing undisputed facts.

(c) The learned magistrate gave undue emphasis to the appellant's prior criminal record unrelated to driving.

(d) The learned magistrate failed to give sufficient weight to the fact that after his arrest the appellant has successfully undertaken courses to improve his driving techniques and failed to consider that matter as evidence of attempted rehabilitation.

[3] At the conclusion of the hearing I ordered that the appeal be dismissed for reasons given thereafter and these are those reasons.

[4] I need not go into all of the detail of the offending. It occurred early on the afternoon of a Sunday on public streets in the Darwin area. The appellant was being pursued by police for a traffic infringement and he was aware at all times that the police were in pursuit. He travelled through those streets at a maximum speed of at least 110 kph, passing through a red traffic light, past slower vehicles and spending some time on the wrong side of the road while doing so. At one stage he stopped at the units where he resided and had the opportunity to discontinue his criminal behaviour but changed his

mind and resumed the journey, continuing at speed, crossing double white lines, on a dual carriage way he drove his vehicle left and right between cars he was overtaking. The traffic was moderate to heavy. Another police vehicle had joined the chase and he was ultimately pulled over. But he says prior to that he made a decision to go to the Berrimah Police Station to avoid the embarrassment of being apprehended at the side of the road.

[5] I have made mention of the findings on disputed fact. What occurred was that the matter had been set down for trial for some months prior to coming before the Court on 27 January 2000, when the appellant's legal representative did not appear whereupon he pleaded guilty. On the facts being read he indicated that he disputed them and his Worship quite rightly set a hearing for 6 March for the purposes of hearing the evidence as to the facts. Having heard that evidence, his Worship delivered judgment on 8 March. There was some difficulty with transcribing what his Worship then said but the Court has been provided with what are called "reconstructed reasons" which the parties adopt for these purposes. There was added upon the hearing of the appeal one minor observation by his Worship that does not appear from those reconstructed reasons and that is, that his Worship had expressed himself as not being satisfied that when the appellant turned right into Parer Drive he slid across the bitumen.

[6] His Worship said that he found the facts to be substantially in accordance with the police version. It is suggested that his Worship was wrong, but it is well to bear in mind that "substantially" it is a matter of degree. Such

dispute as remains about the circumstances of the offence could have no bearing on the outcome.

[7] His Worship was right to hold that the plea of guilty was entered at the last minute. It was at the time the matter was ready to go ahead as a contested hearing and as counsel for the respondent said upon the appeal it could not have come much later than that. His verdict took into account the plea as evidence of some contrition and evidence of acceptance of guilt. (This matter was dealt with before the decision of the Court of Criminal Appeal in *Kelly v The Queen* (2000) 10 NTLR 39 which suggests that the degree of reduction in penalty for a guilty plea should be indicated).

[8] It was conceded in the course of argument by counsel for the appellant that a sentence of three months imprisonment, which his Worship indicated was the starting point, was not outside the range. But the thrust of the submissions was that his Worship had paid too much attention to the appellant's record of prior criminal convictions. They were undoubtedly significant, there are convictions for driving offences, including speeding, and one for driving at a dangerous speed. There are convictions for other traffic offences and the appellant had previously had the benefit of suspended sentences of imprisonment. He exhibited a continuing attitude of disregard of the law. There is no indication that his Worship increased the penalty on account of past offending but that undoubtedly deprived him of the benefit of which those of good character might claim in the sentencing process.

[9] It is complained and his Worship made no mention in his sentencing remarks of the appellant's successful attendance at driving courses after his offence. His Worship did not mention it specifically, but it would carry little weight as an indication of the path of rehabilitation undertaken by the appellant. What was particularly troubling to his Worship was the appellant's record of criminal convictions and the circumstances of this offence.

[10] In constructing the sentence, his Worship fixed three months imprisonment as being the starting point and then paid regard to the appellant's personal circumstances. His Worship expressed the hope that he would grow out of his disregard for the law and offered him a last opportunity of rehabilitation by making an order that the sentence be suspended after two months. "…… he's 26, he's not beyond the prospects of rehabilitation and hopefully he won't come back and trouble the courts again".

[11] It was also put on behalf of the appellant that he had not offended since committing this particular offence as being evidence of his rehabilitation. That would only be relevant if this Court had found some sentencing error on the part of the learned magistrate and none have been found. It should be noted however, that he was on bail for the current offence in the meantime and was also serving a suspended sentence in the community for an offence for which he was dealt with after this.

[12] Mention was made before his Worship and before this Court that alcohol and drugs are not a factor, no person was injured and no damage caused to

property as a result of the driving. That is true but if any of those factors had been present then the appellant would have been facing additional or/and perhaps more serious charges. I am not satisfied that the learned magistrate fell into error by failing to give appropriate weight to the circumstances personal to the offender.

[13] His Worship has not been shown to have erred in any way which would merit the appeal. The sentence is not manifestly excessive.
