

COURT OF APPEAL

DAVIES JA  
McPHERSON JA  
WILLIAMS JA

CA No 270 of 2001

THE QUEEN

v.

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Applicant

BRISBANE

..DATE 19/02/2002

JUDGMENT

McPHERSON JA: The applicant was convicted and sentenced after a trial by jury in the District Court in May last year. In September he applied for an extension of time within which to appeal against conviction and sentence. He has offered no explanation at all for his delay in appealing and, consequently, as regards the conviction appeal, I would be prepared to dismiss his application on that ground alone. However, even if that consideration presented no obstacle, the application to extend time to appeal against conviction has no prospect of success. It consists essentially of complaints about the quality of his legal representation at the trial and about the conduct of the trial Judge. The complaints are supported by nothing more than the applicant's unsworn assertions which appear in the notice of application stated in the most general terms, such as "None of my evidence entered"; "Witnesses were not subpoenaed"; "Barrister was not given time to study my case"; "The Judge called the defendant a liar"; and so on. His assertions to that effect are contradicted by the extracts from the trial transcript including the summing-up that have been placed before us and by an affidavit from counsel who appeared for the applicant at the trial. Counsel deals in detail with each of the matters of complaint against him and satisfactorily disposes of them. His affidavit has not been contradicted by evidence from the applicant in any way at all.

So far as sentence is concerned, the applicant was found guilty of three counts of assault occasioning bodily harm committed in 1994 at a time when he was on parole; another five such counts committed on the same woman complainant between October 1998 and March 1999; one count of maintaining a sexual relationship with a child in 1998 and 1999, which was count 10 in the indictment; three counts of wilfully exposing a child under 12 to indecent videotapes; another three of exposing the child to an indecent act; two counts of committing an indecent act on the child; and one of doing grievous bodily harm to the woman complainant.

The victim of the physical assaults was at the time his de facto wife. Most of them took place after she had, at his insistence, performed indecent acts which the applicant filmed for the purpose of setting up a pornographic business. Some of those acts consisted of performing acts of multiple sex with other adults. The assaults, some of which involved the use or threat of use of a dangerous instrument such as a garden fork, were carried out by the applicant because he was dissatisfied with the standard of the complainant's performance during those indecent acts.

One of the persons with whom she was forced to commit some of the sexual acts was her own nine year old son, who was also the victim of the sexual offences committed against the child

to which I have referred. To crown this career of appalling behaviour, the applicant finally subjected the woman complainant to a prolonged and savage beating inflicting grievous bodily harm on her, including brain damage, fractures to facial bones and a severe injury to her left ear requiring plastic surgery.

In the course of his submissions in this Court the applicant, it may be noted, admitted that he had committed that assault causing grievous bodily harm.

It was count 19 in the indictment, in respect of which a sentence of six years imprisonment was imposed and made cumulative on the concurrent sentences imposed for the other offences, which varied in duration from three years each for the individual sexual offences committed against the child; from three to five years for the assaults occasioning bodily harm; up to 10 years for count 10, which was the offence of maintaining the sexual relationship in respect of which a declaration of a serious violent offence was made by the Judge. The upshot was therefore, as I understand it, an effective sentence of 10 years of which the applicant will be required to serve 80% before becoming eligible for parole, followed by a cumulative sentence of six years on which parole would be available in the ordinary way.

The applicant is a 27 year old man with a prior criminal history involving offences of violence and dishonesty, including an assault occasioning bodily harm in 1991 and another in 1992 before the spate of present offences began. He showed no remorse whatever for what he has done. The learned sentencing Judge described his behaviour as depraved and despicable. Those are strong words, but they are in my opinion fully justified. In the 20 years in which I have been on this Court, I have not seen a case in which the conduct of the accused was worse than this.

There is no basis for supposing that, if an extension of time were permitted to enable an appeal to be pursued against conviction or against sentence, it would have any prospect of succeeding. I would therefore refuse the application to extend time.

DAVIES JA: By way of explanation for his delay this morning, the applicant told us that within the required time he sent a notice of appeal to Legal Aid and that Legal Aid did not forward this notice of appeal on to the Court or inform him that they were not going to act for him until outside that time.

He told us this this morning when it was too late to verify its accuracy with the appropriate officer of Legal Aid.

Notwithstanding that and notwithstanding the fact that he told us that in an unsworn submission this morning, I might have been prepared to accept that as a satisfactory explanation for his delay when taking into account the other matters which he raised in that respect had there been any prospect in my view of his success on appeal.

However for the reasons already stated by his Honour Mr Justice McPherson I agree that there are no prospects of success in an appeal against conviction or sentence and I therefore agree with the orders proposed by his Honour.

WILLIAMS JA: I agree with all that has been said by Mr Justice McPherson and Mr Justice Davies.

I would add that I have read the detailed summing-up of the learned trial Judge in this case and I can see no error of law in that summing-up.

In addition on the facts it appears that the summing-up was balanced; the applicant gave evidence and denied any involvement in the commission of at least a number of the offences. With respect to each offence the summing-up detailed both the Prosecution and the defence evidence.

In all the circumstances, I agree that there is no reasonable

19022002 T6/BP17 M/T COA20/2002

prospect of the applicant succeeding on an appeal and in consequence I agree with the order proposed.

DAVIES JA: The application for an extension of time within which to appeal against conviction and for leave to appeal against sentence is refused.

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