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Sentencing Paris

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For a number of years now punishing Paris Hilton may have been on the mind of many a person for different reasons. She is guilty of crimes against fashion some would say. Cries of cruelty to animals could also be heard for, among other things, dressing her Chihuahua Tinkerbell in pink Chanel. Parents scorned her as a bad role model for their children.

Nevertheless shockwaves were felt around the world (at least in the world of entertainment news) when the heiress actually found herself behind bars. And the gossip magazine headline trend of 'Young starlet goes to prison' looks set to continue with the likes of Nicole Richie and Lindsay Lohan. So now is an opportune time to set the record straight, to answer the burning question in many young, would-be lawyers' minds – *If Paris committed the same offence while holidaying on the Gold Coast, would she go to gaol here?*

The quickest and most straightforward answer is – *Probably not.* And now to reason why ...

Chronology of events

To start with, it is important to determine the charge that Paris faced. So time for a brief chronology of relevant events:

- September 2006 – Paris was charged with driving under the influence of alcohol and a drug, and of driving with a blood alcohol concentration of 0.08%.¹
- 21 November 2006 – The Californian Department of Motor Vehicles suspended Paris' licence for approximately four months, effective 30 November 2006.²
- 22 January 2007 – Paris made the equivalent of a guilty plea to a reduced charge of alcohol-related reckless driving. The maximum penalty for this offence is a fine of US\$1000 and imprisonment for 90 days.³ Paris was given three years probation and fined. The conditions of her probation included that she must: (i) enrol in, within 21 days, and complete an alcohol education program; (ii) not drive without a valid licence; and (iii) obey all laws and orders of the Court.⁴
- 27 February 2007 – Paris was found by police driving whilst suspended.⁵
- 30 April 2007 – The prosecution alleged Paris had violated her probation by breaching the conditions mentioned above.⁶
- 4 May 2007 – A judge ordered Paris to serve 45 days in prison for violating her probation.⁷
- Late May 2007 – The Los Angeles County Sheriff's Department halved Paris' sentence to 23 days for good behaviour, before she went to prison.⁸

The rest, as they say, is history ... and can be left for another day.

Queensland law

Under Queensland law Paris' conduct of driving with a blood alcohol concentration of 0.08% would constitute an offence by virtue of s 79 of the *Transport Operations (Road Use Management) Act 1995*. Being over 25 years of age (and assuming she is not subject to a learner or provisional driver's licence) with no previous convictions,⁹ Paris would be liable to a fine of up to AU\$1050 or imprisonment for up to three months.¹⁰ She would also be disqualified from driving for a period of between one and nine months, the length determined at the Court's discretion.¹¹

Generally, in a Queensland Magistrates Court a drink driving first offender like Paris would be fined in addition to receiving the mandatory disqualification from driving.¹² In an analogous case, Dave Grohl, the lead singer and guitarist of the 'Foo Fighters', and of ex-'Nirvana' fame, was convicted in Queensland of driving a moped with a blood alcohol concentration of 0.095%. He had no prior convictions and was fined \$400 and disqualified from driving for three months.¹³ The common law principle of consistency encourages that '[l]ike cases should be treated in a like manner'¹⁴ and is supported by the purpose outlined in the legislation of promoting consistent approaches in sentencing offenders.¹⁵ Strict adherence to this principle would favour a similar result for Paris.

However, it is recognised that in a discretionary sentencing system, some level of inconsistency is expected and accepted.¹⁶ The Queensland system is certainly discretionary and comments made by the Chief Justice of the Queensland Supreme Court indicate that Magistrates and Judges are not confined by a straightjacket as the principle of consistency might suggest, but rather that 'fully informed sentencing discretion is the hallmark'.¹⁷ In exercising this discretion the Courts must look to the relevant legislation – in Queensland, the *Penalties and Sentences Act 1992* (hereafter the Act) – and to common law principles of sentencing. The Act stipulates that the only purposes for which a Court may impose a sentence are to justly punish, rehabilitate and/or deter offenders, to denounce their conduct and/or deter others from committing similar offences, and/or to protect the community.¹⁸ It further outlines a number of considerations to which the Court must have regard in sentencing offenders.¹⁹

Ultimately though it is up to the Court how these purposes and considerations are applied. As the Act makes it clear that imprisonment is an option for Paris' offence, it is possible for the Court to order probation.²⁰ As such, a Magistrate who thought the still relatively young Miss Hilton was in need of some guidance to understand and conform to society's expectations may have regarded probation as appropriate for that rehabilitative purpose.

