

SUPREME COURT OF QUEENSLAND

CITATION: *R v Drews* [2020] QCA 18

PARTIES: **R**
v
DREWS, Troy Allen
(applicant)

FILE NO/S: CA No 140 of 2019
DC No 20 of 2016

DIVISION: Court of Appeal

PROCEEDING: Application for Extension (Sentence)

ORIGINATING COURT: District Court at Bundaberg – Date of Sentence: 10 March 2016 (Moynihan QC DCJ)

DELIVERED ON: 14 February 2020

DELIVERED AT: Brisbane

HEARING DATE: 29 November 2019

JUDGE: Sofronoff P and McMurdo JA and Boddice J

ORDERS: **1. The application to adduce further evidence be refused.**
2. The application for an extension of time within which to seek leave to appeal against sentence be refused.

CATCHWORDS: APPEAL AND NEW TRIAL – PROCEDURE – QUEENSLAND – TIME FOR APPEAL – EXTENSION OF TIME – OTHER MATTERS – where the applicant pleaded guilty to two counts of deprivation of liberty, three counts of common assault, one count of torture, one count of grievous bodily harm and two counts of contravention of a domestic violence order – where the applicant was sentenced to 10 years imprisonment with an automatic serious violent offence declaration for the count of torture – where the applicant makes an application for extension of time within which to appeal against the sentence – where the application for an extension of time was brought more than three years after the expiry of the statutory time for the filing of a notice seeking leave to appeal the sentence – where the applicant makes an application to adduce further evidence – whether the discretion to grant the extension of time should be exercised – whether there is a satisfactory explanation for the delay in bringing the application – whether the refusal of the extension would result in a miscarriage of justice

R v GV [2006] QCA 394, cited

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

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] **SOFRONOFF P:** I agree with Boddice J.
- [2] **McMURDO JA:** I agree with Boddice J.
- [3] **BODDICE J:** Troy Allen Drews makes application for an extension of time within which to appeal against sentences of imprisonment imposed on 10 March 2016. Those sentences followed pleas of guilty entered by the applicant in the District Court at Bundaberg.
- [4] The applicant also seeks leave to adduce further evidence as to the sentence hearing and the conduct of his legal representatives.

Background

- [5] The applicant was born on 11 April 1979. He was aged 35 years at the time of the offences. He was aged 40 at the date of the hearing.
- [6] The applicant has a relevant and significant criminal history, including for offences involving violence and drugs. He has previously served periods of imprisonment.

Offences

- [7] On 10 March 2016, the applicant pleaded guilty to two counts of deprivation of liberty, three counts of common assault, one count of torture, one count of grievous bodily harm and two counts of contravention of a domestic violence order. A sentence of ten years imprisonment, with an automatic serious violent offence declaration was imposed on the most serious of those offences, torture. Lesser, concurrent terms of imprisonment were imposed in respect of two of the other offences and, in respect of the remaining offences, the applicant was convicted and not further punished.
- [8] The offences were committed by the applicant in the company of two other offenders. These offenders' individual roles were peripheral. Each was sentenced to periods of imprisonment, with a requirement that they serve actual time in custody.
- [9] The offences concerned a male complainant aged 39 years and a female complainant aged 28 years. The male complainant had cerebral palsy and limited use of the right side of his body. The offences involved the use of actual violence by the applicant.
- [10] That violence included threatening to kill the female complainant whilst holding a pair of open scissors against her throat. The applicant then grabbed that complainant around the neck and spat in her face. He later threw the scissors at her, striking her in the abdomen.

- [11] The offences against the male complainant began after the applicant had accused him of stealing money and of being a paedophile. Both accusations were denied by the male complainant. Thereafter, the applicant commenced a brutal and cruel assault upon the male complainant who was defenceless and particularly vulnerable.
- [12] The acts of violence included knocking the male complainant to the ground, repeatedly punching him to the head and face, jumping on his chest causing a lung to collapse, repeatedly kicking him in the ribs and hitting him to the head with a glass. On three occasions boiling water was poured on his neck, face and back. The applicant expressed an intent to blind that complainant. The complainant describes smelling his skin burning.
- [13] The complainant was subsequently repeatedly struck to the back and neck with a power cord. His legs were hit with a metal bar stool. He was hit in the head with a kettle. The applicant used the heel of his foot to stomp on the male complainant's cheek and eye. A knife was subsequently used by the applicant to make a small cut to that complainant's throat.
- [14] Throughout the ordeal, the applicant verbally abused and tormented that male complainant. The male complainant described being terrified and fearing for his life. At one point he passed out as a consequence of his ordeal. After a considerable period of time, the applicant forced that male complainant into a vehicle. The male complainant was subsequently able to escape from that car and seek refuge in the home of another.
- [15] The applicant subsequently arrived at that house. The occupant was threatened if she did not disclose the whereabouts of the male complainant. The applicant located the male complainant in a cupboard. He stomped on the male complainant's head before dragging him from the house and forcing him back into the vehicle. The applicant took the male complainant to another residence, where he was beaten again repeatedly until he nearly passed out. The applicant subsequently left the male complainant in the front yard of another house before driving away.
- [16] The ordeal was estimated to have lasted in the order of ten hours. The male complainant suffered a life threatening injury, being a traumatic large left pneumothorax with partial collapse of the left lung, rib fractures, fractures to his vertebra, partial thickness burns, multiple abrasions and contusions and a nasal bone fracture.

