SUPREME COURT OF QUEENSLAND

CITATION:	*R v Anderson* [2012] QCA 264
PARTIES:	**R** **v** **ANDERSON, Christopher James** (applicant)
FILE NO/S:	CA No 54 of 2012 DC No 464 of 2010
DIVISION:	Court of Appeal
PROCEEDING:	Sentence Application
ORIGINATING COURT:	District Court at Townsville
DELIVERED ON:	28 September 2012
DELIVERED AT:	Brisbane
HEARING DATE:	17 September 2012
JUDGES:	Holmes and Gotterson JJA and McMeekin J Separate reasons for judgment of each member of the Court, each concurring as to the order made
ORDER:	**Application refused.**
CATCHWORDS:	CRIMINAL LAW – APPEAL AND NEW TRIAL – APPEAL AGAINST SENTENCE – GROUNDS FOR INTERFERENCE – SENTENCE MANIFESTLY EXCESSIVE OR INADEQUATE – where the applicant was convicted after a trial of one count of grievous bodily harm – where the applicant was sentenced to two years and six months imprisonment with parole release fixed after fifteen months – where the applicant was an experienced security guard in his mid-thirties working at a hotel – where the applicant struck a female patron, breaking her jaw – where the assault was an over-reaction to a minor, brief and unthreatening physical contact – where the applicant had previous convictions for public nuisance offences but none for offences of violence – where the applicant had shown no remorse – whether the sentence was manifestly excessive *R v Grimley* [2000] QCA 64, considered *R v Harvey* [2003] QCA 286, considered *R v Katsidis* [2003] QCA 82, considered *R v Lambert; ex parte A-G* (2000) 111 A Crim R 564, [2000] QCA 141, considered *R v Taputoro* [2007] QCA 29, considered

COUNSEL: J J Allen for the applicant
B J Merrin for the respondent

SOLICITORS: Legal Aid Queensland for the applicant
Director of Public Prosecutions (Queensland) for the respondent

[1] **HOLMES JA:** The applicant was convicted, after a trial, of grievous bodily harm. He applies for leave to appeal against the sentence imposed, two years and six months imprisonment with parole release fixed after fifteen months, on the ground that it is manifestly excessive.

The factual basis of the sentence

[2] The applicant was a security officer at a hotel in Ayr. The complainant, Ms Beteridge, was one of a group of six people who were standing, late at night, on the footpath outside the hotel. One of the group, Mr Liebrecht, was engaged in an argument with the manager, with whom he had previously had altercations, about whether he was entitled to be on the footpath. The applicant's account was that he received a call to go to the front of the hotel where he saw the manager arguing with Mr Liebrecht. Following the manager's instructions to get the group off the footpath, he repeatedly told Mr Liebrecht to move. Eventually, Mr Liebrecht did move onto the road, and the applicant took up a position on the edge of the footpath to ensure that he could not step back onto it. He was focussing on Mr Liebrecht when Ms Beteridge hit him on the side of his face, pushing him back. Believing the group was setting on him, he struck out, hitting Ms Beteridge.

[3] The applicant relied on that account of being struck by Ms Beteridge as a foundation for self-defence, but it was plainly rejected by the jury, not surprisingly because CCTV footage of the events showed no such incident. Ms Beteridge had little recollection of what happened: the applicant's blow knocked her to the ground and broke her jaw. The trial judge accepted the evidence of a friend who was with her, to the effect that she had moved in front of Mr Liebrecht in an endeavour to protect him and delivered what his Honour said might have been some sort of minor push to the applicant's chest. Ms Beteridge was not, the friend said, very big. Any contact must, the learned judge observed, have been transient (it could not be seen on the CCTV footage) and could not have put the applicant in fear.

[4] His Honour described the blow visible on the footage: it lifted Ms Beteridge off her feet and deposited her in the roadway. Witnesses, he said, had described hearing the crack of her jaw breaking. He accepted, however that the applicant may not have realised that he was hitting a woman. He noted that the applicant had not shown any sign of remorse during the trial. His Honour expressed the view that an appropriate sentence for what he described as "thuggery in the street" would have been three years imprisonment, but he acknowledged that the applicant had received some direction from the hotel manager to behave in the way he did, reducing his criminality to some extent. The applicant must have known, however, that he had no authority to order Mr Liebrecht off the footpath.

