

BEAT THE RAP

The sentence

If you break a criminal law, go to court and are sentenced::

:

- You might have to do some work in the community.
- You might have to fix something you broke.
- You might have to pay a fine (money).
- In serious cases you might have to go to jail.

The magistrate in this case sentenced Joseph to:

- A fine of \$2,000, in default of payment, 20 days' imprisonment. An application for a fine option order can be made for this fine; and
- Loss of driver's licence for 6 months for each of the driving charges – totals of 12 months
- The magistrate did not record a conviction.

What this means is that Joseph has to pay a fine, or spend 20 days in prison, or he can apply to do unpaid community service instead of paying the fine. He loses his drivers licence for 12 months. Luckily, no conviction was recorded. This was Joseph's first offence.

The words the Magistrate would use are:

One penalty imposed on both charges - you are convicted and fined \$2000 in default of payment to be imprisoned for 20 days. The proper officer is to refer the matter to SPER and you are allowed 2 months in which to pay the fine in full or to enter into a payment plan. Instead of paying the fine by paying the money you can apply to do community service. As you have indicated that you wish to do community service you are now ordered to do 100 hours community service and the order for the payment of the fine is suspended.

On each charge you are disqualified from holding or obtaining a driver's licence in Queensland for a period of 6 months, and those periods are cumulative, that is, they run after each other, so you cannot drive for 12 months. If you do decide to drive during this period and you come back before a Queensland Court you face a fine of up to \$6,000 or imprisonment up to 18 months and you will be further disqualified from holding or obtaining a driver's licence for between 2 and 5 years. In the circumstances I do not record a conviction."

Details: drink driving charge

Losing your driver's licence

The offence of driving under the influence of alcohol is a more serious offence, because the driver had more than 0.15% alcohol in his or her blood. (Drink driving, where the driver has more than 0.05% alcohol in his or her blood, is not as serious.)

A person who is found guilty of driving under the influence of alcohol, will lose their driver's licence for at least one month. The higher the amount of alcohol in the accused's blood, the longer the period of time he or she will be without a licence. This means that the accused is not allowed to drive a car at all.

As well as the licence disqualification, a person convicted of driving under the influence of alcohol is likely to be fined or given a community service order. For very high readings or repeat offences you may be jailed.

Fine

You have to pay some money. A fine can be punishment in addition to or instead of any other sentence. The law under which a person is convicted usually states the maximum fine that can be given as punishment for breaking that law. When deciding how much to fine an offender, the court must consider the offender's financial situation and whether paying the fine would put a burden on the offender. The court will set a deadline by which the fine must be paid. A fine can be paid in installments. When a magistrate gives a fine as punishment, the magistrate will usually state the number of days that must be served in prison if the fine is not paid.

Fine option order

If an offender is given the penalty of paying a fine, he or she can apply to the court to perform unpaid community service instead of paying the fine. The court can only make a fine option order if the court is satisfied that:

- The offender is unable to pay the original fine OR the offender or the offender's family would suffer economic hardship; and
- The offender is a suitable person to perform community service under a fine option order.

The number of hours of community service that an offender must perform under a fine option order must be fair in the circumstances.

Community service order

A community service order means an offender must do community service under supervision of a corrective services officer, without being paid, for a set number of hours. A community service order can only be made if the offender agrees and can be for a minimum of 40 hours, up to a maximum of 240 hours. The main advantage of a community service order is that it enables an offender to give something back to the community.

Recording convictions

When an offender is being sentenced, the magistrate or judge usually has a choice whether to record a conviction against the offender's name in criminal records kept by police. When deciding whether or not to record a conviction, the magistrate or judge will consider things including:

- the nature of the offence;
- the age and character of the offender; and

- the impact of recording the conviction on the offender's economic and social wellbeing or employment prospects.

If imprisonment is being given as punishment, a conviction must be recorded.

If a conviction is recorded, this can have legal and social adverse affects for the offender. For example, some laws require previous convictions to be disclosed, for example, when applying to join the police force or for admission to a profession. Also, an offender may limit his or her behaviour, ambitions, social and community interactions because he or she is afraid the previous conviction will be discovered.

If a conviction is not recorded, as in Joseph's case, the fact of the conviction is not on public record.

details: DANGEROUS DRIVING charge

Losing your driver's licence

A person convicted of operating a vehicle dangerously will lose his or her driver's licence for at least six months.

In addition to losing their driver's licence for at least 6 months, a person convicted of operating a vehicle dangerously may be punished by a fine, being sent to jail, or both.

Fine

See above information on fines.

Community service order

See above information on community service orders.

Imprisonment

Usually the law creating an offence sets out the maximum period of imprisonment that can be given as punishment for committing that offence.

The maximum penalty for dangerous driving is 3 years prison. But if the offender:

- was intoxicated (drunk or high); or
- was speeding; or
- was doing an unlawful race or speed trial; or
- has previously been convicted of dangerous driving;

the maximum penalty is 5 years in prison.

Therefore, Joseph could have been punished by up to 5 years in prison.

If an offender drives dangerously and this causes death or serious injury (grievous bodily harm) to someone, the maximum penalty is 10 years in prison. If the dangerous driving causes death or grievous bodily harm AND the driver:

- was intoxicated (drunk or high); or
- was speeding; or
- was doing an unlawful race or speed trial; or
- left the scene of the accident before the police came, other than to get medical help;

the maximum penalty is 14 years in prison.

These sentences apply in Queensland. It may be different in other States