

SUPREME COURT OF QUEENSLAND

CITATION: *R v Quinn* [2018] QCA 144

PARTIES: **R**
v
QUINN, Kevin Douglas
(applicant)

FILE NO/S: CA No 287 of 2017
DC No 87 of 2016

DIVISION: Court of Appeal

PROCEEDING: Application for Extension (Sentence)

ORIGINATING COURT: District Court at Maryborough – Date of Sentence:
28 November 2016 (Dearden DCJ)

DELIVERED ON: 29 June 2018

DELIVERED AT: Brisbane

HEARING DATE: 12 June 2018

JUDGES: Sofronoff P and Henry and Crow JJ

ORDERS: **Application refused.**

CATCHWORDS: CRIMINAL LAW – APPEAL AND NEW TRIAL – GENERAL PRINCIPLES – PROCEDURE – TIME FOR APPEAL – EXTENSION OF TIME – GENERAL PRINCIPLES AS TO GRANT OR REFUSAL – where the applicant pleaded guilty to one count of maintaining a relationship with a child, three counts of indecent treatment of a child under 16, five counts of sodomy committed against a child and three counts of failing to comply with reporting obligations under the *Child Protection (Offender Reporting) Act 2004* – where the applicant was sentenced to a head sentence of 10 years imprisonment for the maintaining count – where a serious violent offender declaration was made in respect of the maintaining count – where the applicant filed an application for an extension of time within which to seek leave to appeal against his sentence approximately a year out of time – where there is no satisfactory explanation for the delay – whether there is any basis upon which the applicant’s sentence could be interfered with

R v ZA; Ex parte Attorney-General (Qld) [\[2009\] QCA 249](#), discussed

COUNSEL: The applicant appeared on his own behalf
D Kovac for the respondent

SOLICITORS: The applicant appeared on his own behalf

Director of Public Prosecutions (Queensland) for the
respondent

- [1] **SOFRONOFF P:** On 28 November 2016 the applicant pleaded guilty to one count of maintaining a relationship with a child, three counts of indecent treatment of a child under 16, five counts of sodomy committed against a child and three counts of failing to comply with reporting obligations under the *Child Protection (Offender Reporting) Act 2004* (Qld). He was sentenced to 10 years imprisonment in respect of the maintaining count, two years imprisonment on the indecent treatment counts and five years imprisonment for each of the sodomy counts as well as two years imprisonment for each of his breaches of the *Child Protection (Offender Reporting) Act 2004*. The sentences were concurrent. A declaration that the applicant was a serious violent offender was made in respect of the maintaining charge. The learned sentencing judge made a declaration that the applicant had served 1,004 days of his term of imprisonment by reason of pre-sentence custody.
- [2] The applicant now seeks an extension of time within which to apply for leave to appeal against his sentence. The application was filed on 22 December 2017, almost a year out of time.
- [3] The applicant says that he lodged an appeal on 3 December 2016 to Legal Aid. There is no evidence to support this statement. There has been no other explanation for the delay of almost a year. The explanation for the delay is, therefore, unsatisfactory.
- [4] The applicant was 53 years old when he committed the offences and 56 years old when he was sentenced. At the time of sentence he had a single previous conviction in Queensland for a failure to report under the *Child Protection (Offender Reporting) Act 2004*. He was convicted on 14 March 2008 and was fined \$540. The applicant also has a criminal history in New South Wales. On 11 December 2001 he was convicted for sexual offences that he committed during the late 1980s against his stepson who was, over the relevant period, aged between nine and 16 years. He was sentenced to a term of imprisonment of three years and three months with a non-parole period of one year and three months. He also committed other offences in New South Wales, one of which included an assault on a female.
- [5] The applicant had come into contact with the complainants, two boys aged 15 and 16, through a friendship with their father. He offered accommodation to their father and the family then came to stay with him. The offending began shortly afterwards. The maintaining offence involved penetrative anal intercourse two to five times a week. The other counts against the younger of the children also involved anal intercourse as well as other indecent acts and photographing the complainant's penis as well as exposing him to pornographic videos. This complainant suffered a greater vulnerability because his intelligence was much lower than was normal for his age.
- [6] At the sentence hearing before Dearden DCJ the prosecutor had submitted that a sentence in the vicinity of nine to 10 years was appropriate. The applicant's counsel submitted that a sentence of eight years imprisonment was appropriate. Counsel referred to *R v Souter*,¹ *The Queen v EH*² and *R v AE*.³

¹ [2002] QCA 516.

² [2008] QCA 67.

- [7] Dearden DCJ correctly regarded the offending as extremely serious. The applicant had taken advantage of two vulnerable young boys and had groomed them. Some of the offending with one complainant was committed in the presence of the other one. The offences have had a very significant effect upon the applicant's victims who now suffer from various psychological troubles as a result.
- [8] Dearden DCJ took into account that, although committal proceedings were held that involved the cross-examination of witnesses, including both complainants, the applicant nevertheless pleaded guilty. This spared the complainants the ordeal of a trial.
- [9] It cannot be inferred that the sentence imposed in this case was erroneous. In *R v ZA; Ex parte Attorney-General (Qld)*⁴ the respondent had been convicted on his plea of guilty in respect of 34 sexual offences committed between 1 November 2006 and 1 February 2008. The offences involved six boys. The offences included maintaining an unlawful sexual relationship with a child, two counts of sodomy and numerous counts of indecent treatment as well as attempting to procure a young person for carnal knowledge. The respondent had been sentenced to nine and a half years imprisonment with an order that he be eligible for release on parole after serving four years and nine months. On the Attorney-General's appeal this sentence was set aside and he was sentenced to a sentence of 10 years imprisonment with the effect that he had to serve 80 per cent of that sentence. The Court of Appeal took into account the respondent's actions in enticing and grooming his victims, the breach of trust involved and the devastating effect of his offending on the victims and their families. Notwithstanding his plea and cooperation with authorities, the requirements of deterrence and protection of the community meant that the sentence had to be increased.
- [10] In view of that case and others relied upon by the prosecution at the sentence hearing⁵ it cannot be said that the sentence imposed in this case was so obviously wrong as to imply that his Honour had erred in some way in the exercise of his discretion.
- [11] The applicant also complains about his legal representation. He said that he wanted to plead at a much earlier stage. He also says that the alleged period of maintaining, one of eight months, was not correct. He says that the actual period was eight weeks. However, he gave no indications of any desire to plead at an earlier stage and he voiced no objection to his counsel's assent to the prosecution facts.
- [12] The applicant also says that he is now very ill with cancer.
- [13] None of these matters raise any basis upon which the sentence could possibly be interfered with.
- [14] For these reasons⁶ the application for an extension of time within which to apply for leave to appeal against sentence should be refused.
- [15] **HENRY J:** I have read the reasons of Sofronoff P. I agree with those reasons and the order proposed.

³ [2001] QCA 136.

⁴ [2009] QCA 249.

⁵ *R v Souter, supra*; *R v Hereford* [2001] QCA 177.

⁶ *R v Tait* [1999] 2 Qd R 667 at [5].

- [16] **CROW J:** I have read the reasons of Sofronoff P and agree with the order his Honour proposes.