[2019] QCA 115

COURT OF APPEAL

SOFRONOFF P
MORRISON JA
LYONS SJA

CA No 42 of 2018
DC No 400 of 2016

THE QUEEN

v

CAMPBELL, Richard Brian **Appellant**

BRISBANE

TUESDAY, 11 JUNE 2019

JUDGMENT

SOFRONOFF P: On 6 February 2018, the appellant was convicted of three counts of wilfully exposing three different children under 16 to an indecent act, and one count of wilfully doing an indecent act in a place to which the public had access. The notice of appeal in this matter was filed on the 28 February 2018. The appellant's sole ground of appeal was that the verdict of the jury was unreasonable and cannot be supported by the evidence. On 4 December 2018, the appellant was furnished with the appeal record and directed to file his outline of argument by 18 January 2019.

On 23 January 2019, the appellant spoke to the Deputy Registrar and informed that he had received the materials. He said that a medical problem was giving him difficulties in complying with the directions. He asked the hearing be vacated. By a letter from the

appellant's psychiatrist, he sought an extension of time to file his outline until 28 February 2019. This was granted and the hearing was vacated. On 6 March, his outline was overdue. On 4 April, the Registrar set a new date for filing of 14 May and a hearing date of 11 June. The appellant's psychologist responded to say that the appellant was emotionally unable to prepare his outline and was having difficulties getting assistance. She gave some details about his then state of mental and the problems he was facing, and the new date passed without an outline.

It is clear that the appellant's health issues are interfering with his abilities to prepare his appeal, however, there is nothing before the Court to show that there is any merit in this appeal, nor is there anything to suggest when or whether the appellant will ever be able to conduct his appeal. It is unsatisfactory for an appeal to be instituted and then not properly progressed, and with no sign whether it ever will be, or if it will, when that might be.

Rule 25 of Practice Direction 3 of 2013 provides that a failure to comply with directions may result in a proceeding being struck out. Section 44(1)(b) of the *Supreme Court of Queensland Act* 1991 provides that a judge of the Court of Appeal may dismiss an appeal for want of prosecution. Such a dismissal is interlocutory. See *Macatangay v State of New South Wales (No 2)* [2009] NSWCA 272.

In this case, the appellant has failed to prosecute his appeal and has not demonstrated that he will ever be able to prosecute it. He has not shown that it has any merit to justify its continuance. In these circumstances, I would order that the appeal be dismissed. That dismissal is without prejudice to the appellant's entitlement to apply for an extension of time within which to appeal, should he choose to do so at some future date, the matter not having been determined on its merits.

MORRISON JA: I agree.

LYONS SJA: I agree.

SOFRONOFF P: The order is that the appeal is dismissed.