Probation

The first condition of Paris' probation, that she attend an alcohol education program, could also be attached to a probation order in Queensland and, if attached, must be followed.²¹ Courts in Queensland have attached a condition to probation that offenders attend the 'Under the Limit'²² drink driving program.²³ It would be unnecessary for the Court to affix a condition that Paris not drive without a valid licence²⁴ because of the mandatory requirement of all Queensland probation orders that offenders 'must not commit another offence during the period of the order'.²⁵ Driving without a

valid licence is such an offence. This condition would have the same effect as the third condition of Paris' probation.²⁶

It is unlikely that Paris would be subjected to three years probation in Queensland as this is the maximum period of probation available.²⁷ However, even if the minimum period of six months probation had been ordered,²⁸ Paris would have violated the conditions by not attending the drink driving program and by re-offending during the period of her order (only a month after it was made). As such, a Queensland Court would have a number of options. The breach of probation in itself is an offence attracting a maximum penalty of 10 penalty units (a \$750 fine).²⁹ For that offence imprisonment is not an option. Nevertheless, upon being satisfied of the breach the Court may instead or additionally admonish and discharge Paris – effectively warning her not to do it again and letting the probation continue unabated – and/or re-sentence her for the original drink driving offence.³⁰ Further, Paris would be facing a new offence of disqualified driving, which carries a maximum penalty of 60 penalty units or 18 months imprisonment.³¹

Re-sentencing

Assuming that the Court decided to re-sentence Paris for drink driving it must be remembered that the maximum period of imprisonment that can be imposed is three months. This maximum penalty must be considered³² and the common law principle of proportionality notes that this penalty should be prescribed for cases falling within the worst category.³³

To determine whether Paris' case is such a case, the nature and seriousness of the offence and Paris' culpability need to be considered.³⁴ At around 12.30 am on a Thursday Paris was pulled over by police, who stated she was driving erratically.³⁵ Paris accepted that she may have been speeding a little on her way to get a burger as she had not eaten all day.³⁶ She said that she had consumed one margarita that evening.³⁷ As previously mentioned, the breath test indicated a reading of 0.08%.

The exact nature of the erratic driving is not known, neither is the risk that her driving posed to other drivers. For example it is not known whether the road that she was stopped on was generally a busy one or a back street, whether there were other cars around that night and the distance Paris intended to drive. All of these matters would impact on how serious the offence was deemed to be. The time of night may imply the risk was reduced as generally less traffic would be on the road. Also, Paris was only charged with driving under the influence so her erratic driving could perhaps be assumed not to be significant as it did not amount to an offence. If Paris' contention that she only had one margarita is credible, it may be considered that she is less culpable than a person who had consumed a large amount of alcohol and who could not plausibly assert that they did not think they would be over the limit. Indeed, in Queensland, for the category of offence that Paris committed (driving under the influence – over the general alcohol limit, between 0.05% and 0.15%³⁸) her reading is at the lower end of the scale.

As previously discussed Paris had no criminal or traffic history of any description. To the Court this would suggest that she is – wait for it – of good character.³⁹

The offence characteristics combined with Paris' characteristics as an offender certainly do not suggest that she

should be given the maximum penalty of three months imprisonment, nor would they support the imposition of the one and a half months imprisonment (45 days) that she eventually received. This is further reinforced by the requirement that the Court consider Paris' guilty plea.⁴⁰ The Act stipulates that the Court may reduce the sentence to take this into account.⁴¹

It has been suggested in Queensland that '[n]ormally the sentence will be reduced by 10 percent to 30 percent for such a plea',⁴² depending on factors such as whether the plea was made at the earliest reasonable opportunity. It is conceded that the Courts retain discretion whether to make such a reduction and there are appropriate situations where no reduction is afforded despite a guilty plea.⁴³ However, this seems only to be pertinent if the offence falls within the worst category which, as mentioned earlier, Paris' does not. A reduction can be reflected in the sentence in various ways.⁴⁴ Particularly relevant here may be the option of a community based order (such as probation or community service) rather than time in gaol.

