



Key Concepts

Director of Public Prosecutions, Attorney-General, prosecution appeals, parole eligibility, victim impact statement, manifestly excessive or inadequate, personal circumstances and antecedents.

CASE IN FOCUS

R v Muirhead; Ex parte Attorney-General (Qld) [2019] QCA 244

Case law summary

The Queensland Director of Public Prosecutions, representing the Attorney-General (the prosecution), appealed to the Queensland Court of Appeal against Mr Muirhead's sentence for dangerous operation of a vehicle causing death. Mr Muirhead also applied for leave to appeal against his sentence.

The facts

In July 2017, Mr Muirhead's truck, towing wood-chipping equipment, collided with a woman standing by the driver's door of her vehicle, parked legally outside her house.

Before reaching her, Mr Muirhead had driven 105 metres of straight road, giving him an unobstructed view of the woman and her vehicle for approximately 7.6 seconds.

He did not brake, swerve or take any action to avoid the collision. The road was in good condition and the weather was fine. He stopped and showed clear signs of distress.

Police breathalysed him and took a saliva sample. This revealed a blood alcohol reading within the legal limit and an unquantified concentration of methylamphetamine. [11]–[16]

The prosecution did not allege that drugs or alcohol had been a cause of the dangerous driving. [24]

The sentence

The District Court of Queensland sentenced Mr Muirhead, who pled guilty to the offence, to three and a half years' imprisonment with parole eligibility after 12 months.

He was disqualified from holding or obtaining a driver licence for five years. [4]

Victim impact statements revealed the trauma and tragic consequences suffered by the woman's family, who had lost a wife, mother and daughter. [32] Some members of her family had been present at the scene. [46]



NOTE: This summary is an incomplete summary of the Court's reasons and is not legal advice. It includes explanations of legal concepts not set out in the judgment. It is not approved by, or affiliated with, Queensland Courts and is not to be regarded as a substitute for the Court of Appeal's judgment.

Numbers in square brackets refer to paragraph numbers in the judgment.

For information of a general nature about appeals and sentencing see our Queensland Sentencing Guide.



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About the offender

Mr Muirhead was 39 when he committed the offence and 40 when sentenced. At the time of the offence, he was feeling very depressed due to separation from his long-term partner.

He was experiencing significant sleep disturbance, fatigue, difficulties concentrating and was under significant financial stress. He was self-medicating with methylamphetamine.

He saw a psychologist 13 times after the offence, who diagnosed him as suffering from a major depressive disorder. She thought there was a direct link between these issues and the offence.

He frequently expressed deep remorse and sorrow to the psychologist for the woman's death and the trauma he caused to her family.

He had a prior criminal record with minor convictions of little relevance to this offence. He did have a significant traffic history, committing more than 17 separate offences since 1995. [17]–[20], [25]

At the time of the offence, he could only drive for work purposes (under a 'special hardship order') due to demerit point accumulation. [20], [23]

Why this case is of interest

The court examined five other cases regarding sentences for dangerous driving causing death.

It noted that an offender's responsibility should be evaluated by looking at their acts and omissions in operating the vehicle. That is, the degree of seriousness of the offence should be determined by the circumstances in which acts were (or were not) carried out.

Adjectives or descriptive labels are not enough. The same is true when comparing the responsibility of offenders in different cases. [75]

The Court also commented on how appeal courts conduct sentence appeals. To decide whether a sentence is manifestly excessive or inadequate, it must be examined from the perspective of: [63]

1. The maximum penalty for the offence
2. The sentencing standards customarily observed for the offence
3. The place which the offender's criminal conduct occupies on the scale of seriousness of that kind of offence
4. The offender's personal circumstances and antecedents.

What was said at the appeal

Mr Muirhead's ground of appeal was that the sentence was manifestly excessive. His lawyers also argued the judge made an error in finding there was a 'significant' period of time involving a failure to keep a proper lookout. They submitted there was no evidence to suggest anything more than 'momentary inattention', which stemmed from his depressive symptoms. [27], [36]–[41], [56], [57], [60], [77]

Counsel for the Attorney-General argued that the sentence was manifestly inadequate; highlighting that Mr Muirhead was aware of his depressive symptoms, had significant traffic history and had willingly driven after consuming alcohol and amphetamine (which reflected a reckless attitude and disregard towards road laws, even if it did not cause the dangerous driving). [37], [44]–[52]

What the court decided

The Court dismissed both appeals, with the initial sentence remaining unchanged. It held that the sentence was reasonable and just in regard to the seriousness of the offence, with no error implied from the sentencing outcome. [80]–[84]

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