



**IN THE SUPREME COURT OF NAURU
AT YAREN
[CRIMINAL APPELLATE JURISDICTION]**

Criminal Appeal Number: 1 of 2024

BETWEEN: THE REPUBLIC
APPELLANT

AND: CAMLUC BORABEN SCOTTY
RESPONDENT

BEFORE: Keteca J

Date of Hearing: 05th August 2025

Date of Judgment: 06th October 2025

Case may be cited as: Republic v Camluc Scotty

Catchwords: Dangerous Driving Occasioning Death Contrary to: Section 67A(1)(d) of the **Motor Traffic Act 2014** (“the Act”)

Appearances:

Counsel for the Prosecution: **A. Driu**

Counsel for the Accused: **S. Hazelman**

JUDGMENT

BACKGROUND

1. The accused was convicted of one count of - Dangerous Driving Occasioning Death Contrary to: Section 67A(1)(d) of the **Motor Traffic Act 2014** (“the Act”). He was sentenced by the Resident Magistrate (RM) to imprisonment for 2 years and 270 days. This was suspended for 4 years.

GROUNDS OF APPEAL

2. These are:

- i. The RM erred in law and fact in imposing a suspended sentence; and
- ii. The sentence was manifestly lenient.

SUBMISSIONS BY THE APPELLANT

3. Madam DPP submits the following:

- In questioning the sentencing discretion of the trial court, Counsel refers to *House v The King* (1936) 55 CLE 499 at 504-505 per Dixon, Evatt & McTiernan JJ- ‘The judgment complained of, namely, sentence to a term of imprisonment, **depends upon the exercise of a judicial discretion by the court imposing it.** The manner in which an appeal against **the exercise of discretion** should be determined **is governed by established principles.** It is not enough that the judges composing the appellate court consider that, if they had been in the position of the primary judge, they would have taken a different course. It must appear that some error has been made in exercising the discretion. **If the judge acts upon a wrong principle, if he allows extraneous or irrelevant matters to guide or affect him, if he mistakes the facts, if he does not take into account some material consideration, then his determination should be reviewed and the appellate court may exercise its own discretion in substitution for his if it has the materials for doing so.** *It may not appear how the primary judge has reached the result embodied in his order, but if upon the facts it is unreasonable or plainly unjust, the appellate court may infer that in some way there has been a failure to properly exercise the discretion which the law reposes in the court of first instance.* In such a case, although the nature of the error may not be discoverable, the exercise of the discretion is reviewed on the ground that a substantial wrong has in fact occurred.’
- The issue here is ‘whether the exercise by the RM of his discretion to suspend the sentence was justified.’
- Counsel agrees with the RM, saying in paragraph[38] –‘ **the court finds that this is an appropriate case in which a term of imprisonment is to be imposed.**
- [39] *the case did not involve momentary inattention or misjudgement- a custodial sentence must be imposed.*
- [40] *the court condemns the taking of a child’s life and a custodial sentence is a reminder to motorists of the seriousness of offending under Section 67A(1)(d) of the Act.*

