SUPREME COURT OF QUEENSLAND

CITATION:	*Croll v Commissioner of Police* [2019] QCA 34
PARTIES:	**CROLL, Leonard Theodore** (applicant) **v** **COMMISSIONER OF POLICE** (respondent)
FILE NO:	CA No 139 of 2018 DC No 4595 of 2016 DC No 4958 of 2016
DIVISION:	Court of Appeal
PROCEEDING:	Application for Extension of Time s 118 DCA (Criminal)
ORIGINATING COURT:	District Court at Brisbane – Unreported, 27 March 2017 (Clare SC DCJ)
DELIVERED ON:	1 March 2019
DELIVERED AT:	Brisbane
HEARING DATE:	21 February 2019
JUDGES:	Fraser and Philippides and McMurdo JJA
ORDERS:	**Application for an extension of time within which to apply for leave to appeal be refused with costs.**
CATCHWORDS:	CRIMINAL LAW – APPEAL AND NEW TRIAL – PROCEDURE – NOTICES OF APPEAL – TIME FOR APPEAL AND EXTENSION THEREOF – where the applicant was convicted and fined for failing to appear in accordance with his bail undertaking – where a charge of breach of a bail condition was struck out rather than dismissed – where the applicant required an extension of time of more than 13 months to bring his application – where the explanation of the delay was manifestly inadequate – where the contention that proceedings were initiated at first opportunity was not supported by the evidence – where the appeal would have no prospect of success – whether an extension of time to bring an application should be granted or refused CRIMINAL LAW – APPEAL AND NEW TRIAL – COSTS – where the applicant was not legally represented – where the application was pursued despite a clear explanation as to why the arguments could not succeed – whether costs should follow the event *Bail Act* 1980 (Qld), s 33(3)(b)(i)

R v Tait [1999] 2 Qd R 667; [1998] QCA 304, applied

COUNSEL: The applicant appeared on his own behalf
C M Cook for the respondent

SOLICITORS: The applicant appeared on his own behalf
Director of Public Prosecutions (Queensland) for the respondent

[1] **FRASER JA:** The applicant was convicted and fined $600 for failing to appear in the Magistrates Court on 18 October 2016 in accordance with his bail undertaking. He appealed to the District Court against conviction and sentence. He brought a second appeal to the same court against an order made in the Magistrates Court on 8 December 2016 striking out a charge against the applicant for breach of a bail condition. Both the first appeal and the second appeal were dismissed with costs by a District Court judge on 27 March 2017. On 7 June 2018 the applicant filed applications for leave to appeal to this court and for an extension of time.

[2] In deciding whether to grant an extension of time the Court considers whether or not the delay in applying is explained and whether it is in the interests of justice overall to extend time: *R v Tait* [1999] 2 Qd R 667 at 668.

[3] The application for leave to appeal contains nine grounds, eight of which challenge the primary judge's decision to dismiss the first appeal. Grounds 2.1 and 2.2 contend that on 26 October 2016 the applicant had given a reasonable lawful excuse for his non-appearance on 18 October 2016, he was wrongly convicted and fined, and his appeal to the District Court should have succeeded. Grounds 2.3 and 2.6 contend that there was sufficient evidence for the primary judge to deem that the applicant had been indirectly released from his undertaking and the applicant's appeal against conviction and sentence could not have been dismissed in the District Court "based on all the information within the transcript of proceedings for 2 August 2016 and the fact that this date was listed as the trial date for the matters and was hijacked by way of undisclosed by prosecution proceedings".

[4] Under those four grounds the applicant argues that he was wrongly convicted because the charges in respect of which he had been granted bail had been dismissed by the Chief Magistrate on 2 August 2016. The transcript of the hearing on that date reveals that the prosecutor sought to replace the original charges with fresh ones, the applicant opposed that, and the Chief Magistrate decided that this issue should be addressed at the trial at a later date. The applicant's bail undertaking was enlarged until 18 October 2016 after the Chief Magistrate had enquired of the applicant whether that date suited him for a trial. In response to a question whether a new undertaking would have to be signed, the Chief Magistrate replied that he had not accepted the new charges and they would have to be proffered on the day of the trial. The Chief Magistrate told the applicant that he would see him then. The applicant said "Thank you". No order was made permitting the substitution of the charges. All of that is perfectly clear on the face of the transcript, notwithstanding the applicant's argument to the contrary.

[5] The applicant failed to appear on 18 October 2016 and a warrant for his arrest was issued. He was brought before a magistrate on 26 October 2016. The applicant then argued that the charges had been struck out by the Chief Magistrate on 2

August 2016. The magistrate rejected the argument and found that the applicant had failed to show reasonable cause. The primary judge concluded that this was the only reasonable finding open. I agree. There being no evidence to the contrary, under s 33(3)(b)(i) of the *Bail Act* 1980 (Qld) the warrant for the applicant's arrest produced to the Magistrates Court on 26 October 2016 was conclusive evidence of the applicant's bail undertaking, his failure to surrender into custody, and that the issue of the warrant was duly authorised.

