

SUPREME COURT OF QUEENSLAND

CITATION: *R v Quagliata* [2019] QCA 52

PARTIES: **R**
v
QUAGLIATA, Troy Anthony
(appellant)

FILE NO/S: CA No 67 of 2018
DC No 306 of 2017

DIVISION: Court of Appeal

PROCEEDING: Appeal against Conviction – Further Orders

ORIGINATING COURT: District Court at Townsville – Date of Conviction: 12 March 2018 (Durward SC DCJ)

DELIVERED ON: 2 April 2019

DELIVERED AT: Brisbane

HEARING DATE: 1 August 2018

JUDGES: Sofronoff P and Henry and Bond JJ

ORDER: **1. The conviction on count 1 of the indictment should be quashed.**
2. There should be a re-trial of count 1 of the indictment.
3. The defendant should be remanded in custody.

CATCHWORDS: CRIMINAL LAW – APPEAL AND NEW TRIAL – where an order was made quashing count 1 of the indictment and a re-trial ordered – where the respondent has indicated they will not be proceeding further on count 1 of the indictment – where this would result in there being no sentences according to law as counts 2, 4 and 5 of the indictment were not further punished – whether further orders should be made
Criminal Code (Qld), s 563
Penalties and Sentences Act 1992 (Qld), s 188

COUNSEL: J A Greggery QC for the appellant
D L Meredith for the respondent

SOLICITORS: Anderson Telford Lawyers for the appellant
Director of Public Prosecutions (Queensland) for the respondent

[1] **SOFRONOFF P:** I agree with Bond J.

[2] **HENRY J:** I have read the reasons of Bond J. I agree with those reasons and the order proposed.

- [3] **BOND J:** For reasons set out in *R v Quagliata* [2019] QCA 45, this Court determined that -
- (a) the conviction on count 1 of the indictment should be quashed;
 - (b) there should be a re-trial of count 1 of the indictment; and
 - (c) otherwise:
 - (i) the appeal should be adjourned to permit the appellant and the respondent to file and serve submissions as to the orders which should be made in relation to counts 2, 4 and 5 of the indictment;
 - (ii) each party must file and serve written submissions as to those orders within 7 days of the date of these reasons; and
 - (iii) the determination on the question of the orders which should be made in final disposition of the appeal will be made on the papers.
- [4] Submissions have now been received.
- [5] The respondent has communicated to the appellant its intention not to proceed further on count 1.
- [6] Both parties agree that although (1) the respondent could enter the *nolle prosequi* in this Court pursuant to s 563(1) of the *Criminal Code*, and (2) this Court could then proceed to impose an appropriate sentence in respect of counts 2, 4 and 5, that would then entail a further hearing in this Court. Given that the appellant's lawyers are based in Townsville, cost and delay would be minimised if the two courses mentioned took place in the District Court in Townsville.
- [7] To that end, the appellant proposes that the orders which should be made in final disposition of the appeal are as follows:
- (a) The conviction on count 1 of the indictment should be quashed.
 - (b) There should be a re-trial of count 1 of the indictment.
 - (c) The defendant should be remanded in custody.
- [8] The appellant submits that making those three orders would then permit –
- (a) the prosecution to elect to proceed under s 563 of the *Criminal Code* in the District Court in Townsville in relation to count 1;
 - (b) the prosecution to apply to the District Court under ss 188(1)(a) and 188(5)(b)(ii) of the *Penalties and Sentences Act 1992* (Qld) to re-open the sentences originally imposed in respect of counts 2, 4 and 5, on the basis that, by reason of the quashing of the conviction on and subsequent discontinuance of count 1, those sentences would not be sentences according to law; and
 - (c) the District Court then to impose appropriate sentences in respect of counts 2, 4 and 5.
- [9] The respondent agrees.
- [10] Accordingly, the orders made in final disposition of the appeal are:
- (a) The conviction on count 1 of the indictment should be quashed.
 - (b) There should be a re-trial of count 1 of the indictment.
 - (c) The defendant should be remanded in custody.