- *At [41] the RM said- 'However, in the current circumstances the court is mindful of the chances of rehabilitation of the defendant. The defendant is a first-time offender and is genuinely remorseful. He has stopped drinking alcohol and has been going to church. He is employed and is supporting his family. An immediate custodial sentence would affect his livelihood. It will also affect his family, especially his children. **The court finds these circumstances warrant a suspension of the term of imprisonment for a reasonable period of time.'***
- Counsel submits that there is no evidence that the respondent was '**genuinely remorseful.**' As stated by Shameem J in *The State v Jocelyn Deo* Criminal Appeal No. HAA0008 of 2005S-'*The issue is not just restitution. The issue is true and sincere remorse, an early guilty plea and confession, and restitution to the victim as evidence of such remorse and apology.*'
- **Gordon Aitcheson v The State**, Criminal Petition No. CAVOO12.2018, per Gates J- [17] *It might be viewed differently however. He had maintained his conduct with the daughters, and his threats to kill his wife (and mother of 7 children) up to when the mother summoned up enough courage to escape with her daughters. Only then did the truth emerge, and the dynamics of his power over them change.*
- [18] *The issue is remorse that is genuinely feeling sorry for what the offender has done. Accepting the inevitable of the proof of the offender's deeds and therefore pleading guilty is not the same thing. An early guilty plea could form part of that process but courts must assess the early guilty plea along with other factors before arriving at a conclusion that genuine regret, sometimes accompanied (particularly in property offences) by apology and restitution: Sate v Deo Cr App. No. HAA008 of 2005.*
- **Joselyn Deo v The State**, Criminal Appeal No. AAU0025.2005S, the Fiji Court of Appeal said: [20] *The appellate court will interfere only if there is no evidence upon which the sentencing magistrate could properly have based his decision or it was based on a wrong principle or mistake of law or plainly unreasonable.*
- [21] *That is not what the learned judge did. The judgment shows the learned judge reached a different conclusion on the genuineness of the Appellant's remorse following a reassessment of the same evidence as had been before the magistrate. **That was not the proper approach.** The question should have been whether the magistrate had evidence upon which he could have reached the decision he did and not simply to substitute the appellants judge's own opinion.'*

- *Pijila Naikawakawavesi v State Criminal Appeal Case No. HAA 10 of 2019, per Aluthge J-* addressing whether ‘remorse is true or genuine’ – the trial magistrate advancing irrelevant considerations in rejecting the early guilty plea as being not evidence of genuine remorse. *At [28] ‘This formulation of the Trial Magistrate is not technically correct. The conviction was recorded purely on the strength of the unequivocal confession and facts agreed by the Appellant. The Trial Magistrate speculated about the evidence against the Appellant which was not before her in forming the view that the Appellant pleaded guilty because she had a weak case.’*
- Based on the **Joselyn Deo**, **Aitcheson** and **Naikawakawavesi** cases above, Counsel submits that the RM ‘reached his decision (**I assume Counsel is referring to genuine remorse here**) without any evidence. The RM wrongly said that the respondent called for the ambulance- paragraph 8(viii). It was PW2 that called for the ambulance. **He did not plead guilty**. He did not co-operate with the police as claimed by the probation officer in the Pre- sentence report.
- The consideration by the RM of –‘*The actions of the child victim and / or lack of parental supervision of the child contributed to the accident.*’ - showed the respondent distancing himself from the crime he was convicted of and **raises doubt on his ‘true and genuine remorse.’**
- On **rehabilitation**, Counsel refers to the book-*Sentencing in Australia*, Bagaric.M & Edney.R, (2018) 2nd Edition pp 201-202- ‘*Rehabilitation seeks to alter the values of the offender so that he or she no longer desires to commit criminal acts: it involves the renunciation of wrongdoing by the offender and the re-establishment of the offender as an honourable law-abiding citizen, and is achieved by ‘reducing or eliminating the factors which contributed to the conduct for which [the offender] is sentenced. Thus, it works through a process of internal altitudinal reform, whereas specific deterrence seeks to dissuade crime simply by making the offender afraid of being apprehended and punished again.’*
- Counsel submits that the RM did not consider ‘specific deterrence’ but looked at his abstention from drinking alcohol and attending church. These aren’t relevant as the respondent was not under the influence of alcohol while driving on that day but ‘speeding in a local school district prone with school children playing after school resulting in the tragic death of the victim.’

- There was no exceptional or special circumstance ‘justifying a suspended’ sentence. Referring to the Fiji Court of Appeal decision in the **Joselyn Deo case** and noting that the present case does not deal with fraud-
‘[27] Frauds by an employee which involve a breach of trust strike at the very foundations of modern commerce and public administration. It has long been the rule that such cases must merit a sentence of imprisonment. Where the sentence imposed is such a length that the court has power to consider suspending it, the sentencing judge must consider that option. However, that decision should only be made where there are special circumstances meriting such a sentence and, in all cases, the sentencing court should not be too quick to find such circumstances.’