Application

- [17] The application for extension of time within which to appeal against the sentence relates only to the sentence of ten years imprisonment imposed on the count of torture. Many grounds of appeal are relied upon, in the event that an extension of time is given in which to seek leave to appeal that sentence.
- [18] The proposed grounds of appeal may be summarised as containing contentions of inadequate legal representation, the withholding of essential information from the Court, inconsistency and misrepresentation of the facts, and a failure to rely upon a circumstance of diminished responsibility in mitigation of sentence. All are said to give rise to a conclusion that the sentence imposed was manifestly excessive.

- [19] The application for an extension of time is brought more than three years after expiry of the statutory time for the filing of a notice seeking leave to appeal the sentence.

Relevant principles

- [20] In considering such an application, relevant factors for the Court to consider include the length of the delay, whether there is a satisfactory explanation for that delay and whether it is in the interests of justice to grant the extension.¹
- [21] The discretion to grant an extension is broad. An extension may be granted even in the absence of a satisfactory explanation for the delay if the Court is satisfied that a refusal of the extension would result in a miscarriage of justice.²

Consideration

- [22] The applicant's material does not reveal any satisfactory explanation for what is an inordinately lengthy delay for the bringing of an application for an extension of time within which to appeal the sentence.
- [23] Further, a consideration of the grounds relied upon in support of any application for a grant of leave to appeal out of time supports a conclusion that any appeal would not enjoy sufficient prospects of success and there is no basis to conclude that a refusal of the extension application will result in a miscarriage of justice.
- [24] The applicant's complaints as to the conduct of his legal representatives relate largely to their conduct prior to the entry of his pleas of guilty and in the course of the sentencing submissions. There is no satisfactory explanation as to why the applicant did not, at that point, terminate their services or place his concerns on the record.
- [25] In any event, a consideration of the sentencing submissions and remarks reveal that the applicant's longstanding drug addiction, including the circumstances that the offences occurred whilst he was on "a methylamphetamine bender" were specifically canvassed at sentence and accepted by the sentencing Judge as being relevant in providing some context for the offending behaviour.³
- [26] Finally, a consideration of the circumstances of the offences, in the context of the applicant's personal circumstances and mitigating factors, supports a conclusion that an effective head sentence of ten years imprisonment, with the consequence of an automatic serious violent offence declaration was well within a proper exercise of the sentencing discretion, even allowing for the matters sought to be contended for as being relevant in the setting of that sentence.
- [27] The offences to which the applicant pleaded guilty involved a course of conduct over a protracted period in which the applicant, as the principal offender, terrorised two complainants. The torturous assault of those complainants was properly described by the sentencing Judge as "cowardly, vicious and evil".⁴ One complainant suffered serious and life-threatening injuries. He was callously left for

¹ *R v Tait* [1999] 2 Qd R 667; [1998] QCA 304.

² *R v GV* [2006] QCA 394 at [3].

³ AB36/36.

⁴ AB36/3.

dead. That complainant was disabled, rendering him largely defenceless. There was nothing in that complainant's conduct which provided any sensible reason for the applicant's behaviour.

[28] Notwithstanding the applicant's pleas of guilty and his expressed remorse and the other matters in mitigation such as his troubled childhood, drug addiction and prospects of rehabilitation, an effective head sentence of ten years imprisonment imposed on an offender who had a relevant and significant criminal history, including previous convictions for violence and drugs, and who had committed the offences in question while on probation and when on bail for the domestic violence offence, fell well within an appropriate exercise of the sentencing discretion.

[29] As there is no basis to conclude that a failure to grant the extension of time within which to seek leave to appeal against the sentence would result in a miscarriage of justice and there is no satisfactory explanation for the extensive delay in bringing such an application, the interests of justice do not favour the grant of an extension of time. The further evidence sought to be adduced, even if leave to adduce that evidence be granted, would not alter those conclusions.

Orders

[30] I would order:

1. The application to adduce further evidence be refused.
2. The application for an extension of time within which to seek leave to appeal against sentence be refused.