[5] The learned judge noted the applicant's background and current circumstances. At the time of the offence he was 34 years old, and he was 36 at sentence. He had, in the past, suffered from bi-polar disorder but had been adequately treated and

medicated for some years. Two weeks prior to sentence, his partner had had a baby. The applicant had spent most of his working life in the security industry but had not worked as a security guard since the incident and had taken up an apprenticeship as a carpenter. He had performed some volunteer work and had completed an arts degree.

[6] The applicant had a history of summary offences, although none involved violence. He had appeared in the Magistrates Court on eight occasions, most frequently for public nuisance offences; his last conviction in November 2009 was on six charges of committing a public nuisance and one of obstructing a police officer. Notwithstanding his criminal history, he had held a security licence for 14 years. His counsel said that all of his offending was alcohol related.

[7] In the course of submissions on sentence, the applicant's counsel said this:

> "...he expresses his sympathy for the pain and suffering of the complainant, however reiterates that he believed she was a man and that he reacted in a necessity of having defended himself."

He accepted, however, that the jury had not accepted that defence.

Decisions relied on

[8] Counsel for the applicant here, in arguing the sentence was manifestly excessive, relied on four authorities: *R v Lambert; ex parte A-G*;[1] *R v Harvey*;[2] *R v Katsidis*;[3] and *R v Grimley*.[4] All involved individuals convicted of grievous bodily harm after trials. (The learned sentencing judge was referred to *Lambert* and *Harvey*.) *Lambert* was an Attorney-General's appeal against a sentence of two and a half years imprisonment, suspended after eight months. The respondent, who had martial arts training, was convicted not only of grievous bodily harm but also two counts of assault occasioning bodily harm, and pleaded guilty to another three counts of assault, all of which he had committed while working as a security officer at a nightclub. The offences involved various incidents of kicking, punching and head-butting patrons. The grievous bodily harm had involved the infliction of a ruptured testicle. Lambert was 23 years old and had one previous conviction for assault occasioning bodily harm. He had a solid work history, had formed a relationship and had two young dependents.

[9] Significantly, for present purposes, the court in *Lambert* made this observation:

> "The cases which point towards a mean or common level of sentence in [grievous bodily harm] cases in the vicinity of two and a half years are nearly all single reprehensible incidents of violence, some with and some without provocation, and often reflect the product of a momentary loss of self-control."[5]

Lambert's offending, however was in a different category; over three nights he had assaulted five different people who had done little or nothing to attract his aggression. For his original sentence, a sentence of three years imprisonment was substituted, without suspension or parole declaration. It was, the court said, "on the

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1 [2000] QCA 141.
2 [2003] QCA 286.
3 [2003] QCA 82.
4 [2000] QCA 64.
5 [2000] QCA 141 at [33].

conservative side" because of the long period, four and a half years, between offending and sentencing, during which the respondent had not re-offended.

[10] In *R v Harvey*, the applicant for leave to appeal against sentence injured an intoxicated patron who was trying to re-enter a bar where the former was working as a barman. The applicant hit him with force, and he fell unconscious to the pavement, suffering a broken jaw and tooth. He faced the prospect of a mildly affected bite, altered sensation to the left lower lip and a fixation plate in his jaw. The applicant was 28 years old and had no prior convictions. He was sentenced to two years imprisonment, but as the *Corrective Services Act* 2000 then stood, would be eligible only for release on remissions after he had served two thirds of his sentence, something of which the sentencing judge had not been informed. Consequently, the court allowed the appeal by ordering the suspension of the sentence after 12 months.

[11] In *R v Katsidis*, the applicant was sentenced to two years imprisonment, suspended after eight months. He was a professional boxer employed at a club, but there was no suggestion that he was a security officer. He was 21 years old and had only one prior conviction for assault, in respect of which no conviction had been recorded. He confronted a man who had urinated on his friend's car. The culprit, who was very intoxicated, threw a punch at him, but clearly was incapable of landing a blow. The applicant, however, responded with a number of severe blows, fracturing his jaw and leaving him disfigured. This court concluded that the sentence imposed was not manifestly excessive.

[12] In both *Harvey* and *Katsidis*, reference was made to the earlier decision of *Grimley*. The applicant there was sentenced to two years and six months imprisonment for hitting another man in the jaw, breaking it in two places. The facts of the case are not given in any detail in the judgment (which dealt principally with whether a defence of accident should have been left). It appears that the incident occurred in a caravan park; that the victim was intoxicated and was said not to have provoked the assault; and that he took some time to recover from the injury. The applicant was 46 years old and had been dealt with some years previously for assault occasioning bodily harm, for which no conviction had been recorded. Davies and Pincus JJA in the majority (McPherson JA dissenting) regarded the sentence as excessive, and substituted a sentence of one year and eight months, without any suspension or recommendation for parole.