4. On the second ground that the sentence is manifestly lenient, DPP submits:

- The maximum sentence for a Section 67A(1)(d) Motor Traffic Act 2014 offence is 10 years imprisonment. This Section 67A was introduced in January 2016. Before the amendment, ‘a charge of Manslaughter under Section 303 of the Criminal Code 1899 would have been proffered with a maximum penalty under Section 310 of imprisonment with hard labour for life.’
- **R v Rosen Ribauw**, Criminal Case No. 51 of 2016 (25th February 2017)- Crulci J referred to the Samoa Court of Appeal decision in **Iosua v AG** [2014] WSCA where the court said:

‘ [29] The motor manslaughter cases are concerned with charges of careless or reckless driving causing death or manslaughter charges where deaths have been caused by bad driving. For this category we were referred to authorities drawn from England and New Zealand.

30. *For the approach in England, the Sentencing Guidelines Council now divides cases of this kind into three levels of seriousness. The most serious level, **level 1**, involves a deliberate decision to ignore (or a flagrant disregard) for the rules of the road and a disregard for the great danger to others. Examples are a prolonged, persistent and deliberate course of bad driving, consumption of substantial alcohol or a combination of other seriously aggravating factors. For this category the Guidelines propose a starting point of **8 years with a sentencing range of 7 to 14 years.***

31. *In **level 2** of seriousness, the same English Guidelines include driving that created a substantial risk of danger including greatly excessive speed, racing or competitive driving and driving while impaired by alcohol or a combination of other aggravating factors. For this category the Guidelines propose a starting point of **5 years with a sentencing range of 4 to 7 years.***

32. For the approach in New Zealand we were referred to a series of authorities showing motor manslaughter starting points. These included *Gacitua v Queen* [2013] NZCA 234 (5 years reduced to 3 for mitigating factors), *Anderson v Queen* [2010] NZCA 339 (7 years reduced to 4 years 10 months for mitigating factors) and *R v Mckelvey* CA 372/ 97 (9 years reduced to 8 years for mitigating factors.)
33. In an extremely broad way it might be said that the sentences imposed in recent New Zealand cases are not inconsistent with the approach taken under the English Guidelines. Although individual cases differ widely, it would not be unusual to find a starting point of **five years imprisonment** and in very **serious cases eight years** or more, in both countries.
34. Although it is helpful to have that background of motor manslaughter authorities, the analogy with the present case is not a close one. Serious cases of motor manslaughter usually involve a deliberate course of bad driving, repeated and serious traffic violations during a lengthy journey, the presence of alcohol, competitive driving or persistence in driving after apprehension. None of those factors were present in the case now under appeal. On the other hand, the present appellant had the special responsibility of many other people in his vehicle and he defied the warnings of others. Neither circumstance can be found in the motor manslaughter precedents to which we have referred.’
- *Regina v Kaukui* [2010] SBCA2; CA-CRAC 110f 2009- the Solomon Islands Court of Appeal said: ‘ .. the appropriate range of sentence in this instance of causing death by dangerous driving is between **3- and 4-years imprisonment**. This takes no account of possible matters of mitigation operating in favour of the respondent.’
 - The RM referred to *R v Christopher Tom Jurisic* (1998) 45 NSLC 209 (BC9805254), where the NSW Court of Criminal Appeal stated:
‘The presence or absence of the following factors will determine the appropriate penalty:
 - (i) extent and nature of the injuries inflicted;*
 - (ii) number of people at risk;*
 - (iii) degree of speed;*
 - (iv) degree of intoxication or substance abuse;*
 - (v) erratic driving;*
 - (vi) competitive driving or showing off;*
 - (vii) length of the journey during which others were exposed to risk;*
 - (viii) ignoring of warnings;*
 - (ix) escaping police pursuit.*

Items (iii) to (ix) are aggravating factors relating to the conduct of the offender. They are present to a material degree where any one of them indicates that the offender has abandoned responsibility for his or her conduct.

