

COURT OF APPEAL

**SOFRONOFF P
GOTTERSON JA
BOND J**

**CA No 52 of 2018
SC No 457 of 2009**

THE QUEEN

v

UPSON, Robert James

Applicant

BRISBANE

MONDAY, 23 JULY 2018

JUDGMENT

GOTTERSON JA: Robert James Upson was convicted on the 18th of January 2010 of unlawfully trafficking in the dangerous drug cannabis sativa between the 1st of June 1997 and the 30th of September 2007 at Coominya. He was sentenced to eight years' imprisonment and became eligible for parole after four years. On the 15th of March 2018, Mr Upson filed a Form 1 Application for an Extension of Time in which to appeal and a Form 26 Notice of Appeal. The latter document does not specify whether he wishes to appeal against his conviction, his sentence or both. The latter document sets out a single ground of appeal. It is, I quote:

“The police accountant Christopher Allen has recently under oath admitted that he got the figures wrong in my trial adjusting the

unsourced income down from over 1.3 million dollars to 950 thousand dollars. Therefore committing perjury...”

This application for an extension of time is the fourth occasion on which Mr Upson has sought to challenge his conviction in this Court. The first was in 2011. He was then represented by senior counsel. His appeal was heard on the merits and it was dismissed. See *R v Upson* [2011] QCA 196. Then in 2013 he applied for an extension of time to appeal against his conviction. The application was refused on the basis that he had by his 2011 appeal exhausted his statutory right of appeal against conviction and that therefore this Court had no jurisdiction to entertain a further appeal. See *R v Upson* [2013] QCA 76.

Next, in 2017 Mr Upson sought a further extension of time within which to appeal against the conviction. That too was refused for the same reason. See *R v Upson* [2017] QCA 221. On that occasion the Court applied the well-established principle that had been recently affirmed by the decision of this Court in *R v KAM (No 2)* [2017] QCA 197. In that case McMurdo JA, with whom Sofronoff P and Boddice J agreed, said:

“Where an appeal against conviction has been dismissed, it is well established that the Court has no jurisdiction to hear a further appeal against conviction: see eg. *R v MAM* [2005] QCA 323, *R v Nudd* [2007] QCA 40 and *R v Lumley* [2008] QCA 155 and [2009] QCA 172.”

These and other judgments to the same effect have applied *Grierson v The King* (1938) 60 CLR 431 which held that where a right of appeal is provided by statute in terms such as in s 668D of the *Criminal Code* (Qld), the statute is to be interpreted as allowing for only one appeal.

It is abundantly clear that Mr Upson exhausted his right to appeal against his conviction by the appeal on the merits that was determined in 2011. Accordingly, I would refuse his current application for an extension of time within which to appeal against conviction. I hasten to add that Mr Allen’s admission of error, if it was made, could not conceivably constitute perjury on his part. Insofar as an extension of time might also be being sought to appeal against the sentence, it is relevant that in the 2011 proceeding Mr Upson was refused leave to appeal against sentence. He has no prospects of succeeding on a renewed application for

leave to appeal against sentence on the single ground stated in his notice of appeal. That ground has no measurable significance for his sentence. Moreover, Mr Upson has quite failed to produce any sworn evidence to explain his delay in appealing against the sentence.

In these circumstances his application for an extension of time within which to appeal against the sentence must also be refused.

SOFRONOFF P: I agree.

BOND J: I agree.