[2002] QCA 142

COURT OF APPEAL

McPHERSON JA
WILLIAMS JA
HELMAN J

CA No 44 of 2002

THE QUEEN

v.

IAN ROBERT WILLIAMS

BRISBANE

..DATE 17/04/2002

JUDGMENT

McPHERSON JA: I will ask Justice Helman to give judgment in this matter.

HELMAN J: The applicant seeks the extension of the time within which to apply for leave to appeal against a sentence passed on him on 14 August 2001 in the Supreme Court at Brisbane. The ground of the appeal, if it were permitted to proceed, would be that the sentence was manifestly excessive.

The applicant was charged with the attempted murder of Pirjo Kristina Ikonen and, alternatively, with doing grievous bodily harm to her with intent to do some grievous bodily harm. It was alleged in each case that the offence took place on 13 April 2000 at Noosa Heads, Queensland. The applicant pleaded guilty to the alternative count and that plea was accepted in full discharge of the indictment. He was sentenced to imprisonment for eleven years, and it was declared by the learned sentencing judge that the conviction was a conviction of a serious violent offence. The applicant had been in pre-sentence custody from 13 April 2000 until the day he was sentenced, and the 488 days was declared to have been time served under the sentence.

The application was filed on 13 February 2002, approximately five months out of time. The applicant explains that delay by saying that he gave instructions to his solicitor on the day he was sentenced to institute an

application for leave to appeal, and followed those instructions with letters dated 7 September 2001 and 16 October 2001 to the same effect. None of those instructions were followed, and by a letter dated 22 January 2002 he sent a further letter by registered mail giving instructions to institute an application for leave to appeal against sentence, and after that the application was filed.

In R v. Tait [1999] 2 Qd.R. 667 this appears concerning applications for the extension of time:

> "The recent approach of this Court to the question of extending time in criminal appeals is sufficiently illustrated by R v. Mentink and a number of unreported cases in this Court. These suggest that the Court will examine whether there is any good reason shown to account for the delay and consider overall whether it is in the interests of justice to grant the extension. That may involve some assessment of whether the appeal seems to be a viable one. It is not to be expected that in all such cases the Court will be able to assess whether the prospective appeal is viable or not, but when it is feasible to do so the Court will often find it appropriate to make some provisional assessment of the strength of the applicant's appeal and take that into account in deciding whether it is a fit case for granting the extension. Other factors include prejudice to the respondent, but in the case of criminal appeals this is not often a live issue. Another factor is the length of the delay, it being much easier to excuse a short than a long delay." (p.668)

In this case it may be accepted, I think, that the applicant took steps to ensure that his application for leave to appeal against the sentence proceeded within the time limit provided for, but that through circumstances beyond his control that did not happen. Because of that, I

conclude that he has explained his delay satisfactorily.

I then come to consider the second matter mentioned in the passage that I have just quoted, i.e., whether it is in the interests of justice to grant the extension. It is possible, in this case, to assess whether the proposed application seems to be a viable one. The events that gave rise to the commission of the offence are clearly before us. The applicant had been residing with three other people in a house at Noosa Heads, and as a result of a dispute between him and the complainant he left the house and returned carrying a bottle of methylated spirits. He then said to the complainant, "You're going to burn, bitch", and poured the methylated spirits on to the complainant and set her alight. He inadvertently set himself alight but suffered no major damage. He then left the house and tried to obtain funds in order to flee the area. He was unsuccessful so he attempted to hide at the home of a friend until he was apprehended by investigating police officers later the same day.

The complainant suffered extensive burns to her body. She was in hospital for eight days in intensive care and for a further seventeen days in the burns unit. She had operations for the burns including skin grafting. She has been left with extensive areas of scarring. She has recovered from some of the injuries but others still affect her. She has found it necessary to take pain-killing medication and faces the possibility of further operations.

The applicant was a heavy user of amphetamines at the time he committed the offence. He was then aged thirty-eight years, having been born on 6 March 1962. The learned sentencing judge observed that the applicant's criminal history was not extensive but did reflect a history of violence. He was convicted of an assault occasioning bodily harm in 1988. There were two charges of assaulting police officers in 1993, both of which resulted in his imprisonment. There were charges in 1994 of possession of a weapon without a licence and carrying a loaded weapon in a public place. In 2000 there was a charge of breach of a domestic violence order.

In sentencing the applicant his Honour said that the starting point was, he thought, a penalty within the range of imprisonment for twelve to fourteen years. His Honour then expressed the opinion that the top of that range was inappropriate and that toward the bottom of the range would be the appropriate area in which to fix the sentence, but for the mitigating factors: about twelve and a half or thirteen years. The mitigating factor - such as it was, his Honour said - was the applicant's plea of guilty and, in those circumstances, his Honour decided that a sentence of imprisonment for eleven years met the case.

We have been referred to a number of comparable cases including R. v. Streeton (C.A. No. 99 of 1997, 4 June 1997), R. v. Wentworth (C.A. No. 461 of 1996, 20 December

1996) and - perhaps the most relevant since it was decided after the introduction of the provisions of Part 9A of the Penalties and Sentences Act 1992 - R. v. Difford (C.A. No. 105 of 2001, 3 September 2001). In each of those cases heavy penalties were imposed for offences of this kind.

In the result, accepting that a sufficient explanation has been given for the delay in instituting this application but taking into account the horrific circumstances of the offence and its aftermath and the sentences imposed in comparable cases, I conclude that this is a case that does not warrant granting the extension sought.

I should refuse the application.

McPHERSON JA: I agree. It is quite evident that the offence was premeditated. It was committed at the time when a domestic violence order was in force or effect. As is to be expected it has had disastrous consequences for the complainant and her future life. The offence is one that carries a maximum of life imprisonment. Drugs seemed to have been the precipitating cause of the applicant's behaviour in committing the offence but that cannot excuse the terrible crime that he committed in this instance.

I agree with Helman J in saying that the application for an extension of time and for leave to appeal against the sentence should be refused.

WILLIAMS JA: I agree with what has been said by each of Helman J and McPherson JA and only wish to add some remarks on one aspect.

The offence in question occurred on 13 April 2000 at a house in Noosa. For some time prior to that the applicant, his partner, the victim and her partner had been residing in that house. For reasons which are not made clear in the material a domestic violence order was obtained against the applicant restricting his right to visit those premises.

In breach of that order, on the 3rd of January 2000, he visited the premises; that gave rise to two charges of breaching that order which were dealt with in the Noosa Magistrates Court on the 24th of January 2000. There was a further breach of that order on the 8th of April 2000; on the same occasion, undoubtedly associated therewith, the applicant also faced charges of obstructing police and assaulting police. He had not been dealt with for those offences when five days later he committed the offence in question.

That brief history indicates that this was not an isolated act of violence directed towards persons who were residing in that house. In all the circumstances, there is no reasonable prospect of any appeal against sentence succeeding and I agree with the orders proposed.

McPHERSON JA: The applications to extend time and for leave to appeal against sentence are refused.