The Court should promulgate the following guidelines:

- (1) A non- custodial sentence for an offence against s52A should be exceptional and almost invariably confined to cases involving **momentary inattention or misjudgement.**
- (2) With a plea of guilty, wherever there is present to a material degree any aggravating factor involving the conduct of the offender, a custodial sentence (minimum plus additional or fixed) of **less than three years** (in the case of dangerous driving causing death) and **less than two years** (in the case of dangerous driving causing grievous bodily harm) **should be exceptional.** The period of three or two years, once the threshold of **abandoning responsibility has been reached**, is a starting point. The presence of additional aggravating factors or their increased intensity, will determine the actual sentence. ’

- In the **Jurisc** case, the court said-

*‘The first occasion on which the Court of Appeal (Criminal Division of the High Court of Justice laid down a guideline for sentencing for such an offence was in **Guilfoyle (1973) 57 Cr App R 549.** The Court was concerned with the offence of causing death by dangerous driving. The Court said at 552:*

*“Cases of this kind fall into two broad categories: **first**, those in which the accident has arisen through **momentary inattention or misjudgement**, and **secondly**, those in which the accused has driven in a manner which **has shown a selfish disregard for the safety of other road users or of his passengers, or with a degree of recklessness.** A subdivision of this category is provided by cases in which the accident has been caused or contributed to by the accused’s consumption of alcohol or drugs.’*

The Court went on to say that in the first kind of case a fine may be appropriate but in the second kind of case a custodial sentence was called for.’

- DPP then refers to **Warren Rina Pana v Regina** Criminal Appeal Case No. 1 of 2013. The Solomon Islands Court of Appeal said:

‘ [18] The aim of guidelines is to give the sentencing judge general guidance on the appropriate level of sentence. They can do no more. They can never take away from the judge the determination of what is proper and appropriate sentence for the particular case the court is considering. In all cases the judge should bear in mind the warning given in Milberry:

‘ [G}uidelines... can produce sentences which are inappropriately high or inappropriately low if sentencers merely adopt a mechanistic approach to the guidelines. It is essential that having taken the guidelines into account, sentencers should stand back and look at the circumstances as a whole and impose the sentence which is appropriate having regard to all the circumstances. Double accounting must be avoided and can be a result of guidelines if they are applied indiscriminately.

Guideline judgments are intended to assist the judge arrive at the correct sentence. They do not purport to identify the correct sentence. Doing so is the task of the trial judge.’

- Counsel concludes that ‘there are no exceptional (special) circumstances **to warrant a suspension of the sentence.**’

SUBMISSIONS BY THE RESPONDENT

5. Ms Hazelman submits as follows:

- On the issue of ‘no genuine remorse’, the Pre- Sentence Report states that the Respondent ‘acknowledges the wrong done and sympathy and remorse to the family.’ In the ROI, when the Respondent was informed that a kid died, he said- **“Forgive me.”** Coupled with his testimony in court, Counsel submits that there was genuine remorse by the Respondent.
- *Moses v R* [2020] NZCA 296 The New Zealand Court of Appeal said- *‘Remorse is a personal mitigating factor that may justify a discount separately from any guilty plea discount. Remorse is a question of fact and judgment. The defendant bears the onus of showing that it is genuine... Remorse need not be extraordinary to earn a discount, but it does require something more than the bare acceptance of responsibility inherent in the plea.’*
At [25]- *‘A guilty plea is not synonymous with remorse but may evidence it. The plea is an act of confession to a wrong done and is commonly associated with contrition and a desire for expiation. It follows that guilty plea and remorse discounts may be paired, and very often are..’*
Counsel adds-*“The RM evaluated remorse based on reliable indicators emotional reactions, cooperation, contrition in the Pre- sentence Report and the Respondent’s conduct post- incident which collectively satisfy the requirement under Section 279(2)(h) of the Crimes Act 2016.’*
- The Appellant’s contention that the RM ‘wrongly considered contributory negligence in assessing the sentence’ is unfounded. The RM had accepted that the ‘defendant was driving well below the standards expected of him as a bus driver in a school zone.’ The RM’s finding that the actions of the child/ victim contributed to his demise does not diminish the culpability of the Respondent but taken together under Section 279(2)(a) and (d) of the Crimes Act form ‘the nature and circumstances of the offence’ and ‘any injury, loss or damage resulting from the offence.’ In addition, the RM clearly states- **“The court condemns the taking of the child’s life as a result of the defendant’s reckless driving.”** In this regard, the RM ‘focussed on the Respondent’s driving conduct, **not on shifting blame to the victim.**’
- On RM’s reliance on the Pre- Sentence Report, the prosecution chose not to cross - examine the probation officer nor submit any evidence to the contrary.

