



Key Concepts

Suspended imprisonment, operational period, mitigating factors, delay, extra-curial punishment, attitude of victims, prosecution brought by the State, general and personal deterrence, denunciation, head sentence, leniency.

CASE IN FOCUS

R v Chmieluk; Ex parte Attorney-General (Qld) [2018] QCA 271

Case law summary

The Queensland Director of Public Prosecutions, representing the Attorney-General (the prosecution), appealed to the Queensland Court of Appeal against Ms Chmieluk's sentence for the dangerous operation of a vehicle, causing her younger sister's death, while under the influence of alcohol.

The facts

Ms Chmieluk had lunch at a surf club with her younger sister, Sammy-Jo. Both left intoxicated and then got in and out of their car, swapping between the driver and passenger seats. Patrons and staff discouraged Ms Chmieluk from driving and had taken her keys for a short period to prevent her from doing so, but the sisters left. Sammy-Jo was passenger and the unlicensed Ms Chmieluk was driving. [3], [13]

Over the following 17-minutes the car, often speeding, hit a speed bump and become airborne, hit a concrete wall, drove onto a footpath, median strip and traffic island at different times, ran over a sign, swerved off the road, almost collided with another car, and crashed into a pole with such a violent impact that the car was cleaved into two pieces. [4]-[9]

Sammy-Jo was killed and Ms Chmieluk suffered fractures to both ankles. She recorded a blood alcohol concentration (BAC) of 0.202 per cent. Ms Chmieluk was arrested and declined to participate in a recorded interview with police. [10]-[12]

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.

The sentence

The District Court of Queensland sentenced Ms Chmieluk, who pled guilty to the offence, to five years' imprisonment, to be suspended after serving three months, with an operational period of five years — meaning if she committed another offence punishable by imprisonment during this five-year period, she would have to serve the remainder of the period suspended unless the court dealing with the breach determined it was unjust for her to do so.

She was disqualified from holding or obtaining a driver licence for five years. [1]

About the offender

Ms Chmieluk was 29 at the time of the offence and 31 when sentenced. She had a bad traffic history, having committed over 20 separate offences within the six years prior to the offence. One was a drink driving offence with a BAC concentration of 0.174 per cent. She had no criminal history.

She was a single mother of twins aged four, had a stable income and had been living on the Gold Coast with Sammy-Jo. She suffered diagnosable psychiatric disorders (and great shame and guilt) as a result of the offence. [13]-[14], [71]-[72]



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What the prosecution said at the appeal

The prosecution argued the sentence was manifestly inadequate, being inconsistent with previous sentences for the same offence, and should have been at least six years' imprisonment with parole eligibility after 18 months. [51], [77]

It argued the sentencing judge had overestimated the mitigating effect of one, some or all of four factors. [42], [50]

These were the delay of two years between the offence and sentence [43]–[45] during which time Ms Chmieluk had to confront her responsibility for causing her sister's death, the disadvantage to Ms Chmieluk's children because of her imprisonment [46]–[47], her family opposing her imprisonment [47]–[48] and her 'extra-curial punishment', such as her own physical injuries and complications caused by the crash. [49]

What the court decided

The Court found that there were three relevant matters to be considered.

The first was Ms Chmieluk's unstable upbringing and painful relationship with her children's father, which was not of great weight and 'not nearly as bad as the experiences of many' sentenced for serious crimes. [17]–[25]

The second was the two-year delay to sentencing. This was a 'relatively minor consideration', but she used that time to genuinely address the causes and effects of her behaviour and take responsibility for the consequences.

She stopped drinking alcohol, attended Alcoholics Anonymous and regular counselling, was prescribed medication for post-traumatic stress disorder and depressive conditions, completed drink driving and drug and alcohol disorder programs, and obtained psychological and psychiatric reports. [19], [26]–[39], [43]–[45]

The third matter was the (supportive) attitudes of the other victims, Sammy-Jo's relatives and her own family. These would be the people most interested in denouncing her. [40], [47]

While they were victims for the purposes of sentencing legislation, the attitude of victims (favouring lenience or severity) is only one factor to consider.

The prosecution is brought by the State in the public interest, not on behalf of a victim. But the question of what weight to give to those views is a matter for judicial discretion. [47]–[48], [71], [83]

The Court considered the purpose of a longer period of imprisonment, stating the focus of a sentence for this offence was to maintain road safety.

Sentences should deter offenders and others from offending, and act as a denunciation of the offender in appropriate cases. [79]

Ms Chmieluk's five-year head sentence addressed general deterrence. Personal deterrence was not of great significance: Ms Chmieluk's psychiatrist was confident that she would not reoffend, she addressed her alcohol problem, had family support, had her children to care for and was disqualified by a court from driving for five years. [79]–[80]

She was no real threat to public safety. Denunciation did not require more prison time beyond the three months she served. [82]

The Court dismissed the appeal, and the sentence originally imposed remained unchanged.

Why this case is of interest

The court examined seven other cases of dangerous driving causing death. It noted a rare characteristic of this offence, in that anybody, of any age and in any walk of life, might commit it. [63], [64]

This case further highlights that there is no standard range of penalty for this offence. The penalty is reliant on the range of circumstances in which the offence is committed, along with the range of personal circumstances of the offender. [65]

The Court stated that when appealing a sentence, a preference for a different result is not enough. The appeal court examines whether an error was made. Comparing a sentence with other cases is usually necessary and helpful, but the application of sentencing principles to the facts of the case is what matters most. [69], [83]–[85]

In appropriate cases like this one, leniency could serve the public interest, while a more severe penalty would not. In such a case, a sentence might be arithmetically out of line with earlier, somewhat similar cases, but not be in error. [85]

The Court noted a previous case that said the proper role for prosecution appeals is to: [84]

1. Enable courts to establish and maintain adequate standards of punishment
2. Correct idiosyncratic views of individual judges about particular crimes or crime types
3. Occasionally to correct a sentence which is so disproportionate to the seriousness of the crime that it 'shocks the public conscience'.

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