COURT OF APPEAL

MORRISON JA

Appeal No 2100 of 2019
SC No 238 of 2018

JASON RONALD VAUGHAN **Applicant**

v

PAROLE BOARD OF QUEENSLAND **Respondent**

BRISBANE

FRIDAY, 17 MAY 2019

JUDGMENT

MORRISON JA: The applicant seeks leave to amend the notice of appeal to add various grounds. They are set out in the application itself, as well as in the very fulsome amended outline relied upon by the appellant. The short basis upon which leave is refused is that the grounds sought to be raised largely replicate those that are within the notice of appeal as it stands and by that, I refer to proposed grounds 1 and 2a.

The other grounds, which are reflected in paragraphs 2b and c of the proposed notice of appeal and also referred to in paragraphs 3(a) and (b) of the application to this court, are points that were not raised below and therefore, should not be raised for the first time on appeal. Mr Vaughan has referred me to a passage in the transcript, where he contends that the ground referred to in paragraph 3(b) of the application was raised by his counsel. That is a transcript reference 1-31, lines 30 to 42. In my view, that is directed to a different point,

namely, an argument about the infection of Dr Moyle's report by the extraneous matters, rather than a contention that is directed to the grounds sought to be raised.

The same applies to paragraph 75 of the reasons below. Mr Vaughan seeks, by his application, to amend the grounds to include a costs application under s 49 of the *Judicial Review Act* 1991. That is not the appropriate form in which such an application should be made. He remains free to file that application if he so chooses and that matter will be dealt with by the Appeal Court, when it is heard. That deals with all of the matters that he seeks to raise.

The matters to be agitated on the appeal, on their face have little utility, given that Mr Vaughan accepts that his discharge date for the sentence that he was serving, expired on the 2nd of February 2019, as did any question of parole. That raises a serious question about whether there is any utility in the existing grounds, other than that relating to the order for costs made below, which was that each party bear their own costs. As to that, Mr Vaughan submitted that he had made a section 49 application below and to some extent, that suggestion is correct. In the original application for an order for a statutory review, paragraph 4 of the relief sought costs orders under section 49 by way of indemnification, or in the alternative, that each party bear their own costs.

However, in the amended application for a statutory order for review filed on about 23rd July 2018, the reliance on section 49 was removed, and all that was sought was that an order that the respondent pay the costs. That was reflected then, in the outline of argument that was made on behalf of Mr Vaughan by his senior counsel, where, under the orders sought, paragraph 41 was merely an order for costs not invoking section 49 and senior counsel's outline otherwise made no reference to section 49. Not surprisingly, there was no reference to that in the respondent's outline, as a consequence. It therefore seems that reliance on section 49 was not persisted with below and if an application is to be made now, it should be made quite separately from the notice of appeal.

The question of utility then affects this matter, which was raised with Mr Vaughan and Mr Woodford, and that is that if there is no utility in the substantive grounds and therefore, the substantive relief, the subject of the notice of appeal, and the only live question then is the costs order made below, a real question arises as to whether that relief can only be granted upon the Court of Appeal granting leave to raise the issue. And that is a matter that Mr Vaughan will have to address.