The applicant's submissions

[13] The applicant here argued that the sentencing judge had wrongly regarded the applicant as not showing remorse, notwithstanding what was described as an apology (the passage I have set out at [7] above). It was also said that the judge had arrived at an excessive sentence by wrongly starting from three years imprisonment as the appropriate penalty. His approach to sentence, as exemplified by his reference to the applicant's conduct as "thuggery", was coloured by a view that the applicant should not have been forcing the people standing outside the hotel off the footpath. That was unfair given the manager's evidence, which was that he believed he was entitled to instruct anyone evicted from or not permitted to enter his hotel to move away from the premises.

[14] The applicant, it was submitted, was to be sentenced for a momentary lack of judgment in a context of heightened emotions and assertive behaviour by the group

with Ms Beteridge. She had recovered from her injuries (although I note her evidence was that she had three metal plates in her jaw). Insufficient weight had been given to a number of other matters in mitigation: the absence of any conviction for violence, the applicant's otherwise good background, the fact that he had recently had a child and the fact that he had lost his employment as a security officer. The head sentence, it was submitted, should not have exceeded two years imprisonment with suspension after eight to 12 months.

Conclusions

[15] The question of how the hotel manager had come to a view that people could be told to move away from the vicinity of the hotel, in the absence of any specific banning order in relation to those individuals under the *Liquor Act* 1992, was not explored at the applicant's trial. But there was, in any event, no evidence that the applicant had any belief to that effect, or knew of the manager's; he said that he was told to get the group off the footpath and complied without question. The learned judge's observation that the applicant could not have believed he had authority to order Mr Liebrecht off the footpath seems a reasonable inference.

[16] His Honour was certainly correct in saying that there was no sign of remorse during the trial. All that the applicant subsequently offered was an expression of sympathy, while maintaining his position that he was entitled to act as he did. There was no hint of an acknowledgement of responsibility for Ms Beteridge's plight. In those circumstances, there was little in the way of remorse or co-operation with the administration of justice which could have warranted a reduction in the head sentence, or, as is more commonly the practice, in the non-parole period. And had the case been one where the applicant had intentionally and of his own volition sought out the group for confrontation (as opposed to following the manager's direction), a three year sentence might well have been appropriate.

[17] The learned judge plainly took such mitigating circumstances as there were into account. But the applicant, while having no history of offences of violence, was not in the position of a first time offender and had not the particular claim to lenience that might have given him. Unlike the applicants in *Lambert* and *Katsidis,* who were in their early twenties, he could not plead that his conduct was the product of youthful immaturity. And, significantly, he was in a different position from all of the applicants in the cases referred to, other than *Lambert*, because he was exercising his powers as a security guard. In *R v Taputoro*[6] Keane JA noted, in reference to an assault by a security officer, that considerations

> "...of general and personal deterrence, bearing in mind the applicant's occupation and the opportunity which security staff have to use personal violence on their fellow citizens in and around nightclubs"[7]

were highly relevant in the exercise of the sentencing discretion.

[18] The present applicant was a man in his thirties, with several years of experience as a security officer. With that background, the argument that he reacted impulsively in a highly charged atmosphere is unconvincing. At the highest, he was the subject of a minor, brief and unthreatening physical contact; his brutal response, fairly

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6 [2007] QCA 29.

7 At page 5.

described as thuggery, caused a serious injury to his unlucky victim. The fact that he behaved in that way while carrying out his role as a security officer squarely raised the particular considerations of deterrence to which Keane JA referred.

[19] Had a sentence of two years imprisonment been imposed, I do not think it would have been inadequate; but that does not mean that a sentence of two and a half years was excessive. *Lambert* makes it clear, in the passage quoted earlier in these reasons, that a sentence of the proportions imposed was unremarkable.

Order

[20] I would refuse the application for leave to appeal.

[21] **GOTTERSON JA:** I agree with the order proposed by Holmes JA and with the reasons given by her Honour.

[22] **McMEEKIN J:** I have read the reasons of Holmes JA and I agree with those reasons and the order proposed by her Honour.