

COURT OF APPEAL

**HOLMES CJ
GOTTERSON JA
McMURDO JA**

**CA No 213 of 2017
DC No 44 of 2015**

THE QUEEN

v

BROWN, Jamie Jeffrey

Applicant

BRISBANE

WEDNESDAY, 7 FEBRUARY 2018

JUDGMENT

HOLMES CJ: The applicant seeks an extension of time within which to appeal against his convictions of arson and attempted fraud. I would refuse the application for the following reasons. The application was out of time by a period of some three and a-half months. The applicant has given an explanation of that. He says that he understood that he had lodged an appeal against his conviction. It is not necessary to explore that matter further, but rather to turn to the question of whether there would be a miscarriage of justice if this extension of time were not granted.

The applicant had actually pleaded guilty to the two counts to which I have referred. The basis of his appeal against conviction is necessarily an application or an appeal on the basis that the conviction should not have been entered because he did not make a voluntary plea of

guilty to the offences. The Crown case against him was that he was responsible for the arson of a business with which he had been involved and attempted fraud through an insurance claim in respect of it.

The Crown case included evidence from his brother-in-law and a connection of the brother-in-law about having been procured to commit the arson. There was further evidence from his sister about a confession which the applicant was said to have made to having committed the arson. Those witnesses were examined on the voir dire. The matter had originally been listed for trial. After the voir dire in relation to his sister, the applicant pleaded guilty to the charges. He says that he entered that plea under extreme duress from his barrister.

It can be said at the outset that there is no question of the applicant not having understood what he was pleading guilty to. He plainly was very familiar with the Crown case and the evidence against him. There is no suggestion that he is of poor understanding or literacy. He had carried on a business for some time. His claims against his counsel, however, are, as I have said, extreme duress, but as to the particulars of that he says that his counsel said on the morning it was to go to trial that he had not read the brief. The cross-examination which can be seen from the transcripts of the voir dires of the three witnesses I have mentioned shows that that is not the case.

The applicant also claims that the barrister took no interest in certain documents that he wanted tendered and had not read a financial analysis which he had obtained until the second day that the matter was listed for trial. The barrister regarded those documents as of no assistance. The barrister, as I will come to shortly, may very well have been right about those matters. The larger complaint though is that the barrister told him that he would go to jail for a very long time if he did not plead guilty. That, in fact, seems to have been accurate in the event that the applicant were convicted of arson after a trial.

The applicant says too that he did not think that he could go against his barrister's wishes. That is extraordinarily difficult to reconcile with the instructions to plead guilty which he signed which make the statement, "I have taken advice from my solicitor and barrister

regarding the case against me and I accept the advice given to me and I am happy with that advice. I accept the case against me is strong and it is on this basis that I have made the decision to plead guilty". And also his expression of his understanding in the same documents that it is, "My right to plead not guilty and to maintain my innocence. Taking all this into consideration and the advice given I wish to proceed to sentence". The barrister in question, Mr Harrison, has given an affidavit on which he was not cross-examined. His account is that the applicant was given advice about his prospects and that the applicant was left alone on a number of occasions with his girlfriend to discuss the matter without his lawyers being present to avoid a situation where he felt overpowered by his lawyers. It may well be that the applicant came to the view that he had no choice but to plead guilty when presented with the strong advice that he would if convicted be going to jail for a very long time, but that is not the same as an involuntary plea. I would not accept that there are real prospects of the applicant, were he granted an extension of time, being able to show a basis on which to set aside his plea of guilty and thus the conviction.

I should also mention that the applicant raised what he said were matters which pointed to his innocence of the offences to which he pleaded guilty. They turned on the ownership of the company which owned the property which was the subject of the arson. The property was owned by a company, the director of which was his father, or that is how it appears at any rate from an ASIC search. There appear to have been no documents evidencing a sale of the business and certainly the insurance company from an exhibit was unaware that the business had changed hands.

The applicant has produced a late affidavit from his mother which was not available at trial asserting that there was a change in the business ownership. That is by the by because the Crown in relation to the attempted fraud alleged that the benefit to be gained was either for the applicant's company or the company of which his father was director. Another matter which the applicant raises in his material is the suggestion that the business was trading well and that there was no motive for him to commit the arson.

He has provided financial analysis which indicates that the business, in fact, was trading at a loss for two financial years prior, but for the second half of 2013-2014 year, the fire having occurred in June 2014, it made small profits. The report also says that in the months of April and May the business traded at a profit. The glaring omission is what was happening in January, February and March. At any rate, there is nothing in the material that the applicant has produced which would lead one to conclude that there was some overwhelming evidence which would show that his conviction involved a miscarriage of justice.

For those reasons, there is in my view no real prospect of his establishing that his plea of guilty was entered involuntarily or that even if it were set aside, he would have such a strong case as to establish a miscarriage occurred by reason of his conviction. That being the case, I would not grant the application for an extension of time.

GOTTERSON JA: I agree.

McMURDO JA: I agree.

HOLMES CJ: The application for an extension of time within which to appeal against conviction is refused.