Imprisonment

The only reason remaining then for the possible imposition of imprisonment would be punishment for the offence of disqualified driving. Arguably the most important purposes in sentencing this type of offence and the related offence of drink driving are deterrence and protection of the community. In the decision of *McIvor v Rourke*,⁴⁵ the District Court Judge quoted the Magistrate who initially sentenced Mr McIvor for offences of disqualified driving and drink driving as follows:

'Drink driving and disqualified driving, and the combination of the two are offences that are all too prevalent in the community. They cause death, they cause destruction. There is a need to tell you [the offender] and to tell other members of the community that these offences are not to be tolerated. Indeed, offences of this nature need a firm determination from the court so that the community is protected.'⁴⁶

General deterrence (that is, making an example of the offender as a warning to others in the community to deter them from considering a similar path) as a sentencing purpose is frequently used in the way the Magistrate described to counter prevalent offences⁴⁷ and would be appropriately applied here. However, Paris Hilton's lawyers intimated that she was selectively targeted for prosecution because of her celebrity status.⁴⁸ Perhaps it could also be argued that the sentence was exemplary to drive home the point that no-one is above the law. This would be an inappropriate consideration in Queensland. While some well-known Queenslanders (such as Pauline Hanson and Di Fingleton) originally received sentences that appeared harsh by comparison to others, they can be distinguished from a person with celebrity status such as Paris as they were alleged to have abused their prominent positions of trust in public life.⁴⁹

Specific deterrence (that is, deterring the offender before the Court from re-offending) is also less important in Paris' case. Although it may be accepted that 'the court should deal decisively with drivers who continuously break the rules in a serious way'⁵⁰ it cannot be said that Paris has continuously and seriously broken the rules. This was the first occasion of Paris displaying contempt for a court order and one incident does not imply that she is likely to do so again.⁵¹

Finally, it must be noted that in Queensland (for non-violent offences that do not cause physical harm and are not sexual offences against persons under 16) imprisonment is a last resort and a sentence that would allow Paris to stay in the community should be preferred.⁵² Specifically for disqualified driving offences, Judge Robin has said 'it is unusual for a first offender to be sentenced to imprisonment'.⁵³ And Paris should be no exception.

Although this analysis may provide some comfort to Paris on her next visit to the Gold Coast, perhaps in the future she should stick to chauffeur-driven limousines to ensure that the only 'big house' she ends up in is one of wax!

