

COURT OF APPEAL

**SOFRONOFF P
MORRISON JA
JACKSON J**

**CA No 228 of 2019
CA No 107 of 2020
DC No 840 of 2019**

THE QUEEN

v

DOUST, Ashley Mark

Appellant/Applicant

BRISBANE

WEDNESDAY, 3 JUNE 2020

JUDGMENT

SOFRONOFF P: The appeal against conviction is dismissed.

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SOFRONOFF P: This is an application for an extension of time within which to appeal a sentence in this matter. The case arises in this way.

The applicant and two of his friends were driving around when they spotted the complainant, who was a 17 year old young man, walking to work. The applicant told the driver of the car to stop and he got out carrying a knife. He approached the complainant and said something to him. The complainant couldn't hear him because he was wearing headphones.

The applicant then slashed the complainant's face with a pocket knife. He demanded his wallet and he proceeded to rob the complainant of his wallet and his phone. He punched the complainant on the nose and broke the complainant's nose. The complainant, very bravely, then chased the applicant whose friends came to his assistance and helped the applicant to punch the complainant and subdue him.

The applicant pleaded not guilty and was found guilty by the jury of two charges. The charges were one count of unlawful wounding and one count of armed robbery with personal violence. Judge Shanahan sentenced the applicant to a term of imprisonment of five and a half years and made no special order in relation to the parole eligibility date. His Honour considered declaring the offence a serious violent offence but declined to make that declaration. His Honour took into account that the applicant was only 26 when he committed the offence. The two accomplices who helped the applicant rob the complainant were each sentenced to two and a half years' imprisonment.

The applicant seeks an extension of time within which to seek leave to appeal his sentence so that the Court would, if it allowed the appeal, reduce his non-parole period. He contends that this would be justified because of the much lesser penalties that were imposed upon his accomplices. There is no merit in this application and an extension of time should not be granted because an appeal would have no prospects of success.

The applicant has a reasonably lengthy criminal history for somebody of his age. It includes many offences of stealing, an offence of unlawful use of a motor vehicle, but, more importantly for present purposes, numerous offences involving violence, including using a knife and discharging a gun during the course of a robbery. It follows that, for that reason alone, his position was one that justified a severe sentence.

What is more, there is no comparison to be made between the applicant and his co-offenders. Those two co-offenders pleaded guilty and were sentenced on that basis. Further, those two offenders were not charged with the offence of unlawful wounding which is, in my view, the

more serious of the two offences with which the applicant was charged. As a consequence, I would refuse an extension of time.

MORRISON JA: I agree.

JACKSON J: I agree.

SOFRONOFF P: The order of the Court is an extension of time is refused.