[2019] QCA 164

COURT OF APPEAL

MORRISON JA
PHILIPPIDES JA
FLANAGAN J

CA No 34 of 2019
SC No 128 of 2015

THE QUEEN

v

SCHMIDT, Andreas

BRISBANE

FRIDAY, 23 AUGUST 2019

JUDGMENT

PHILIPPIDES JA: On 9 August 2016 the applicant was convicted by a jury of one count of conspiracy to traffic in a commercial quantity of a controlled drug, namely cocaine. He was sentenced on 14 December 2016 to 12 years' imprisonment with a non-parole period of seven and a half years. The offending related to a conspiracy between the applicant and one Heilbronn and another, Le, to traffic, as I mentioned, in a commercial quantity of cocaine. The investigation involved the use of surveillance and undercover cop operatives. During the original appeal hearing, and at first instance, the applicant's contention was that he was aware of the police investigation and was, in fact, conducting counter-surveillance on police and that that was relevant to his state of mind and his guilt and that he was therefore not guilty of the offence.

The applicant filed an appeal against conviction and sentence. The appeal was dismissed on 29 March 2018 and leave to appeal against sentence was also refused. Subsequently an application for leave – for special leave to appeal to the High Court was dismissed on 12 September 2018. The applicant now seeks an extension of time in which to appeal again against his conviction and sentence by notices filed on 26 February 2019, and seeks to raise the following grounds:

(a) Fresh evidence which it is contended has surfaced and is proposed to be given by the witness Le and is relevant as the basis for overturning the conviction.

(b) Evidence to be called from the witness Higgins.

(c) That the setting aside of parts of a subpoena by the trial judge on 16 November 2015 caused a miscarriage of justice.

In that regard, the applicant has also brought an application to adduce evidence concerning Mr Le and that application proceeds on the basis that that evidence was not available at trial, that the applicant was only able to locate Mr Le recently and obtain an affidavit from him and that the application is brought at the earliest opportunity.

There is well established authority concerning the process of an appeal against conviction. Once an appeal has been decided on its merits, the right to appeal against conviction created pursuant to s 668D of the *Criminal Code* is exhausted and there is no jurisdiction for a Court of Appeal to hear a further appeal. That principle is a well-established one and has been enunciated in decisions of the High Court, including *Grierson v The King* and *Nudd*. There are strong policy reasons as to the finality of judgment which underline the principle.

There are, however, some extremely limited exceptions to that rule concerning, amongst other things, the denial of procedural fairness. Those exceptions do not apply here. This is a case where the applicant received a full hearing on the merits. The three grounds of appeal sought to be raised were, in fact, previously raised before the Court of Appeal and dealt with. In those circumstances there is no basis in law for the further ventilation of the grounds sought to

be raised. The application for leave to adduce evidence should be refused and the applications for an extension of time should likewise be refused.

FLANAGAN J: I agree.

MORRISON JA: I also agree. The orders of the Court are as follows:

1. Application for leave to adduce evidence is refused.

2. Application for extension of time to appeal is refused.