- On the Appellant’s submission that RM erred by imposing a suspended sentence, Counsel relies on *House v The King* (1936) 55 CLR 499 at 505- “*The judgment complained of. must be the result of some error of law or fact or failure to take into consideration material circumstances, or the sentence must be unreasonable or plainly unjust.*’ The factual circumstances ‘met the exceptional circumstances threshold-
 - a) The Respondent had a clean record after over a decade of public service;
 - b) He showed remorse and emotional distress;
 - c) He cooperated fully with the investigation;
 - d) The victim’s family forgave him;
 - e) He was the sole breadwinner for four children;
 - f) There was no alcohol, recklessness or intent involved; and
 - g) The child emerged suddenly and unexpectedly across the road.
 - Thus, the RM ‘was entitled to conclude that these circumstances justified a suspended sentence.’
6. On the second ground that the sentence was too lenient, Counsel submits:
- The sentence was within the prescribed range.
 - The RM considered the following:
 - a. The gravity of the offence (a child’s death);
 - b. The Respondent was speeding in a school zone;
 - c. There was no malice or intent;
 - d. The respondent showed remorse and cooperated;
 - e. The victim’s family forgave the Respondent; and
 - f. The Pre- sentence Report identified strong rehabilitation prospects.
 - Considering the above, the sentence was not manifestly lenient.

CONSIDERATION

7. I have considered fully the submissions by both Counsels. The first ground of appeal is that the RM erred in law and fact in imposing a suspended sentence. To support this, the Madam DPP submits that there was no evidence before the court where the RM could have concluded that the Respondent was ‘genuinely remorseful.’ I note that at common law, a plea of guilty without remorse is still a mitigating factor- *R v Doyle* (1994) 71 A Crim R 360 (WA CCA). I further note that the Respondent, did not plead guilty in this case.
8. How does one determine whether the Respondent was ‘genuinely remorseful’ in this case? In *Gundry v The King* [2025] VSCA 233, Emerton P and Lyons JA stated: [67] ‘Remorse is a mitigating factor in the sentencing process. This Court in *Mohtadi v The Queen* [2018] VSCA 238. stated that:

[R]emorse involves a genuine subjective feeling of regret for the harm that has been occasioned, either to other persons or to society, as a consequence of the criminal activity in which the particular offender has been involved ...A conclusion as to remorse, by the applicant, could only be based upon appropriate evidence that indicated he had insight into the type of harm that commonly results in that type of activity, and a genuine sense of contrition being a party to it. [2018] VSCA 238.

At [68] *Thus the onus is on the offender to establish remorse, to the satisfaction of the court, based on appropriate evidence (either words or conduct). Depending on the nature of the offence, it may involve acknowledgement of the injury, loss or damage caused, restitution to the victim (particularly if voluntary), (R v Starr [2002] VSCA 180, [26] (O’Bryan AJA, Winneke P agreeing at [1], Chernov JA agreeing at [2]) co-operation with authorities or the provision of information leading to restitution of goods or property. (R v Golding [1980] 24 SASR 161, 162–3 (Wells J).) Of course, it is difficult to state an exhaustive list of matters which might constitute remorse. (R v Starr [2002] VSCA 180, [26] (O’Bryan AJA, Winneke P agreeing at [1], Chernov JA agreeing at [2]).*

At [69] Further, a guilty plea is not *necessarily* indicative of an expression of remorse: *Mohtadi v The Queen* [2018] VSCA 238, [28]–[29] (Kyrou and Kaye JJA). it depends on all the circumstances of the case. *R v Gray* [1977] VR 225, 231–2 (McInerney and Crockett JJ, Gillard J agreeing at 235).