References

- ¹ *California v Paris Hilton* (26 September 2006, Misdemeanour Complaint) – available through FindLaw: 'Paris Hilton's DUI/DWI charges' at <http://news.findlaw.com/hdocs/docs/ent/cahilton92606cmp.html> (accessed 9 August 2007).
- ² *California v Paris Hilton* (30 April 2007, Prosecutor's Motion to Revoke Probation, pp 3 and 7) – available through FindLaw: 'Paris Hilton's probation violation charges' at <http://news.findlaw.com/hdocs/docs/ent/cahilton43007mot.html> (accessed 9 August 2007).
- ³ Section 23103(c) *California Vehicle Code*, cited in above n 2, p 3.
- ⁴ Above n 2, p 4.
- ⁵ *Ibid*, p 6.
- ⁶ *Ibid*.
- ⁷ FindLaw: 'Paris Hilton's probation violation charges' at <http://news.findlaw.com/hdocs/docs/ent/cahilton43007mot.html> (accessed 9 August 2007).
- ⁸ Reuters News: 'Paris Hilton's jail time halved due to good behaviour' (17 May 2007) at <http://www.reuters.com/article/entertainmentNews/idUSN1739753020070517> (accessed 9 August 2007).
- ⁹ Above n 1.
- ¹⁰ Section 79(2) *Transport Operations (Road Use Management) Act 1995* (Qld). The fine is determined by multiplying the maximum 14 penalty units listed in that section by the current value of a penalty unit, \$75, as noted in s 5(1)(b) *Penalties and Sentences Act 1992* (Qld).
- ¹¹ Section 86(2)(f) *Transport Operations (Road Use Management) Act 1995* (Qld).
- ¹² Based on the writer's experiences in Magistrates Courts in Queensland.
- ¹³ *Senior Constable Riordan v David Eric Grohl* [2000] QCA 487.
- ¹⁴ *Wong v The Queen; Leung v The Queen* [2001] HCA 64, [6] (Gleeson CJ).
- ¹⁵ Section 3(c) *Penalties and Sentences Act 1992* (Qld). All subsequent section references relate to this Act, unless otherwise specified.
- ¹⁶ Above n 14.
- ¹⁷ *R v Smith* [2004] QCA 31, 4 (de Jersey CJ).
- ¹⁸ Section 9(1).
- ¹⁹ Relevantly here those listed in s 9(2).
- ²⁰ Section 91.
- ²¹ In accordance with s 93(1)(d) and s 94(b).
- ²² For an explanation of this program see http://www.carrsq.qut.edu.au/documents/FactSheet_UTL_Interlocks.pdf (accessed 12 August 2007).
- ²³ See for example *McIvor v Rourke* [2007] QDC 095.
- ²⁴ Like the second condition attached to her probation order, mentioned previously.
- ²⁵ Section 93(1)(a).
- ²⁶ Also mentioned previously.
- ²⁷ Section 92(2)(a).
- ²⁸ *Ibid*.
- ²⁹ Section 123(1).
- ³⁰ Section 125.
- ³¹ Section 78(1) *Transport Operations (Road Use Management) Act 1995* (Qld).
- ³² Section 9(2)(b).
- ³³ *Veen v The Queen* (No 2) (1988) 164 CLR 465.
- ³⁴ Section 9(2)(c) and s 9(2)(d).
- ³⁵ Associated Press: 'Paris Hilton says DUI arrest was nothing', *Celebrity News*, MSNBC.com at <http://www.msnbc.msn.com/id/>

14712866/ (accessed 13 August 2007).

- ³⁶ *Ibid*.
- ³⁷ *Ibid*.
- ³⁸ Section 79A *Transport Operations (Road Use Management) Act 1995* (Qld).
- ³⁹ Section 9(2)(f) and s 11.
- ⁴⁰ Section 13(1)(a).
- ⁴¹ Section 13(1)(b).
- ⁴² *R v Houghton* [2002] QCA 159, [31] (Fryberg J).
- ⁴³ See for example *R v D* [2003] QCA 547.
- ⁴⁴ See the different ways outlined by Atkinson J in *R v BAY* [2005] QCA 427.
- ⁴⁵ Above n 23.
- ⁴⁶ Cited in above n 23, [3].
- ⁴⁷ This is a consideration in s 9(2)(h).
- ⁴⁸ ABC News: 'Party Girl Hilton may find jail "Awful Hellish Place"' at <http://abcnews.go.com/GMA/Story?id=3143374&page=1> (accessed 15 August 2007).
- ⁴⁹ *R v Fingleton* [2003] QCA 266, [29]. *Hanson v DPP; Ettridge v DPP* [2003] QSC 277.
- ⁵⁰ As it was by defence counsel in above n 23, [11].
- ⁵¹ *Noon v Wilson* [2006] QDC 168, 7.
- ⁵² Section 9(2)(a).
- ⁵³ Above n 51, 4. This has been supported by Judge Wilson in *Rogers v Harding and Peel* [2007] QDC 112, [13].

You be the judge:

If you were the presiding judge, how would you sentence a drink driving offender such as Paris Hilton? Explain your approach by reference to relevant sentencing laws and principles.