[6] Ground 2.5 contends that the fine was excessive as there was an error in law on 2 August 2016 causing ambiguity at the hands of the prosecutor and the Chief Magistrate that caused the applicant confusion and was not considered by the primary judge. For the reasons already given that ground also cannot succeed. I note also that the primary judge rejected the applicant's argument that the fine of $600 was an excessive sentence. The respondent points out that the maximum penalty for the offence was two years' imprisonment, the applicant had a criminal history, and the sentence was imposed in circumstances in which the applicant failed to appear at his trial. Even putting aside the additional circumstance upon which the respondent relied, that the applicant unsuccessfully contested the charge against him, no basis appears for thinking that the primary judge erred in dismissing the applicant's appeal against the fine.

[7] The primary judge referred to the circumstance that after the applicant was convicted and sentenced the applicant was remanded in custody on the substantive charge and he was unable to secure bail for another three weeks. The applicant argued that he had been wrongly refused bail because he would not accept bail conditions which kept him away from his children even though the Department of Child Safety had withdrawn a care application for those children. The primary judge observed that the transcript of the 26 October 2016 hearing indicated that the magistrate's concern was an unacceptable risk of the applicant failing to appear in light of his previous failure to attend for the trial and continued statements by the applicant that he did not accept the validity of the bail undertaking. The primary judge also concluded that the refusal of bail on the substantive charges was a separate issue to the sentence for the offence of failing to appear. Ground 2.4 challenges that conclusion. I agree with the trial judge's conclusion. The events which occurred after the applicant had been sentenced for his failure to appear on 18 October 2016 have no bearing upon the question whether that sentence was excessive.

[8] The effect of ground 2.8 of the application is that the primary judge should have accepted the applicant's arguments against the costs order in the District Court. Ground 2.9 contends that the costs order was unjust and unlawful because he was self-represented and his appeals identified significant matters of public interest. The primary judge rejected the arguments which are repeated in those grounds and found that there was no proper reason to depart from the usual rule that costs ordinarily follow the event. Costs were in the discretion of the primary judge. The applicant's arguments do not identify any arguable ground for thinking that the discretion miscarried.

[9] The applicant was released on a fresh bail undertaking on 11 November 2016. He was subsequently charged with a breach of a condition of bail requiring him to report to a police station on 25 November 2016. When that matter came before a magistrate the prosecutor disclosed that the prosecution was not ready to proceed.

A statement of facts had not been prepared. At the prosecutor's invitation the magistrate struck out the charge. In the applicant's second appeal to the District Court he argued that the charge should have been dismissed rather than struck out. The primary judge observed that the order to strike out the charge was appropriate, there was no alleged abuse of process on foot, and any alleged misuse of process should be addressed if and when it arose. The primary judge therefore dismissed the second appeal. That order is not mentioned in the section of the application for leave to appeal in this court which identifies the orders challenged, but ground 2.7 of the application contends that the appeal should not have been dismissed because the charge was an abuse of process. The evidence before this court does not support a reasonable argument that the charge should have been dismissed rather than struck out. In any event the point is academic: the applicant informed the court that he was re-charged with the same offence, he pleaded guilty, and no conviction was recorded. No appeal should be entertained in those circumstances.

[10] The applicant argues that decisions against him resulted from bias. This argument appears to have been based upon the fact that the applicant's arguments were not accepted. The argument lacks substance. The applicant also argues that the primary judge failed to conduct a re-hearing but found merely that the challenged decisions were open in the Magistrates Court, and that the primary judge erred in rejecting the applicant's attempt to adduce new evidence in the appeals. It appears from the applicant's description of that evidence that it comprised a video recording of the applicant making statements to police officers to the effect that the warrant for his arrest was invalid. The primary judge correctly rejected the applicant's attempt to adduce that evidence. It was not admissible. It is also clear from the transcript and the primary judge's reasons that the primary judge correctly conducted the appeals to the District Court as a rehearing and reconsidered afresh the issues that had been agitated in the Magistrates Court.

[11] The applicant requires an extension of time of more than 13 months to bring his application. He has filed an affidavit in which he seeks to explain that long delay. In relation to the period of more than seven months after the primary judge's decision on 27 March 2017 until 18 November 2017, the applicant deposes that he represented himself in court appearances on seven separate days. That is a manifestly inadequate explanation for the delay in that period. As to the following period of more than six months, the applicant deposes in very general terms that he has cared for both of his children, prepared a District Court appeal and taken other steps in that court, had trouble accessing information from Queensland Police, and encountered other difficulties. Again the explanation is manifestly inadequate. The applicant deposes that he initiated proceedings in this court at the first opportunity, but that opinion is not supported by evidence.

[12] The length of the delay in applying, the absence of a satisfactory explanation for the delay, and (in relation to the decision dismissing the second appeal to the District Court) the absence of any substantial injustice resulting from the suggested error militate against granting the extension of time sought by the applicant, but I would refuse the application on the additional ground that an appeal would have no prospect of success.

[13] The respondent applied for costs of the application. The applicant opposed a costs order upon the bases that he was self-represented, he had been the victim of miscarriages of justice, and the matters he raised involved the public interest. The public interest is opposed to the repetition in a second hearing of misconceived

arguments of the kind which the applicant presented in the District Court. The applicant does suffer from the disadvantage that he is not legally represented, but he pursued his application despite the clear explanation given in the primary judge's reasons of why his arguments could not succeed. Costs should follow the event.

[14] I would order that the application for an extension of time within which to apply for leave to appeal be refused with costs.

[15] **PHILIPPIDES JA:** I agree with the reasons of Fraser JA and the orders proposed by his Honour.

[16] **McMURDO JA:** I agree with Fraser JA.