9. At [15] of the Sentence, the RM states- ‘The defendant is genuinely remorseful and this is reflected in the Report- **Pre- Sentence Report.**’ Is this sufficient to hold that the defendant is genuinely remorseful? Only in part. There has to be something more. As stated in the *Mohtadi v The Queen* case above, ‘Remorse involves a genuine subjective feeling of regret for the harm that has been occasioned, either to other persons or to society, as a consequence of the criminal activity...’
10. I find that genuine remorse can only come directly from the offender himself. Although, in practice, defendants may opt not to express remorse openly in court because they may be appealing the conviction and the sentence, such remorse to be genuine, has to be ‘a subjective feeling of regret for the harm caused.’ Ideally, genuine remorse is to be expressed by the offender in open court.
11. Did the Respondent express this remorse elsewhere than in the Report relied upon by the RM? This is covered in the submissions of the Respondent. Counsel refers to the Record of Interview.

‘Q 34. Did you know that the kid had died?’

Ans.- I don’t know.

Q 35- ‘I tell you now, that kid died.’

A.- ‘Forgive me.’

12. When the Respondent was being interviewed, he had not known that the victim of the motor vehicle accident had died. After Q. 34, he was then informed about it. Such news would have been devastating to him. I find that the Respondent, uttering the words- ‘**forgive me,**’ though not expressed to the parents of the boy, at that moment, whilst in police custody, it did show ‘genuine remorse’ on his part. It was a ‘subjective feeling of regret for’ causing the death of the child.

SUSPENDED SENTENCE

13. Madam DPP submits that there are no ‘special or exceptional circumstances’ that justify a suspended sentence. In *R v Ford* (2008) 100 SASR 94; A Crim R 398 (CCA) Gray J, with whom the others agreed, said (at [51]-[52]):

‘A sentencing judge will only turn to consider suspending a sentence of imprisonment after first determining that imprisonment is the appropriate penalty. Having decided that imprisonment is the appropriate penalty, and having decided the head sentence and non-parole period to impose, a sentencing judge may then suspend that sentence if he or she considers that good reason exists to do so.

Whilst ‘good reason’ will usually be derived from circumstances personal to the offender, there is no limitation placed on what may amount to a good reason. There must be something about the personal circumstances of the applicant or the offence that would render it inappropriate to imprison the applicant in the circumstances where imprisonment is the appropriate penalty. It is not a matter of finding something special or exceptional, but rather a matter of weighing all relevant factors.’

14. In *Dinsdale v The Queen* (2000) 202 CLR 321; 175 ALR 315; 115 A Crim R 558 Kirby J referred to the cases and said (at 347; 335; 579 [81]):

‘There is a line of authority in Australian courts that suggests that the primary consideration will be the effect such an order will have on rehabilitation of the offender, which will achieve the protection of the community which the sentence of imprisonment itself is designed to attain. But most such statements are qualified by judicial recognition that other factors may be taken into account. The point is therefore largely one of emphasis.’

At [83]:

‘On the other hand, other judges have regarded it as impermissible effectively to confine consideration of whether to exercise the discretion to the question of rehabilitation of the offender. According to this second view, there is no warrant for holding that the decision on suspension should depend largely on the prospects of rehabilitation, or contrition, or any other factor.’ Such considerations are accepted as relevant. But they are not determinative. They do not excuse those with the responsibility of sentencing of the obligation to consider all of the circumstances.’

15. **DPP v Buhagiar and Heathcote** [1998] 4 VR 540 (CA) Batt and Buchanan (at 547) is noteworthy. They said:

‘ [T]here are cases where a judge may reach the view that suspension of a sentence is appropriate, not because it would be less unpleasant for the offender, but because it may be productive of reformation, which offers the greatest protection to society: R v Davey (1980) 50 FLR 57; 2 A Crim 254 at FLR 65; A Crim R 260-1. A suspended sentence of imprisonment is not an unconditional release or a mere exercise in leniency. Rather it is an order made in the community’s interest and generally designed to prevent re-offending: at FLR 67; A Crim R 262. In deciding whether to suspend in whole or in part a term of imprisonment a judge is deciding whether in all the circumstances, the offender should have the benefit of a special opportunity for reform, to rebuild his own life, or to make some recompense for the wrong done, or should have the benefit of the mercy to which King CJ referred in R v Osenkowski (1982) 30 ASR212 at 212-13, or for some other sufficient reason should have this particular avenue open to him, provided the conditions of the suspension are observed: R v P (1992) 39 FCR 276 at 285, a decision of the Full Court of the Federal Court. (The three cases cited in this paragraph all concerned Crown appeals.)

16. At paragraph [41] of the Sentence, the RM said:

‘However, in the current circumstances the court is mindful of the chances of rehabilitation of the defendant. The defendant is a first-time offender and is genuinely remorseful. He has stopped drinking alcohol and has been going to church. He is employed and is supporting his family. An immediate custodial sentence would affect his livelihood. It will also affect his family, especially his children. The court finds that these circumstances warrant a suspension of the term of imprisonment for a reasonable time.’

I find that the factors considered by the RM are all relevant. As stated in the **R v Ford** case above, the Supreme Court of South Australia (Court of Criminal Appeal) said- **‘It is not a matter of finding something special or exceptional, but rather a matter of weighing all relevant factors.’**

17. I further note that the conduct of the Respondent was not one of ‘momentary inattention or misjudgement.’ It did not involve any of the aggravating factors identified in Items **(iii) to (ix) in the R v Christopher Tom Jurisic case above**. In particular, the present case did not involve *‘ a deliberate course of bad driving, repeated and serious traffic violations during a lengthy journey, the presence of alcohol, competitive driving or persistence in driving after apprehension*. Therefore, the Respondent had not **‘abandoned responsibility’ for his conduct**.

18. I further find that the RM did not act on a wrong principle of law, he did not allow extraneous or irrelevant matters to guide or affect the exercise of his discretion, he did not mistake the facts, and he did not fail to consider some relevant matters.

19. I conclude that the RM did not err in law or fact when he imposed a suspended sentence here.

20. Considering all the above, the first Ground of appeal, fails.

GROUND 2

21. On the Ground that the sentence was manifestly lenient, the DPP submits at paragraph [3.28] that ‘there were no exceptional (special) circumstances to warrant a suspension of the sentence..’ Counsel appears to suggest that in suspending the sentence, this makes the sentence ‘manifestly lenient.’

22. The following cases are noteworthy:

- i. **R v JCE** (2000) 120 A Crim R 18 (NSW CCA) Fitzgerald JA, with whom the others agreed, said (at 22 [25]):- ‘ *A suspended sentence of imprisonment is punishment*’;
- ii. **R v O’Keefe** [1969] 2 QB 29; [1969] 1 ALL ER 426 Lord Parker said (at 32;94): - *A suspended sentence is a sentence of imprisonment. Further, whether the sentence comes into effect or not, it ranks as a conviction, unlike the case where a probation order is made, or a conditional discharge is given.*’
- iii. **Elliot v Harris** (No 2) (1976) 13 SASR 516 (CCA) Bray CJ said (at 527):- ‘ *So far from being no punishment at all, a suspended sentence is a sentence to imprisonment with all the consequences such a sentence involves on the defendant’s record and his future, and it is one which can be called automatically into effect on the slightest breach of the terms of the bond during its currency.*’


23. Further, this is not a case where the Respondent had ‘abandoned responsibility’ of his conduct as in paragraph [17] above. The Respondent stands convicted. He may not be able to acquire Visas to travel abroad now. Employment options may dwindle. Like those that receive immediate custodial sentences, his future is equally bleak. Though the duration of suspension of 4 years, where this sentence will be hanging over the head of the Respondent may be on the high side, I choose not disturb this.

24. I find that the 2 years and 270 days imprisonment suspended for 4 years is not manifestly lenient. The second Ground of appeal also fails.

CONCLUSION

25. The appeal is dismissed.

DATED this 06th Day of October 2025


Kiniviliame T. Keteca

Judge.

